

Summary of Comments on the Construction General Permit Received During the Public Comment Period (Oct. 27, 2008 – Dec. 26, 2008) and at the Public Hearings and the Agency’s Response to the Comments Received

Commenter	Comment	Agency response
Williams Mullen (on behalf of Great Eastern Management Company)	The restriction against beginning construction activity until a response to the registration statement is received from the Department of Conservation and Recreation has a potential to create costly delays on account of weather and could jeopardize financing commitments.	The effective time of a registration statement has been amended to specify that coverage under the General Permit becomes effective 15 business days following the mailing of a complete and accurate registration statement, unless an earlier notification of coverage is made by the Department.
Williams Mullen (on behalf of Great Eastern Management Company); David Rubando	The proposal to require that permit holders make their Stormwater Pollution Prevention Plans (SWPPP) publicly available should be eliminated. This proposal will add no additional environmental benefit, and will create unnecessary and unreasonable costs on permit holders.	The requirement related to public availability of the SWPPP has been amended. Numerous comments were received on this subject reflecting various viewpoints. Many strongly favored public availability of the SWPPP, while others strongly opposed it. In the end, language that is believed to achieve a compromise has been included in the General Permit. Under that language, the initial SWPPP developed for each site must be made publicly available. The developer will have a choice to either: (i) make the initial SWPPP available on an internet website and post the website address at the entrance to the construction site (or at a publicly accessible location for linear projects); or (ii) make a hard copy of the initial SWPPP available upon the receipt of a request from the public, at least once per month and during normal business hours.
Williams Mullen (on behalf of Great Eastern Management Company)	A SWPPP is an extremely technical document whose interpretation requires someone with specific engineering expertise.	The requirement related to public availability of the SWPPP has been amended. Numerous comments were received on this subject reflecting various viewpoints. Many strongly favored public availability of the SWPPP, while others strongly opposed it. In the end, language that is believed to achieve a compromise has been included in the General Permit. Under that language, the initial SWPPP developed for each site must be made publicly available. The developer will have a choice to either: (i) make the initial SWPPP available on an internet website and post the website address at the entrance to the construction site (or at a publicly accessible location for linear projects); or (ii) make a hard copy of the initial SWPPP available upon the receipt of a request from the public, at least once per month and during normal business hours.

Summary of Comments on the Construction General Permit Received During the Public Comment Period (Oct. 27, 2008 – Dec. 26, 2008) and at the Public Hearings and the Agency’s Response to the Comments Received

Commenter	Comment	Agency response
Williams Mullen (on behalf of Great Eastern Management Company)	In addition, the SWPPP is a proprietary document that governs how the permit holder manages its construction site. It discloses the location where valuable and sensitive materials are stored and thus its release to the general public could create a safety concern.	<p>The requirement related to public availability of the SWPPP has been amended. Numerous comments were received on this subject reflecting various viewpoints. Many strongly favored public availability of the SWPPP, while others strongly opposed it. In the end, language that is believed to achieve a compromise has been included in the General Permit. Under that language, the initial SWPPP developed for each site must be made publicly available. The developer will have a choice to either: (i) make the initial SWPPP available on an internet website and post the website address at the entrance to the construction site (or at a publicly accessible location for linear projects); or (ii) make a hard copy of the initial SWPPP available upon the receipt of a request from the public, at least once per month and during normal business hours.</p> <p>Information that is excluded from disclosure by law and information not required to be included in the SWPPP by the General Permit is explicitly not required to be released to the public under this provision.</p>
Williams Mullen (on behalf of Great Eastern Management Company)	The requirement that the SWPPP contain information about endangered species should be eliminated. The General Permit's sole purpose is to protect the waters of the Commonwealth. While the identification and protection of endangered species is an important issue, its inclusion in the SWPPP is both inappropriate and ineffective in furthering that goal and will only serve to be an additional unnecessary regulatory burden.	The language requiring consideration of threatened and endangered species in the SWPPP has been removed.
Williams Mullen (on behalf of Great Eastern Management Company)	It is vital that any proposed regulations balance the public benefit against the added cost to conducting business in the Commonwealth, especially during such severe economic times.	It is agreed that many considerations must be balanced in developing the revised General Permit. The revised permit is believed to balance, within the confines of the Clean Water Act and state law, the public benefit, environmental protection, economic considerations, and other applicable factors.
Williams Mullen (on behalf of Great Eastern Management Company)	The proposed regulations would double the stormwater treatment requirements for redevelopment projects, which will be a strong disincentive to such projects. This is particularly unfortunate at a time when many localities are trying to encourage infill projects.	This comment is not germane to this regulatory action, but rather relates to the Board’s revision of Parts I/II/III of the VSMP regulations. That regulatory action will be the subject of a separate public comment period in the future.

Summary of Comments on the Construction General Permit Received During the Public Comment Period (Oct. 27, 2008 – Dec. 26, 2008) and at the Public Hearings and the Agency’s Response to the Comments Received

Commenter	Comment	Agency response
Williams Mullen (on behalf of Great Eastern Management Company)	The proposed requirement that new development meet a runoff standard of 0.28 pounds of phosphorus per acre per year is based on flawed assumptions and is therefore much more stringent than necessary.	This comment is not germane to this regulatory action, but rather relates to the Board’s revision of Parts I/II/III of the VSMP regulations. That regulatory action will be the subject of a separate public comment period in the future.
Williams Mullen (on behalf of Great Eastern Management Company)	It is our understanding that the proposed rules would impose such strict requirements on stormwater quantity controls that would require some projects to meet a runoff level equal to the runoff from forested land. This is not a reasonable standard in any situation, but particularly an urban infill redevelopment project.	This comment is not germane to this regulatory action, but rather relates to the Board’s revision of Parts I/II/III of the VSMP regulations. That regulatory action will be the subject of a separate public comment period in the future.
Charles Newton (Page County Water Quality Advisory Committee); John Haddock; Thomas Verratti (Constructive Change and Coaching Center); Edward Knight; Art Fovargue; Asad Markarevic; Andy Manley; Michael Mulloy; Fred Boyer; Robert Hess; Jay Cohen	I ask that the Commonwealth of Virginia do more to protect streams that are already "impaired" from the additional damage caused by sediment running off from construction sites.	The General Permit requires discharges to waters identified as impaired on the 2008 305(b)/303(d) Water Quality Assessment Integrated Report to be addressed. Operators must minimize pollutants in their discharges as necessary to meet applicable water quality standards (see Section I H). In addition, if it is determined at any time that the operator’s discharges have reasonable potential to cause or contribute to an excursion above any applicable water quality standard, the Board will require the operator to either modify its control measures, submit data indicating that the receiving water is in fact meeting water quality standards, or cease its discharge and seek coverage under an individual permit.
Charles Newton (Page County Water Quality Advisory Committee)	Please add to this General Permit for Discharges of Stormwater from Construction Activities to require full and effective implementation of the erosion and sediment control plan as a primary condition for continuation of the stormwater general permit.	Section II(D)(2)(a)(1) and (2) of the General Permit requires that the operator have an approved erosion and sediment control plan or agreement in lieu of a plan. All control measures required by the plan must be designed, installed, and maintained in accordance with good engineering practices and the minimum standards of the Virginia Erosion and Sediment Control Law and Regulations.
Charles Newton (Page County Water Quality Advisory Committee)	Please strengthen the enforcement of erosion and sediment control regulations and make violations of the erosion and sediment control regulations a serious violation of the stormwater permit.	As referenced in the immediately preceding comment response, compliance with Erosion and Sediment Control requirements is a requirement of the revised General Permit. Additionally, over the past few years, the Board has placed a renewed emphasis on its review of local Erosion and Sediment Control programs to ensure greater compliance with the Erosion and Sediment Control Law and Regulations statewide.

Summary of Comments on the Construction General Permit Received During the Public Comment Period (Oct. 27, 2008 – Dec. 26, 2008) and at the Public Hearings and the Agency’s Response to the Comments Received

Commenter	Comment	Agency response
Charles Newton (Page County Water Quality Advisory Committee)	Please add a provision to the regulations that would require suspension of work other than erosion and sediment control activities, from the time that an erosion and sediment control violation occurs until the erosion and sediment control measures are re-established and any sediment that had left the site have been cleaned up.	<p>The Virginia Erosion and Sediment Control Law contains provisions allowing for stop work orders and other enforcement mechanisms. Local erosion and sediment control programs are administered by localities and local soil and water conservation districts across the state and are believed to be the best primary mechanisms for enforcement of erosion and sediment control requirements. The Board has oversight of local erosion and sediment control programs and conducts reviews of these programs on an ongoing basis.</p> <p>It is of note, however, that as referenced in the two preceding comments, the revised General Permit does contain requirements related to Erosion and Sediment Control. Enforcement actions for violations of the terms of the General Permit may be commenced in accordance with the Virginia Stormwater Management Act (§10.1-603.1).</p>
Bruce Lundeen (Shenandoah Valley Pure Water Forum); Bob Dickinson; Patricia Kurpiel; Beau Beasley; Leslie Mitchell-Watson (Friends of the North Fork of the Shenandoah River); John Haddock; Thomas Verratti (Constructive Change and Coaching Center); Audrey Clement (Green Party of Virginia); Ralph Hendrickson; Edward Knight; Art Fovargue; Asad Markarevic; Tim Adams; Andy Manley; Tom Boyd; John Fawsett; Michael Mulloy; John Moser; Tom Fore; Jeff Murray;	We support the new permit requirement that the stormwater pollution prevention plan be made available to the public.	The requirement related to public availability of the SWPPP has been amended. Numerous comments were received on this subject reflecting various viewpoints. Many strongly favored public availability of the SWPPP, while others strongly opposed it. In the end, language that is believed to achieve a compromise has been included in the General Permit. Under that language, the initial SWPPP developed for each site must be made publicly available. The developer will have a choice to either: (i) make the initial SWPPP available on an internet website and post the website address at the entrance to the construction site (or at a publicly accessible location for linear projects); or (ii) make a hard copy of the initial SWPPP available upon the receipt of a request from the public, at least once per month and during normal business hours.

Summary of Comments on the Construction General Permit Received During the Public Comment Period (Oct. 27, 2008 – Dec. 26, 2008) and at the Public Hearings and the Agency’s Response to the Comments Received

Commenter	Comment	Agency response
Fred Boyer; Robert Hess; Jay Cohen; Peter Bross; Doug Jackson; Kris Unger, Leon Szeptycki (on behalf of the Shenandoah and Potomac Riverkeepers)		
Bruce Lundeen (Shenandoah Valley Pure Water Forum)	There needs to be a clear standard for discharges from construction sites and that a narrative effluent limitation is a viable alternative to a numeric limitation. I believe that this would go a long way in providing the public with a course of action that along with access to the SWPPP documentation would assist the Department and local erosion and sediment staff with proof that a site is out of compliance.	<p>The Board is currently undertaking a substantial revision of Parts I/II/III of the VSMP regulations; a part of that separate regulatory action is the consideration of a 0.28 lbs/acre/yr phosphorus loading requirement. The development of this standard has taken over three years and involved a multitude of technical advisory committee meetings, design charettes, and other discussions in order to reach the proper standard and compliance methodologies. It is believed to be more appropriate to complete any effluent limitations in that action, and not in this abbreviated General Permit regulatory action. When a revised Part II is developed, any effluent limitations will then be incorporated into the next-developed Construction General Permit.</p> <p>The US EPA is additionally considering the development of effluent limit guidelines (ELGs) that were placed out for public comment during late 2008 and early 2009. Should EPA establish ELGs for construction activities, those requirements will likewise need to be included in future versions of the Construction General Permit.</p>
Patricia Kurpiel	There is no reason why a citizen observing pollution, or perhaps a site with no pollution, should not be able to learn all the details about plans to manage for clean public waters. Education of the public is in the public interest.	The requirement related to public availability of the SWPPP has been amended. Numerous comments were received on this subject reflecting various viewpoints. Many strongly favored public availability of the SWPPP, while others strongly opposed it. In the end, language that is believed to achieve a compromise has been included in the General Permit. Under that language, the initial SWPPP developed for each site must be made publicly available. The developer will have a choice to either: (i) make the initial SWPPP available on an internet website and post the website address at the entrance to the construction site (or at a publicly

Summary of Comments on the Construction General Permit Received During the Public Comment Period (Oct. 27, 2008 – Dec. 26, 2008) and at the Public Hearings and the Agency’s Response to the Comments Received

Commenter	Comment	Agency response
		accessible location for linear projects); or (ii) make a hard copy of the initial SWPPP available upon the receipt of a request from the public, at least once per month and during normal business hours.
Downriver Canoe Company; Leslie Mitchell-Watson (Friends of the North Fork of the Shenandoah River); Edward Knight; John Fawsett; Mike Aronoff (American Canoe Association); Tom Fore; Andrew Thayer; Pascal Girard (Sun Microsystems)	We support the recommendations made by the Shenandoah Riverkeeper and Potomac Riverkeeper to strengthen and update the construction general permit regulations.	The proposed revisions to the General Permit are believed to strengthen and update the permit. More revisions are likely to occur in future general permits, as the Board also has substantial regulatory actions underway to revise other parts of the VSMP regulations. Once these other actions are final, the criteria contained therein can be included in future versions of the General Permit.
Ralph Hendrickson	Developers, large and small, need to be held accountable for the protection of the areas surrounding their projects from detrimental effects caused by these projects. The complaints of the regulations requiring increased protection from runoff and public oversight because of hard economic times are unjustified. It does not take a disproportionate amount of effort to control the runoff from these projects. It is true that the cost of these efforts would need to be incorporated into the final cost of the completed projects making them more expensive.	The revised General Permit does hold construction site operators accountable for protection of downstream waters and properties. As a part of the Stormwater Pollution Prevention Plan required for each site, the permit includes provisions requiring consistency with an approved Erosion and Sediment Control plan and mandating compliance with the water quality and quantity technical criteria contained in the existing Part II of the VSMP regulations (now to be found in 4VAC50-60-1180 through 1190). It is believed that the improvements contained in the new General Permit have been made in a way that results in low (or no) additional costs to construction site operators beyond the costs being experienced today.
Herschel Finch	The current regulations do not meet the requirements of the Federal Clean Water Act, let alone show common sense and good stewardship of the lands and our waters. I urge that these regulations be brought up to date using the "best practices" standards that will help improve and sustain our waters.	The revised General Permit meets federal Clean Water Act requirements. In addition, US EPA will be reviewing the General Permit for consistency with the CWA prior to its becoming effective. The permit requires the utilization of control measures to control runoff from the construction site. Rather than limit the number and type of practices that may be utilized, it is instead the intent of the Department and the Board to allow for a variety of practices to be utilized in

Summary of Comments on the Construction General Permit Received During the Public Comment Period (Oct. 27, 2008 – Dec. 26, 2008) and at the Public Hearings and the Agency’s Response to the Comments Received

Commenter	Comment	Agency response
George Paine	I support Shenandoah and Potomac Riverkeepers' efforts to require public notice of all construction.	<p>order to provide flexibility and for the best choice to be made for each site's conditions.</p> <p>The Riverkeepers' efforts have largely centered on promoting the public availability of each site's Stormwater Pollution Prevention Plan (SWPPP). The requirement related to public availability of the SWPPP has been amended. Numerous comments were received on this subject reflecting various viewpoints. Many strongly favored public availability of the SWPPP, while others strongly opposed it. In the end, language that is believed to achieve a compromise has been included in the General Permit. Under that language, the initial SWPPP developed for each site must be made publicly available. The developer will have a choice to either: (i) make the initial SWPPP available on an internet website and post the website address at the entrance to the construction site (or at a publicly accessible location for linear projects); or (ii) make a hard copy of the initial SWPPP available upon the receipt of a request from the public, at least once per month and during normal business hours.</p> <p>Additionally, the Department is currently working on an enterprise website that may be utilized to provide the public with greater information related to permits in the future.</p>
Dave Anthony	We have an opportunity to bring regulation on these factors [stormwater management and construction runoff] up to date and into compliance with the federal Clean Water Act now.	The revised General Permit meets federal Clean Water Act requirements. In addition, US EPA will be reviewing the General Permit for consistency with the CWA prior to its becoming effective.
Gary Collins	This is an opportunity to put teeth into the permit and review process. I strongly urge a more stringent regulatory approach with sincere efforts to review and then enforce.	While the proposed General Permit does not require up front review of stormwater plans for a construction site, the Board is currently engaging in a separate regulatory action to amend Parts I/II/III of the VSMP regulations that will provide for such review prior to the commencement of land disturbance. Even under the existing permit, however, the Board and the Department take site inspections and enforcement of permits seriously. The revised General Permit will enhance current enforcement efforts by clarifying certain provisions related to permit

Summary of Comments on the Construction General Permit Received During the Public Comment Period (Oct. 27, 2008 – Dec. 26, 2008) and at the Public Hearings and the Agency’s Response to the Comments Received

Commenter	Comment	Agency response
Woodward S. Bousquet (Shenandoah University)	I concur with comments by the Shenandoah Riverkeepers that sediment entering water bodies from construction will only add to benthic impairments that already exist.	requirements (including direct language requiring compliance with water quality and quantity criteria contained in Part II of the VSMP regulations). The revised General Permit does address sediment discharges from construction sites in an effort to prevent further impairments. For example, section II(D)(2)(a)(1) and (2) of the General Permit requires that the operator have an approved erosion and sediment control plan or agreement in lieu of a plan. All control measures required by the plan must be designed, installed, and maintained in accordance with good engineering practices and the minimum standards of the Virginia Erosion and Sediment Control Law and Regulations.
Woodward S. Bousquet (Shenandoah University)	Controlling sediment runoff in Virginia’s streams, rivers, and other bodies of water is essential to protecting aquatic life and restoring the water quality of Virginia’s impaired waters.	The revised General Permit does address sediment discharges from construction sites in an effort to prevent further impairments. For example, section II(D)(2)(a)(1) and (2) of the General Permit requires that the operator have an approved erosion and sediment control plan or agreement in lieu of a plan. All control measures required by the plan must be designed, installed, and maintained in accordance with good engineering practices and the minimum standards of the Virginia Erosion and Sediment Control Law and Regulations.
Kathy and Frank Collins	The rules covering the permits for construction in Virginia need to be strengthened and even more important, the existing rules need to be enforced.	The proposed revisions to the General Permit are believed to strengthen and update the permit. More revisions are likely to occur in future general permits, as the Board also has substantial regulatory actions underway to revise other parts of the VSMP regulations. Once these other actions are final, the criteria contained therein can be included in future versions of the General Permit. The Board and the Department take site inspections and enforcement of permits seriously. The revised General Permit will enhance current enforcement efforts by clarifying certain provisions related to permit requirements (including direct language requiring compliance with water quality and quantity criteria contained in Part II of the VSMP regulations).
Rich Coffman	Protecting the environment should be the number one priority for anyone disturbing the natural processes. Those doing the damage on a large scale should be under	The revised General Permit is protective of the environment and does hold construction site operators accountable for protection of downstream waters and

Summary of Comments on the Construction General Permit Received During the Public Comment Period (Oct. 27, 2008 – Dec. 26, 2008) and at the Public Hearings and the Agency’s Response to the Comments Received

Commenter	Comment	Agency response
	the strictest regulations and monitoring.	<p>properties. Among other requirements, as a part of the Stormwater Pollution Prevention Plan (SWPPP) required for each site, the permit includes provisions requiring consistency with an approved Erosion and Sediment Control plan and mandating compliance with the water quality and quantity technical criteria contained in the existing Part II of the VSMP regulations (now to be found in 4VAC50-60-1180 through 1190).</p> <p>Larger construction sites are addressed by the General Permit. In fact, Phase I of the federal regulations that gave rise to the permit were at first focused upon construction sites of five acres or greater. Phase II of the federal regulations expanded stormwater requirements to include sites of one acre or greater, and the Virginia Stormwater Management Act reduces this requirement even further on the state level, to sites that are 2500 square feet or larger within areas designated subject to the Chesapeake Bay Preservation Act and regulations.</p> <p>In addition to this revised General Permit, the Board is also undertaking a significant regulatory action to revise Parts I/II/III of the VSMP regulations. This regulatory action will result in enhanced water quality and quantity technical criteria to be applied to construction activities in the future.</p>
F. Wayne Tate (Potomac River Smallmouth Bass Club)	A certain amount of siltation is normal of course, but it seems to me the rivers are holding excess silt (mud) that is swept somewhere else only with extraordinary rain events.	It is understood that the Commonwealth faces a number of water quality problems, and urban runoff is a factor in these problems. The revised General Permit is intended to assist in the effort to control stormwater runoff from construction activities, as are the Board's other regulatory actions to revise the water quality and quantity criteria of the VSMP regulations and the requirements for local stormwater management programs.
Wayne D. Seipel	Experiences have convinced me that the current siltation requirements are not sufficient to safeguard our waterways and that enforcement is also lacking.	The proposed revisions to the General Permit strengthen and update the permit in an effort to help the Commonwealth achieve improved water quality. The revised General Permit will enhance current enforcement efforts by clarifying certain provisions related to permit requirements (including direct language requiring

Summary of Comments on the Construction General Permit Received During the Public Comment Period (Oct. 27, 2008 – Dec. 26, 2008) and at the Public Hearings and the Agency’s Response to the Comments Received

Commenter	Comment	Agency response
		compliance with water quality and quantity criteria contained in Part II of the VSMP regulations).
Mark Trostle (Richmond American Homes of Virginia)	First, the focus of this permit should be on the ease of implementation to assist with maximum compliance.	The revisions to the General Permit clarify requirements and administration and implementation procedures.
Mark Trostle (Richmond American Homes of Virginia)	The Department should make every effort to synthesize the various requirements for erosion controls, stormwater management and BMP's so that it is possible for contractors to know what is needed to comply.	The revisions to the General Permit clarify requirements and administration and implementation procedures. For example, the revised language now makes it explicitly clear that all construction site operators must comply with an approved Erosion and Sediment Control Plan, and that all must meet the water quality and quantity technical criteria contained in the existing Part II of the regulations (now to be found at 4VAC50-60-1180 through 4VAC50-60-1190).
Mark Trostle (Richmond American Homes of Virginia)	The Department should keep the current system or be required to respond to a Notice of Intent within a short time, such as one week; otherwise builders will be stuck holding lots waiting for a response to the Notice of Intent. That is an unreasonable economic hardship.	The effective time of a registration statement has been amended to specify that coverage under the General Permit becomes effective 15 business days following the mailing of a complete and accurate registration statement, unless an earlier notification of coverage is made by the Department.
Mark Trostle (Richmond American Homes of Virginia)	Also, the requirement for public disclosure for the SWPPP at the operator's expense is unnecessary, improper and very difficult to implement. The SWPPP is required by statute to be kept on the site so a duplicate would have to be made for public review. It is constantly being updated and evolving and contains information on the operator's business practices that should not be subject to public scrutiny. It is an internal document for which no legal authority exists to require disclosure.	The requirement related to public availability of the SWPPP has been amended. Numerous comments were received on this subject reflecting various viewpoints. Many strongly favored public availability of the SWPPP, while others strongly opposed it. In the end, language that is believed to achieve a compromise has been included in the General Permit. Under that language, the initial SWPPP developed for each site must be made publicly available. The developer will have a choice to either: (i) make the initial SWPPP available on an internet website and post the website address at the entrance to the construction site (or at a publicly accessible location for linear projects); or (ii) make a hard copy of the initial SWPPP available upon the receipt of a request from the public, at least once per month and during normal business hours.
Daun Klarevas (Christopher Consultants)	The new requirement for the public viewing of the SWPPP at a publicly accessible location and an individual to accompany the SWPPP to address any questions or	The requirement related to public availability of the SWPPP has been amended. Numerous comments were received on this subject reflecting various viewpoints.

Summary of Comments on the Construction General Permit Received During the Public Comment Period (Oct. 27, 2008 – Dec. 26, 2008) and at the Public Hearings and the Agency’s Response to the Comments Received

Commenter	Comment	Agency response
	<p>concerns for no less than twice a month is just another financial burden on the engineer, developer or contractor. The developer would like to add this additional cost to the sale of their property. However, due to the economic situation they will not be able to do that in order to keep their cost competitive with other developers whose projects were constructed before the new regulations are in place. Furthermore, if citizen groups are concerned about the impacts of the construction in regards to sediment on their properties or in the streams, the erosion and sediment control plans, which are part of the approved plans, are available at the localities for public viewing.</p>	<p>Many strongly favored public availability of the SWPPP, while others strongly opposed it. In the end, language that is believed to achieve a compromise has been included in the General Permit. Under that language, the initial SWPPP developed for each site must be made publicly available. The developer will have a choice to either: (i) make the initial SWPPP available on an internet website and post the website address at the entrance to the construction site (or at a publicly accessible location for linear projects); or (ii) make a hard copy of the initial SWPPP available upon the receipt of a request from the public, at least once per month and during normal business hours.</p>
<p>Barrett Hardiman (Home Builders Association of Virginia); Taylor Chess (Regency Centers); Pete Kotarides (Tidewater Builders Association)</p>	<p>HBAV commends the Department on the inclusion of vesting language through the use of the current "Technical Standards" in the General Permit and encourages the Board to maintain and strengthen that language.</p>	<p>It is agreed that including specific language in the General Permit relating which technical criteria are applicable to coverage holders increases clarity and ensures that construction site operators know what standards they will be held to. The language that is the subject of the comment has been maintained. In addition, the Department is aware of larger concerns related to vesting of existing projects from upcoming revisions to Part II of the VSMP regulations. This topic is currently under discussion.</p>
<p>Barrett Hardiman (Home Builders Association of Virginia); Taylor Chess (Regency Centers); Taylor Chess (Regency Centers); Pete Kotarides (Tidewater Builders Association)</p>	<p>HBAV is aware of the regulatory process addressing the new technical standards and asked that some provision be included in Part XIV to eliminate doubt on which technical standards would be enforced should new criteria be adopted after the adoption of the General Permit, and to vest those approved preliminary plans approved prior to the adoption of the new technical standards. It is our understanding that with the General Permit drafted in this manner, no new technical standards could be enforced or incorporated by reference as that is a separate regulatory matter.</p>	<p>The inclusion of sections 4VAC50-60-1180 through 1190 clarifies the technical criteria that coverage holders will be held to under this general permit. As a requirement of Virginia’s administrative law, requirements that will not come into effect until the future (such as the revisions being proposed by the Board related to Parts I/II/III of the VSMP regulations) cannot be incorporated by reference into the General Permit. Rather, those requirements would have to be made effective through a separate action, either in the form of a reopener of the General Permit or the development of a future, new general permit, both of which would involve public comment and participation.</p>
<p>Barrett Hardiman (Home Builders Association of Virginia); Taylor Chess (Regency</p>	<p>HBAV would prefer an administrative extension for current permit holders over the requirement for re-application in the proposed regulation.</p>	<p>The requirement for permit coverage holders to reapply for coverage under the General Permit is a matter of federal and state law and cannot be changed through this regulatory action (see, e.g., §10.1-603.2:2 of the</p>

Summary of Comments on the Construction General Permit Received During the Public Comment Period (Oct. 27, 2008 – Dec. 26, 2008) and at the Public Hearings and the Agency’s Response to the Comments Received

Commenter	Comment	Agency response
Centers)		Code of Virginia and 40 CFR § 122.6). The Department will make every effort to simplify the reapplication process and assist construction site operators through it.
Barrett Hardiman (Home Builders Association of Virginia); Taylor Chess (Regency Centers)	Given the difficult economic times and several of the changes to requirements in the proposed General Permit, HBAV requests the proposed General Permit regulation include a provision that allows for the administrative re-approval for permit holders under the current regulation. Under the current proposed regulation, each permit holder would be required to resubmit their application for permit coverage. The results of this process could be disastrous. There is the potential for many projects to experience lapses in coverage while re-approval is sought. Not knowing the number of outstanding permits, and the response time and capabilities of the department, HBAV feels that it is prudent to allow for an administrative extension of current permits to allow previously approved work to continue.	Changes made to the effective date of coverage (i.e., restoring the provision which specifies that coverage is valid as of the date that a complete and accurate registration statement is submitted) allow for reapplications to be made by June 1, 2009. So long as any reapplication is made by this date, a construction site will not experience a lapse in coverage. Reapplication is required by law, and the completion and submittal of a new registration statement for the new General Permit is not believed to be an onerous requirement.
Barrett Hardiman (Home Builders Association of Virginia); Taylor Chess (Regency Centers)	The proposed regulation lacks a limitation on time to respond by the permitting authority to the request for permit coverage. The proposed regulation not only eliminates administrative efficiency of the General Permit as was envisioned by Congress in the creation of the General Permit, but also provides no timeframe in which the permitting authority must respond to the request for coverage.	The effective time of a registration statement has been amended to specify that coverage under the General Permit becomes effective 15 business days following the mailing of a complete and accurate registration statement, unless an earlier notification of coverage is made by the Department.
Barrett Hardiman (Home Builders Association of Virginia); Tyler Craddock (Virginia Chamber of Commerce); John Olivieri (Associated Development); Taylor Chess (Regency Centers); Andrew Herr (Terry Peterson Residential Companies); Christine Early (Waverton	Permit holders should not be required to make Stormwater Pollution Prevention Plans available to the public.	The requirement related to public availability of the SWPPP has been amended. Numerous comments were received on this subject reflecting various viewpoints. Many strongly favored public availability of the SWPPP, while others strongly opposed it. In the end, language that is believed to achieve a compromise has been included in the General Permit. Under that language, the initial SWPPP developed for each site must be made publicly available. The developer will have a choice to either: (i) make the initial SWPPP available on an internet website and post the website address at the entrance to the construction site (or at a publicly accessible location for linear projects); or (ii) make a hard copy of the initial SWPPP available upon the receipt of a

Summary of Comments on the Construction General Permit Received During the Public Comment Period (Oct. 27, 2008 – Dec. 26, 2008) and at the Public Hearings and the Agency’s Response to the Comments Received

Commenter	Comment	Agency response
Associates); Pete Kotarides (Tidewater Builders Association); George Renault (Colonial Heritage)		request from the public, at least once per month and during normal business hours.
Barrett Hardiman (Home Builders Association of Virginia); John Olivieri (Associated Development); Taylor Chess (Regency Centers); Andrew Herr (Terry Peterson Residential Companies); Christine Early (Waverton Associates); Pete Kotarides (Tidewater Builders Association); George Renault (Colonial Heritage)	The SWPPP is also a very technical document whose interpretation and understanding requires someone with specific engineering knowledge. Mandating public availability of this document creates a hardship for a permit holder by requiring the time of either a project manager or engineer to spend valuable time in a public place answering questions about the SWPPP.	The requirement related to public availability of the SWPPP has been amended. Numerous comments were received on this subject reflecting various viewpoints. Many strongly favored public availability of the SWPPP, while others strongly opposed it. In the end, language that is believed to achieve a compromise has been included in the General Permit. Under that language, the initial SWPPP developed for each site must be made publicly available. The developer will have a choice to either: (i) make the initial SWPPP available on an internet website and post the website address at the entrance to the construction site (or at a publicly accessible location for linear projects); or (ii) make a hard copy of the initial SWPPP available upon the receipt of a request from the public, at least once per month and during normal business hours.
Barrett Hardiman (Home Builders Association of Virginia); Tyler Craddock (Virginia Chamber of Commerce); Taylor Chess (Regency Centers); Pete Kotarides (Tidewater Builders Association)	While the Clean Water Act does encourage public participation, the Act specifically says that only permits and permit applications and documents obtained by the permitting authority shall be publicly available. It does not provide for public availability of internal control documents such as the SWPPP. The SWPPP is reviewed by the permitting authority but is not obtained. It remains in the possession of the permittee at all times.	The requirement related to public availability of the SWPPP has been amended. Numerous comments were received on this subject reflecting various viewpoints. Many strongly favored public availability of the SWPPP, while others strongly opposed it. In the end, language that is believed to achieve a compromise has been included in the General Permit. Under that language, the initial SWPPP developed for each site must be made publicly available. The developer will have a choice to either: (i) make the initial SWPPP available on an internet website and post the website address at the entrance to the construction site (or at a publicly accessible location for linear projects); or (ii) make a hard copy of the initial SWPPP available upon the receipt of a request from the public, at least once per month and during normal business hours.
Barrett Hardiman (Home Builders	The SWPPP is not a vehicle of enforcement. The General Permit is issued to allow discharges of stormwater to the	The requirement related to public availability of the SWPPP has been amended. Numerous comments were

Summary of Comments on the Construction General Permit Received During the Public Comment Period (Oct. 27, 2008 – Dec. 26, 2008) and at the Public Hearings and the Agency’s Response to the Comments Received

Commenter	Comment	Agency response
<p>Association of Virginia); Taylor Chess (Regency Centers); Pete Kotarides (Tidewater Builders Association)</p>	<p>waters of the Commonwealth from construction activities. Therefore, the only interest the public and the Commonwealth have in the runoff discharged, is the quality and quantity of the water at the point of discharge into a public waterway, which is regulated and enforceable by the General Permit alone.</p>	<p>received on this subject reflecting various viewpoints. Many strongly favored public availability of the SWPPP, while others strongly opposed it. In the end, language that is believed to achieve a compromise has been included in the General Permit. Under that language, the initial SWPPP developed for each site must be made publicly available. The developer will have a choice to either: (i) make the initial SWPPP available on an internet website and post the website address at the entrance to the construction site (or at a publicly accessible location for linear projects); or (ii) make a hard copy of the initial SWPPP available upon the receipt of a request from the public, at least once per month and during normal business hours.</p>
<p>Barrett Hardiman (Home Builders Association of Virginia); John Olivieri (Associated Development); Taylor Chess (Regency Centers); Andrew Herr (Terry Peterson Residential Companies); Christine Early (Waverton Associates); Pete Kotarides (Tidewater Builders Association); George Renault (Colonial Heritage)</p>	<p>The SWPPP does not need to contain information on endangered species.</p>	<p>The language requiring consideration of threatened and endangered species in the SWPPP has been removed.</p>
<p>Barrett Hardiman (Home Builders Association of Virginia); John Olivieri (Associated Development); Taylor Chess (Regency Centers); Andrew Herr (Terry Peterson</p>	<p>The General Permit’s purpose is to protect the waters of the Commonwealth, and identification of endangered species in internal control documents will not further protect water quality.</p>	<p>The language requiring consideration of threatened and endangered species in the SWPPP has been removed.</p>

Summary of Comments on the Construction General Permit Received During the Public Comment Period (Oct. 27, 2008 – Dec. 26, 2008) and at the Public Hearings and the Agency’s Response to the Comments Received

Commenter	Comment	Agency response
Residential Companies); Christine Early (Waverton Associates); Pete Kotarides (Tidewater Builders Association); George Renault (Colonial Heritage)		
Roger Kirchen (Virginia Department of Historic Resources)	Although the permitting authority has been transferred to a state agency, EPA may still have compliance responsibilities under Section 106 of the National Historic Preservation Act which requires federal agencies to consider the effect of their undertaking on historic properties. We advise the Department to consult with the EPA regarding your collective compliance with the NHPA.	The language of the General Permit is subject to EPA review and approval. 40 CFR § 122.49(b) does require permits issued by US EPA to contain requirements related to the National Historic Preservation Act of 1966 where applicable. The requirements of that section of the CFR, however, are not applicable to state-administered programs (see 40 CFR § 123.25).
Hunton & Williams (on behalf of the Virginia Manufacturers Association)	Our first concern with the Proposed Regulations involves the open-ended "waiting period" set forth in 4VAC50-60-1130A. As drafted, this waiting period would force applicants to suspend their proposed construction projects unless and until the permit issuing authority affirmatively issues coverage under the permit. This is inconsistent with both the existing permit, which provides for coverage under the filing of a complete and accurate registration statement, and EPA's national equivalent, which provides for coverage 7 days after this filing. We recommend that the Department maintain the approach set forth in the existing permit, or alternatively, EPA's national equivalent.	The effective time of a registration statement has been amended to specify that coverage under the General Permit becomes effective 15 business days following the mailing of a complete and accurate registration statement, unless an earlier notification of coverage is made by the Department.
Hunton & Williams (on behalf of the Virginia Manufacturers Association)	Our second concern with the Proposed Regulations involves DCR's various references to TMDL wasteload allocations. These references imply that a wasteload allocation applies whenever it is set forth in a TMDL: (1) established by the State Water Control Board and (2) approved by EPA. However, the State Water Control Board's practice and procedure make clear that the allocation does not apply until a third step is successfully completed: (3) adoption into the Water Quality Management Planning Regulation, 9VAC25-720-10 et seq. This is a vital procedural safeguard and one that the Department cannot ignore. The Proposed Regulations need to be revised accordingly.	Language in the General Permit related to TMDLs has been amended and made uniform to indicate that TMDLs are "approved by the State Water Control Board." The use of the term "approved" is intended to indicate the completion of the TMDL process, which includes development of the TMDL, approval by EPA, and finally, approval by the State Water Control Board.

Summary of Comments on the Construction General Permit Received During the Public Comment Period (Oct. 27, 2008 – Dec. 26, 2008) and at the Public Hearings and the Agency’s Response to the Comments Received

Commenter	Comment	Agency response
Hunton & Williams (on behalf of the Virginia Manufacturers Association)	Our third concern with the Proposed Regulations involves the water quality protection provision in 4VAC50-60-1170 Section I.H.2. Under this provision, the permit issuing authority "shall require" the operator to take additional action "if it is determined at any time that the operator's stormwater discharges have reasonable potential to cause or contribute to an excursion about any applicable water quality standard". DCR needs to clarify that this reasonable potential determination may only be made by the permit issuing authority. In other words, a third party may not make this determination because it is not empowered or qualified to do so. This clarification is necessary to maintain consistency with EPA's own construction general permit.	The requested amendment has been made to the General Permit.
Hunton & Williams (on behalf of the Virginia Manufacturers Association)	DCR needs to clarify that operators may properly exclude from public review those aspects of their SWPPPs that contain either confidential business information or sensitive security information.	The section dealing with public availability of SWPPPs does explicitly state that information which is excluded from disclosure under other law is not required to be provided to the public with the SWPPP.
Hunton & Williams (on behalf of the Virginia Manufacturers Association)	Our fifth concern with the Proposed Regulations relates to the potential for improper interpretation of 4VAC50-60-1170 Section II.D.2.c.(1) which requires the operator to ensure compliance with particular water quality and quantity provisions set forth in other DCR regulations. DCR needs to clarify that these other provisions only apply if and the extent to which they are relevant to the covered construction activity.	The inclusion of a requirement for compliance with new sections 4VAC50-60-1180 through 1190 is intended to clarify that the requirements of these sections are applicable to all construction site operators. It is not believed necessary to note explicitly that a provision of these sections may not apply to an individual construction site by its own terms (i.e., the requirements for sites with impervious cover greater than or equal to 16% when dealing with a site that is less than 16% impervious cover). When addressing other federal, state, or local regulations and their impact on the installation and placement of control measures, the existing language of the section does make clear that those regulations must be addressed to the extent applicable.
Hunton & Williams (on behalf of the Virginia Manufacturers Association)	Our final concern with the Proposed Regulations relates to the TMDL provision set forth in 4VAC50-60-1170, Section II.D.7. The second paragraph of this provision is duplicative of other provisions, unnecessary and confusing. If the permit is reopened to include future wasteload allocations, then the applicable requirements will be made clear as part of the reopener and should be	The requested amendment has been made to the General Permit.

Summary of Comments on the Construction General Permit Received During the Public Comment Period (Oct. 27, 2008 – Dec. 26, 2008) and at the Public Hearings and the Agency’s Response to the Comments Received

Commenter	Comment	Agency response
	deferred until then.	
Michael Flagg (Hanover County)	Line 971 – Notice of Termination should include provisions for reporting participation in regional programs. We would suggest an item "e" worked "in lieu of items a-d, the operator may provide reference to a regional stormwater management program for which the administrator of the regional program reports the information a-d for the regional facilities to the Department as part of a MS4 program, or other applicable stormwater management program."	The language of 4VAC50-60-1160(B) and the associated Notice of Termination form has been amended in accordance with the intent of the comment.
Michael Flagg (Hanover County)	Line 1241 – suggest adding "the operator may charge the costs of providing public access to the SWPPP in accordance with the Virginia Freedom of Information Act".	This section requires that the public be granted access to SWPPPs. It does not require the operator to provide a separate copy. Language has been added specifying that if separate copies are desired by members of the public, they will be responsible for copying charges.
Michael Flagg (Hanover County)	Line 1241 – suggest adding "the operator may require request to review SWPPPs be made in writing".	The language of this section has been amended to require that a request be made for access to the SWPPP. As is the case with FOIA, however, it is not required that this request be made in writing.
Michael Flagg (Hanover County)	Line 1983 – suggest adding " <u>adequate channel in accordance with technical criteria in sections 1186 – 1990.</u> "	Sections 4VAC50-60-1180 through 1190 of the General Permit are direct copies of the existing Part II of the VSMP regulations and intended to clarify what requirements apply to construction site operators who hold coverage under the General Permit. It is not believed advisable to make any changes to these sections through this abbreviated regulatory action.
Michael Flagg (Hanover County)	Line 1993 – suggest modifying to state "J. Construction of stormwater management impoundment structures within a designated 100 year floodplain shall be in accordance with good engineering practice and shall be in compliance with all applicable regulations under the National Flood Insurance Program, 44 CFR Part 59.	Sections 4VAC50-60-1180 through 1190 of the General Permit are direct copies of the existing Part II of the VSMP regulations and intended to clarify what requirements apply to construction site operators who hold coverage under the General Permit. It is not believed advisable to make any changes to these sections through this abbreviated regulatory action.
Michael Flagg (Hanover County)	Line 1979 – should add a clarification that "Temporary Sediment Basins" are not considered "Impounding Structures". Current standards require temporary sediment basins to be designed for a 25 year storm.	Sections 4VAC50-60-1180 through 1190 of the General Permit are direct copies of the existing Part II of the VSMP regulations and intended to clarify what requirements apply to construction site operators who hold coverage under the General Permit. It is not believed advisable to make any changes to these

Summary of Comments on the Construction General Permit Received During the Public Comment Period (Oct. 27, 2008 – Dec. 26, 2008) and at the Public Hearings and the Agency’s Response to the Comments Received

Commenter	Comment	Agency response
Michael Flagg (Hanover County)	Line 2001 – it appears that this paragraph is replicating requirements contained in the Chesapeake Bay Preservation Act and regulations. Since this is not applicable statewide we would suggest the paragraph be deleted since it is governed by separate state law and regulations. In the absence of deleting this reference would request the last sentence delete "...that has been approved by the board" and/or clarify that "board" means either the Virginia Soil and Water Conservation Board, Virginia Conservation and Recreation Board or Chesapeake Bay Local Assistance Board" since all these boards have exercised approval authority over programs applicable to this permit.	sections through this abbreviated regulatory action. Sections 4VAC50-60-1180 through 1190 of the General Permit are direct copies of the existing Part II of the VSMP regulations and intended to clarify what requirements apply to construction site operators who hold coverage under the General Permit. It is not believed advisable to make any changes to these sections through this abbreviated regulatory action.
Michael Flagg (Hanover County)	Line 2009 and relationship to definitions in line 477. There appears to be an inconsistency over "pollution of concern" from the definition and the "Water Quality Criteria". For "small construction activity" and in the absence of a TMDL, the pollutant of concern is limited to sediment. We believe it would be appropriate to clarify when small construction activities are required to go beyond erosion and sediment control standards, for sediment, and implement water quality standards based on phosphorus.	Sections 4VAC50-60-1180 through 1190 of the General Permit are direct copies of the existing Part II of the VSMP regulations and intended to clarify what requirements apply to construction site operators who hold coverage under the General Permit. It is not believed advisable to make any changes to these sections through this abbreviated regulatory action.
Alan Wood (American Electric Power)	4VAC50-60-10 Definitions. The definition of "impervious cover" seems straight forward for the language "significantly impedes" and the example of "compacted gravel surface". We suggest an infiltration rate be developed and applied to measure a surface that "significantly impedes". We believe the intent of "compacted gravel surface" applies to road beds in which an unconsolidated stone size is used (i.e. "compacted gravel surface). In cases where graduated, larger sized stone is used (i.e. #57 stone that has an approximate 40% void space), and not mechanically compacted or compacted over time from use (i.e. parking and laydown areas where the stone is physically compacted from use), we believe these types of surfaces do not significantly impede or prevent natural infiltration. For example, railroad yards have runoff coefficients between 0.20 and 0.40, which suggests higher infiltration	This comment is more closely related to the Board's revision of Parts I/II/III of the VSMP regulations (which is considering, among other changes, new water quality and quantity technical criteria and compliance methodologies), and not this regulatory action. That regulatory action will be the subject of a separate public comment period in the future.

Summary of Comments on the Construction General Permit Received During the Public Comment Period (Oct. 27, 2008 – Dec. 26, 2008) and at the Public Hearings and the Agency’s Response to the Comments Received

Commenter	Comment	Agency response
	<p>rates into the soils. Substation yards, where #57 stone is typically used as yard cover, are expected to have similar runoff coefficients as railroads, therefore, much higher infiltration rates into the soils than "...roofs, buildings, streets, parking areas, and any concrete, asphalt...". As a result, we request an infiltration rate or some other measurable method be specified to define "significantly impedes" and we also request clarification regarding the example of "compacted gravel surface".</p>	
<p>Alan Wood (American Electric Power)</p>	<p>The definition of "land disturbance" or "land-disturbing activity" is inconsistent with the definition found in Virginia Erosion and Sediment Control Law. For consistency purposes, we suggest the definitions of the two terms be consistent with the statute.</p>	<p>The definition of "land disturbance" or "land disturbing activity" found in 4VAC50-60-10 is taken verbatim from the definition of those terms in the Virginia Stormwater Management Act (specifically §10.1-603.2). It is correct that this definition differs from that utilized in the Erosion and Sediment Control Law, §10.1-560 et. seq; however, aligning these definitions would require a legislative change to the Code of Virginia.</p>
<p>Alan Wood (American Electric Power)</p>	<p>The definition of "Virginia Stormwater BMP Clearinghouse website" and its use in the regulations seems premature. Since this website is not established and available for public review and comment, we suggest this definition and use be removed from the proposed regulations until those resources are available.</p>	<p>The Virginia Stormwater BMP Clearinghouse website is available for public review. It can be found at: http://www.vwrrc.vt.edu/swc/</p>
<p>Alan Wood (American Electric Power)</p>	<p>We suggest that 4VAC50-60-1150A.3.A be revised to allow for automatic coverage under the 2009 general permit for some to-be-determined time to allow for operators with coverage under the 2004 general permit to either apply and receive coverage under the 2009 general permit, or file a notice of termination.</p>	<p>The requirement for permit coverage holders to reapply for coverage under the General Permit is a matter of federal and state law and cannot be changed through this regulatory action or extended beyond the expiration date of the existing permit (see, e.g., §10.1-603.2:2 of the Code of Virginia and 40 CFR § 122.6). The Department will make every effort to assist construction site operators through the reapplication process.</p>
<p>Alan Wood (American Electric Power)</p>	<p>We suggest incorporating a reasonable timeframe (i.e. within 15 days upon receipt by DCR) in which the DCR will notify the applicant of registration statement deficiencies on non-eligibility for coverage.</p>	<p>The effective time of a registration statement has been amended to specify that coverage under the General Permit becomes effective 15 business days following the mailing of a complete and accurate registration statement, unless an earlier notification of coverage is made by the Department.</p>
<p>Alan Wood (American Electric Power)</p>	<p>We suggest that a reasonable timeframe for notification of coverage under the 2009 general permit be established in</p>	<p>The effective time of a registration statement has been amended to specify that coverage under the General</p>

Summary of Comments on the Construction General Permit Received During the Public Comment Period (Oct. 27, 2008 – Dec. 26, 2008) and at the Public Hearings and the Agency’s Response to the Comments Received

Commenter	Comment	Agency response
	4VAC50-60-1150.A.4. For example, within 30 days of receipt of a complete and accurate registration statement by the DCR, the applicant will receive written notice of coverage. We also suggest consideration be given to developing an electronic approval process and online permit tracking website.	Permit becomes effective 15 business days following the mailing of a complete and accurate registration statement, unless an earlier notification of coverage is made by the Department. The Department is currently working to develop an electronic enterprise website which will allow for electronic approval of permit coverage in the future.
Alan Wood (American Electric Power)	Section I.B4 of the proposed 2009 general permit states "Discharges to waters for which a wasteload allocation (WLA) for a pollutant...by the Commonwealth and approved by EPA that would apply to discharges from a construction activity are not eligible for coverage..." This statement is very vague and subject to multiple interpretations. Although the specific pollutant for the total daily maximum load (TMDL) of a receiving body would be defined, it is unclear what entity, method or rationale would be used to determine if that TMDL pollutant would be in a stormwater discharge from a specific construction project. Without clear guidance on how this is determined, we suggest the deleted language ("...for sediment or a parameter that addresses sediment (such as total suspended solids, turbidity, or siltation)...") in the 2004 general permit remain in the 2009 general permit.	As this language is currently written, in order for a TMDL WLA to apply to a construction activity, the involved TMDL would need to specifically contain a WLA that has been allocated to construction activities. If no such WLA is included, meeting permit requirements is considered sufficient to meet the requirements of the TMDL.
Alan Wood (American Electric Power)	Section I.D.2.f of the 2004 general permit was deleted from the proposed 2009 general permit. We believe this non-stormwater discharge exemption should remain in 2009 general permit, as it is our experience that water used for such hydrostatic testing is from a clean source and not different from Section I.D.2.e. Therefore, we suggest insertion of "uncontaminated" at the beginning of Section I.D.2.f to clarify this type of discharge and not prohibit it altogether. We suggest Section I.D.2.f to read "uncontaminated water for hydrostatic testing of new pipeline construction".	The hydrostatic testing exemption was deleted in order to bring the General Permit in line with the EPA's federal construction general permit. The hydrostatic testing exemption was removed from that permit, thus, it is necessary to likewise remove it from this General Permit in order to align the permit with federal requirements.
Alan Wood (American Electric Power)	Section I.H.1 of the proposed 2009 general permit states "the stormwater control measures developed, implemented, and updated consistent with Section II shall be as stringent as necessary to ensure the operator's discharges do not cause or contribute to an excursion	The language cited by the comment has been deleted, and language similar to that requested to be re-inserted has been included (see Sections I H 1 and 2).

Summary of Comments on the Construction General Permit Received During the Public Comment Period (Oct. 27, 2008 – Dec. 26, 2008) and at the Public Hearings and the Agency’s Response to the Comments Received

Commenter	Comment	Agency response
	<p>above any applicable water quality standard". It is unclear what entity, method or rationale would determine the control measures "as stringent as necessary". We suggest the deleted language in the 2004 general permit ("If there is evidence indicating that the stormwater discharges authorized by this permit are causing, have the reasonable potential to cause, or are contributing to an excursion above applicable water quality standards, or are causing downstream pollution (as defined in this part), the permit issuing authority may take appropriate enforcement action, may require the permittee to include and implement appropriate controls in the SWPPP to correct the problem, and/or may require the permittee to obtain an individual permit...) remain in the 2009 general permit for clarity purposes.</p>	
<p>Alan Wood (American Electric Power)</p>	<p>Section II.B.4.b of the proposed 2009 general permit states "for linear projects, the sign or other notice must be posted at a publicly accessible location near the active part of the construction project (e.g., where a pipeline project crosses a public road)...". Although this seems logical and reasonable for some small linear projects, it is not easily accomplished for lengthy projects that cross multiple public roads over a relatively large distance and it serves little purpose for remote projects. Additional clarity on the exact location of the signage for these types of projects is requested. We suggest that clarity on the exact location of the signage for these types of projects is requested. We suggest the permittee of small linear projects, those resulting in less than 5 acres of earth disturbance, be exempt from this signage requirement. For large linear projects, those resulting in 5 acres or greater of earth disturbance, we propose signage be posted at the first major road crossing at each end of the project.</p>	<p>The language of Section II(B)(4)(b) has been amended to indicate that the sign must be posted near "an" active part of the construction project, indicating a singular location. It is not required that signage be placed at multiple locations.</p>
<p>Alan Wood (American Electric Power)</p>	<p>Section II.D.4.a of the proposed 2009 general permit revised the inspection frequency criteria to give the operator the choice to perform inspections either "(i) at least every seven calendar days or (ii) at least every 14 calendar days and within 48 hours following any runoff producing storm event." We appreciate and support this</p>	<p>The addition of an option related to site inspections is intended to provide flexibility for construction site operators while still providing adequate inspection frequencies for construction activities. It is in agreement with the EPA’s federal construction general permit.</p>

Summary of Comments on the Construction General Permit Received During the Public Comment Period (Oct. 27, 2008 – Dec. 26, 2008) and at the Public Hearings and the Agency’s Response to the Comments Received

Commenter	Comment	Agency response
	revision.	
Alan Wood (American Electric Power)	For the record, we would like to confirm that once an area has achieved final stabilization, the area is no longer required to be inspected.	As set forth in Section II D 4 b, areas marked on the SWPPP as finally stabilized pursuant to Section II A 5 are no longer required to be inspected.
Alan Wood (American Electric Power)	Section II.D.4.b of the proposed 2009 general permit states "Inspections must include...construction activity, off-site areas,...". For clarity purposes, we suggest the addition of "supporting the construction activity" following "off-site areas".	The phrase "covered by the permit" has been added to Section II(D)(4)(b) in order to add the clarity requested by the comment.
Alan Wood (American Electric Power)	Section II.D.4.d.(6) of the proposed 2009 general permit suggests that a rain gauge or other precipitation measuring device be installed at the construction site. It the intent of this subsection, we believe this is inappropriate and burdensome for the operator. We fear that onsite rain gauges would be subject to vandalism and become a maintenance burden. DCR has given no indication as to the purpose of any collected data.	The language of Section II(D)(4)(d)(6) has been amended to require "an estimate of" the amount of rainfall at the construction site. This section does not require that a rain gauge be maintained on the construction site, although that may be the most accurate source of this information.
Alan Wood (American Electric Power)	Section II.D.6 of the proposed 2009 general permit discuss "endangered species" and it is not clear whether the required discussion in the SWPPP is for only federally listed threatened and endangered species and critical habitats with legal protection or whether it is intended to include state listed threatened and endangered species with legal protection. We request clarification regarding this issue.	The language requiring consideration of threatened and endangered species in the SWPPP has been removed.
Alan Wood (American Electric Power)	We believe there should be an upfront exemption to 4VAC50-60-1182 for linear development projects as provided for 4VAC50-60-1188 (Flooding). This exemption should also apply to 4VAC50-60-1182 due to the linear and localized nature of these projects.	Sections 4VAC50-60-1180 through 1190 of the General Permit are direct copies of the existing Part II of the VSMP regulations and intended to clarify what requirements apply to construction site operators who hold coverage under the General Permit. It is not believed advisable to make any changes to these sections through this abbreviated regulatory action.
Alan Wood (American Electric Power)	4VAC50-60-1182.E states "impounding structures...shall be engineered for structural integrity during the 100-year storm event". It is unclear which impounding structures (i.e. stormwater management ponds) this applies and which 100-year storm event duration should be designed (i.e. 3-hour, 6-hour, 25-hour, etc.). We request clarification of these points.	Sections 4VAC50-60-1180 through 1190 of the General Permit are direct copies of the existing Part II of the VSMP regulations and intended to clarify what requirements apply to construction site operators who hold coverage under the General Permit. It is not believed advisable to make any changes to these sections through this abbreviated regulatory action.

Summary of Comments on the Construction General Permit Received During the Public Comment Period (Oct. 27, 2008 – Dec. 26, 2008) and at the Public Hearings and the Agency’s Response to the Comments Received

Commenter	Comment	Agency response
Alan Wood (American Electric Power)	4VAC50-60-1184 is confusing and it is not clear what statute allows the DCR to implement such requirements in drainage areas outside the Chesapeake Bay watershed. 4VAC50-60-1184.A. states "compliance with the water quality criteria may be achieved by applying the performance-based criteria or the technology-based criteria to either the site or a planning area" This suggests that a specific project could be placed with the burden to ensure water quality criteria are being achieved for a larger watershed. Furthermore, the specified water quality BMP's are targeted for removal of phosphorus which Virginia has no current water quality criteria for in all waterbodies. Therefore, we recommend postponing such requirements for waters outside the Chesapeake Bay watershed.	Sections 4VAC50-60-1180 through 1190 of the General Permit are direct copies of the existing Part II of the VSMP regulations and intended to clarify what requirements apply to construction site operators who hold coverage under the General Permit. It is not believed advisable to make any changes to these sections through this abbreviated regulatory action. It is also of note that the water quality and quantity requirements contained in these sections are already employed in areas outside of the Chesapeake Bay watershed.
Roy Mills (Virginia Department of Transportation)	4VAC50-60-1150 A.3.e.a Since VDOT has an average of 450-500 active projects covered under the VSMP General Construction Permit at any given time, it is anticipated that this requirement will result in a significant cost relative to the effort necessary to satisfy what predominately amounts to additional administrative paper work of questionable value (it would appear that DCR would also experience a significant burden in processing such a large number of requests for reissuing coverage under the new permit.	The requirement for permit coverage holders to reapply for coverage under the General Permit is a matter of federal and state law and cannot be changed through this regulatory action or extended beyond the expiration date of the existing permit (see, e.g., §10.1-603.2:2 of the Code of Virginia and 40 CFR § 122.6). The Department will make every effort to assist construction site operators through the reapplication process.
Roy Mills (Virginia Department of Transportation)	Section A.3.b requires permittees of ongoing construction activities that were issued coverage under the permit issued in 2004 to update their SWPPP to comply with the requirements in the new permit within 30 days after the date of coverage under the new permit. VDOT projects typically apply for permit coverage somewhere between the Pre-Advertisement Conference (PAC) meeting and the actual advertisement date of the project (typically a 6-month window). After the PAC meeting, the project design is considered complete and changes are generally not allowed, especially those that might impact the right of way limits and trigger a need to revisit the public involvement process. Also, any changes to projects that are under construction could require a redesign effort and a potentially difficult renegotiation of portions of the	It is not believed that any changes to SWPPP requirements made in the General Permit will cause substantive changes to SWPPPs for existing projects. All water quality requirements remain the same as required under the existing permit. Requirements related to documentation of endangered species have been removed.

Summary of Comments on the Construction General Permit Received During the Public Comment Period (Oct. 27, 2008 – Dec. 26, 2008) and at the Public Hearings and the Agency’s Response to the Comments Received

Commenter	Comment	Agency response
	<p>construction contract. Requiring projects that have previously obtained permit coverage (either those in the advertisement stage or those under construction) to be redesigned to meet new SWPPP requirements has a potential to cause significant delays in project schedules and significant increases in project costs.</p>	
<p>Roy Mills (Virginia Department of Transportation); David Rubando</p>	<p>VDOT would request that the provisions of Section A.3.a. and A.3.b. be revised so that the projects that have obtained coverage under the existing permit be "automatically" covered under the new permit without having to go through the process of submitting a new registration statement. Furthermore, VDOT would request that such projects be "grandfathered" from having to comply with any new SWPPP requirements that might be contained in the new permit.</p>	<p>The requirement for permit coverage holders to reapply for coverage under the General Permit is a matter of federal and state law and cannot be changed through this regulatory action or extended beyond the expiration date of the existing permit (see, e.g., §10.1-603.2:2 of the Code of Virginia and 40 CFR § 122.6). The Department will make every effort to assist construction site operators through the reapplication process.</p> <p>It is not believed that any changes to SWPPP requirements made in the General Permit will cause substantive changes to SWPPPs for existing projects. All water quality requirements remain the same as required under the existing permit. Requirements related to documentation of endangered species have been removed.</p>
<p>Roy Mills (Virginia Department of Transportation)</p>	<p>4VAC50-60-1170 Section II.B.4 requires the posting of permit coverage letter at the main entrance of the construction site. If it is required that this information be posted at another location or independently of other such information [additional information required by state or federal laws and regulations], additional project costs will likely be incurred.</p>	<p>Section II B 4 requires only that the permit coverage letter, along with an internet address at which a copy of the initial SWPPP for the site may be viewed or a contact person for obtaining a hard copy of the initial SWPPP, be posted at a single location; not multiple locations.</p>
<p>Thompson & Knight L.L.P (on behalf of Centex Homes)</p>	<p>We support the Board's definition of "discharge of a pollutant" (4VAC50-60-10) which clarifies that the permit only regulates discharges to surface waters and not discharges to groundwater or the percolation of stormwater through soils.</p>	<p>The definition of "discharge of a pollutant" has been amended to include discharges to state waters in place of surface waters. This allows discharges to karst and other like features to be covered by the General Permit.</p>
<p>Thompson & Knight L.L.P (on behalf of Centex Homes)</p>	<p>Individual lot issues The draft 2009 General Permit appears to have been written with the assumption that the project being regulated involves a single owner and single operator planning to conduct all construction from initial land development through final building construction. We</p>	<p>The General Permit is designed to cover single owners/operators, including single lot owners/operators. The current permitting process has been successfully employed in Virginia for all owners/operators.</p>

Summary of Comments on the Construction General Permit Received During the Public Comment Period (Oct. 27, 2008 – Dec. 26, 2008) and at the Public Hearings and the Agency’s Response to the Comments Received

Commenter	Comment	Agency response
	<p>suggest that the draft 2009 general permit be revised to include alternatives, e.g. a single lot permit, for builders of smaller portions of a larger project. A single lot permit should be a streamlined permitting option for builders of residential single lot homes that are part of a larger common plan of one acre or more. The single lot permit concept has already been successfully completed outside of Virginia.</p>	
<p>Thompson & Knight L.L.P (on behalf of Centex Homes)</p>	<p>At many homebuilding sites, a builder may own or build on separate lots that drain into the common storm drain system or a common area built and maintained by the master developer over which the builder has no control. In this case, we believe that draft 2009 general permit should make it clear that a builder who has all controls required by the SWPPP in place on lots under its control should have no responsibility for stormwater discharge from the common storm drain system or common area, whether it be maintaining those areas or addressing stormwater issues that may arise in those areas. We suggest inclusion of the following language in 4VAC50-60-1130: A homebuilder that purchases one or more lots part of a common plan of development from an owner/developer and that obtains permit coverage for its lots is an operator for its lots only. Further, such an operator is responsible for permit conditions relating to the discharge from the lots for which it is the operator; that is, the homebuilder is only responsible for compliance with the general permit requirements as they apply to the lots for which the homebuilder is the operator. The developer remains responsible for common controls or discharges.</p>	<p>Operators are only responsible for those areas which they specify in their permit application and SWPPP. If a builder’s lots are covered by a regional facility and it can be shown that such a facility provides sufficient treatment for their discharge, such information should be included in the SWPPP and can be used to achieve compliance. On the other hand, if other lots not under the builder’s control are responsible for the overall development not complying with stormwater management requirements, the builder will not be made responsible for those discharges simply because all lots discharge to a common regional facility.</p>
<p>Thompson & Knight L.L.P (on behalf of Centex Homes)</p>	<p>4VAC50-60-10 includes a broad definition of "operator". We believe that the proposed language is too vague and ambiguous to provide the regulated community with adequate guidance to determine which entity or entities are required to obtain coverage on a given project. The definition can be read to include everyone that performs work at a site. Additionally, the definition would be understood to include every entity connected to the site whether or not they are physically present at the site. We suggest that the definition of operator in 4VAC50-60-10 be</p>	<p>It is believed that the definition of “operator” is adequate as it is currently set forth. It could not include any person who performs any type of work at the site; rather, it is required that the operator have direct operational control over plans or specifications or day to day control over operations necessary to ensure compliance with the SWPPP or other permit terms.</p>

Summary of Comments on the Construction General Permit Received During the Public Comment Period (Oct. 27, 2008 – Dec. 26, 2008) and at the Public Hearings and the Agency’s Response to the Comments Received

Commenter	Comment	Agency response
	revised to read: "operator" means the owner or operator of any facility or activity subject to the VSMP permit regulation. In the context of stormwater associated with a large or small construction activity, operator means the person associated with a construction project that has primary operational responsibility for development or construction of the large or small construction project. In the context of stormwater discharges from Municipal Separate Storm Sewer Systems (MS4s), operator means the operator of the regulated MS4 system.	
Thompson & Knight L.L.P (on behalf of Centex Homes)	We further suggest that everyone working for or with the operator on-site be considered a "co-operator", a term currently defined in 4VAC50-60-10. We suggest the definition be modified, however, to mean "a person physically present at a site working for an operator". In our view, this approach allows those working for an operator to be subject to independent enforcement actions.	The operator of a site is the person who obtains permit coverage and is ultimately responsible for the site’s compliance with the permit. Individuals hired by such operators are not appropriate subjects of responsibility for permit compliance and would not be the proper subjects of an enforcement action.
Thompson & Knight L.L.P (on behalf of Centex Homes)	We generally support the Board's inclusion of language in 4VAC50-60-1150.A.5 regarding late registrations. We agree that the permit issuing authority has the ability to take enforcement action for un-permitted discharges, but do not believe that the permit issuing authority has the right to take enforcement action for "permit noncompliance" before coverage under the general permit is issued. Until that point, no permit is in effect, so an operator cannot act in noncompliance with a non-existent permit. Accordingly, we suggest revision of the third sentence of 4VAC50-60-1150.A.5 to read" The permit-issuing authority reserves the right to take enforcement action for any un-permitted discharges that occur between the commencement of construction and discharge authorization".	The requested change has been made.
Thompson & Knight L.L.P (on behalf of Centex Homes)	We support the Board's position that stormwater discharges from support activities, e.g. concrete batch plants, may be authorized under the draft 2009 general permit, provided that certain requirements are met (4VAC50-60-1130.B).	The allowance for support activities to be covered by the General Permit has been retained.
Thompson & Knight L.L.P (on behalf of	Section II.B.5 appears to have an internal inconsistency. On the one hand, II.B.5 requires the operator to make the	The language of Section II B 5 has been significantly modified. SWPPPs will now be required to be made

Summary of Comments on the Construction General Permit Received During the Public Comment Period (Oct. 27, 2008 – Dec. 26, 2008) and at the Public Hearings and the Agency’s Response to the Comments Received

Commenter	Comment	Agency response
Centex Homes)	SWPPP available to the public for review upon request. On the other hand, II.B.5 states that access "shall be no less than twice per month and shall be during normal business hours". It is unclear whether II.B.5 requires the SWPPP to be made available only upon request, or requires it to be made available regularly regardless of whether any request has been made. We assume the former, and object to the later.	available in their initial form, either (i) on an internet website, or (by request and if not posted on the internet) (ii) in hard copy no less than once per month and during normal business hours.
Thompson & Knight L.L.P (on behalf of Centex Homes)	We suggest that the second line of II.B.5 be revised to read: "upon request, access to the SWPPP may be arranged at a time and at a publicly accessible on-site location convenient to the operator or his designee".	Language similar to the request has been included in the revisions to Section II B 5.
Thompson & Knight L.L.P (on behalf of Centex Homes)	We support the description of permit authorization in 4VAC50-60-1130 insofar as it clarifies that only discharges to state waters require coverage under the draft 2009 general permit. This is further supported by the lack of a "no exposure" or "no discharge" certification similar to those available in other program areas in Virginia, e.g. industrial stormwater.	It is recognized that the General Permit is a discharge permit and that a permit is not required where no discharge exists.
Thompson & Knight L.L.P (on behalf of Centex Homes)	In the homebuilding industry, land development is often performed by one entity, with lots in development being sold to different homebuilders. In that situation, the land developer should be allowed to file a Notice of Termination covering lots sold to other builders.	Rather than a Notice of Termination (which is used to end permit coverage for the entire site), the proper method for removing sites from the responsibility of the operator is through amendments to the SWPPP noting that lots have been sold to other operators, who will then be responsible for obtaining separate permit coverage for future activities on those lots.
Thompson & Knight L.L.P (on behalf of Centex Homes)	Proposed 4VAC50-60-1160.A. provides that a notice of termination must be submitted within 30 days of (a) final stabilization of the entire site, (b) transfer of control to another operator, (c) coverage under a different permit has been obtained, or (d) temporary stabilization has been completed on a residential lot and the lot transferred to the homeowner. We question the need for a time limit. What happens if the notice is not timely filed? We suggest removing the following language: The notice of termination must be submitted within 30 days of one of the above conditions being met.	Operators of completed projects should submit Notice of Termination; if no Notice is received, then permit conditions remain applicable to a site. It is believed that the inclusion of a requirement for termination within 30 days promotes operator compliance with the requirement that a Notice of Termination be filed for a completed project. The 30-day timeframe has been retained.
Thompson & Knight L.L.P (on behalf of	We suggest that builders be allowed, though not required, to file a notice of termination for portions of a site that	Rather than a Notice of Termination (which is used to end permit coverage for the entire site), the proper

Summary of Comments on the Construction General Permit Received During the Public Comment Period (Oct. 27, 2008 – Dec. 26, 2008) and at the Public Hearings and the Agency’s Response to the Comments Received

Commenter	Comment	Agency response
Centex Homes)	have been stabilized and sold to homeowners. Suggested language for 4VAC50-60-1160.A.4 (Termination of permit coverage): For residential construction only, temporary stabilization has been completed on a lot and the lot has been transferred to a homeowner or third party. An operator may submit a notice of termination for individual lots on a lot-by-lot basis as individual lots become eligible or for groups of lots as they become eligible.	method for removing sites from the responsibility of the operator is through amendments to the SWPPP noting that lots have been sold to other persons, including homeowners.
Thompson & Knight L.L.P (on behalf of Centex Homes)	We further suggest that the notice of termination filed for such lots be allowed to be filed anytime between the sale of the lot to the homeowner and the time a notice of termination covering the entire site is filed. Suggested language for 4VAC50-60-1160.A (Termination of permit coverage): Add a new number 5 – the operator has elected not to proceed with land disturbing activities on a portion of the site.	Rather than a Notice of Termination (which is used to end permit coverage for the entire site), the proper method for removing sites from the responsibility of the operator is through amendments to the SWPPP noting that lots have been sold to other persons, including homeowners.
Thompson & Knight L.L.P (on behalf of Centex Homes)	We also request that you allow a notice of termination to be filed for that portion of the site covered in a registration statement but at which no land disturbing activity has occurred and the operator has decided not to proceed with development even though the remainder of the site continues to be developed. Such a provision is consistent with the requirement in II.A.6 to revise the SWPPP to show properties that are no longer under control of the operator.	Rather than a Notice of Termination (which is used to end permit coverage for the entire site), the proper method for removing portions of a site from a development plan when they remain under the control of the operator but will not be disturbed is an amendment to the SWPPP for the site.
Thompson & Knight L.L.P (on behalf of Centex Homes)	We suggest the following language for 4VAC50-60-1160.A. Requirements. The operator may submit a notice of termination on the official department form after one or more of the following conditions have been met.	The language of 4VAC50-60-1160(A) has been amended to specify that a Notice of Termination shall be submitted after the enumerated events have occurred.
Thompson & Knight L.L.P (on behalf of Centex Homes)	Section II.D.1.b requires SWPPPs to include "the intended sequence and timing of activities that disturb soils at the site..." The provision is unclear as to what level of detail is required in the description of timing and sequence. Further, the timing and sequence are heavily dependent on weather and other factors, e.g. the activity of third parties, outside of a permittee's control. Accordingly, we request revision of the draft to make clear that a general narrative description of the intended schedule or anticipated sequence is sufficient.	As evidenced by the examples included in Section II D 1 b, the activities intended to be detailed in this description of the "intended" sequence and timing are general in nature (e.g., grubbing, excavation, grading, utilities and infrastructure installation). It is not believed that any modification is necessary to demonstrate the intent of this section.

Summary of Comments on the Construction General Permit Received During the Public Comment Period (Oct. 27, 2008 – Dec. 26, 2008) and at the Public Hearings and the Agency’s Response to the Comments Received

Commenter	Comment	Agency response
Thompson & Knight L.L.P (on behalf of Centex Homes)	Section II.D.1.c requires SWPPPs to include "[a] record of the dates when ...construction activity temporarily or permanently cease on a portion of the site, and when stabilization measures are initiated..." This provision is unclear. For example, what is temporary cessation? To avoid confusion and the possibility of inconsistent enforcement, we suggest deletion of this provision.	The cited language was adopted from EPA’s federal construction general permit. It is believed to be consistent with Virginia’s Erosion and Sediment Control regulations (which additionally define temporary cessation as a period longer than 30 days, which has been added to this section of the General Permit).
Thompson & Knight L.L.P (on behalf of Centex Homes)	Section II.D.1.i (2) requires SWPPPs to include a map showing "areas of soil disturbance and areas that will not be disturbed..." To simplify the designation process for sites where most or all of the area will be disturbed, we recommend the following parenthetical be added at the end of section II.D.1.i.(2) a statement that "all areas in the map will be disturbed unless otherwise noted" is sufficient.	The cited language exists within the current general permit and is not believed to be overly burdensome. The existing requirement has been retained.
Thompson & Knight L.L.P (on behalf of Centex Homes)	Section II.D.2.b.3 provides that "off-site accumulations of sediment must be removed as soon as practicable to minimize off-site impacts..." This provision is not clear. To avoid inconsistent enforcement, we suggest clarification of this provision. For example, the provision could read: "If a significant amount of sediment is leaving the site and will likely affect an off-site surface water, the sediment must be removed within a reasonable time after the permittee discovers or is notified of the off-site accumulation of sediment". Additionally, we request clarification that "off-site" means outside of the boundaries of the area described in the registration statement.	It is not believed that the suggested amendment creates greater clarity than that which currently exists due to usage of the terms “significant” and “reasonable”. It is additionally believed that the existing language is sufficiently clear regarding the “off-site” status of the sediment in question, which is specifically noted to escape the construction site.
Thompson & Knight L.L.P (on behalf of Centex Homes)	Section III.D.3 states that "maintenance shall be preformed before the next storm event, or as soon as practicable to maintain the continued effectiveness of stormwater control". Before the next storm event and as soon as practicable are likely two different time frames. Is compliance with either timeframe sufficient? Are the two standards applicable in different situations? To avoid confusion, we suggest a revision so that controls are to be repaired within a reasonable time, e.g. ten days, after discovery that the control is in need of repair.	The language of Section III D 3 has been amended to require that maintenance be performed “as soon as practicable” to maintain the continued effectiveness of stormwater controls.
Thompson & Knight L.L.P (on behalf of Centex Homes)	The draft permit should clarify that a violation only occurs after 1) the damage has been discovered, and 2) the permittee fails to make repairs after a reasonable time. In other words, the need for a BMP repair is not, by itself, a	The General Permit clearly requires in Section II D 3 that all control measures be maintained in effective operating condition. While normal practice, in many cases, is for control measures to be required to be repaired rather

Summary of Comments on the Construction General Permit Received During the Public Comment Period (Oct. 27, 2008 – Dec. 26, 2008) and at the Public Hearings and the Agency’s Response to the Comments Received

Commenter	Comment	Agency response
	violation. The violation occurs only after the permittee fails to address the problem within the framework established in the permit (i.e., procedures for conducting inspections and addressing deficiencies).	than the commencement of an enforcement action, it is desired to retain the ability to proceed in enforcement in egregious cases.
Thompson & Knight L.L.P (on behalf of Centex Homes)	<p>Section III.W of the draft permit provides that the Board, the department, and an "authorized representative of either (including an authorized contractor)" to, among other things, enter a site, conduct inspections, access records, and conduct sampling. We request clarification regarding the following issues:</p> <ol style="list-style-type: none"> 1. How does the Board or the department delegate authority to an "authorized representative"? 2. Does a representative from a local agency that is a "permit-issuing authority" qualify as an authorized representative? 3. Is a representative of federal EPA an authorized representative" 4. What kind of "credentials or other documents" will authorized representatives carry? 	<p>The language of this section has been modified to clarify that a representative of EPA is authorized to enter a site. The "authorized representative" language included in this section could include a person working under contract with the Department to conduct site inspections (to date, such an arrangement has not been necessary). Persons seeking to enter a site will display credentials such as agency identification in order to identify themselves as being an employee of an agency having permission to enter a site under this section.</p>
Thompson & Knight L.L.P (on behalf of Centex Homes)	<p>Section II.C.2 of the draft permit requires the SWPPP to be amended "if during inspections or investigations...by local, state or federal officials, it is determined that the existing control measures are ineffective in minimizing pollutants in stormwater discharges from the construction site." We request clarification regarding the following issues raised by this provision:</p> <ol style="list-style-type: none"> 1. What standards guide a local, state, or federal official in determining whether existing control measures are effective or ineffective in minimizing pollutants in stormwater discharges from the construction site? 2. If a permittee disagrees with the determination of the local, state, or federal official, how would that disagreement be resolved? 3. Does an authorized representative under III.W of the draft permit qualify as a local, state, or federal official? 4. What is the scope of "local, state, or federal official" and what is the scope of their jurisdiction? For example, a city mayor is a local official. Does 	<ol style="list-style-type: none"> 1. State standards and specifications for control measures (as set forth in the Virginia Erosion and Sediment Control Handbook and the Virginia Stormwater Management Handbook and, in the future, the Virginia BMP Clearinghouse website) are utilized in evaluating control measures located on a land disturbing site. Local standards and specifications may additionally be applicable. 2. Disagreements will be resolved in accordance with the standards and specifications discussed above in consultation with compliance and, if necessary, enforcement staff. 3. An authorized representative would be acting as an agent of the Board and would qualify as a state official. 4. While it is theoretically possible for a party such as a mayor to be considered under the language of this section, in order for an official to be authorized to require SWPPP revisions, they need to be an agent of the

Summary of Comments on the Construction General Permit Received During the Public Comment Period (Oct. 27, 2008 – Dec. 26, 2008) and at the Public Hearings and the Agency’s Response to the Comments Received

Commenter	Comment	Agency response
	<p>a city mayor have the ability to require SWPPP revisions? Can the mayor of Town A require SWPPP revisions at a site in Town B?</p> <p>5. Does a local official from a locality that is not a "permit-issuing authority" have the authority to require SWPPP revisions?</p>	<p>permit-issuing authority. At this point in time, the permit-issuing authority is the Board, and the Department is the Board’s representative. In the instance that a locality becomes authorized to act on behalf of the Board, that locality’s representatives would only be authorized to act within their own jurisdictions.</p> <p>5. A locality representative from a locality that is not a permit issuing authority does not have the authority to require SWPPP revisions. The reports of local Erosion and Sediment Control staff, however, may be utilized by the Department in conducting its own inspections and requiring SWPPP revisions.</p>
<p>Thompson & Knight L.L.P (on behalf of Centex Homes)</p>	<p>Section II.C.3 requires all SWPPP revisions to be dated and signed in accordance with III.K.2. Section III.K.4, however, requires any person signing a document under III.K.2 to include a certification statement with the signature. While a certification statement may be appropriate for execution of certain documents such as the registration statement or a wholesale revision of an entire SWPPP, certification of every minor SWPPP revision, e.g. amendment of a SWPPP map to show movement of a BMP, is excessively burdensome and will act as a disincentive to regularly and appropriately making minor SWPPP revisions. We suggest either removal of the requirement to certify revisions of the SWPPP, or clarification that only revision of the entire SWPPP requires certification.</p>	<p>Language has been added to Section II C 3 specifying that certifications are not required for SWPPP revisions.</p>
<p>Thompson & Knight L.L.P (on behalf of Centex Homes)</p>	<p>Section II.C.4 requires the SWPPP to identify contractors and subcontractors that implement and maintain each measure in the SWPPP. We believe that this requirement is unduly burdensome and does not serve a useful purpose. Additionally, we assume that the Board's position is that the operator is liable for noncompliance with the SWPPP or general permit, regardless of whether the noncompliance was due to the action or inaction of a contractor or subcontractor. If so, the identity of the contractor or subcontractor is irrelevant. Further, even when prudent and when it would benefit stormwater quality, builders will be inhibited from quickly changing</p>	<p>The language contained in Section II C 4 is existing language found in the General Permit. It is not believed to be overly burdensome and has not been noted as a source of difficulty historically. Section II C 4 has been retained.</p>

Summary of Comments on the Construction General Permit Received During the Public Comment Period (Oct. 27, 2008 – Dec. 26, 2008) and at the Public Hearings and the Agency’s Response to the Comments Received

Commenter	Comment	Agency response
	contractors and subcontractors if a builder is required to revise the SWPPP before allowing a new or different contractor onsite. Accordingly, we suggest deletion of II.C.4.	
Thompson & Knight L.L.P (on behalf of Centex Homes)	The draft permit uses the phrase "common plan of development" in a number of places, but does not define it. We recommend adding a definition. The definition should address the question of whether a project built in phases over a long period of time is considered all part of the same "common plan of development".	A definition of “common plan of development or sale” has been added to section 10.
Thompson & Knight L.L.P (on behalf of Centex Homes)	In the context of a permit transfer, section III.Y.3 provides that for "ongoing construction activity involving a change of operator, the new operator shall accept and maintain the existing SWPPP, or prepare and implement a new SWPPP prior to taking over operations at the site". In our view, the more prudent approach is to use the existing procedures for Registration Statements and Notices of Termination. This is, a new builder or operator would prepare its own SWPPP and complete its own registration statement while the existing operator would remain responsible for permit and SWPPP compliance until it becomes eligible to file a Notice of Termination (i.e. completion of final or temporary stabilization or another operator assumes control over all areas of the site not stabilized). In our view, the permit transfer provision is at best redundant. Accordingly, we suggest deletion of the permit transfer provision.	The process described by the comment is an option that is available during transition processes in addition to the permit transfer mechanism contained in Section III Y 3. Section III Y 3 has been retained as an option for other operators.
Thompson & Knight L.L.P (on behalf of Centex Homes)	Alternatively, we request clarification on the situations in which a permit transfer would be more appropriate than use of Notice of Termination by the existing operator and completion of a new Registration by the new operator.	<p>The process described by the comment is an option that is available during transition processes in addition to the permit transfer mechanism contained in Section III Y 3. Section III Y 3 has been retained as an option for other operators.</p> <p>The decision as to which mechanism to employ during the transition process is left to the discretion of permittee and future permittee. There is no preference on behalf of the Board for either option.</p>
Thompson & Knight L.L.P (on behalf of Centex Homes)	Additionally, we request clarification regarding how a new operator/permit transferee determines whether it is appropriate to accept and maintain the existing SWPPP	The decision as to whether a new operator should adopt and utilize an existing SWPPP or develop its own lies with the new operator. Every operator is required to

Summary of Comments on the Construction General Permit Received During the Public Comment Period (Oct. 27, 2008 – Dec. 26, 2008) and at the Public Hearings and the Agency’s Response to the Comments Received

Commenter	Comment	Agency response
	and in what situations a new SWPPP is required.	utilize a SWPPP meeting all permit requirements. So long as this condition is met, the Board has no preference as to which choice the new site operator makes.
Thompson & Knight L.L.P (on behalf of Centex Homes)	Proposed section 4VAC50-60-1150.A.3 requires builders with coverage under the 2004 General Permit to submit a registration statement by July 1, 2009 and update their stormwater pollution prevention plan within 30 days "after the date of coverage under this general permit". With respect to submission of the registration statement, we request that the Board provide flexibility in the event that the draft permit is issued near or after July 2009. We suggest revising the requirement to read "submit a complete and accurate registration statement by the later of (i) July 1, 2009; and (ii) 90 days after adoption of the 2009 construction stormwater general permit.	The new General Permit will be effective on July 1, 2009, although it is anticipated to be adopted by the Board at its mid-March meeting. This will provide a longer period than the 90 days requested by the comment for operators to be aware of new permit requirements and prepare revisions to their SWPPPs.
Thompson & Knight L.L.P (on behalf of Centex Homes)	With respect to revision of the stormwater pollution prevention plan, we request clarification on the trigger for the 30 day period to revise. What is the "date of coverage" under this general permit? To provide clarity, we suggest amending the deadline for revision of the stormwater pollution prevention plan to 45 days after submission of the registration statement requesting continuing coverage under the draft permit.	The “date of coverage” under the General Permit will occur 15 business days following the submission of a complete and accurate registration statement, unless an earlier notification of coverage is made by the Department (see 4VAC50-60-1150(A)(4)).
Thompson & Knight L.L.P (on behalf of Centex Homes)	Section 4VAC50-60-1150.A.4 provides that discharge is authorized "only upon issuance of coverage under the general permit by the permit-issuing authority". We suggest that the Board revise the draft permit to provide provisional coverage for a fixed amount of time after submission of a complete registration statement. For example, section 4VAC50-60-1150.A.4 could be rewritten to read: The operator of a construction activity is provisionally authorized seven days from the date that a complete and accurate registration statement is postmarked for delivery to the permit-issuing authority, unless otherwise notified by the permit-issuing authority. If electronic submission of the registration statement is allowed, and unless otherwise notified by the permit issuing authority, the operator is authorized immediately following confirmation of receipt of the electronic	Section 4VAC50-60-1150(A)(4) has been revised to specify that permit coverage becomes effective 15 business days following submission of a complete and accurate registration statement, unless an earlier notification of coverage is made by the Department. This removes the requirement for a response to be received prior to commencement of land disturbance.

Summary of Comments on the Construction General Permit Received During the Public Comment Period (Oct. 27, 2008 – Dec. 26, 2008) and at the Public Hearings and the Agency’s Response to the Comments Received

Commenter	Comment	Agency response
	<p>registration statement by the permit issuing authority. Authorization is nonprovisional when the permitting authority issues coverage under the general permit.</p>	
<p>Thompson & Knight L.L.P (on behalf of Centex Homes)</p>	<p>Section 4VAC50-60-1150.B.3 requires the registration statement to indicate the "status of activity: federal, state, public or private..." We request clarification on whether this refers to the operator status (i.e. is the operator a federal entity? private entity?) or project status (i.e. is the project a federal project? private project? or some other status?)</p>	<p>Section 4VAC50-60-1150(B)(3) requests the status of the <u>activity</u>, not the status of the operator.</p>
<p>Thompson & Knight L.L.P (on behalf of Centex Homes)</p>	<p>The definition of "qualified personnel" (4VAC50-60-10) is either severely limiting or needs clarification. Does the requirement to hold a certificate of competency apply only to "knowledgeable person"? Or does the requirement also apply to a professional engineer and the responsible land disturber?</p>	<p>All persons described by the definition of "qualified personnel" hold certifications. The qualifier "knowledgeable" has been removed.</p>
<p>Thompson & Knight L.L.P (on behalf of Centex Homes)</p>	<p>Additionally, who is the "responsible land disturber"? Is it the permittee? In the case of most construction projects, the permittee under a general permit will be a legal entity, not an individual person. Is any employee of the construction company within the scope of responsible land disturber? Is any agent of the construction company within the scope of responsible land disturber? Can the construction company designate someone to serve the role?</p>	<p>"Responsible land disturber" is a certification that is held by an individual. Entities conducting construction projects may designate an individual having such certification as the "qualified personnel" for the project.</p>
<p>Thompson & Knight L.L.P (on behalf of Centex Homes)</p>	<p>To avoid confusion and allow builders with appropriate flexibility, we suggest revision of the definition of qualified person to read: "qualified personnel means a person knowledgeable in the principles and practices of erosion and sediment controls and who possess the skills to assess conditions at the construction site that could impact stormwater quality and to assess the effectiveness of any sediment and erosion control measures selected to control the quality of stormwater discharges from the construction activity".</p>	<p>Revisions have been made to the definition of qualified personnel in accordance with comments received. That definition still requires certifications to have been obtained by an individual designated as qualified personnel. These certifications are believed to be necessary and the requirement for them has been retained.</p>
<p>Thompson & Knight L.L.P (on behalf of Centex Homes)</p>	<p>We support the inclusion of II.A.5: "once a definable area has been further stabilized, the operator may mark this on the SWPPP and no further SWPPP or inspection requirements apply to that portion of the site". To avoid</p>	<p>Language specifying that areas identified pursuant to Section II A 5 do not require further inspections has been included in Section II D 4.</p>

Summary of Comments on the Construction General Permit Received During the Public Comment Period (Oct. 27, 2008 – Dec. 26, 2008) and at the Public Hearings and the Agency’s Response to the Comments Received

Commenter	Comment	Agency response
	<p>confusion, however, we request inclusion of a similar provisions in the section on inspections II.D.4. Specifically, II.D.4.b could be rewritten to read "inspections must include all areas of the site disturbed by construction activity and that have not been finally stabilized, off site areas, and areas used for storage of materials that are exposed to precipitation..."</p>	
<p>Thompson & Knight L.L.P (on behalf of Centex Homes)</p>	<p>We also request that if the deadline for conducting a regular inspection falls on a federal or state holiday, that an inspection conducted the day before or after that holiday will be treated as having been conducted on the holiday. This change would allow existing schedules to be maintained. Currently, if an inspection falls on a holiday, the schedule is thrown off resulting in unnecessary delay, effort, and expense to get back onto a regular 7 or 14 day schedule.</p>	<p>It is the responsibility of the operator to ensure that required inspection frequencies are met and that holidays and other non-work days are accounted for in the inspection schedule. No change to the permit language has been made.</p>
<p>Thompson & Knight L.L.P (on behalf of Centex Homes)</p>	<p>We believe that proposed section 4VAC50-60-1130.A has a typographical error in the 4th line. We believe the reference requirements for the registration statement should be 4VAC50-60-1150.</p>	<p>The registration statement requirements are contained in 4VAC50-60-1150 and the requested change has been made.</p>
<p>Ernie Aschenbach (Virginia Department of Game and Inland Fisheries)</p>	<p>A change that is of particular interest to the Department of Game and Inland Fisheries (DGIF) is the requirement for the applicant to report whether they have coordinated with agencies regarding potential impacts to threatened and endangered species. Such as addition would be beneficial and DGIF supports such an addition.</p>	<p>The language requiring consideration of threatened and endangered species in the SWPPP has been removed.</p>
<p>Ernie Aschenbach (Virginia Department of Game and Inland Fisheries)</p>	<p>However, we are concerned with the actual wording of the proposed revision. Furthermore we are concerned that based on the Fact Sheet the actual wording appears to address only federally listed species and/or federally designated habitat (i.e. does not mention actual coordination with DGIF and/or VDACS/DCR regarding state listed species or their habitat).</p>	<p>The language requiring consideration of threatened and endangered species in the SWPPP has been removed.</p>
<p>Ernie Aschenbach (Virginia Department of Game and Inland Fisheries)</p>	<p>We recommend that the proposed amendments include the requirement for an applicant to coordinate with, and report on coordination correspondence with DGIF on threatened and endangered wildlife excluding class Insecta; and the Virginia Department of Agriculture and Consumer Services and DCR – Division of Natural</p>	<p>The language requiring consideration of threatened and endangered species in the SWPPP has been removed.</p>

Summary of Comments on the Construction General Permit Received During the Public Comment Period (Oct. 27, 2008 – Dec. 26, 2008) and at the Public Hearings and the Agency’s Response to the Comments Received

Commenter	Comment	Agency response
	Heritage regarding threatened and endangered plants and insects. We recommend that the corresponding language and protocols for this requirement be developed in a manner that is similar to and consistent with those included within current Department of Environmental Quality (DEQ) general permit regulations and the recent Virginia Pollution Discharge Elimination System (VPDES) and Water Pollution Program (WPP) permit Memorandums of Understanding (MOUs), as DEQ's compliance with the state requirements for agencies to "cooperate" with DGIF regarding protection of threatened and endangered species.	
David Rubando	There should be a time limit for DCR to review the Notice of Intent. For example: If they don't respond within 5 days, it's assumed approved. It is terrible idea to place this road block into the already bottle-neck process.	Section 4VAC50-60-1150(A)(4) has been revised to specify that permit coverage becomes effective 15 business days following submission of a complete and accurate registration statement, unless an earlier notification of coverage is made by the Department. This removes the requirement for a response to be received prior to commencement of land disturbance.
David Rubando	Prohibiting coverage of multiple builders within the same construction site. This may solve a problem of responsibility for the particular site, but creates other problems. There needs to be something addressing this scenario or else, people will be forced to ignore the regulations or be confused as to what to do.	All construction site operators are required to obtain permit coverage for their site. In the case that multiple sites adjoin one another but fall under the responsibility of different builders, each builder will need to obtain his or her own permit coverage.
Chuck Claar (Hubert Construction)	One proposed change will require issuance of the coverage letter, not just submission of the statement. Let's not hold up the few development opportunities anticipated, in the near future, and thus delay future anticipated tax revenues, for the additional time that it will take the already overburdened DCR staff to issue the coverage letter.	Section 4VAC50-60-1150(A)(4) has been revised to specify that permit coverage becomes effective 15 business days following submission of a complete and accurate registration statement, unless an earlier notification of coverage is made by the Department. This removes the requirement for a response to be received prior to commencement of land disturbance.
Chuck Claar (Hubert Construction)	Additionally, the proposed new regulations will require a public posting of the SWPPP by the operator twice monthly. Who is going to enforce? We have never seen an inspector on any site covered by a SWPPP. Why make this requirement when there is not even enough inspectors to enforce what is already in place? Also, why should the operator be required to show up twice a month, when we all know that no one is going to show up to	The requirement related to public availability of the SWPPP has been amended. Numerous comments were received on this subject reflecting various viewpoints. Many strongly favored public availability of the SWPPP, while others strongly opposed it. In the end, language that is believed to achieve a compromise has been included in the General Permit. Under that language, the initial SWPPP developed for each site must be made

Summary of Comments on the Construction General Permit Received During the Public Comment Period (Oct. 27, 2008 – Dec. 26, 2008) and at the Public Hearings and the Agency’s Response to the Comments Received

Commenter	Comment	Agency response
	review the SWPPP, so let's not waste anyone's valuable time.	publicly available. The developer will have a choice to either: (i) make the initial SWPPP available on an internet website and post the website address at the entrance to the construction site (or at a publicly accessible location for linear projects); or (ii) make a hard copy of the initial SWPPP available upon the receipt of a request from the public, at least once per month and during normal business hours.
David Sligh (Upper James River Riverkeeper)	The greatest weakness of this proposed amendment to the general permits is its failure to incorporate effluent limitations that will prevent sites from causing or contributing to violations of standards in "water quality limited" water bodies.	<p>The Board is currently undertaking a substantial revision of Parts I/II/III of the VSMP regulations; a part of this regulatory action is the consideration of a 0.28 lbs/acre/yr phosphorus loading requirement. The development of this standard has taken over three years and involved a multitude of technical advisory committee meetings, design charettes, and other discussions in order to reach the proper standard and compliance methodologies. It is believed to be more appropriate to complete any effluent limitations in that action, and not in this abbreviated General Permit regulatory action. When a revised Part II is developed, any effluent limitations will then be incorporated into the next-developed Construction General Permit.</p> <p>The US EPA is additionally considering the development of effluent limit guidelines (ELGs) that were placed out for public comment during late 2008 and early 2009. Should EPA establish ELGs for construction activities, those requirements will likewise need to be included in future versions of the Construction General Permit.</p>
David Sligh (Upper James River Riverkeeper)	Where new permitted discharges are permitted under the CWA §402 (NPDES permitting), these discharges may not contribute additional pollutants that will contribute to or even exacerbate the violation of Water Quality Standards in the receiving waters or in other waters affected. This permit fails to enforce the Clean Water Act and Virginia requirements, because discharges allowed under it will inevitably contribute to violations already existing in §303(d)-listed waters.	Section 4VAC50-60-1130(A)(4) clearly states that stormwater discharges that the State Water Control Board determines cause, may reasonably be expected to cause, or contribute to a violation of water quality standards are not covered by this permit. In addition, discharges to waters that have been identified as impaired on the 2008 305(b)/303(d) Water Quality Assessment Integrated Report are not eligible for coverage unless they are addressed through the implementation of control measures at the site that minimize pollutants as necessary to meet applicable

Summary of Comments on the Construction General Permit Received During the Public Comment Period (Oct. 27, 2008 – Dec. 26, 2008) and at the Public Hearings and the Agency’s Response to the Comments Received

Commenter	Comment	Agency response
		water quality standards. If it is determined at any time that the operator’s discharges have reasonable potential to cause or contribute to an excursion above any applicable water quality standard, the Board will require the operator to either modify its control measures, submit data indicating that the receiving water is in fact meeting water quality standards, or cease its discharge and seek coverage under an individual permit.
David Sligh (Upper James River Riverkeeper)	Abundant scientific findings exist to prove that BMPs or technology-based limits imposed in the general permit cannot be expected to eliminate the pollutants that will further contribute to violations in Virginia waters and the Virginia DCR has produced no evidence in support of a contrary finding. Because Virginia regulators have the burden of making sure that all CWA and state requirements are met by these permits, it also bears the burden of proof that its proposed limits are adequate for that purpose – in this instance, the state has failed to meet that burden.	In addition to the other SWPPP requirements of the General Permit, section 4VAC50-60-1130(A)(4) clearly states that stormwater discharges that the State Water Control Board determines cause, may reasonably be expected to cause, or contribute to a violation of water quality standards are not covered by this permit. In addition, discharges to waters that have been identified as impaired on the 2008 305(b)/303(d) Water Quality Assessment Integrated Report are not eligible for coverage unless they are addressed through the implementation of control measures at the site that minimize pollutants as necessary to meet applicable water quality standards. If it is determined at any time that the operator’s discharges have reasonable potential to cause or contribute to an excursion above any applicable water quality standard, the Board will require the operator to either modify its control measures, submit data indicating that the receiving water is in fact meeting water quality standards, or cease its discharge and seek coverage under an individual permit.
David Sligh (Upper James River Riverkeeper)	Another important concern regarding the legality of this regulatory amendment and the construction stormwater general permit is the failure of the regulation to adequately address antidegradation requirements in the CWA or in Virginia water quality standards. Antidegradation is part of water quality standards that must be upheld (according to federal regulations at 40 CFR §131.12 and Virginia regulations). These provisions require that antidegradation reviews related to each applicable regulatory action assess whether the application of Tier I, II, or III measures are needed to prevent illegal degradation of water quality. Since the application of this	Water quality standards are addressed by the General Permit. Section 4VAC50-60-1130(A)(4) clearly states that stormwater discharges that the State Water Control Board determines cause, may reasonably be expected to cause, or contribute to a violation of water quality standards are not covered by this permit. In addition, discharges to waters that have been identified as impaired on the 2008 305(b)/303(d) Water Quality Assessment Integrated Report are not eligible for coverage unless they are addressed through the implementation of control measures at the site that minimize pollutants as necessary to meet applicable

Summary of Comments on the Construction General Permit Received During the Public Comment Period (Oct. 27, 2008 – Dec. 26, 2008) and at the Public Hearings and the Agency’s Response to the Comments Received

Commenter	Comment	Agency response
	<p>general permit does not provide for variations in requirements based upon finding of high quality conditions in waters that may be affected, the general permit and this amended regulation are inadequate and fail to meet legal requirements.</p>	<p>water quality standards. If it is determined at any time that the operator’s discharges have reasonable potential to cause or contribute to an excursion above any applicable water quality standard, the Board will require the operator to either modify its control measures, submit data indicating that the receiving water is in fact meeting water quality standards, or cease its discharge and seek coverage under an individual permit.</p> <p>The US EPA has had full review of the General Permit (as it is a CWA permit) to ensure that applicable federal requirements are met.</p>
<p>David Sligh (Upper James River Riverkeeper)</p>	<p>We encourage the Virginia Soil and Water Conservation Board to issue this general permit only for a term of one year (in whatever form it emerges from this public review), rather than the proposed five year period, because we believe that new information and scientific and regulatory findings (particularly those related to EPA’s current review of federal construction stormwater permits) require this action to be reviewed in the near future.</p>	<p>The General Permit can be reopened and additional general permits can be issued to deal with new regulatory requirements in the future, if necessary. Due to the administrative process required by law, development and adoption of a new general permit is a 9-18 month process. In order to provide for maximum flexibility to deal with future circumstances which still, at this point, have uncertain timeframes, a 5-year permit term is believed appropriate.</p>
<p>Tyler Craddock (Virginia Chamber of Commerce)</p>	<p>We recognize those most directly involved in obtaining coverage – e.g. builders, developers and engineers – have several concerns about various provisions, including grandfathering, coverage for multiple builders and the commencement of coverage upon application. Given their field of expertise, we urge you to follow their counsel on these issues.</p>	<p>The concerns of builders, developers, and engineers (among many others) have been received during the public comment process on this permit. Responses to their concerns can be found throughout this document.</p>
<p>Tyler Craddock (Virginia Chamber of Commerce)</p>	<p>An operator should only be required to provide SWPPP access to the appropriate government agency – in this case, DCR – expressly charged with enforcing the permit.</p>	<p>The requirement related to public availability of the SWPPP has been amended. Numerous comments were received on this subject reflecting various viewpoints. Many strongly favored public availability of the SWPPP, while others strongly opposed it. In the end, language that is believed to achieve a compromise has been included in the General Permit. Under that language, the initial SWPPP developed for each site must be made publicly available. The developer will have a choice to either: (i) make the initial SWPPP available on an internet website and post the website address at the entrance to the construction site (or at a publicly</p>

Summary of Comments on the Construction General Permit Received During the Public Comment Period (Oct. 27, 2008 – Dec. 26, 2008) and at the Public Hearings and the Agency’s Response to the Comments Received

Commenter	Comment	Agency response
		accessible location for linear projects); or (ii) make a hard copy of the initial SWPPP available upon the receipt of a request from the public, at least once per month and during normal business hours.
Tyler Craddock (Virginia Chamber of Commerce)	One of the reasons put forth to justify public availability of the SWPPP has been the desire of some in the general public to verify stormwater compliance. The truth is that in order to do that, the person viewing the SWPPP would also likely need access to the job site, something that is highly unlikely given the legal liability such access would entail for the owner of the site.	<p>The requirement related to public availability of the SWPPP has been amended. Numerous comments were received on this subject reflecting various viewpoints. Many strongly favored public availability of the SWPPP, while others strongly opposed it. In the end, language that is believed to achieve a compromise has been included in the General Permit. Under that language, the initial SWPPP developed for each site must be made publicly available. The developer will have a choice to either: (i) make the initial SWPPP available on an internet website and post the website address at the entrance to the construction site (or at a publicly accessible location for linear projects); or (ii) make a hard copy of the initial SWPPP available upon the receipt of a request from the public, at least once per month and during normal business hours.</p> <p>Nothing in the General Permit provides for public access to the job site.</p>
Tyler Craddock (Virginia Chamber of Commerce)	Moreover, DCR is the agency charged with enforcement of the permit. Thus, the public – through DCR, a public agency – is already empowered to ensure compliance.	The requirement related to public availability of the SWPPP has been amended. Numerous comments were received on this subject reflecting various viewpoints. Many strongly favored public availability of the SWPPP, while others strongly opposed it. In the end, language that is believed to achieve a compromise has been included in the General Permit. Under that language, the initial SWPPP developed for each site must be made publicly available. The developer will have a choice to either: (i) make the initial SWPPP available on an internet website and post the website address at the entrance to the construction site (or at a publicly accessible location for linear projects); or (ii) make a hard copy of the initial SWPPP available upon the receipt of a request from the public, at least once per month and during normal business hours.
Tyler Craddock (Virginia	Moreover, the fact that public SWPPP availability is not	The requirement related to public availability of the

Summary of Comments on the Construction General Permit Received During the Public Comment Period (Oct. 27, 2008 – Dec. 26, 2008) and at the Public Hearings and the Agency’s Response to the Comments Received

Commenter	Comment	Agency response
Chamber of Commerce)	mandated under other NPDES permits in Virginia is an indication that such availability is not generally interpreted by other state agencies to be required by federal law.	SWPPP has been amended. Numerous comments were received on this subject reflecting various viewpoints. Many strongly favored public availability of the SWPPP, while others strongly opposed it. In the end, language that is believed to achieve a compromise has been included in the General Permit. Under that language, the initial SWPPP developed for each site must be made publicly available. The developer will have a choice to either: (i) make the initial SWPPP available on an internet website and post the website address at the entrance to the construction site (or at a publicly accessible location for linear projects); or (ii) make a hard copy of the initial SWPPP available upon the receipt of a request from the public, at least once per month and during normal business hours.
Tyler Craddock (Virginia Chamber of Commerce)	Regarding language that mandates inclusion of information about endangered species, every other item that is required in the SWPPP is related in some direct fashion to stormwater management, but endangered species information is not. While it is an important consideration, its inclusion here is not germane to the purpose of the permit, and accordingly, it should not be addressed in a stormwater general permit.	The language requiring consideration of threatened and endangered species in the SWPPP has been removed.
Cherryl Barnett (Department of the Navy)	4VAC50-60-10 Definitions The definition of "permittee" includes any owner or operator. Since owner is part of the definition of operator, suggest removing the word owner from the definition of permittee. This is consistent with the rest of the permit which uses the term operator to describe the regulated entity.	While it is noted that the term "owner" is included in the definition of "operator", inclusion of that term in the definition of "permittee" was requested to provide clarity and is not believed to harm the definition.
Cherryl Barnett (Department of the Navy)	4VAC50-60-10 In the definition of "predevelopment", DCR uses the time that the plans for land development are approved by the plan approving authority to establish the baseline (predevelopment) condition. Since engineering calculations that compare the post-development condition to the predevelopment condition are done prior to submitting the application to the plan approval authority for approval, the definition should be changed to state that the predevelopment condition is the condition of the land	The term "predevelopment" is utilized only in sections 1180-1190, which are direct copies of the existing Part II of the VSMP regulations. Inclusion of these sections was intended to maintain the status quo for water quality requirements under the permit, and not to alter the manner in which water quality and quantity is addressed. It is not believed that the requested amendment will make a substantial difference for projects, and given the intention of maintaining water quality and quantity as is currently done, the requested change has not been

Summary of Comments on the Construction General Permit Received During the Public Comment Period (Oct. 27, 2008 – Dec. 26, 2008) and at the Public Hearings and the Agency’s Response to the Comments Received

Commenter	Comment	Agency response
	when the plans for land development are submitted to the plan approval authority.	made.
Cherryl Barnett (Department of the Navy)	4VAC50-60-10 "Qualified Personnel" is defined as a licensed professional engineer, responsible land disturber, or other knowledgeable person that holds a certificate of competency from the board in the area of project inspection or a combined administrator. Since all inspections must be conducted by qualified personnel, this requirement will be overly burdensome. Although it is desirable that inspections are performed by qualified personnel, it is unreasonable to require all inspectors to be board-certified inspectors. Suggest qualified personnel definition also include personnel who work under the direction of and have been provided training by a P.E., RLD or certified inspector.	Revisions have been made to the definition of qualified personnel in accordance with comments received. That definition still requires certifications to have been obtained by an individual designated as qualified personnel. These certifications are believed to be necessary and the requirement for them has been retained.
Cherryl Barnett (Department of the Navy)	4VAC50-60-10 The definition of "stormwater management program" only includes programs established by localities. There are other entities (i.e., military installations, universities, prisons, etc.) that are defined as Regulated Small Municipal Separate Storm Sewer Systems that are required to develop stormwater management programs. Therefore, the definition of stormwater management program should be revised to include these entities.	No changes to this definition are proposed for this regulatory action. Amendments to it will be more properly considered in the Board's other ongoing regulatory action to amend Parts I, II, and III of the VSMP regulations.
Cherryl Barnett (Department of the Navy)	4VAC50-60-1100, Definitions of final stabilization The second part of the definition states that permanent vegetation shall not be considered established until a ground cover is achieved that is uniform (e.g., evenly distributed without large bare areas), mature enough to survive, and will inhibit erosion. It would be helpful to clarify/quantify what is meant by large bare areas. Perhaps an area size or percentage of the site should be added for clarification. Another option would be to use something like 70% uniform coverage (similar to EPA's definition) rather than prohibiting large bare areas.	The specification that vegetation be evenly distributed has been retained; however, the specification related to large bare areas has been removed.
Cherryl Barnett (Department of the Navy)	4VAC50-60-1130E. This section states that the permit issuing authority may allow exceptions to technical criteria in the permit in accordance with Part III. It is unclear what technical	The reference contained in this section refers to Part III of the Board's VSMP regulations, which currently appear at sections 4VAC50-60-100 through 4VAC50-60-150 (although a separate regulatory action is currently

Summary of Comments on the Construction General Permit Received During the Public Comment Period (Oct. 27, 2008 – Dec. 26, 2008) and at the Public Hearings and the Agency’s Response to the Comments Received

Commenter	Comment	Agency response
	<p>criteria this condition addresses since there is no Part III of their permit. Section III of the permit is at line 1374 and is titled Conditions Applicable to all VSMP permits. These are the standard permit conditions that do not address exceptions or technical criteria. There are technical criteria for water quality at 4VAC50-60-1184. Perhaps these are the criteria being referred to. However, these technical criteria are already implemented through stormwater management program regulations and do not seem pertinent to this permit for stormwater discharges from construction activities.</p>	<p>underway that may adopt additional/replacement sections). Clarifying language has been added specifying that the Part III being referenced is the Part III “of this Chapter”, instead of Section III contained in the permit.</p>
<p>Cherryl Barnett (Department of the Navy)</p>	<p>4VAC50-60-1150.A.3 According to this section, operators of ongoing construction activity covered by the 2004 general permit must submit a new registration statement for continued coverage under this permit by July 1, 2009. The language does not address whether the applicant must submit another fee with the registration statement. Since fees were submitted with the original registration statement that was filed with the project, DoD requests that language be added to state that a permit fee will not be required for registration statements requesting coverage for ongoing construction projects. Requiring this fee is an unnecessary administrative burden, particularly for sites where construction is nearly complete.</p>	<p>A provision has been added to section 4VAC50-60-1150 that, provided a complete and accurate registration statement is received by June 1, 2009, no permit application (registration statement) fee shall be due from projects that received permit coverage from the Department on or after July 1, 2008. Other projects will be required to pay the applicable permit fee.</p>
<p>Cherryl Barnett (Department of the Navy)</p>	<p>4VAC50-60-150.B.1 In this section, it is stated, that "no more than one operator may receive coverage under each registration statement". DoD supports the concept that only one operator is required to obtain permit coverage for a construction activity at any given point in time. The existing language could be interpreted to mean that although only one operator may receive coverage under a registration statement, that multiple operators could be required to file registration statements for coverage at a given point in time. DoD suggests alternative language that clarifies that only one registration statement must be submitted for coverage at any point in time. This allows different operators to file for coverage as they become responsible for the site but prevents registration statements being filed</p>	<p>All regulated land disturbing activities are required to have permit coverage. Each activity, however, only needs and only receives one permit coverage. The cited language is intended to clarify that there can only be one operator finally responsible for permit compliance for each permitted site.</p>

Summary of Comments on the Construction General Permit Received During the Public Comment Period (Oct. 27, 2008 – Dec. 26, 2008) and at the Public Hearings and the Agency’s Response to the Comments Received

Commenter	Comment	Agency response
	that provide permit coverage to more than one operator at the same time.	
Cherryl Barnett (Department of the Navy)	4VAC50-60-1150.B.1 This section is titled "status of activity" and asks the applicant to indicate whether the project is federal, state, public or private. Suggest revising the title to more accurately depict the information that is requested. Alternatives would be type of activity, funding source or development category. Also suggest replacing "public" with "municipal" since federal and state are two selections that are also "public".	The cited language is existing language from the current general permit. Problems with this language have not been noted and it is not believed necessary to make any amendment at this time.
Cherryl Barnett (Department of the Navy)	4VAC50-60-1150.C Revise the signature to read "the registration statement shall be signed by the operator in accordance..." to clarify that the signatory requirements apply to the operator.	Section III K, which is referenced in 4VAC50-60-1150(C), explains who must sign a registration statement. It is not believed necessary to further amend the language of this section.
Cherryl Barnett (Department of the Navy)	4VAC50-60-1160.B.5 This section requires this operator to provide the type, location, waterbody receiving the discharge, and number of acres treated for each permanent control measure that is installed as part of the Notice of Termination. This requirement should be deleted from the permit since the information is not relevant to the construction activity that is being regulated by the permit. Also, the receiving waterbody HUC and number of acres treated by each permanent control measure will be burdensome for operators (who are generally construction contractors) to provide because they are not involved with the design of the permanent control measures.	The cited language had previously existed in the requirements for a complete registration statement in 4VAC50-60-1150 and has been moved to the section dealing with notices of termination in order to allow more accurate reporting. The information requested is relevant to the permit, which requires post-construction stormwater management quality and quantity controls.
Cherryl Barnett (Department of the Navy)	4VAC50-60-1170, Section I.H.2 If it is determined that the operator's stormwater discharges have reasonable potential to cause or contribute to an excursion of a water quality standard, according to this section, the permitting authority shall require the operator to a) modify the control measures to adequately address water quality concerns, b) submit valid and verifiable data and information that are representative of ambient conditions and indicate that the receiving water is attaining water quality standards or c) cease discharges and apply for an individual permit. The first and third requirements are reasonable and consistent with the existing permit.	The three options listed in Section I H 2 are intended to be choices for the operator, and it is not intended that the permit issuing authority mandate one choice over the other. The language of this section has been amended with the intention of making this clearer.

Summary of Comments on the Construction General Permit Received During the Public Comment Period (Oct. 27, 2008 – Dec. 26, 2008) and at the Public Hearings and the Agency’s Response to the Comments Received

Commenter	Comment	Agency response
	DoD strongly objects to the requirement for the operator to provide ambient water quality data to demonstrate that water quality standards are attained. This requirement is burdensome and will be difficult to implement because it is often difficult to link ambient monitoring water quality excursions to a single source. Therefore, the ambient monitoring requirement should be deleted.	
Cherryl Barnett (Department of the Navy)	4VAC50-60-1170, Section II.C.3 This section requires that revisions to the SWPPP be dated and signed by the same person that signed the NOI and initial SWPPP. Since the SWPPP at the construction site is such a dynamic document that is updated frequently, it is burdensome to require that each revision be signed by this higher ranking person. DoD requests that the requirement be modified to allow the person responsible for day to day control of the site to sign the SWPPP revisions.	Section III K 2, which is referenced by Section II C 3, allows a duly authorized representative of the person who signs the registration statement to be appointed to sign SWPPP revisions and other reports. That section explains how such a representative is appointed.
Cherryl Barnett (Department of the Navy)	4VAC50-60-1170, Section II.D.2.c This section requires the operator to ensure compliance with the requirements of 4VAC50-60-1180-1190 of the Virginia Stormwater Management Regulations, including water quality and quantity requirements. It also requires the operator to incorporate in the SWPPP information (description and calculations) of all the post-construction stormwater management measures that will be installed as part of the project. Although DoD appreciates the value of having this information to track compliance with the Chesapeake Bay Tributary Strategies, it does not seem relevant to the purpose of this permit which is control of stormwater runoff from construction sites. Since this information is already required to be submitted to DCR or the locality in which the project is sited in accordance with 4VAC50-60-1180-1190 of the Virginia Stormwater Management Regulations, it seems redundant to include this information in the SWPPP for construction sites. Therefore, DoD requests that this section be deleted.	Post-construction stormwater management is a requirement of the General Permit. The inclusion of sections 1180 through 1190 is intended to clarify what requirements apply to regulated activities having coverage under the General Permit. Requiring that the SWPPP include how sections 1180 through 1190 will be met is not burdensome, since it generally requires only that the stormwater management plan for the site be referenced.
Cherryl Barnett (Department of the Navy)	4VAC50-60-1180-1190 Sections 4VAC50-60-1180-1190 are included in this proposal even though they are already promulgated	Post-construction stormwater management is a requirement of the General Permit. The inclusion of sections 1180 through 1190 is intended to clarify what

Summary of Comments on the Construction General Permit Received During the Public Comment Period (Oct. 27, 2008 – Dec. 26, 2008) and at the Public Hearings and the Agency’s Response to the Comments Received

Commenter	Comment	Agency response
	<p>regulations governing the requirements for permanent (as opposed to construction site) stormwater BMPs. As stated in the previous comment, these sections do not seem germane to this rulemaking which addresses stormwater discharges from construction activities. DCR is revisiting these provisions under a separate rulemaking. Therefore, they should be removed from this rulemaking.</p>	<p>requirements apply to regulated activities having coverage under the General Permit. As noted, they are direct copies of the current Part II of the VSMP regulations. That Part is the subject of another ongoing regulatory process and is expected to be substantially revised. Including sections 1180 through 1190 in the General Permit is necessary to ensure that requirements on operators having coverage under this permit remain constant when Part II is amended in the future.</p>
<p>Kris Unger</p>	<p>I strongly encourage Virginia to strengthen sediment control standards and construction oversight, in adherence to the EPA's Clean Water Act.</p>	<p>The revised General Permit does address sediment discharges from construction sites in an effort to prevent further impairments. For example, section II(D)(2)(a)(1) and (2) of the General Permit requires that the operator have an approved erosion and sediment control plan of agreement in lieu of a plan. All control measures required by the plan must be designed, installed, and maintained in accordance with good engineering practices and the minimum standards of the Virginia Erosion and Sediment Control Law and Regulations.</p>
<p>Kris Unger</p>	<p>Sediment control structures are a trivial component of most construction projects. Actual adherence to Virginia's legal standards would significantly reduce the number of construction-related contamination events. Raising the bar would increase project costs by an insignificant fraction of a percentage, but would significantly reduce the number of contamination events, as well as their severity.</p>	<p>The revised General Permit does address sediment discharges from construction sites in an effort to prevent further impairments. For example, section II(D)(2)(a)(1) and (2) of the General Permit requires that the operator have an approved erosion and sediment control plan of agreement in lieu of a plan. All control measures required by the plan must be designed, installed, and maintained in accordance with good engineering practices and the minimum standards of the Virginia Erosion and Sediment Control Law and Regulations.</p> <p>The Virginia Erosion and Sediment Control Law is also of note. Local erosion and sediment control programs are administered by localities and soil and water conservation districts across the state and are believed to be the best primary mechanisms for enforcement of erosion and sediment control requirements. The Board has oversight of local erosion and sediment control programs and conducts reviews of these programs on an ongoing basis.</p>
<p>Gary Earp (Tazewell)</p>	<p>General Requirements</p>	<p>Section II D 6 of the General Permit (4VAC50-60-1170)</p>

Summary of Comments on the Construction General Permit Received During the Public Comment Period (Oct. 27, 2008 – Dec. 26, 2008) and at the Public Hearings and the Agency’s Response to the Comments Received

Commenter	Comment	Agency response
County)	This requires that water quality meet the "state designated uses". What this means is that the stormwater regulations will be dictated by the current TMDL (Total Maximum Daily Load) study for that watershed. Therefore, if the current TMDL requirements call for a sediment load reduction in the Upper Clinch River Watershed, the developer must take additional steps to reduce the sediment load which will increase the developer's cost for the development.	requires the operator to address TMDLs where wasteload allocations (WLAs) are made for construction activities. Where no WLA is made for construction activities, compliance with permit requirements will generally be considered sufficient to meet the assumptions and requirements of the TMDL.
Gary Earp (Tazewell County)	Water Quality Requirements Under this section, the State is proposing to lower the water quality standards for phosphorus loads from 0.45 lbs/ac/yr to 0.28 lbs/ac/yr. This change will have a significant impact on development.	This comment is not germane to this regulatory action, but rather relates to the Board’s revision of Parts I/II/III of the VSMP regulations. That regulatory action will be the subject of a separate public comment period in the future.
Gary Earp (Tazewell County)	Water Quantity Requirements This section proposes to protect properties and state waters from the changes to runoff volume and reduce the runoff to undeveloped conditions. The proposed requirement will increase the need for underground storage or larger stormwater basins or more open space (having to retain some of the developable land to control runoff volume increases).	This comment is not germane to this regulatory action, but rather relates to the Board’s revision of Parts I/II/III of the VSMP regulations. That regulatory action will be the subject of a separate public comment period in the future.
Gary Earp (Tazewell County)	Stormwater management impoundment structures or facilities The proposed BMPs are going to increase the installation costs by 5 to 10 times the cost compared to today's regulations.	This comment is not germane to this regulatory action, but rather relates to the Board’s revision of Parts I/II/III of the VSMP regulations. That regulatory action will be the subject of a separate public comment period in the future.
Gary Earp (Tazewell County)	Delegation of the stormwater program We would have to voluntarily adopt the stormwater program from DCR. The adoption of the program will require additional staffing and are the permit fees enough to sustain the program with additional staffing or will the state have additional funding to help the localities meet the requirements mandated by DCR if these proposed regulations are adopted?	This comment is not germane to this regulatory action, but rather relates to the Board’s revision of Parts I/II/III of the VSMP regulations. That regulatory action will be the subject of a separate public comment period in the future.
James Williams (Northern Virginia Building Industry Association)	4VAC50-60-1150 While we commend DCR on the inclusion of vesting language through the use of the current "technical standards" in the general permit, we believe that the proposed changes to the general permit do present a	It is not believed that any changes to SWPPP requirements made in the General Permit will cause substantive changes to SWPPPs for existing projects. All water quality requirements remain the same as required under the existing permit. Requirements related

Summary of Comments on the Construction General Permit Received During the Public Comment Period (Oct. 27, 2008 – Dec. 26, 2008) and at the Public Hearings and the Agency’s Response to the Comments Received

Commenter	Comment	Agency response
	substantial hardship to our members to retrofit their existing SWPPPs for ongoing projects. We recommend that all on-going projects be allowed to operate under the existing general permit regulations.	to documentation of endangered species have been removed.
James Williams (Northern Virginia Building Industry Association)	4VAC50-60-1150 We are also concerned about on-going projects that may continue beyond the issuance of the 2014 general permit. We recommend that provisions for grandfathering be added so that on-going projects would not be subject to new technical criteria for water quality and quantity with the issuance of any new general permit.	The Department is aware of concerns regarding grandfathering from new requirements that may arise from the Board's other regulatory action revising Part II of the VSMP regulations. It is intended to address those concerns in that action.
James Williams (Northern Virginia Building Industry Association)	4VAC50-60-1150.A.4 We would like to know the intent behind this change from coverage immediately upon submission of a complete and accurate registration statement. There is no discretionary approval required for the general VSMP permit, and no apparent reason for this change to the regulations. We would recommend that the regulation remain unchanged so that the permittee is covered on the postmark date of the registration statement or at least specify a turn around time of 2 weeks so that our members are no left waiting indefinitely for approval.	The effective time of a registration statement has been amended to specify that coverage under the General Permit becomes effective 15 business days following the mailing of a complete and accurate registration statement, unless an earlier notification of coverage is made by the Department.
James Williams (Northern Virginia Building Industry Association)	4VAC50-60-1150.B.1. If the land developer is still active on the project and builders are working on individual lots, why are separate permits required for each lot? Lots are often purchased individually over a period of time, and can add up to a very large expense for permit fees for an overall relatively small area to be developed. The temporary stormwater controls such as detention ponds are designed for the site overall. It could be left to the land developer to negotiate liability with the lot developers. If the land developer indicates in the SWPPP that individual lots have been sold, there is still the possibility of confusion over liability since the lots are within the original areas covered by the active permit. If more than one operator is active on a development, does that mean that multiple permits would be required for the same development? If a separate permit is required for each contractor, how would liability be determined? We recommend removing the language, "no more than	All regulated land disturbing activities are required to receive permit coverage obtained by the operator who controls them. In a situation where control over individual lots is transferred to entities or individuals other than the operator having permit coverage, those operators must obtain their own permit coverage since the initial operator no longer has the authority to direct activities on the site. Where stormwater controls are put in place to serve an entire development, those operators may still utilize and reference such controls as their compliance methods in their SWPPPs.

Summary of Comments on the Construction General Permit Received During the Public Comment Period (Oct. 27, 2008 – Dec. 26, 2008) and at the Public Hearings and the Agency’s Response to the Comments Received

Commenter	Comment	Agency response
	one operator may receive coverage under each registration statement", and providing clarification on liability issues. If a separate permit is required for each contractor, how would the liability be determined?	
James Williams (Northern Virginia Building Industry Association)	4VAC50-60-1160.A.1 We request clarification on what is required to show that the control measures are functioning. We recommend that the professionally certified submission, review and acceptance of as-built surveys by the jurisdiction constitute evidence of a functioning system.	It is agreed professionally-certified submission, review, and acceptance of as-built surveys would constitute evidence of functioning systems, provided such systems were designed in accordance with all requirements. It is not believed necessary, however, to add language concerning this to the requirements for a notice of termination.
James Williams (Northern Virginia Building Industry Association); Martha Marks (Northern Virginia Chapter of Industrial and Office Properties)	4VAC50-60-1170 The SWPPP is a proprietary and very technical document with information that can change on a daily basis. SWPPP availability does not change a citizen's ability to monitor compliance with a general permit. We believe that it is an unreasonable financial burden to provide knowledgeable staff to be available to the public 2 days a month. Many businesses cannot afford this additional expense. Because the SWPPP needs to be kept on site, this requirement would also require an extra copy of the SWPPP to be kept up to date. We strongly recommend that this requirement be removed from the regulation.	The requirement related to public availability of the SWPPP has been amended. Numerous comments were received on this subject reflecting various viewpoints. Many strongly favored public availability of the SWPPP, while others strongly opposed it. In the end, language that is believed to achieve a compromise has been included in the General Permit. Under that language, the initial SWPPP developed for each site must be made publicly available. The developer will have a choice to either: (i) make the initial SWPPP available on an internet website and post the website address at the entrance to the construction site (or at a publicly accessible location for linear projects); or (ii) make a hard copy of the initial SWPPP available upon the receipt of a request from the public, at least once per month and during normal business hours.
James Williams (Northern Virginia Building Industry Association); Martha Marks (Northern Virginia Chapter of Industrial and Office Properties)	4VAC50-60-1170.B.4 The posting of a sign can be a liability issue for builders. We request clarification of "near" and recommend adding language that the sign should be posted within a public roadway or an existing public right of way.	The issue of where signs should be posted is left in the discretion of operators so long as the sign is near the construction site entrance (or, in the case of linear development projects, at a publicly accessible location).
James Williams (Northern Virginia Building Industry Association); Martha Marks (Northern Virginia Chapter of Industrial	4VAC50-60-1170.C.2 We request clarification for the time requirement to implement the changes to control measures that would be revised in the SWPPP within seven calendar days after approval by the plan-approval authority. If the changes are to be implemented within the seven day period, we	Section II C 2 specifically addresses the timeframe for amendments to be made to the SWPPP. That section then references II D 3 with regard to actual maintenance to control measures, which includes consideration for weather conditions.

Summary of Comments on the Construction General Permit Received During the Public Comment Period (Oct. 27, 2008 – Dec. 26, 2008) and at the Public Hearings and the Agency’s Response to the Comments Received

Commenter	Comment	Agency response
and Office Properties)	recommend adding "weather permitting" language. Does this situation fall under the II.D.3. Maintenance of controls, part b, that specifies implementation before the next anticipated storm event?	
James Williams (Northern Virginia Building Industry Association)	4VAC50-60-1170.D.6 We request clarification of "if applicable" to indicate that only existing documentation need to be included in the SWPPP and no database searches, etc would be required specifically for the SWPPP.	The language requiring consideration of threatened and endangered species in the SWPPP has been removed.
Mike Gerel (Chesapeake Bay Foundation)	We believe this proposed general permit falls short because it continues to lack measureable discharge limitations paired with appropriate monitoring.	<p>The Board is currently undertaking a substantial revision of Parts I/II/III of the VSMP regulations; a part of this regulatory action is the consideration of a 0.28 lbs/acre/yr phosphorus loading requirement. The development of this standard has taken over three years and involved a multitude of technical advisory committee meetings, design charettes, and other discussions in order to reach the proper standard and compliance methodologies. It is believed to be more appropriate to complete any effluent limitations in that action, and not in this abbreviated General Permit regulatory action. When a revised Part II is developed, any effluent limitations will then be incorporated into the next-developed Construction General Permit.</p> <p>The US EPA is additionally considering the development of effluent limit guidelines (ELGs), and was placed out for public comment during late 2008 and early 2009. Should EPA establish ELGs for construction activities, those requirements will likewise need to be included in future versions of the Construction General Permit.</p>
Mike Gerel (Chesapeake Bay Foundation)	While we understand that the Environmental Protection Agency has just recently proposed nationwide Effluent Limitations Guidelines and Standards for Construction and Development Point Source Category that will guide future regulations in this area, we find nothing preventing DCR from taking proactive steps on its own to improve this proposal as evidenced by general construction permits containing numeric performance measures already approved by EPA for the states of Washington, Oregon, and Vermont.	The Board is currently undertaking a substantial revision of Parts I/II/III of the VSMP regulations; a part of this regulatory action is the consideration of a 0.28 lbs/acre/yr phosphorus loading requirement. The development of this standard has taken over three years and involved a multitude of technical advisory committee meetings, design charettes, and other discussions in order to reach the proper standard and compliance methodologies. It is believed to be more appropriate to complete any effluent limitations in that action, and not in

Summary of Comments on the Construction General Permit Received During the Public Comment Period (Oct. 27, 2008 – Dec. 26, 2008) and at the Public Hearings and the Agency’s Response to the Comments Received

Commenter	Comment	Agency response
		<p>this abbreviated General Permit regulatory action. When a revised Part II is developed, any effluent limitations will then be incorporated into the next-developed Construction General Permit.</p> <p>The US EPA is additionally considering the development of effluent limit guidelines (ELGs), and was placed out for public comment during late 2008 and early 2009. Should EPA establish ELGs for construction activities, those requirements will likewise need to be included in future versions of the Construction General Permit.</p>
<p>Mike Gerel (Chesapeake Bay Foundation)</p>	<p>Because this proposal revises a general permit, employs a technology-based approach, and relies heavily on self-enforcement, review of the SWPPP and comparison with actual site conditions is the only means to measure compliance.</p>	<p>Review of the SWPPP and site conditions is the primary method of measuring compliance with the permit and is the method currently employed by the Department.</p>
<p>Mike Gerel (Chesapeake Bay Foundation)</p>	<p>It is important to clarify that this requirement does not require the release of proprietary information, allow citizen groups or other private entities to enter construction sites, or require expenditure of site staff resources to physically oversee SWPPP review.</p>	<p>The requirement related to public availability of the SWPPP has been amended. Numerous comments were received on this subject reflecting various viewpoints. Many strongly favored public availability of the SWPPP, while others strongly opposed it. In the end, language that is believed to achieve a compromise has been included in the General Permit. Under that language, the initial SWPPP developed for each site must be made publicly available. The developer will have a choice to either: (i) make the initial SWPPP available on an internet website and post the website address at the entrance to the construction site (or at a publicly accessible location for linear projects); or (ii) make a hard copy of the initial SWPPP available upon the receipt of a request from the public, at least once per month and during normal business hours.</p>
<p>Mike Gerel (Chesapeake Bay Foundation)</p>	<p>While the erosion and sediment control plan, stormwater management plan, and other elements of the SWPPP are already separately available from localities, the availability of the entire document with updates in one location is imperative for the viewer to be fully educated on the site requirements.</p>	<p>The requirement related to public availability of the SWPPP has been amended. Numerous comments were received on this subject reflecting various viewpoints. Many strongly favored public availability of the SWPPP, while others strongly opposed it. In the end, language that is believed to achieve a compromise has been included in the General Permit. Under that language, the initial SWPPP developed for each site must be made</p>

Summary of Comments on the Construction General Permit Received During the Public Comment Period (Oct. 27, 2008 – Dec. 26, 2008) and at the Public Hearings and the Agency’s Response to the Comments Received

Commenter	Comment	Agency response
		publicly available. The developer will have a choice to either: (i) make the initial SWPPP available on an internet website and post the website address at the entrance to the construction site (or at a publicly accessible location for linear projects); or (ii) make a hard copy of the initial SWPPP available upon the receipt of a request from the public, at least once per month and during normal business hours.
Mike Gerel (Chesapeake Bay Foundation); Leon Szeptycki (on behalf of the Shenandoah and Potomac Riverkeepers)	Based on our review of relevant law, the importance of the SWPPP in the current approach and the limited burden imposed on the regulated community, CBF strongly supports this provision as a reasonable and appropriate new requirement that should be maintained in the final general construction permit.	The requirement related to public availability of the SWPPP has been amended. Numerous comments were received on this subject reflecting various viewpoints. Many strongly favored public availability of the SWPPP, while others strongly opposed it. In the end, language that is believed to achieve a compromise has been included in the General Permit. Under that language, the initial SWPPP developed for each site must be made publicly available. The developer will have a choice to either: (i) make the initial SWPPP available on an internet website and post the website address at the entrance to the construction site (or at a publicly accessible location for linear projects); or (ii) make a hard copy of the initial SWPPP available upon the receipt of a request from the public, at least once per month and during normal business hours.
Mike Gerel (Chesapeake Bay Foundation)	Section 1170.II.D.2.c(1). This new requirement provides an important clarification that the controls needed to meet the water quality and quantity requirements in the VSMP (Part II) must be made operational prior to permit termination.	The cited language was included to provide a clarification to all operators covered by the General Permit and to resolve confusion that has existed in the past.
Mike Gerel (Chesapeake Bay Foundation)	Since the Part II requirements are being proposed for revision in Spring 2009, a new Part II could become effective prior to the expiration of this new general construction permit. The Town Hall Agency Background Document for this action indicates that a "new general permit will then be developed to incorporate the changes to Part II on a going forward basis for new projects". CBF supports this approach, and recommends that DCR pursue development of the new general construction permit sufficiently early to ensure that a new general construction permit is in place when the new Part II	The Department notes the comment and further restates its intention to develop a new General Permit implementing the revised Part II for discharges commencing after the implementation dates of those regulations.

Summary of Comments on the Construction General Permit Received During the Public Comment Period (Oct. 27, 2008 – Dec. 26, 2008) and at the Public Hearings and the Agency’s Response to the Comments Received

Commenter	Comment	Agency response
	requirements become effective. We believe it would be unacceptable if on the ground implementation of the Part II requirements were delayed to await a new general construction permit.	
Mike Gerel (Chesapeake Bay Foundation)	This proposal includes a new requirement that discharges to water identified as impaired on the Virginia 303(b)/305(d) Water Quality Assessment Integrated Report – but not yet covered by a TMDL – must be managed under the installation of controls to prevent further degradation of the impaired water. This provision is especially important for protection of impaired waters during development of TMDLs for these waters.	It is recognized that the protection of impaired waters is important, and the provisions in the permit related to them have been retained and clarified where necessary.
Mike Gerel (Chesapeake Bay Foundation)	The proposal clarifies that TMDL wasteload allocations assigned to construction activities must be addressed through the implementation of controls included in the SWPPP. And second, the proposal clarifies the Clean Water Act requirement that stormwater discharges from industrial activities to any waterway may not cause or contribute to a violation of water quality standards, therefore, controls must be identified in the SWPPP and installed that are protective of such standards. CBF strongly supports these new and clarified requirements as a means to comply with Virginia water quality standards and the Clean Water Act.	It is recognized that the protection of TMDL waters and the maintenance of water quality standards is important, and the provisions in the permit related to them have been retained.
Mike Gerel (Chesapeake Bay Foundation)	CBF recommends modification of the proposal to include the following condition within relevant sections of the proposed general construction permit: Stormwater discharges, from a 2-year, 24 hour or smaller storm, that contain sediment or a parameter that addresses sediment are not eligible for coverage under this permit unless the SWPPP implemented by the operator incorporates the best engineering practice(s) for erosion and sediment control in the Virginia Erosion and Sediment Control Handbook applicable to the particular site. In practice, this provision would mean that if an authorized inspector documents sediment pollution in a discharge from a qualifying design storm, the operator would be required to assess the site and install additional controls from the Handbook so as to achieve best engineering practice for the site. CBF views this recommendation as an	The permit requires that all erosion and sediment control measures be designed and installed in accordance with best engineering practices and in accordance with an approved Erosion and Sediment Control Plan. These requirements act to reduce sediment in discharges from construction sites. The Board’s other ongoing regulatory action related to Part II of the VSMP regulations, as well as EPA’s effort to promulgate Effluent Limit Guidelines, are additionally noted.

Summary of Comments on the Construction General Permit Received During the Public Comment Period (Oct. 27, 2008 – Dec. 26, 2008) and at the Public Hearings and the Agency’s Response to the Comments Received

Commenter	Comment	Agency response
	<p>appropriate and reasonable compromise between our preferred approach of using numeric performance standards and the current proposal's reliance on visual inspection of controls only. Employing this narrative, technology-based standard is attainable with existing technology in the Handbook, will reduce runoff sediment, improve compliance with the general benthic standard, and represents an approach more consistent with EPA's most recent proposal on construction site pollution control.</p>	
<p>Mike Gerel (Chesapeake Bay Foundation)</p>	<p>CBF further recommends modification of the proposal to include a requirement that permittees incorporate in their SWPPP a demonstration that their stormwater runoff will not contribute to an impairment. This condition would not apply to sites assigned a wasteload allocation in a TMDL. Application of standard modeling tools – such as TMDL models and the Revised Universal Soil Loss Equation (RUSLE) – combined with review of existing or new in-stream water quality data could be readily used to demonstrate that the selected controls in the SWPPP are adequate to protect receiving waters.</p>	<p>Section 4VAC50-60-1130(A)(4) clearly states that stormwater discharges that the State Water Control Board determines cause, may reasonably be expected to cause, or contribute to a violation of water quality standards are not covered by this permit. In addition, discharges to waters that have been identified as impaired on the 2008 305(b)/303(d) Water Quality Assessment Integrated Report are not eligible for coverage unless they are addressed through the implementation of control measures at the site that minimize pollutants as necessary to meet applicable water quality standards. If it is determined at any time that the operator’s discharges have reasonable potential to cause or contribute to an excursion above any applicable water quality standard, the Board will require the operator to either modify its control measures, submit data indicating that the receiving water is in fact meeting water quality standards, or cease its discharge and seek coverage under an individual permit.</p>
<p>Tylan Dean (United States Department of the Interior)</p>	<p>Experiences have shown us that despite implementation of "standard" erosion and sedimentation controls, erosion can still have severe effects on listed aquatic species, and in some areas, there may be potential for a sedimentation event to jeopardize the continued existence of some endangered aquatic species.</p>	<p>The permit requires that all erosion and sediment control measures be designed and installed in accordance with best engineering practices and in accordance with an approved Erosion and Sediment Control Plan. These requirements act to reduce sediment in discharges from construction sites.</p>
<p>Tylan Dean (United States Department of the Interior)</p>	<p>We recommend that permit applications that may discharge into waters designated as either VDGIF Threatened and Endangered Species Waters or designated critical habitat either require additional review of proposed stormwater pollution prevention plans or other measures prior to approval, or that projects in these areas</p>	<p>The language requiring consideration of threatened and endangered species in the SWPPP has been removed.</p>

Summary of Comments on the Construction General Permit Received During the Public Comment Period (Oct. 27, 2008 – Dec. 26, 2008) and at the Public Hearings and the Agency’s Response to the Comments Received

Commenter	Comment	Agency response
Tylan Dean (United States Department of the Interior)	<p>simply not be eligible for these permits.</p> <p>We would like permits in these areas [either VDGIF Threatened and Endangered Species Waters or designated critical habitat] to require adopting more stringent requirements such as monitoring within 12-24 hours of storm events, installation of "enhanced" erosion control measures, retention basins to receive runoff, or other similar types of precautions.</p>	<p>The language requiring consideration of threatened and endangered species in the SWPPP has been removed.</p>
John Olivieri (Associated Development); Andrew Herr (Terry Peterson Residential Companies); Christine Early (Waverton Associates); Pete Kotarides (Tidewater Builders Association); George Renault (Colonial Heritage)	<p>I would like to ask DCR and the Soil and Water Conservation Board to add the following language: "permits issued prior to the effective date of this regulation shall remain valid under the terms of that permit until terminated in accordance with the regulations at the time of issuance".</p>	<p>It is not believed that any changes to SWPPP requirements made in the General Permit will cause substantive changes to SWPPPs for existing projects. All water quality requirements remain the same as required under the existing permit, as evidenced by the express inclusion of sections 4VAC50-60-1180 through 1190, which are the existing water quality and quantity requirements of Part II of the VSMP regulations. Requirements related to documentation of endangered species have been removed.</p>
Martha Marks (Northern Virginia Chapter of Industrial and Office Properties)	<p>We recommend a grandfathering clause to the above requirement [permit application 4VAC50-60-1150.A.3] for any current projects to allow them to continue to operate under the existing general permit. Property owners may have already installed infrastructure for these project sites but due to current economic conditions have not begun construction. Installing additional facilities to accommodate new VSMP general permit guidelines could be financially and technically burdensome.</p>	<p>It is not believed that any changes to SWPPP requirements made in the General Permit will cause substantive changes to SWPPPs for existing projects. All water quality requirements remain the same as required under the existing permit, as evidenced by the express inclusion of sections 4VAC50-60-1180 through 1190, which are the existing water quality and quantity requirements of Part II of the VSMP regulations. Requirements related to documentation of endangered species have been removed.</p>
Martha Marks (Northern Virginia Chapter of Industrial and Office Properties)	<p>4VAC50-60-1150.A.4 We request that a time frame for a response from DCR be established. A two week response time (10 business days) from DCR will ensure that there is no delay in construction. A delay will result in financial hardships for the developer and the small business subcontractors.</p>	<p>The effective time of a registration statement has been amended to specify that coverage under the General Permit becomes effective 15 business days following the mailing of a complete and accurate registration statement, unless an earlier notification of coverage is made by the Department.</p>
Martha Marks (Northern Virginia Chapter of Industrial and Office Properties)	<p>4VAC50-60-1160A.1. Further clarification is needed on what is required to show that the control measures are functioning. Is the</p>	<p>Evidence of the effective functioning of a control measure includes a demonstration that it was designed and installed in accordance with best engineering</p>

Summary of Comments on the Construction General Permit Received During the Public Comment Period (Oct. 27, 2008 – Dec. 26, 2008) and at the Public Hearings and the Agency’s Response to the Comments Received

Commenter	Comment	Agency response
Properties)	determination qualitative or quantitative? If quantitative, how will it be qualified? How would the control measures that may require rainfall to demonstrate that they are functioning when drought conditions prevail?	practices and standards and specifications relating to proper design of that control measure. It is not believed that specific language is necessary to be included in the General Permit.
Martha Marks (Northern Virginia Chapter of Industrial and Office Properties)	4VAC50-60-1170D.6 We request clarification on this point. As it is our understanding that the documentation in regards to endangered species shall be provided if it has already been obtained during the project design phase, and if the information is not available, it does not need to be acquired.	The language requiring consideration of threatened and endangered species in the SWPPP has been removed.
John Carlock (Hampton Roads Planning District Commission)	The proposed regulation reflects the technical criteria and standards that are included in the current Virginia stormwater regulations. New, more stringent standards are included in the proposed overall stormwater regulation, which is expected to become final by the end of December 2009. It is not clear in the proposed construction general permit how the new standards may apply to activities permitted prior to the effective date of the new construction general permit. The HRPDC staff and the regional stormwater management committee members believe that a very clear framework and process for incorporating the new technical standards into the general permit, which expires in June 2014, must be established.	The Department is aware of concerns regarding grandfathering from new requirements that may arise from the Board’s other regulatory action revising Part II of the VSMP regulations. It is intended to address those concerns in that action.
John Carlock (Hampton Roads Planning District Commission)	4VAC50-60-1160, termination of coverage During the TAC process, the representatives of the development community expressed concern that the proposed regulation does not provide for partial termination after a developer has completed the initial development and sold parcels to other builders or to individuals who may develop the parcel. The only alternative that seems to be available to a developer in this instance is to terminate coverage for the entire project and to submit a new application for coverage on the balance of the project, which would include payment of another permit fee. Additionally, if this were done during the transition period to the new regulations, a different set of technical criteria could potentially apply to a project that was already underway. Provision for partial termination	Partial termination is available to construction site operators through modifications to the SWPPP for the site that indicate that control over portions of the site has been released to other individuals or entities (including other operators). The filing of a Notice of Termination is not required. A Notice of Termination is utilized to terminate the operator’s permit coverage in its entirety, which is not the desire of the operators referenced by the comment.

Summary of Comments on the Construction General Permit Received During the Public Comment Period (Oct. 27, 2008 – Dec. 26, 2008) and at the Public Hearings and the Agency’s Response to the Comments Received

Commenter	Comment	Agency response
	<p>should be made for those portions of a project where ownership has been transferred to individuals builders or homeowners.</p>	
<p>John Carlock (Hampton Roads Planning District Commission)</p>	<p>4VAC50-60-1170 I.H. provides an appropriate approach to water quality protection. It does not provide for inclusion of numerical effluent limits in permits. We agree with that. It is believed that considerable more research and technology development is needed before numerical limits should be considered for inclusion in the general permit.</p>	<p>The Board is currently undertaking a substantial revision of Parts I/II/III of the VSMP regulations; a part of this regulatory action is the consideration of a 0.28 lbs/acre/yr phosphorus loading requirement. The development of this standard has taken over two and one half years and involved a multitude of technical advisory committee meetings, design charettes, and other discussions in order to reach the proper standard and compliance methodologies. It is believed to be more appropriate to complete any effluent limitations in that action, and not in this abbreviated General Permit regulatory action. When a revised Part II is developed, any effluent limitations will then be incorporated into the next-developed Construction General Permit.</p> <p>The US EPA is additionally considering the development of effluent limit guidelines (ELGs), and was placed out for public comment during late 2008 and early 2009. Should EPA establish ELGs for construction activities, those requirements will likewise need to be included in future versions of the Construction General Permit.</p>
<p>John Carlock (Hampton Roads Planning District Commission)</p>	<p>4VAC50-60-1170 I.H.2 There is some very subjective wording in this section regarding when stormwater discharges have reasonable potential to cause a violation of any water quality standard. As currently written, a job could be shut down or monitoring data be required to be submitted if it is determined that there is a reasonable potential that a water quality problem will occur. The person making that determination is not specified in the regulation although it implies that it is a representative of the permit issuing authority (DCR or local government). This is probably more of a concern to the development community but it could be used to implicate the local or state inspector if they did not prevent a problem by recognizing the potential for the discharge to exceed water quality standards.</p>	<p>The language in this section has been revised to clarify that the permit issuing authority is the entity determining whether a discharge could cause or contribute to a violation of a water quality standard. It is not anticipated that such determinations will be made on site by an inspector based on a single site visit in most cases; rather, locality inspectors may wish to consult with the Department and others prior to making such a determination.</p>

Summary of Comments on the Construction General Permit Received During the Public Comment Period (Oct. 27, 2008 – Dec. 26, 2008) and at the Public Hearings and the Agency’s Response to the Comments Received

Commenter	Comment	Agency response
John Carlock (Hampton Roads Planning District Commission)	4VAC50-60-1170 II.B requires that the SWPPP be available for review, requires that it be made available upon request to DCR, localities and other regulatory entities and otherwise establishes reasonable limits on its availability to the public. We support these provisions and believe that they represent a reasonable compromise in promoting public availability, while allowing business to continue operating in a reasonable manner. It is strongly recommended that advance notice be required for non-regulatory entities to visit a site to review the SWPPP to minimize disruption of normal business activities.	The requirement related to public availability of the SWPPP has been amended. Numerous comments were received on this subject reflecting various viewpoints. Many strongly favored public availability of the SWPPP, while others strongly opposed it. In the end, language that is believed to achieve a compromise has been included in the General Permit. Under that language, the initial SWPPP developed for each site must be made publicly available. The developer will have a choice: either (i) make the initial SWPPP available on an internet website and post the website address at the entrance to the construction site (or at a publicly accessible location for linear projects); or (ii) make a hard copy of the initial SWPPP available upon the receipt of a request from the public, at least once per month and during normal business hours.
John Carlock (Hampton Roads Planning District Commission)	4VAC50-60-1170 II.D. This provision must also require the approval of the plan approving authority, i.e. local government, especially in cases where the locality is also an MS4 permittee. This would ensure that the controls are allowed by the MS4 locality, and are, in fact feasible and appropriate to the regional conditions (coastal plain, piedmont, karst, etc.) and local maintenance policies. This is particularly important since in most cases the locality will be required to take on the long-term maintenance of the controls to satisfy MS4 permit requirements. Establishment of approved removal efficiencies for innovative technologies is critical to allowing localities to determine which technologies or practices are applicable in their area and thus, approvable for use.	Localities currently approve erosion and sediment control plans and, in the case of MS4 and Chesapeake Bay Preservation Act localities, stormwater management plans. These are the two major components of SWPPPs, and allow for local review of control measures to be employed on the site.
John Carlock (Hampton Roads Planning District Commission)	4VAC50-60-1170 II.D.4 limits inspection requirements when ground is frozen. Frozen ground has many of the same characteristics as other impervious surfaces. This should be clarified.	It is important to note that this provision applies while a project is under construction. As noted by the comment, frozen ground does have many of the same characteristics as impervious surfaces. During construction, this means that erosion from that soil is lessened, meaning less inspection is necessary. This does not, however, exempt the site from any post-construction stormwater management requirements or other requirements of the General Permit.

Summary of Comments on the Construction General Permit Received During the Public Comment Period (Oct. 27, 2008 – Dec. 26, 2008) and at the Public Hearings and the Agency’s Response to the Comments Received

Commenter	Comment	Agency response
John Carlock (Hampton Roads Planning District Commission)	4VAC50-60-1182 E. requires that impounding structures that are not covered by the Impounding Structure Regulations in 4VAC50-20 be engineered for structural integrity during the 100-year storm event. Does this require that sediment basins be required to accommodate the 100-year storm? Current criteria only require the 25-year storm. If this is only meant to apply to permanent stormwater facilities, it should be clarified.	Sections 1180 through 1190 of the General Permit, including this provision in section 1182, are direct copies of the current Part II of the VSMP regulations. The inclusion of these sections is intended to maintain the same water quality and quantity requirements as exist under the current general permit for projects receiving coverage under the revised General Permit. It is not intended to make any revisions to these sections, but rather to maintain them as direct copies of the current Part II.
John Carlock (Hampton Roads Planning District Commission)	Various sections. The 2006 305(b)/303(d) list is mentioned. It seems that this reference should be more general such as most recent or current list. Otherwise, either everyone will have to keep using the 2006 list or the regulations will need to be revised regularly to change the date of the list to ensure that the most current water quality assessment is being used.	Due to requirements of Virginia administrative law, only requirements in existence at the time of the adoption of a regulation (including this general permit regulation) can be referenced (note that this reference has, however, been updated to reflect the new 2008 list). Inclusion of future 305(b)/303(d) lists will need to be accomplished by reopening or re-issuing the General Permit.
John Friedman (Fairfax County)	4VAC50-60-10 Definitions The proposed change to the definition of "linear development project" to include construction of stormwater channels and stream restoration activities does not match the current definition in the Virginia Stormwater Management Act. If it is determined that his difference is consistent with the definition of the Act, the proposed change should be revised to limit the scope of such projects to those which are not part of a larger development project. It would be confusing to have a linear development project within the general construction area of a larger nonlinear project be subject to different requirements.	It is noted that the revisions to this definition result in a change from the definition contained in the Stormwater Management Act; however, the definition contained in the Act explicitly states that the list that it contains is not exhaustive ("such as"). It is believed that the amendments to the definition contained in Part I simply lend greater clarity and are not in conflict with the Code definition. Most linear development projects are not exempt from the requirements of the Act or the VSMP regulations (the exemption is contained in §10.1-603.8(B)(5). Therefore, most linear development projects will face the same requirements as all other land disturbing activities.
John Friedman (Fairfax County)	4VAC50-60-1130 Authorization to discharge The proposed change that authorization to discharge under the general permit doesn't begin until "issuance of coverage under the general permit be the issuing authority" should be modified to include an allowance that the discharge is authorized after 10 days from the time of filing a complete and accurate registration statement if no response has been received from the issuing agency. The delay in the start of construction that may result from	The effective time of a registration statement has been amended to specify that coverage under the General Permit becomes effective 15 business days following the mailing of a complete and accurate registration statement, unless an earlier notification of coverage is made by the Department.

Summary of Comments on the Construction General Permit Received During the Public Comment Period (Oct. 27, 2008 – Dec. 26, 2008) and at the Public Hearings and the Agency’s Response to the Comments Received

Commenter	Comment	Agency response
	the proposed change does not seem warranted, especially for small residential projects (e.g. additions, detached garages, pool, etc.) in jurisdictions subject to Chesapeake Bay requirements where the threshold for a permit is lowered to 2,500 square feet, given that clearing and grading cannot begin until after plans are approved and permits issued under local E&S laws.	
John Friedman (Fairfax County)	4VAC50-60-1130 Authorization to discharge What is the purpose of the change from authorization to discharge to surface waters to authorization to discharge to state waters? Is the proposed change intended to allow discharges to groundwater or groundwater recharge areas (i.e. infiltration controls) or restrict such discharges?	The intent of this change is to allow discharges to groundwater under certain conditions, such as karst features. Infiltration practices are not typically considered groundwater recharge.
John Friedman (Fairfax County)	Permit Section I.D. Prohibition of nonstormwater discharges. Why was water used for hydrostatic testing of new pipeline construction eliminated from the list of allowed nonstormwater discharges?	The hydrostatic testing exemption was deleted in order to bring the General Permit in line with the EPA’s federal construction general permit. The hydrostatic testing exemption was removed from that permit, thus, it is necessary to likewise remove it from this General Permit in order to align the permit with federal requirements.
John Friedman (Fairfax County)	Permit Section II.D.2.a (2) The requirement for control measures to be designed, installed, and maintained in accordance with the minimum standards of the Virginia Erosion and Sediment Control Law and regulations should be revised to explicitly recognize that control measures also must be designed in accordance with local standards where such standards are stricter than the state's minimum standards.	Section II D 2 a 1 requires each construction site operator to have an Erosion and Sediment Control Plan approved by the plan-approving authority. This would necessarily include consideration of more stringent standards employed by a locality.
John Friedman (Fairfax County)	Permit Section II.D.2.b. (1): Under Fairfax County regulations, the term "site plan" has a very specific meaning that does not include subdivision construction plans. Other jurisdictions also may use the term "site plan" differently. Recommend that a more generic term such as construction plan or erosion and sediment control plan be used.	Section II D 2 b (1) has been amended to generically refer to “plans” rather than “site plans.”
John Friedman (Fairfax County)	Permit Section II.D.2.c (1) The requirement to ensure compliance with the water quality requirements of the Virginia Stormwater Management Regulations during construction is problematic because good engineering practice dictates	The language of this section has been amended to clarify that post-construction practices must be implemented prior to the completion of the construction process, which reflects the intent of the initial language as well.

Summary of Comments on the Construction General Permit Received During the Public Comment Period (Oct. 27, 2008 – Dec. 26, 2008) and at the Public Hearings and the Agency’s Response to the Comments Received

Commenter	Comment	Agency response
	that certain types of permanent controls (e.g. bioretention facilities), which are sensitive to sediment contamination, not be installed until after the areas draining to the controls are permanently stabilized, which typically occurs during the final phase of construction. Because the underlying quality control requirements of the Virginia Stormwater Management Regulations are post-construction standards, full compliance during construction should not be required.	
John Friedman (Fairfax County)	Permit Section II.D.2.c.(2) The allowance for control measures contained in Part II of the Virginia Stormwater Management Regulations, 4VAC50-60-1184, or the Virginia BMP Clearinghouse should be revised to allow for the local approval of innovative practices at least until such time as the Clearinghouse is operational and grandfather any previous locally approved practices.	Allowance for local programs to approve innovative practices does appear in footnote 1 (below Table 1) in section 4VAC50-60-1184. As noted by the comment, however, Section II D 2 c 2 does solely allow for approval by the Department, which would allow the Department to override a local approval where such approval is improper. In the future, all practices will need to be approved by the Virginia Stormwater BMP Clearinghouse committee.
John Friedman (Fairfax County)	Permit Section II.D.3.d (6) The requirement to include rainfall amounts at the construction site in the inspection reports should specify the use of NWS rain gage information unless the expectation is that measurements be taken on-site.	This section has been amended to specify that what is required is “an estimate” of rainfall amounts at the construction site. This can be achieved through on-site measurement or through use of local weather data.
John Friedman (Fairfax County)	Permit Section II.D.4.a Revise this section to make it clear that the inspections this section refers to are the ones being performed by the operator and not the permit issuing authority.	The opening sentence to this section specifies that the name and phone number of qualified personnel conducting inspections must be included in the SWPPP. Qualified personnel are agents of the construction site operator.
John Friedman (Fairfax County)	Permit Section II.D.6 It is difficult to see the nexus between the purpose of the general permit, stormwater discharges from construction activities, and endangered species outside of riparian areas within and downstream of construction site.	The language requiring consideration of threatened and endangered species in the SWPPP has been removed.
John Friedman (Fairfax County)	4VAC50-60-1180 et seq. The existing technical criteria of Part II (4VAC50-60-60 et seq) which are currently undergoing revision, should not be repeated as part of the general permit requirements; they should be referenced. It is our understanding that this is being done to address construction projects begun	Sections 1180 through 1190 of the General Permit are direct copies of the current Part II of the VSMP regulations. The inclusion of these sections is intended to maintain the same water quality and quantity requirements as exist under the current general permit for projects receiving coverage under the revised

Summary of Comments on the Construction General Permit Received During the Public Comment Period (Oct. 27, 2008 – Dec. 26, 2008) and at the Public Hearings and the Agency’s Response to the Comments Received

Commenter	Comment	Agency response
	<p>under this general permit from the new requirements of Part II when they are adopted. However, the general permit will have to be reissued at the same time that the revisions to Part II are adopted, operators will have to re-apply, and the same issue will exist. There are other methods for addressing ongoing construction projects when the general permits are renewed or the requirements of Part II are changed such as stating in 4VAC50-60-1180 et seq. that construction shall meet the existing technical criteria at the time coverage is applied for and requiring those criteria be attached to the SWPPP or the letter of coverage under the permit from the permit issuing authority.</p>	<p>General Permit.</p> <p>When revisions to Part II are completed, it is the intent of the Board and the Department to issue a second general permit to apply to discharges that commence on or after the effective date of those revisions. Projects having coverage under this revised General Permit will continue to be subject to its terms during its lifespan. In addition, the Board and the Department are aware of concerns related to grandfathering of existing projects from the revised technical criteria, and anticipate addressing this issue through that process prior to its completion.</p>
<p>Thomas Bruun (Prince William County)</p>	<p>Discharges to waters identified as impaired in the 2006 303(d) report are not eligible for coverage under the general permit for construction activities. Based on the proposed regulations, VSMP construction permits cannot authorize stormwater discharges in watersheds for which a TMDL has been implemented, or in those watersheds that are listed as impaired. The stormwater discharges from construction activities shall be required to conform to wasteload allocations (WLAs) established by the TMDL plan. This is a serious concern since we do not know what those wasteload allocations would be and how these WLAs may affect future developments, zoning and development densities.</p>	<p>The General Permit requires compliance only with those WLAs that are in existence as of the effective date of the General Permit and that are assigned to construction activities. Any future WLAs, which are currently unknown, would need to be the subject of a reopening of the General Permit, which would require separate public notice.</p> <p>Note that the reference to the 305(b)/303(d) report has been updated to reflect the new 2008 version of that report.</p>
<p>Thomas Bruun (Prince William County)</p>	<p>The goal of this permit is to minimize stormwater pollutants by requiring the operator to implement control measures consistent with approved TMDL, and in the absence of a TMDL, with the water quality standards. Even for routine construction activities, the construction operator will be required to implement controls in compliance with the approved TMDL. What are the consequences if the erosion and sediment control measures based on the available technology are unable to meet the WLAs? Will the water quality limits taken into consideration practicality, available technology and realistic resources?</p>	<p>Section 4VAC50-60-1130(A)(6) specifies that discharges to waters for which a TMDL wasteload allocation has been established are not eligible for coverage unless they are addressed in accordance with Section II D 7 of the General Permit. Those that are not addressed in accordance with that section would need to apply to the Board for individual permit coverage.</p>
<p>Thomas Bruun (Prince William County)</p>	<p>It is not reasonable to apply the proposed standards for every construction activity as small as just 2,500 square</p>	<p>Pursuant to the requirements of the Virginia Stormwater Management Act (§10.1-603.1 et seq.), all projects of</p>

Summary of Comments on the Construction General Permit Received During the Public Comment Period (Oct. 27, 2008 – Dec. 26, 2008) and at the Public Hearings and the Agency’s Response to the Comments Received

Commenter	Comment	Agency response
	feet, by requiring these small projects to address standards, such as TMDLs. The major pollutant of concern during construction activities are sediments, which are addressed during construction. However, applying all the other standards for these projects appears to be far reaching.	greater than or equal to 2,500 square feet in areas subject to the Chesapeake Bay Preservation Area Designation and Management Regulations are required to obtain VSMP permit coverage unless otherwise exempt. As a Clean Water Act permit, the General Permit must address TMDLs.
Thomas Bruun (Prince William County)	The County is uncertain about the feasibility and the cost implications of conforming to the proposed limits on phosphorus loads from higher density developments. We feel that it is necessary to evaluate these costs with the benefits derived in developments with higher densities and land values, such as those in northern Virginia.	This comment is not germane to this regulatory action, but rather relates to the Board’s revision of Parts I/II/III of the VSMP regulations. That regulatory action will be the subject of a separate public comment period in the future.
Thomas Bruun (Prince William County)	Each construction permit must indicate whether it is discharging into an impaired stream or watershed with TMDL wasteload allocation. We believe that this information must be provided and used to mitigate the development impacts in a practical manner during the land development plan approval stages itself, and not just when the applicant is trying to procure the VSMP permit for stormwater discharges. If this is the purpose, then does it also imply that the land development regulations must be modified to account for stormwater discharges into a TMDL stream?	The General Permit regulations can only address situations in which VSMP permit coverage is necessary for a project. They cannot direct the adoption or revision of local ordinances related to other projects or aspects of projects.
Thomas Bruun (Prince William County)	Impaired waters limitation – discharges to waters that are impaired are not eligible for coverage under this permit. This is a serious concern in the sense that the regulations are proposed to be applied even before developing a TMDL implementation plan years ahead of a WLA. The proposed language applies to impaired waters for which a TMDL has not even been developed.	40 CFR § 122.4 prohibits the permitting of new discharges that will cause or contribute to a violation of water quality standards. The language included in 4VAC50-60-1130 related to water quality standards is necessary to ensure compliance with federal law.
Thomas Bruun (Prince William County)	If it is determined at any time that the operator’s stormwater discharges have reasonable potential to cause or contribute to an excursion of the applicable water quality standard, the permitting authority shall require the operator to modify control measures... We cannot fully comprehend the implications of the proposed regulations at this time, without knowing the extent of improvement in the control measures that may be necessitated to conform to the intent of the proposed regulation.	40 CFR § 122.4 prohibits the permitting of new discharges that will cause or contribute to a violation of water quality standards. Addressing applicable water quality standards is necessary to ensure compliance with federal law. The cited language does indicate that there will be variability in what will be necessary to ensure that a water quality standard is not violated by a particular discharge.

Summary of Comments on the Construction General Permit Received During the Public Comment Period (Oct. 27, 2008 – Dec. 26, 2008) and at the Public Hearings and the Agency’s Response to the Comments Received

Commenter	Comment	Agency response
Thomas Bruun (Prince William County)	<p>Site plans should ensure that existing vegetation is preserved where possible.</p> <p>Is the intended purpose to the proposed regulation to require localities to implement the tree preservation ordinance? Why is VSMP incorporating tree-related issues?</p>	<p>The intent of this section is not to require tree preservation ordinances. Rather, the intent of the language is to encourage the preservation of existing vegetation on a construction site where possible. The presence of vegetation on site is one of the best methods of reducing sediment and other pollutants from the construction site.</p>
Thomas Bruun (Prince William County)	<p>If sediment escapes a construction site, offsite accumulation of sediments must be removed as soon as practicable.</p> <p>We understand the intent of the regulations. However, in reality, some quantity of sediments always leave the construction site since the erosion control measures are not 100 percent effective in filtering sediments from stormwater runoff. Language needs to be added to clarify the intent.</p>	<p>As noted by the comment, the language utilized in the General Permit evidences its intent that off-site <u>accumulations</u> of sediment be removed as soon as practicable.</p>
Thomas Bruun (Prince William County)	<p>All adequate control measures shall be employed in a manner that minimizes impacts on the physical, chemical and biological integrity of streams.</p> <p>Adequate outfall requirement is expanding to protect the chemical and biological integrity of receiving streams. It is not clear how the regulations are proposed to be enforced for conformance with protecting chemical and biological integrity of streams. These regulations as proposed are subjective for enforcement.</p>	<p>The requirement that all control measures be employed in a manner which minimizes impacts on the physical, chemical and biological integrity of rivers, streams and other waters of the state is an existing requirement of MS 19(k) of the Virginia Erosion and Sediment Control Regulations. It is also a requirement of the existing general permit. The amendment to the language contained in this revised General Permit simply aligns the General Permit’s existing language with that utilized in MS 19(k).</p>
Thomas Bruun (Prince William County)	<p>RLD inspections must include all areas of the site disturbed by the construction activity, offsite areas and areas used for storage of materials that are exposed to precipitation.</p> <p>We support this change.</p>	<p>Support for this change is noted.</p>
Thomas Bruun (Prince William County)	<p>Linear development projects shall not be required to control post development runoff.</p> <p>We understand that this does not include private subdivision roads. However, the County is of the opinion that based on the conditions of the watershed where a linear development project is proposed, the County should have the authority to require post development runoff controls as necessary.</p>	<p>Linear development projects are not required to control post-development stormwater runoff <u>for flooding</u> pursuant to 4VAC50-60-1188. This language comes from the existing Part II (water quality and quantity) of the VSMP Regulations. That section is the subject of a separate regulatory action by the Board which is currently underway. Requirements for linear projects, including this provision, are being evaluated as a part of that process.</p>

Summary of Comments on the Construction General Permit Received During the Public Comment Period (Oct. 27, 2008 – Dec. 26, 2008) and at the Public Hearings and the Agency’s Response to the Comments Received

Committer	Comment	Agency response
Thomas Bruun (Prince William County)	Regional stormwater management facility, location, design, etc. The VSMP construction permit regulations are trying to incorporate regional stormwater management facility design elements. Considering that VSMP construction permit should primarily focus on the issues relating to construction activities in an active construction site only, we are of the opinion that the regulations surrounding regional stormwater management facilities should not be included here.	Sections 1180 through 1190 of the General Permit are direct copies of the current Part II of the VSMP regulations. The inclusion of these sections is intended to maintain the same water quality and quantity requirements as exist under the current general permit for projects receiving coverage under the revised General Permit. Use of a regional facility is an option under the current program. It is not intended to make any revisions to these sections, but rather to maintain them as direct copies of the current Part II.
Thomas Bruun (Prince William County)	Determination of channel impacts; this needs to be assessed not just by looking at the land disturbance at the site, but based on the entire watershed above, draining into subject area. Please clarify whether the proposed language implies that even if the proposed development reduces the increases in the post development peak discharges from the 2- and 10-year storms to "zero", the project site will still be considered deficient in addressing the adequate outfall regulations due to existing (receiving) stream conditions.	Sections 1180 through 1190 of the General Permit (which include the subject of the comment) are direct copies of the current Part II of the VSMP regulations. The inclusion of these sections is intended to maintain the same water quality and quantity requirements as exist under the current general permit for projects receiving coverage under the revised General Permit. It is not intended to make any revisions to these sections, but rather to maintain them as direct copies of the current Part II. Both the existing general permit and the revised General Permit require compliance with MS 19 (adequate channel) of the Virginia Erosion and Sediment Control Regulations.
Thomas Bruun (Prince William County)	The regulations are attempting to indirectly establish turbidity limits for stormwater discharges leaving a construction site. Please clarify whether such limits are underway as the next step.	The General Permit does not establish turbidity limits. The Board and the Department do not currently have any efforts underway seeking to establish turbidity limitations. However, US EPA is currently developing Effluent Limitation Guidelines for construction activities that will include turbidity limitations.
Thomas Bruun (Prince William County)	We also have concerns that the regulations are expanding into post-construction activities – not the intent of VSMP construction permit.	Post-construction stormwater discharges are required to be addressed under the Clean Water Act and regulations, and have been required to be addressed under the VSMP since the Board received the program in January of 2005.
Thomas Bruun (Prince William County)	The regulations pertaining to the Chesapeake Bay Preservation Area should also not be incorporated into VSMP construction permit.	Post-construction stormwater discharges are required to be addressed under the Clean Water Act and regulations, and have been required to be addressed under the VSMP since the Board received the program

Summary of Comments on the Construction General Permit Received During the Public Comment Period (Oct. 27, 2008 – Dec. 26, 2008) and at the Public Hearings and the Agency’s Response to the Comments Received

Commenter	Comment	Agency response
Thomas Bruun (Prince William County)	The proposed regulations are attempting to address post construction BMPs also. Please consider restricting to construction and during construction activities only.	in January of 2005. Post-construction stormwater discharges are required to be addressed under the Clean Water Act and regulations, and have been required to be addressed under the VSMP since the Board received the program in January of 2005.
Thomas Bruun (Prince William County)	The regulations must include a vesting period. Considering that there are several proposed changes, the general permit should include a provision that allows for the administrative re-approval of the existing permits under the current regulation.	It is not believed that any changes to the General Permit will cause substantive changes to SWPPPs for existing projects. All water quality requirements remain the same as required under the existing permit. Requirements related to documentation of endangered species have been removed. It is intended that all projects become subject to the revised General Permit. The Department and the Board are additionally aware of concerns regarding the impact of revised Part II technical criteria (currently the subject of another regulatory action) on existing projects. Vesting of existing projects from those criteria is a current topic of discussion and will be handled in that regulatory action.
Thomas Bruun (Prince William County)	It is not clear why the endangered and threatened species issue is linked to VSMP construction permits in the stormwater pollution prevention plan. The County recognizes the importance of endangered and threatened species. However, VSMP construction permit should not be the place where these requirements are inserted.	The language requiring consideration of threatened and endangered species in the SWPPP has been removed.
Thomas Bruun (Prince William County)	Public access to stormwater pollution plan: some conditions needs to be stipulated in the regulations on how people can request access or explanation to these plans, and the timeframe within which the information should be provided.	The requirement related to public availability of the SWPPP has been amended. Numerous comments were received on this subject reflecting various viewpoints. Many strongly favored public availability of the SWPPP, while others strongly opposed it. In the end, language that is believed to achieve a compromise has been included in the General Permit. Under that language, the initial SWPPP developed for each site must be made publicly available. The developer will have a choice: either (i) make the initial SWPPP available on an internet website and post the website address at the entrance to the construction site (or at a publicly accessible location for linear projects); or (ii) make a hard copy of the initial SWPPP available upon the receipt of a request from the

Summary of Comments on the Construction General Permit Received During the Public Comment Period (Oct. 27, 2008 – Dec. 26, 2008) and at the Public Hearings and the Agency’s Response to the Comments Received

Commenter	Comment	Agency response
		public, at least once per month and during normal business hours.
George Rhodes (Williamsburg Environmental Group)	Page 10 of the proposed General Permit for Discharges for Stormwater from Construction Activities regulation has a new definition for "qualified personnel" that does not include landscape architects. It mentions "professional engineers, responsible land disturber or other knowledgeable person..." I just found it odd that I could sign and seal an erosion and sediment control plan but that I might not be allowed to inspect and monitor my construction because I'm not a "qualified personnel".	Landscape architects are included in the definition of "qualified personnel" through the provision in that definition allowing for Responsible Land Disturbors to be considered qualified personnel. Landscape architects are considered Responsible Land Disturbors without further training.
Scott Camp (Base Camp Development Corporation of Virginia, Inc.)	In response to the proposed changes to general permits for discharge of stormwater, we respectfully disagree with this over reaching burdensome taking of land.	It is not believed that revisions to the General Permit are burdensome or in any way result in the taking of land. The Board is undertaking a larger revision of Parts I, II, III, and XIII of the VSMP regulations that is considering changes to the required water quality and water quantity technical criteria for construction sites (Part II). It is believed that this comment may be referring to that larger action, which will be the subject of its own public comment period at a later time.
Scott Camp (Base Camp Development Corporation of Virginia, Inc.)	Furthermore, there should be a rolling back of regulations due to the fact current BMP practices refined over the past ten years are extremely effective.	The Board is undertaking a larger revision of Parts I, II, III, and XIII of the VSMP regulations that is considering changes to the required water quality and water quantity technical criteria for construction sites (Part II). It is believed that this comment may be referring to that larger action, which will be the subject of its own public comment period at a later time.
Scott Camp (Base Camp Development Corporation of Virginia, Inc.)	Our existing projects played by all of the regulatory rules at the time of purchase or zoning and any attempt to cause tens of millions of dollars in damages to this project will be challenged.	The Board is undertaking a larger revision of Parts I, II, III, and XIII of the VSMP regulations that is considering changes to the required water quality and water quantity technical criteria for construction sites (Part II). It is believed that this comment may be referring to that larger action, which will be the subject of its own public comment period at a later time. The Board and the Department are aware of concerns related to grandfathering of existing projects from compliance with new technical criteria. Those concerns will be sought to be addressed in the Parts I, II, III, and

Summary of Comments on the Construction General Permit Received During the Public Comment Period (Oct. 27, 2008 – Dec. 26, 2008) and at the Public Hearings and the Agency’s Response to the Comments Received

Commenter	Comment	Agency response
Joseph Nero (Capital Concrete, Inc.)	The current Virginia DCR regulations do not address the use and recommend the use of pervious concrete as part of a stormwater management system. This omission makes it very difficult for the engineering community to design or recommend to local governments that use of a pervious concrete stormwater management system. Without the state's formal approval, the local agencies are very reluctant to approve such designs. The pervious concrete stormwater management system has been in use across the United States for the last fifteen years, so therefore there is adequate data showing the efficiency of this system to greatly eliminate stormwater runoff and to filter out all the first flush pollutants. Is it possible to have this system formally adopted by the Virginia DCR?	<p>XIII action.</p> <p>This comment is not germane to this regulatory action, but rather relates to the Board’s revision of Parts I/II/III of the VSMP regulations. That regulatory action will be the subject of a separate public comment period in the future.</p> <p>Items such as the types of BMPs to be employed on construction sites are being handled through a process separate from the development of this General Permit. BMPs will be evaluated on an ongoing basis by the Virginia Stormwater BMP Clearinghouse technical advisory committee, and those approved will be posted to the Virginia Stormwater BMP Clearinghouse website and thereafter available for use.</p>
Ken Gibbs	I was told that unless the "disturbed" soil area exceeded 10,000 square feet, no action is required. This is ridiculous. The amount of disturbed soil should be about 1/10 of the area now required that will trigger actions by the responsible party.	<p>Pursuant to the Virginia Stormwater Management Act (§10.1-603.1 et seq.), all land disturbing activities of one acre or greater that are not exempt are regulated under the Virginia Stormwater Management Program, as are activities of 2500 square feet or greater in areas designated as subject to the Chesapeake Bay Preservation Area Designation and Management Regulations. These size requirements are set by statute and cannot be altered through a regulatory action.</p> <p>The Virginia Erosion and Sediment Control Law (§10.1-560 et seq.) and Regulations likewise regulate activities of 10,000 square feet or greater. This minimum size is reduced to 2,500 square feet in areas designated subject to the Chesapeake Bay Preservation Area Designation and Management Regulations.</p>
John Burke (Gay and Neel, Inc.)	Table 3.11-1 in section 3.11 of the stormwater handbook (bioretention) explicitly shows two target P removal efficiencies based on whether the bioretention BMP is designed for 1xWQV or 2xWQV. Table 1 in section 4VAC50-60-1184 water quality does not show bioretention as a viable technology based BMP for the 66%-100% impervious cover range. It seems that the 2xWQV bioretention design should be included as a 65% removal option.	<p>This regulatory action will not make amendments to the Virginia Stormwater Management Handbook. Rather, the Handbook is being revised as a compliment to the Board’s other ongoing regulatory action to amend Parts I, II, and III of the VSMP regulations. A separate technical advisory committee (TAC) has been assembled to assist with this revision.</p> <p>Sections 1180 through 1190 of the General Permit are</p>

Summary of Comments on the Construction General Permit Received During the Public Comment Period (Oct. 27, 2008 – Dec. 26, 2008) and at the Public Hearings and the Agency’s Response to the Comments Received

Commenter	Comment	Agency response
		<p>direct copies of the current Part II of the VSMP regulations. The inclusion of these sections is intended to maintain the same water quality and quantity requirements as exist under the current general permit for projects receiving coverage under the revised General Permit. It is not intended to make any revisions to these sections, but rather to maintain them as direct copies of the current Part II.</p>
<p>John Burke (Gay and Neel, Inc.)</p>	<p>Including a water quality flow (WQF) in the design standards would give designer greater flexibility to design innovative BMP layouts and would provide a consistent standard for manufactured BMP designs. A water quality storm flow rate associated with 1xWQV, 2xWQV, etc. should be made part of the available design standards and specifications.</p>	<p>This regulatory action will not make amendments to the Virginia Stormwater Management Handbook. Rather, the Handbook is being revised as a compliment to the Board’s other ongoing regulatory action to amend Parts I, II, and III of the VSMP regulations. A separate technical advisory committee (TAC) has been assembled to assist with this revision.</p> <p>Sections 1180 through 1190 of the General Permit are direct copies of the current Part II of the VSMP regulations. The inclusion of these sections is intended to maintain the same water quality and quantity requirements as exist under the current general permit for projects receiving coverage under the revised General Permit. It is not intended to make any revisions to these sections, but rather to maintain them as direct copies of the current Part II.</p>
<p>Brian Mitchell and Jeffrey Collins (Townes Site Engineering)</p>	<p>The criteria that new development projects not exceed 0.28 pounds per acre per year (lb/acre/yr) of total phosphorus load is based on assumptions of compiled data and sends the wrong message to businesses that may be considering locating to the Commonwealth.</p>	<p>This comment is not germane to this regulatory action, but rather relates to the Board’s revision of Parts I/II/III of the VSMP regulations. That regulatory action will be the subject of a separate public comment period in the future.</p>
<p>Brian Mitchell and Jeffrey Collins (Townes Site Engineering)</p>	<p>Commercial/Industrial developers would be left to install a combination of multiple treatment trains of BMPs that have associated maintenance and installations cost, or simply reduced the proposed impervious area (to the economic detriment of the Commonwealth).</p>	<p>This comment is not germane to this regulatory action, but rather relates to the Board’s revision of Parts I/II/III of the VSMP regulations. That regulatory action will be the subject of a separate public comment period in the future.</p>
<p>Brian Mitchell and Jeffrey Collins (Townes Site Engineering)</p>	<p>When the entire State of Virginia is required to meet statewide discharge requirements and this is uniformly enforced, it is our opinion that the present 0.45lbs/acre/year requirement will more than meet the need to have the Chesapeake Bay become a healthy</p>	<p>This comment is not germane to this regulatory action, but rather relates to the Board’s revision of Parts I/II/III of the VSMP regulations. That regulatory action will be the subject of a separate public comment period in the future.</p>

Summary of Comments on the Construction General Permit Received During the Public Comment Period (Oct. 27, 2008 – Dec. 26, 2008) and at the Public Hearings and the Agency’s Response to the Comments Received

Commenter	Comment	Agency response
John Cowles (Courtland Homes, Inc.)	<p>estuary.</p> <p>As currently prepared these regulations do not have any grandfathering periods. Accordingly, when proposed, they will affect developments at any stage in the pipeline. That is to say a project may be site plan approved with plat recorded and still fall subject to changed regulations.</p>	<p>The Department is aware of concerns regarding grandfathering from new requirements that may arise from the Board’s other regulatory action revising Part II (water quality and quantity) of the VSMP regulations (which is believed to be the subject of this comment). It is intended to address those concerns in that action.</p>
John Cowles (Courtland Homes, Inc.)	<p>A great concern is the fact that these regulations are designed to affect only new development and construction. The conditions which relate to runoff, phosphorus removal, downstream impacts and potential pollution to tributaries including ultimately the Chesapeake Bay are not related solely to new projects. Rather they are the result of years of development and construction under far less stringent requirements. It is economically impossible for new construction and development to carry the economic burden of corrective measures to deal with past inadequacies.</p>	<p>This comment is not germane to this regulatory action, but rather relates to the Board’s revision of Parts I/II/III of the VSMP regulations (which includes revisions to water quality criteria). That regulatory action will be the subject of a separate public comment period in the future.</p>
Leon Szeptycki (on behalf of the Shenandoah and Potomac Riverkeepers)	<p>The Riverkeeper also urges DCR and the Board to include provisions in the permit to provide public notice of new authorizations to discharge under the general permit.</p>	<p>While the current General Permit does not contain provisions for public notice of new authorizations, that is a possibility for the future. The Department is currently developing an enterprise website, which will allow for the electronic submittal of registration statements and the potential posting of information related to permitted projects electronically.</p>
Leon Szeptycki (on behalf of the Shenandoah and Potomac Riverkeepers)	<p>The general permit should include effluent limitations for discharges from construction sites. At a minimum, a narrative turbidity standard would provide certainty of compliance and meaningful protection of water quality. Without effluent limitations of some kind, water quality standards simply cannot be meaningfully addressed or guaranteed.</p>	<p>The Board is currently undertaking a substantial revision of Parts I/II/III of the VSMP regulations; a part of this regulatory action is the consideration of a 0.28 lbs/acre/yr phosphorus loading requirement. The development of this standard has taken over three years and involved a multitude of technical advisory committee meetings, design charettes, and other discussions in order to reach the proper standard and compliance methodologies. It is believed to be more appropriate to complete any effluent limitations in that action, and not in this abbreviated General Permit regulatory action. When a revised Part II is developed, any effluent limitations will then be incorporated into the next-developed Construction General Permit.</p>

Summary of Comments on the Construction General Permit Received During the Public Comment Period (Oct. 27, 2008 – Dec. 26, 2008) and at the Public Hearings and the Agency’s Response to the Comments Received

Commenter	Comment	Agency response
		<p>The US EPA is additionally considering the development of effluent limit guidelines (ELGs), and was placed out for public comment during late 2008 and early 2009. Should EPA establish ELGs for construction activities, those requirements will likewise need to be included in future versions of the Construction General Permit.</p>
<p>Leon Szeptycki (on behalf of the Shenandoah and Potomac Riverkeepers)</p>	<p>The general permit must do more to protect Virginia waters that are already impaired. It must prohibit discharges into impaired waters that contribute to the impairment and include effective, specific procedures for preventing such discharges.</p>	<p>The General Permit requires discharges to waters identified as impaired on the 2008 305(b)/303(d) Water Quality Assessment Integrated Report to be addressed. Operators must minimize pollutants in their discharges as necessary to meet applicable water quality standards (see Section I H). In addition, if it is determined at any time that the operator’s discharges have reasonable potential to cause or contribute to an excursion above any applicable water quality standard, the Board will require the operator to either modify its control measures, submit data indicating that the receiving water is in fact meeting water quality standards, or cease its discharge and seek coverage under an individual permit.</p>
<p>Leon Szeptycki (on behalf of the Shenandoah and Potomac Riverkeepers)</p>	<p>The general permit should include procedures for requiring individual permits from the largest sites with the most potential to cause pollution.</p>	<p>Circumstances and procedures for requiring that a discharger obtain an individual permit are contained in other sections of the VSMP regulations. See, for example, 4VAC50-60-410(B)(3).</p>
<p>Leon Szeptycki (on behalf of the Shenandoah and Potomac Riverkeepers)</p>	<p>References in the general permit to the 303(d) list and Part II stormwater regulations must be to the most recent versions.</p>	<p>The reference to the 2006 § 305(b)/303(d) Water Quality Assessment Integrated Report has been updated to reference the 2008 list, which is the most recent available.</p>
<p>Leon Szeptycki (on behalf of the Shenandoah and Potomac Riverkeepers)</p>	<p>After construction starts, public access to SWPPPs would allow individuals and citizens' groups to assess whether specific sites are in compliance.</p>	<p>The requirement related to public availability of the SWPPP has been amended. Numerous comments were received on this subject reflecting various viewpoints. Many strongly favored public availability of the SWPPP, while others strongly opposed it. In the end, language that is believed to achieve a compromise has been included in the General Permit. Under that language, the initial SWPPP developed for each site must be made publicly available. The developer will have a choice: either (i) make the initial SWPPP available on an internet website and post the website address at the entrance to the construction site (or at a publicly accessible location</p>

Summary of Comments on the Construction General Permit Received During the Public Comment Period (Oct. 27, 2008 – Dec. 26, 2008) and at the Public Hearings and the Agency’s Response to the Comments Received

Commenter	Comment	Agency response
		for linear projects); or (ii) make a hard copy of the initial SWPPP available upon the receipt of a request from the public, at least once per month and during normal business hours.
Leon Szeptycki (on behalf of the Shenandoah and Potomac Riverkeepers)	<p>The draft permit continues to authorize sites discharging into impaired waters absent a TMDL as long as control measures designed to minimize discharges and meet water quality standards are put in place. Although the language nominally might prohibit certain discharges that violate water quality standards, the draft permit fails to set out any clear procedure or additional pollution control measures for operators discharging into impaired waters. The permit does not actually require the steps needed to prevent discharges into impaired waters. Unfortunately, the draft permit both violates the Clean Water Act and effectively guarantees further degradation of the state's waters.</p> <p>The language [Subsection I of I H.] does not provide clear measures for developers to follow when they are building near an impaired water to make sure there are no discharges from their sites that might contribute to that impairment. Instead the permit relies on the possibility that it may be "determined" that a site has the potential to violate water quality standards or contribute to a violation. The permit does not spell out who would make this determination, what standards would be used to make it, or when it would be made.</p> <p>Before a site that could potentially discharge stormwater into an impaired water body is covered under the general permit, operators should be required to evaluate the potential for sediment discharges; design control measures beyond the standard BMPs required under the E&S program that are intended and proven to prevent sediment discharges and document on the registration statement that the site will not contribute to an existing impairment. After a site is covered under the general permit, operators should be required to conduct periodic inspections and monitoring of the control measures to</p>	<p>The language of the General Permit is protective of water quality standards. Section 4VAC50-60-1130(A)(4) clearly states that stormwater discharges that the State Water Control Board determines cause, may reasonably be expected to cause, or contribute to a violation of water quality standards are not covered by this permit. In addition, discharges to waters that have been identified as impaired on the 2008 305(b)/303(d) Water Quality Assessment Integrated Report are not eligible for coverage unless they are addressed through the implementation of control measures at the site that minimize pollutants as necessary to meet applicable water quality standards. If it is determined at any time that the operator's discharges have reasonable potential to cause or contribute to an excursion above any applicable water quality standard, the Board will require the operator to either modify its control measures, submit data indicating that the receiving water is in fact meeting water quality standards, or cease its discharge and seek coverage under an individual permit.</p> <p>This language does recognize that necessary control measures may vary across regulated construction activities. It also requires inspections of land disturbing activities (see Section II D 4). As noted in that section, these inspections expressly include observations related to function of control measures and the need for additional control measures.</p>

Summary of Comments on the Construction General Permit Received During the Public Comment Period (Oct. 27, 2008 – Dec. 26, 2008) and at the Public Hearings and the Agency’s Response to the Comments Received

Commenter	Comment	Agency response
	<p>determine whether they are preventing sediment discharges and develop more effective control measures if the original control measures are inadequate.</p> <p>Another way to protect impaired waters is to establish buffer zones between such water bodies and construction sites. Keeping construction activity outside a strip of vegetation immediately adjacent to impaired streams offers a higher degree of protection without preventing development altogether.</p>	
<p>Leon Szeptycki (on behalf of the Shenandoah and Potomac Riverkeepers)</p>	<p>During the TAC process, DCR discussed the possibility of reissuing the current permit for one or two years, and issuing a more substantial revision of the permit after the effluent guidelines and a Bay TMDL were finalized. DCR should reconsider this option in light of the draft EPA guidelines, or at least make clear that it will reopen the permit once the effluent guidelines become final.</p>	<p>Modifications (reopeners) of permits is authorized under separate VSMP regulations (see specifically 4VAC50-60-610). Should the Board determine it appropriate to reopen this General Permit in the future, that option does exist under certain circumstances.</p> <p>It is currently intended that a second General Permit be issued when the revised Parts I/II/III criteria become effective. This permit would apply to discharges commencing on or after its effective date.</p>
<p>Leon Szeptycki (on behalf of the Shenandoah and Potomac Riverkeepers)</p>	<p>While a numeric limit would be preferable, another option would be a narrative effluent limitation. The narrative limitation would prohibit any visible discharge of sediment from the site into a water body, or prohibit discharges that are visibly more turbid than the receiving water body. Adherence to a narrative limitation would be straightforward: if visible sediment were transported to a water body, the operator would have to improve the control measures.</p> <p>At the very least, if a site is visibly discharging sediment or other pollutants into a water body, the operator should be required to revise their SWPPP and put into place control measures sufficient to prevent such a discharge.</p>	<p>The Board is currently undertaking a substantial revision of Parts I/II/III of the VSMP regulations; a part of this regulatory action is the consideration of a 0.28 lbs/acre/yr phosphorus loading requirement. The development of this standard has taken over three years and involved a multitude of technical advisory committee meetings, design charettes, and other discussions in order to reach the proper standard and compliance methodologies. It is believed to be more appropriate to complete any effluent limitations in that action, and not in this abbreviated General Permit regulatory action. When a revised Part II is developed, any effluent limitations will then be incorporated into the next-developed Construction General Permit.</p> <p>The US EPA is additionally considering the development of effluent limit guidelines (ELGs), and was placed out for public comment during late 2008 and early 2009. Should EPA establish ELGs for construction activities, those requirements will likewise need to be included in future</p>

Summary of Comments on the Construction General Permit Received During the Public Comment Period (Oct. 27, 2008 – Dec. 26, 2008) and at the Public Hearings and the Agency’s Response to the Comments Received

Commenter	Comment	Agency response
Leon Szeptycki (on behalf of the Shenandoah and Potomac Riverkeepers)	The permit should make clear that each site is governed by the rules in effect at the time of the submission of its registration statement. We are aware of nothing in the Virginia Administrative Process Act that prohibits a regulation from taking account of future agency action, so long as that action is subject to the public participation requirements of the Act. Furthermore, operators who obtain coverage under the general permit while the current Part II regulations are in place could be exempted from the new regulations and anyone seeking coverage when the new regulations will be in place is free to participate in their development.	versions of the Construction General Permit. Virginia administrative law does prohibit the incorporation of standards that have not yet been developed. However, as alluded to above, it is the current intention to issue a second general permit in the future that will incorporate new water quality/quantity requirements following the adoption of revised Parts II and III of the VSMP regulations. This will effectively accomplish the goals of the comment: those operators who receive coverage under this General Permit will remain subject to its water quality requirements, while those receiving coverage under the second, future general permit will be subject to the revised Part II technical criteria (unless otherwise grandfathered or exempted).
Leon Szeptycki (on behalf of the Shenandoah and Potomac Riverkeepers)	The general permit cannot escape its responsibility to enforce applicable water quality standards, which of course differ with respect to impaired waters; using an outdated 303(d) list would do exactly that.	The reference to the 2006 § 305(b)/303(d) Water Quality Assessment Integrated Report has been updated to reference the 2008 list, which is the most recent available.