

Title 4. CONSERVATION AND NATURAL RESOURCES

VIRGINIA SOIL AND WATER CONSERVATION BOARD

Notice of Suspension of Effective Date and Extension of Public Comment Period
October 26, 2009

Titles of Regulations: 4 VAC 50-60. Virginia Stormwater Management Program (VSMP) Permit Regulations (Parts I, II, and III)

4 VAC 50-60. Virginia Stormwater Management Program (VSMP) Permit Regulations (Part XIII)

Notice is hereby given that on October 5, 2009, the Virginia Soil and Water Conservation Board adopted revisions to the Virginia Stormwater Management Program (VSMP) Permit Regulations Parts I, II, and III and Part XIII (4 VAC 50-60), and that the Board suspended the effective date of these regulatory actions under § 2.2-4015 A 4 of the Virginia Administrative Process Act to allow time for a 30-day public review and comment period on changes made since the original proposed regulations were approved on September 24, 2008. The Board is receiving comment only on the changes that were made between the proposed regulations and the final regulations adopted by the Board on October 5, 2009. These changes are shown in brackets “[]” in the final version of the regulations published in the Virginia Register.

Summary of regulations:

1. Virginia Stormwater Management Program (VSMP) Permit Regulations (Parts I, II, and III): This final regulatory action amends the technical criteria applicable to stormwater discharges from construction activities, establishes minimum criteria for locality-administered stormwater management programs (qualifying local programs) and Department of Conservation and Recreation (Department) administered local stormwater management programs, as well as authorization procedures and review procedures for qualifying local programs, and amends the definitions section applicable to all of the Virginia Stormwater Management Program (VSMP) regulations.

The proposed version of the regulations established statewide water quality requirements that included a 0.28 lbs/acre/year phosphorus standard for new development and a requirement that total phosphorus loads be reduced to an amount at least 20% below the pre-development phosphorus load on prior developed lands. Concerning water quantity, the proposed version specified that stormwater discharged from a site to an unstable channel must be released at or below a “forested” peak flow rate condition. No exceptions to the standard were provided. As described below, the final regulations change these technical standards and provide additional flexibility for small infill sites, redevelopment sites, or sites within Urban Development Areas that was not present in the proposed regulations.

In the final action, with regard to technical criteria applicable to stormwater discharges from construction activities, revised water quality and water quantity requirements are included in Part II A of the regulations (existing technical criteria will now be maintained in a new Part II B that applies to grandfathered projects). These revised technical requirements in Part II A include:

- a 0.28 lbs/acre/year phosphorus standard for new development greater than or equal to an acre in the Chesapeake Bay Watershed and a 0.45 lbs/acre/year phosphorus standard for new development less than 1 acre (where applicable) and for projects outside of the Chesapeake Bay Watershed;
- a requirement that total phosphorus loads be reduced to an amount at least 20% below the pre-development phosphorus load on prior developed lands for land disturbing activities greater than or equal to an acre and 10% for redevelopment sites disturbing less than 1 acre;
- authority for a qualifying local program to establish a phosphorus standard between 0.28 and 0.45 pounds per acre per year within an Urban Development Area designated pursuant to §15.2-2223.1 in the Chesapeake Bay Watershed for projects greater than or equal to 1 acre in order to encourage smarter growth in accordance with specified factors;
- a requirement that control measures be installed on a site to meet any applicable wasteload allocation; and
- water quantity requirements that include both channel protection and flood protection criteria. In the final version, stormwater that is discharged from a site to an unstable channel must be released at or below a “good pasture” peak flow rate condition unless the pre-developed condition for the site is forest, in which case, the runoff shall be held to the forested condition. Exceptions to the “good pasture” standard are provided to a land disturbing activity that is less than 5 acres on prior developed lands; or less than 1 acre for new development. Under the exceptions, the sites are expected to improve upon the pre-developed runoff condition.

The final regulations also provide five offsite options organized in a new section that may be utilized as specified in the regulation for a developer to achieve the required onsite water quality and where allowed water quantity requirements. One of the new provisions includes a state buy-down option that would be available should local options not be available, where the locality establishes a phosphorus removal fee in excess of the specified state standard, or where allowed by the locality. The proposed regulations only contained three local options.

The proposed regulations did not contain grandfathering provisions. The final regulations contain a new section on grandfathering that specifies that if the operator of a project has met the three listed local vesting criteria related to significant affirmative governmental acts and has received general permit coverage by July 1, 2010, then the project is grandfathered under today’s water quality and quantity technical standards (Part II B) until June 30, 2014. If permit coverage is maintained by the operator, then the project will remain grandfathered until June 30, 2019. It also notes that past June 30,

2019, or if a project's general permit coverage is not maintained, portions of the project not yet completed shall become subject to the new technical criteria set out in Part II A.

This final action would also establish the minimum criteria and ordinance requirements (where applicable) for a Virginia Soil and Water Conservation Board (Board) authorized qualifying local program (Part IIIA) or for a Board-authorized Department-administered local stormwater management program (Part IIIB) which include, but are not limited to, administration, plan review, issuance of coverage under the General Virginia Stormwater Management Program (VSMP) Permit for Discharges of Stormwater from Construction Activities, inspection, enforcement, reporting, and recordkeeping. Part IIID establishes the procedures the Board will utilize in authorizing a locality to administer a qualifying local program. Part IIIC establishes the criteria the Department will utilize in reviewing a locality's administration of a qualifying local program.

The primary issue in Part III that changed between the proposed and final regulations is that in the final regulations, language was added that specified that stormwater management facilities designed to treat stormwater runoff solely from an individual lot, at the qualifying program's discretion, are not subject to the locality inspection requirements (once every five years), homeowner inspection requirements, maintenance agreement requirements, or construction record drawing requirements. Instead a qualifying local program is authorized to develop a strategy for addressing maintenance of stormwater management facilities located on and designed to treat stormwater runoff from an individual residential lot. Such a strategy may include periodic inspections, public outreach and education, or other method targeted at promoting the long-term maintenance of such facilities.

Finally, this action would make changes to definitions in Part I, which is applicable to the full body of the VSMP regulations. Unnecessary definitions are deleted, needed definitions are added, and many existing definitions are updated. In the final action, several additional definitions were added and other minor refinements made to address comments received.

2. Virginia Stormwater Management Program (VSMP) Permit Regulations (Part XIII): This regulatory action establishes a statewide base fee schedule for stormwater management projects and establishes the fee assessment and the collection and distribution systems for those fees. Permit fees are established for: Municipal Separate Storm Sewer Systems (new coverage); Municipal Separate Storm Sewer Systems (major modifications); Construction activity general permit coverage; Construction activity individual permits, Construction activity modifications or transfers; and MS4 and Construction activity annual permit maintenance fees.

This action is closely tied to the Parts I, II, and III action as the base fees generated are necessary to fund the local stormwater management programs established through that concurrent regulatory action. The fees have been established using estimates of the time determined to be necessary for different sized projects, for a local stormwater

management program to conduct plan review, inspections [including stormwater pollution prevention plan (SWPPP) review and re-inspections], enforcement, provide technical assistance, and issue permit coverage, and for the Department of Conservation and Recreation to provide oversight of the Commonwealth's stormwater management program.

The permit base fee levels were arrived at through discussions of a subcommittee of the Technical Advisory Committee and discussions with the overall TAC and through corroboration of the costs of conducting the various components of program implementation with Department of Conservation and Recreation stormwater field staff and with a number of local government program personnel.

In the regulations, a qualifying local program with approval of the Board was authorized to establish a lower construction fee provided that they can demonstrate their ability to fully and successfully implement a program. In the final regulations, additional authority was added to allow a qualifying local program to establish greater fees if they demonstrate to the Board that greater fees are necessary to properly administer a program. Additionally, in the final regulation the permit maintenance fee for MS4's with general permit coverage has been reduced from \$4,000 to \$3,000 dollars as well as the provision for an annual increase in fees based on the CPI-U has been removed from the final regulations.

Public participation and contact information: In addition to comments on changes made since the original proposed regulations were approved on September 24, 2008, the Board is seeking comments on the costs and benefits of the changes made to the proposed regulations at the time of final adoption.

Anyone wishing to submit written comments pertaining to these final regulations may do so by mail, facsimile, or e-mail. Comments pertaining to the final regulations may be mailed to the Regulatory Coordinator at: Virginia Department of Conservation and Recreation, 203 Governor Street, Suite 302, Richmond, Virginia 23219. Comments may also be faxed to the Regulatory Coordinator at: 804-786-6141 or e-mailed to the coordinator at regcord@dcr.virginia.gov. Written comments (including email) must include the name and address of the commenter. In order to be considered, comments must be received between October 26, 2009, and November 25, 2009. Public comment will be accepted until 5 p.m. on November 25, 2009 except that written comments hand delivered to the Department office must be received by noon on the closing date.

Copies of the final regulations, summary of comments received on the original proposals and agency response, and the Town Hall final regulation discussion forms, may be obtained on the Department of Conservation and Recreation's webpage: <http://www.dcr.virginia.gov/lawregs.shtml> or from the regulatory coordinator at: regcord@dcr.virginia.gov; 804-786-2291.