

## **APPENDIX C**

### **4 VAC 50-60 et seq., Virginia Stormwater Management Program (VSMP) Permit Regulation for Discharges of Stormwater from Construction Activities**

# **CHAPTER 60**

## **VIRGINIA STORMWATER MANAGEMENT PROGRAM (VSMP) PERMIT REGULATIONS**

### **Part I**

#### **4VAC50-60-10. Definitions.**

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

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

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

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

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

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

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

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

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

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

"Best management practice (BMP)" means schedules of activities, prohibitions of practices, including both a structural or nonstructural practice, maintenance procedures, and other management practices to prevent or reduce the pollution of surface waters and groundwater systems from the impacts of land-disturbing activities. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

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

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

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

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

"Channel" means a natural or manmade waterway.

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

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

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

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

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

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

"CWA" means the federal Clean Water Act (33 USC §1251 et seq.), formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972, Public Law 92-500, as amended by Public Law 95-217, Public Law 95-576, Public Law 96-483, and Public Law 97-117, or any subsequent revisions thereto.

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

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

"Department" means the Department of Conservation and Recreation.

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

"Direct discharge" means the discharge of a pollutant.

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

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

"Discharge of a pollutant" means:

1. Any addition of any pollutant or combination of pollutants to surface waters from any point source; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Illicit discharge" means any discharge to a municipal separate storm sewer that is not composed entirely of stormwater, except discharges pursuant to a VPDES or VSMP permit

(other than the VSMP permit for discharges from the municipal separate storm sewer), discharges resulting from fire fighting activities, and discharges identified by and in compliance with 4VAC50-60-1220 C 2.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Manmade" means constructed by man.

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

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

1. Located in an incorporated place with a population of 100,000 or more but less than 250,000 as determined by the latest decennial census by the Bureau of Census (40 CFR Part 122 Appendix G (2000));
2. Located in the counties listed in 40 CFR Part 122 Appendix I (2000), except municipal separate storm sewers that are located in the incorporated places, townships or towns within such counties;
3. Owned or operated by a municipality other than those described in subdivision 1 or 2 of this definition and that are designated by the board as part of the large or medium municipal separate storm sewer system due to the interrelationship between the discharges of the designated storm sewer and the discharges from municipal separate storm sewers described under subdivision 1 or 2 of this definition. In making this determination the board may consider the following factors:
  - a. Physical interconnections between the municipal separate storm sewers;
  - b. The location of discharges from the designated municipal separate storm sewer relative to discharges from municipal separate storm sewers described in subdivision 1 of this definition;
  - c. The quantity and nature of pollutants discharged to surface waters;
  - d. The nature of the receiving waters; or
  - e. Other relevant factors.
4. The board may, upon petition, designate as a medium municipal separate storm sewer system, municipal separate storm sewers located within the boundaries of a region defined by a stormwater management regional authority based on a jurisdictional, watershed, or other appropriate basis that includes one or more of the systems described in subdivisions 1, 2 and 3 of this definition.

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

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

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

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

"Municipal Separate Storm Sewer System Management Program" means a management program covering the duration of a permit for a municipal separate storm sewer system that includes a comprehensive planning process that involves public participation and intergovernmental coordination, to reduce the discharge of pollutants to the maximum extent practicable, using management practices, control techniques, and system, design and engineering methods, and such other provisions that are appropriate.

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

"National Pollutant Discharge Elimination System (NPDES)" means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements under §§307, 402, 318, and 405 of the CWA. The term includes an approved program.

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

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

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

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

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

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

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

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

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

"Outfall" means, when used in reference to municipal separate storm sewers, a point source at the point where a municipal separate storm sewer discharges to surface waters and does not include open conveyances connecting two municipal separate storm sewers, or pipes, tunnels or other conveyances which connect segments of the same stream or other surface waters and are used to convey surface waters.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Publicly owned treatment works (POTW)" means a treatment works as defined by §212 of the CWA that is owned by a state or municipality (as defined by §502(4) of the CWA). This

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Small construction activity" means:

1. Construction activities including clearing, grading, and excavating that results in land disturbance of equal to or greater than one acre, or equal to or greater than 2,500 square feet in all areas of the jurisdictions designated as subject to the Chesapeake Bay Preservation Area Designation and Management Regulations adopted pursuant to the Chesapeake Bay Preservation Act, and less than five acres. Small construction activity also includes the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one and less than five acres. Small construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility. The board may waive the otherwise applicable requirements in a general permit for a stormwater discharge from construction activities that disturb less than five acres where stormwater controls are not needed based on a "total maximum daily load" (TMDL) approved or established by EPA that addresses the pollutant(s) of concern or, for nonimpaired waters that do not require TMDLs, an equivalent analysis that determines allocations for small construction sites for the pollutant(s) of concern or that determines that such allocations are not needed to protect water quality based on consideration of existing in-stream concentrations, expected growth in pollutant contributions from all sources, and a margin of safety. For the purpose of this subdivision, the pollutant(s) of concern include sediment or a parameter that addresses sediment (such as total suspended solids, turbidity or siltation) and any other pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the construction activity. The operator must certify to the board that the construction activity will take place, and stormwater discharges will occur, within the drainage area addressed by the TMDL or equivalent analysis.
2. Any other construction activity designated by either the board or the EPA regional administrator, based on the potential for contribution to a violation of a water quality standard or for significant contribution of pollutants to surface waters.

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

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

"State" means the Commonwealth of Virginia.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Stormwater Pollution Prevention Plan" (SWPPP) or "plan" means a document that is prepared in accordance with good engineering practices and that identifies potential sources of pollution that may reasonably be expected to affect the quality of stormwater discharges from the construction site or its associated land-disturbing activities. In addition the document shall describe and ensure the implementation of best management practices, and shall include, but not be limited to the inclusion of, or the incorporation by reference of, an erosion and sediment control plan, a post-construction stormwater management plan, a spill prevention control and countermeasure (SPCC) plan, and other practices that will be used to reduce pollutants in stormwater discharges from land-disturbing activities and to assure compliance with the terms and conditions of this chapter. All plans incorporated by reference into the SWPPP shall be enforceable under the permit issued.

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

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

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

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

"Subdivision" means the same as defined in §[15.2-2201](#) of the Code of Virginia.

"Surface waters" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **4VAC50-60-20. Purposes.**

The purposes of this chapter are to provide a framework for the administration, implementation and enforcement of the Act and to delineate the procedures and requirements to be followed in connection with VSMP permits issued by the board or its designee pursuant to the Clean Water Act and the Virginia Stormwater Management Act, while at the same time providing flexibility for innovative solutions to stormwater management issues.

#### **4VAC50-60-30. Applicability.**

This chapter is applicable to:

1. Every private, local, state, or federal entity that establishes a stormwater management program;
2. Every state agency project regulated under the Act and this chapter; and
3. Every land-disturbing activity regulated under § [10.1-603.8](#) of the Code of Virginia.

## **Part II Stormwater Management Program Technical Criteria**

#### **4VAC50-60-40. Applicability.**

This part specifies technical criteria for every stormwater management program and land-disturbing activity.

#### **4VAC50-60-50. General.**

A. Determination of flooding and channel erosion impacts to receiving streams due to land-disturbing activities shall be measured at each point of discharge from the land disturbance and such determination shall include any runoff from the balance of the watershed which also contributes to that point of discharge.

B. The specified design storms shall be defined as either a 24-hour storm using the rainfall distribution recommended by the U.S. Department of Agriculture's Natural Resources Conservation Service (NRCS) when using NRCS methods or as the storm of critical duration that produces the greatest required storage volume at the site when using a design method such as the Modified Rational Method.

C. For purposes of computing runoff, all pervious lands in the site shall be assumed prior to development to be in good condition (if the lands are pastures, lawns, or parks), with good cover (if the lands are woods), or with conservation treatment (if the lands are cultivated); regardless of conditions existing at the time of computation.

D. Construction of stormwater management facilities or modifications to channels shall comply with all applicable laws and regulations. Evidence of approval of all necessary permits shall be presented.

E. Impounding structures that are not covered by the Impounding Structure Regulations (4VAC50-20) shall be engineered for structural integrity during the 100-year storm event.

F. Pre-development and post-development runoff rates shall be verified by calculations that are consistent with good engineering practices.

G. Outflows from a stormwater management facility or stormwater conveyance system, shall be discharged to an adequate channel.

H. Proposed residential, commercial, or industrial subdivisions shall apply these stormwater management criteria to the land disturbance as a whole. Individual lots in new subdivisions shall not be considered separate land-disturbing activities, but rather the entire subdivision shall be considered a single land development project. Hydrologic parameters shall reflect the ultimate land disturbance and shall be used in all engineering calculations.

I. All stormwater management facilities shall have an inspection and maintenance plan that identifies the owner and the responsible party for carrying out the inspection and maintenance plan.

J. Construction of stormwater management impoundment structures within a Federal Emergency Management Agency (FEMA) designated 100-year floodplain shall be avoided to the extent possible. When this is unavoidable, all stormwater management facility construction shall be in compliance with all applicable regulations under the National Flood Insurance Program, 44 CFR Part 59.

K. Natural channel characteristics shall be preserved to the maximum extent practicable.

L. Land-disturbing activities shall comply with the Virginia Erosion and Sediment Control Law (§[10.1-560](#) et seq. of the Code of Virginia) and attendant regulations.

M. Flood control and stormwater management facilities that drain or treat water from multiple development projects or from a significant portion of a watershed may be allowed in Resource Protection Areas defined in the Chesapeake Bay Preservation Act, provided that (i) the local government has conclusively established that the location of the facility within the Resource Protection Area is the optimum location; (ii) the size of the facility is the minimum necessary to provide necessary flood control, stormwater treatment, or both; and, (iii) the facility must be consistent with a stormwater management program that has been approved by the board.

**4VAC50-60-60. Water quality.**

A. 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.

B. Performance-based criteria. For land-disturbing activities, the calculated post-development nonpoint source pollutant runoff load shall be compared to the calculated pre-development load based upon the average land cover condition or the existing site condition. A BMP shall be located, designed, and maintained to achieve the target pollutant removal efficiencies specified in Table 1 to effectively reduce the pollutant load to the required level based upon the following four applicable land development situations for which the performance criteria apply:

1. Situation 1 consists of land-disturbing activities where the existing percent impervious cover is less than or equal to the average land cover condition and the proposed improvements will create a total percent impervious cover which is less than the average land cover condition.

Requirement: No reduction in the after disturbance pollutant discharge is required.

2. Situation 2 consists of land-disturbing activities where the existing percent impervious cover is less than or equal to the average land cover condition and the proposed improvements will create a total percent impervious cover which is greater than the average land cover condition.

Requirement: The pollutant discharge after disturbance shall not exceed the existing pollutant discharge based on the average land cover condition.

3. Situation 3 consists of land disturbing activities where the existing percent impervious cover is greater than the average land cover condition.

Requirement: The pollutant discharge after disturbance shall not exceed (i) the pollutant discharge based on existing conditions less 10% or (ii) the pollutant discharge based on the average land cover condition, whichever is greater.

4. Situation 4 consists of land disturbing activities where the existing percent impervious cover is served by an existing stormwater management BMP that addresses water quality.

Requirement: The pollutant discharge after disturbance shall not exceed the existing pollutant discharge based on the existing percent impervious cover while served by the existing BMP. The existing BMP shall be shown to have been designed and constructed in accordance with proper design standards and specifications, and to be in proper functioning condition.

C. Technology-based criteria. For land-disturbing activities, the post-developed stormwater runoff from the impervious cover shall be treated by an appropriate BMP as required by the post-developed condition percent impervious cover as specified in Table 1. The selected BMP shall be located, designed, and maintained to perform at the target pollutant removal efficiency specified in Table 1. Design standards and specifications for the BMPs in Table 1 that meet the required target pollutant removal efficiency will be available at the department.

Table 1 \*

Water Quality BMP*	Target Phosphorus Removal Efficiency	Percent Impervious Cover
Vegetated filter strip	10%	16-21%

Grassed swale	15%	
Constructed wetlands	20%	
Extended detention (2 x WQ Vol)	35%	22-37%
Retention basin I (3 x WQ Vol)	40%	
Bioretention basin	50%	
Bioretention filter	50%	
Extended detention-enhanced	50%	38-66%
Retention basin II (4 x WQ Vol)	50%	
Infiltration (1 x WQ Vol)	50%	
Sand filter	65%	
Infiltration (2 x WQ Vol)	65%	67-100%
Retention basin III (4 x WQ Vol with aquatic bench)	65%	

FN\* Innovative or alternate BMPs not included in this table may be allowed at the discretion of the local program administrator or the department. Innovative or alternate BMPs not included in this table which target appropriate nonpoint source pollution other than phosphorous may be allowed at the discretion of the local program administrator or the department.

**4VAC50-60-70. Stream channel erosion.**

A. Properties and receiving waterways downstream of any land-disturbing activity shall be protected from erosion and damage due to changes in runoff rate of flow and hydrologic characteristics, including but not limited to, changes in volume, velocity, frequency, duration, and peak flow rate of stormwater runoff in accordance with the minimum design standards set out in this section.

B. The permit-issuing authority shall require compliance with subdivision 19 of 4VAC50-30-40 of the Erosion and Sediment Control Regulations, promulgated pursuant to Article 4 (§[10.1-560](#) et seq.) of Chapter 5 of Title 10.1 of the Code of Virginia.

C. The permit-issuing authority may determine that some watersheds or receiving stream systems require enhanced criteria in order to address the increased frequency of bankfull flow conditions (top of bank) brought on by land-disturbing activities. Therefore, in lieu of the reduction of the two-year post-developed peak rate of runoff as required in subsection B of this section, the land development project being considered shall provide 24-hour extended detention of the runoff generated by the one-year, 24-hour duration storm.

D. In addition to subsections B and C of this section permit-issuing authorities, by local ordinance may, or the board by state regulation may, adopt more stringent channel analysis criteria or design standards to ensure that the natural level of channel erosion, to the maximum extent practicable, will not increase due to the land-disturbing activities. These criteria may include, but are not limited to, the following:

1. Criteria and procedures for channel analysis and classification.
2. Procedures for channel data collection.

3. Criteria and procedures for the determination of the magnitude and frequency of natural sediment transport loads.
4. Criteria for the selection of proposed natural or man-made channel linings.

**4VAC50-60-80. Flooding.**

A. Downstream properties and waterways shall be protected from damages from localized flooding due to changes in runoff rate of flow and hydrologic characteristics, including but not limited to, changes in volume, velocity, frequency, duration, and peak flow rate of stormwater runoff in accordance with the minimum design standards set out in this section.

B. The 10-year post-developed peak rate of runoff from the development site shall not exceed the 10-year pre-developed peak rate of runoff.

C. In lieu of subsection B of this section, localities may, by ordinance, adopt alternate design criteria based upon geographic, land use, topographic, geologic factors or other downstream conveyance factors as appropriate.

D. Linear development projects shall not be required to control post-developed stormwater runoff for flooding, except in accordance with a watershed or regional stormwater management plan.

**4VAC50-60-90. Regional (watershed-wide) stormwater management plans.**

This section enables localities to develop regional stormwater management plans. State agencies intending to develop large tracts of land such as campuses or prison compounds are encouraged to develop regional plans where practical.

The objective of a regional stormwater management plan is to address the stormwater management concerns in a given watershed with greater economy and efficiency by installing regional stormwater management facilities versus individual, site-specific facilities. The result will be fewer stormwater management facilities to design, build and maintain in the affected watershed. It is also anticipated that regional stormwater management facilities will not only help mitigate the impacts of new development, but may also provide for the remediation of erosion, flooding or water quality problems caused by existing development within the given watershed. If developed, a regional plan shall, at a minimum, address the following:

1. The specific stormwater management issues within the targeted watersheds.
2. The technical criteria in 4VAC50-60-40 through 4VAC50-60-80 as needed based on subdivision 1 of this section.
3. The implications of any local comprehensive plans, zoning requirements, local ordinances pursuant to the Chesapeake Bay Preservation Area Designation and Management Regulations adopted pursuant to the Chesapeake Bay Preservation Act, and other planning documents.
4. Opportunities for financing a watershed plan through cost sharing with neighboring agencies or localities, implementation of regional stormwater utility fees, etc.
5. Maintenance of the selected stormwater management facilities.

6. Future expansion of the selected stormwater management facilities in the event that development exceeds the anticipated level.

### **Part III**

## **Local Programs**

#### **4VAC50-60-100. Applicability.**

This part specifies technical criteria, minimum ordinance requirements, and administrative procedures for all localities operating local stormwater management programs.  
Statutory Authority

#### **4VAC50-60-110. Technical criteria for local programs.**

A. All local stormwater management programs shall comply with the general technical criteria as outlined in 4VAC50-60-50.

B. All local stormwater management programs which contain provisions for stormwater runoff quality shall comply with 4VAC50-60-60. A locality may establish criteria for selecting either the site or a planning area on which to apply the water quality criteria. A locality may opt to calculate actual watershed specific or locality wide values for the average land cover condition based upon:

1. Existing land use data at time of local Chesapeake Bay Preservation Act Program or department stormwater management program adoption, whichever was adopted first;
2. Watershed or locality size; and
3. Determination of equivalent values of impervious cover for nonurban land uses which contribute nonpoint source pollution, such as agriculture, forest, etc.

C. All local stormwater management programs which contain provisions for stream channel erosion shall comply with 4VAC50-60-70.

D. All local stormwater management programs must contain provisions for flooding and shall comply with 4VAC50-60-80.

E. All local stormwater management programs which contain provisions for watershed or regional stormwater management plans shall comply with 4VAC50-60-110.

F. A locality that has adopted more stringent requirements or implemented a regional (watershed-wide) stormwater management plan may request, in writing, that the department consider these requirements in its review of state projects within that locality.

G. Nothing in this part shall be construed as authorizing a locality to regulate, or to require prior approval by the locality for, a state project.

#### **4VAC50-60-120. Requirements for local program and ordinance.**

A. At a minimum, the local stormwater management program and implementing ordinance shall meet the following:

1. The ordinance shall identify the plan-approving authority and other positions of authority within the program, and shall include the regulations and technical criteria to be used in the program.
2. The ordinance shall include procedures for submission and approval of plans, issuance of permits, monitoring and inspections of land development projects. The party responsible for conducting inspections shall be identified. The local program authority shall maintain, either on-site or in local program files, a copy of the approved plan and a record of all inspections for each land development project.

B. The department shall periodically review each locality's stormwater management program, implementing ordinance, and amendments. Subsequent to this review, the department shall determine if the program and ordinance are consistent with the state stormwater management regulations and notify the locality of its findings. To the maximum extent practicable the department will coordinate the reviews with other local government program reviews to avoid redundancy. The review of a local program shall consist of the following:

1. A personal interview between department staff and the local program administrator or his designee;
2. A review of the local ordinance and other applicable documents;
3. A review of plans approved by the locality and consistency of application;
4. An inspection of regulated activities; and
5. A review of enforcement actions.

C. Nothing in this chapter shall be construed as limiting the rights of other federal and state agencies from imposing stricter technical criteria or other requirements as allowed by law.

#### **4VAC50-60-130. Administrative procedures: stormwater management plans.**

A. Localities shall approve or disapprove stormwater management plans according to the following:

1. A maximum of 60 calendar days from the day a complete stormwater management plan is accepted for review will be allowed for the review of the plan. During the 60-day review period, the locality shall either approve or disapprove the plan and communicate its decision to the applicant in writing. Approval or denial shall be based on the plan's compliance with the locality's stormwater management program.
2. A disapproval of a plan shall contain the reasons for disapproval.

B. Each plan approved by a locality shall be subject to the following conditions:

1. The applicant shall comply with all applicable requirements of the approved plan, the local program, this chapter and the Act, and shall certify that all land clearing, construction, land development and drainage will be done according to the approved plan.
2. The land development project shall be conducted only within the area specified in the approved plan.

3. The locality shall be allowed, after giving notice to the owner, occupier or operator of the land development project, to conduct periodic inspections of the project.
4. The person responsible for implementing the approved plan shall conduct monitoring and submit reports as the locality may require to ensure compliance with the approved plan and to determine whether the plan provides effective stormwater management.
5. No changes may be made to an approved plan without review and written approval by the locality.

**4VAC50-60-140. Administrative procedures: exceptions.**

A. A request for an exception shall be submitted, in writing, to the locality. An exception from the stormwater management regulations may be granted, provided that: (i) exceptions to the criteria are the minimum necessary to afford relief and (ii) reasonable and appropriate conditions shall be imposed as necessary upon any exception granted so that the intent of the Act and this chapter are preserved.

B. Economic hardship is not sufficient reason to grant an exception from the requirements of this chapter.

**4VAC50-60-150. Administrative procedures: maintenance and inspections.**

A. Responsibility for the operation and maintenance of stormwater management facilities, unless assumed by a governmental agency, shall remain with the property owner and shall pass to any successor or owner. If portions of the land are to be sold, legally binding arrangements shall be made to pass the basic responsibility to successors in title. These arrangements shall designate for each project the property owner, governmental agency, or other legally established entity to be permanently responsible for maintenance.

B. In the case of developments where lots are to be sold, permanent arrangements satisfactory to the locality shall be made to ensure continued performance of this chapter.

C. A schedule of maintenance inspections shall be incorporated into the local ordinance. Ordinances shall provide that in cases where maintenance or repair is neglected, or the stormwater management facility becomes a danger to public health or safety, the locality has the authority to perform the work and to recover the costs from the owner.

D. Localities may require right-of-entry agreements or easements from the applicant for purposes of inspection and maintenance.

E. Periodic inspections are required for all stormwater management facilities. Localities shall either:

1. Provide for inspection of stormwater management facilities on an annual basis; or
2. Establish an alternative inspection program which ensures that stormwater management facilities are functioning as intended. Any alternative inspection program shall be:
  - a. Established in writing;

- b. Based on a system of priorities that, at a minimum, considers the purpose of the facility, the contributing drainage area, and downstream conditions; and
- c. Documented by inspection records.

F. During construction of the stormwater management facilities, localities shall make inspections on a regular basis.

G. Inspection reports shall be maintained as part of a land development project file.

## **Part IV**

### **Technical Criteria and Permit Application Requirements for State Projects**

#### **4VAC50-60-160. Technical criteria and requirements for state projects.**

A. This part specifies technical criteria and administrative procedures for all state projects.

B. Stormwater management permit applications prepared for state projects shall comply with the technical criteria outlined in Part II (4VAC50-60-40 et seq.) of this chapter and, to the maximum extent practicable, any local stormwater management program technical requirements adopted pursuant to the Act. It shall be the responsibility of the state agency to demonstrate that the local program technical requirements are not practical for the project under consideration.

C. The department may establish criteria for selecting either the site or a planning area on which to apply the water quality criteria.

D. As a minimum, stormwater management permit application shall contain the following:

1. The location and the design of the proposed stormwater management facilities.
2. Overall site plan with pre-developed and post-developed condition drainage area maps.
3. Comprehensive hydrologic and hydraulic computations of the pre-development and post-development runoff conditions for the required design storms, considered individually.
4. Calculations verifying compliance with the water quality requirements.
5. A description of the requirements for maintenance of the stormwater management facilities and a recommended schedule of inspection and maintenance.
6. The identification of a person or persons who will be responsible for maintenance.
7. All stormwater management and erosion and sediment control plans associated with a permit application shall be appropriately sealed and signed by a professional in adherence to all minimum standards and requirements pertaining to the practice of that profession in accordance with Chapter 4 (§[54.1-400](#) et seq.) of Title 54.1 of the Code of Virginia and attendant regulations.

**4VAC50-60-170. Requirements for stormwater management permit application annual standards and specifications.**

A. A permit application for approval of stormwater management standards and specifications may be submitted to the department by a state agency on an annual basis. State agency stormwater management standards and specifications shall include, but are not limited to:

1. Technical criteria to meet the requirements of this Act and regulations developed under this Act.
2. Provisions for the preparation of individual stormwater management and erosion and sediment control plans for each project. In addition, the individual plans, to the maximum extent practicable, shall comply with any local stormwater management program technical requirements adopted pursuant to the Act. It shall be the responsibility of the state agency to demonstrate that the local program technical requirements are not practical for the project under consideration.
3. Provisions for the long-term responsibility and maintenance of stormwater management control devices and other techniques specified to manage the quantity and quality of runoff, including an inspection and maintenance schedule, shall be developed and implemented.
4. Provisions for erosion and sediment control and stormwater management program administration, plan design, review and approval, and construction inspection and enforcement;
5. Provisions for ensuring that responsible personnel and contractors obtain certifications or qualifications for erosion and sediment control and stormwater management comparable to those required for local government;
6. Implementation of a project tracking and notification system to the department of all land-disturbing activities covered under this Act; and
7. Requirements for documenting on-site changes as they occur to ensure compliance with the requirements of the Act.

B. Copies of such stormwater management specifications and standards including, but not limited to, design manuals, technical guides and handbooks, shall be submitted.

**4VAC50-60-180. Administrative procedures: stormwater management permit applications.**

A. Within 30 days after receipt of a complete permit application (registration statement) submitted by a state agency, the department shall issue or deny the permit.

1. The department shall transmit its decision in writing to the state agency that submitted the permit application.
2. Denied permit applications shall be revised and resubmitted to the department.

B. Approval of a permit application (registration statement) for a state project shall be subject to the following conditions:

1. The state agency shall comply with all applicable requirements of the permit and this chapter, and shall certify that all land clearing, construction, land development, and drainage will be done according to the permit.
2. The land development shall be conducted only within the area specified in the permit.
3. No changes may be made to a plan for which a permit has been issued without review and written approval by the department.

4. The department shall be notified one week prior to the pre-construction meeting and one week prior to the commencement of land-disturbing activity.
5. The department shall conduct random inspections of the project to ensure compliance with the permit.
6. The department shall require inspections and reports from the state agency responsible for compliance with the permit and to determine if the measures required in the permit provide effective stormwater management.

C. Compliance with the permit shall be subject to the following conditions:

1. Where inspection by the responsible state agency reveals deficiencies in carrying out a permitted activity, the responsible state agency shall ensure compliance with the issued permit, permit conditions, and plan specifications.
2. Where inspections by department personnel reveal deficiencies in carrying out the permit, the responsible state agency shall be issued a notice to comply, with corrective actions specified and the deadline within which the work shall be performed.
3. Whenever the Commonwealth or any of its agencies fail to comply within the time provided in a notice to comply, the director may petition the secretary of a given secretariat or an agency head for a given state agency for compliance. Where the petition does not achieve timely compliance, the director shall bring the matter to the Governor for resolution.
4. Where compliance will require the appropriation of funds, the director shall cooperate with the appropriate agency head in seeking such an appropriation; where the director determines that an emergency exists, he shall petition the Governor for funds from the Civil Contingency Fund or other appropriate source.
5. The department may also seek compliance through other means specified in the Act.

**4VAC50-60-190. [Reserved]**

**4VAC50-60-200. Administrative procedures: maintenance and inspections.**

A. Responsibility for the operation and maintenance of stormwater management facilities shall remain with the state agency and shall pass to any successor or owner. If portions of the land are to be sold, legally binding arrangements shall be made to pass the basic responsibility to successors in title. These arrangements shall designate for each state project the property owner, governmental agency, or other legally established entity to be permanently responsible for maintenance.

B. At a minimum, a stormwater management facility shall be inspected by the responsible state agency on an annual basis and after any storm which causes the capacity of the facility principal spillway to be exceeded.

C. During construction of the stormwater management facilities, the department shall make inspections on a random basis.

D. The department shall require inspections and reports from the state agency responsible for ensuring compliance with the permit and to determine if the measures required in the permit provide effective stormwater management.

E. Inspection reports shall be maintained as part of the land disturbance project file.

## **Part V**

### **Reporting**

#### **4VAC50-60-210. Reporting on stormwater management.**

Local governments delegated authority for the implementation of the stormwater management program and state agencies shall report annually, on a schedule to be specified, to the department on the extent to which stormwater management programs have reduced nonpoint source pollution to the Commonwealth's waters and mitigated the effects of localized flooding. The report shall provide the following: data on the number and types of stormwater management facilities installed in the preceding year, the drainage area or watershed size served, the receiving stream or hydrologic unit, a summary of monitoring data, if any, and other data useful in determining the effectiveness of the programs and BMP technologies in current use.

#### **4VAC50-60-220 to 4VAC50-60-290. [Reserved]**

## **Part VI**

### **VSMP General Program Requirements Related to MS4s and Land-Disturbing Activities**

#### **4VAC50-60-300. Exclusions.**

The following discharges do not require VSMP permits:

1. Any discharge of sewage from vessels, effluent from properly functioning marine engines, laundry, shower, and galley sink wastes, or any other discharge incidental to the normal operation of a vessel. This exclusion does not apply to rubbish, trash, garbage, or other such materials discharged overboard; nor to other discharges when the vessel is operating in a capacity other than as a means of transportation such as when used as an energy or mining facility, a storage facility or a seafood processing facility, or when secured to a storage facility or a seafood processing facility, or when secured to the bed of the ocean, contiguous zone or surface waters for the purpose of mineral or oil exploration or development.
2. Discharges of dredged or fill material into surface waters that are regulated under §404 of the CWA.
3. The introduction of sewage, industrial wastes or other pollutants into publicly owned treatment works by indirect dischargers. Plans or agreements to switch to this method of disposal in the future do not relieve dischargers of the obligation to have and comply with permits until all discharges of pollutants to surface waters are eliminated. This exclusion does not apply to the introduction of pollutants to privately owned treatment works or to other discharges through pipes, sewers, or other conveyances owned by a state, municipality, or other party not leading to treatment works.
4. Any discharge in compliance with the instructions of an on-scene coordinator pursuant to 40 CFR Part 300 (2000) (The National Oil and Hazardous Substances Pollution Contingency Plan) or 33 CFR 153.10(e) (2000) (Pollution by Oil and Hazardous Substances).

5. Any introduction of pollutants from nonpoint source agricultural and silvicultural activities, including stormwater runoff from orchards, cultivated crops, pastures, range lands, and forest lands, but not discharges from concentrated animal feeding operations, discharges from concentrated aquatic animal production facilities, discharges to aquaculture projects, and discharges from silvicultural point sources.
6. Return flows from irrigated agriculture.
7. Discharges into a privately owned treatment works, except as the State Water Control Board may otherwise require.

#### **4VAC50-60-310. Prohibitions.**

A. Except in compliance with a VSMP permit issued by the board pursuant to Article 1.1 (§[10.1-603.1](#) et seq.) of Chapter 6 of Title 10.1 of the Code of Virginia, it shall be unlawful for any person to discharge stormwater into state waters from Municipal Separate Storm Sewer Systems or land-disturbing activities.

B. Any person in violation of subsection A of this section, who discharges or causes or allows a discharge of stormwater into or upon state waters from Municipal Separate Storm Sewer Systems or land-disturbing activities, or who discharges or causes or allows a discharge that may reasonably be expected to enter state waters in violation of subsection A of this section, shall notify the department of the discharge immediately upon discovery of the discharge but in no case later than 24 hours after said discovery. A written report of the unauthorized discharge shall be submitted by the owner, to the department, within five days of discovery of the discharge. The written report shall contain:

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

C. No permit may be issued:

1. When the conditions of the permit do not provide for compliance with the applicable requirements of the CWA or the Act, or regulations promulgated under the CWA or the Act;
2. When the permit applicant is required to obtain a state or other appropriate certification under §401 of the CWA and that certification has not been obtained or waived;
3. When the regional administrator has objected to issuance of the permit;
4. When the imposition of conditions cannot ensure compliance with the applicable water quality requirements of all affected states;
5. When, in the judgment of the Secretary of the Army, anchorage and navigation in or on any of the waters of the United States would be substantially impaired by the discharge;
6. For the discharge of any radiological, chemical, or biological warfare agent or high-level radioactive waste;

7. For any discharge inconsistent with a plan or plan amendment approved under §208(b) of the CWA;

8. For any discharge to the territorial sea, the waters of the contiguous zone, or the oceans in the following circumstances:

a. Before the promulgation of guidelines under §403(c) of the CWA (for determining degradation of the waters of the territorial seas, the contiguous zone, and the oceans) unless the board determines permit issuance to be in the public interest; or

b. After promulgation of guidelines under §403(c) of the CWA, when insufficient information exists to make a reasonable judgment whether the discharge complies with them.

9. To a new source or a new discharger, if the discharge from its construction or operation will cause or contribute to the violation of water quality standards. The owner or operator of a new source or new discharger proposing to discharge into a water segment which does not meet applicable water quality standards or is not expected to meet those standards even after the application of the effluent limitations required by the Act and §§301(b)(1)(A) and 301(b)(1)(B) of the CWA, and for which the department has performed a pollutants load allocation for the pollutant to be discharged, must demonstrate, before the close of the public comment period, that:

a. There are sufficient remaining pollutant load allocations to allow for the discharge; and

b. The existing dischargers into that segment are subject to compliance schedules designed to bring the segment into compliance with applicable water quality standards. The board may waive the submission of information by the new source or new discharger required by this subdivision if the board determines that it already has adequate information to evaluate the request. An explanation of the development of limitations to meet the criteria of this paragraph is to be included in the fact sheet to the permit under 4VAC50-60-520.

#### **4VAC50-60-320. Effect of a permit.**

A. Except for any toxic effluent standards and prohibitions imposed under §307 of the CWA and standards for sewage sludge use or disposal under §405(d) of the CWA, compliance with a permit during its term constitutes compliance, for purposes of enforcement, with the Act and with §§301, 302, 306, 307, 318, 403, and 405 (a) through (b) of the CWA. However, a permit may be modified, revoked and reissued, or terminated during its term for cause as set forth in this chapter.

B. The issuance of a permit does not convey any property rights of any sort, or any exclusive privilege.

C. The issuance of a permit does not authorize any injury to persons or property or invasion of other private rights, or any infringement of state or local law or regulations.

#### **4VAC50-60-330. Continuation of expiring permits.**

A. The permit shall expire at the end of its term, except that the conditions of an expired permit continue in force until the effective date of a new permit if:

1. The permittee has submitted a timely application as required by this chapter, which is a complete application for a new permit; and

2. The board, through no fault of the permittee, does not issue a new permit with an effective date on or before the expiration date of the previous permit.

B. Permits continued under this section remain fully effective and enforceable.

C. When the permittee is not in compliance with the conditions of the expiring or expired permit the board may choose to do any or all of the following:

1. Initiate enforcement action based upon the permit which has been continued;
2. Issue a notice of intent to deny the new permit. If the permit is denied, the owner or operator would then be required to cease the activities authorized by the continued permit or be subject to enforcement action for operating without a permit;
3. Issue a new permit with appropriate conditions; or
4. Take other actions authorized by this chapter.

#### **4VAC50-60-340. Confidentiality of information.**

A. The board, the department, or the permit-issuing authority may require every permit applicant or permittee to furnish when requested such application materials, plans, specifications, and other pertinent information as may be necessary to determine the effect of his discharge on the quality of state waters, or such other information as may be necessary to accomplish the purposes of the Act and this chapter. Any personal information shall not be disclosed except to an appropriate official of the board, department, or permit-issuing authority or as may be authorized pursuant to the Virginia Freedom of Information Act (§[2.2-3700](#) et seq. of the Code of Virginia). However:

1. Disclosure of records of the department, the board, or the permit-issuing authority relating to (i) active federal environmental enforcement actions that are considered confidential under federal law and (ii) enforcement strategies, including proposed sanctions for enforcement actions is prohibited. Upon request, such records shall be disclosed after a proposed sanction resulting from the investigation has been determined by the department, the board, or the permit-issuing authority.
2. Any secret formula, secret processes, or secret methods other than effluent data submitted to the department pursuant to this chapter may be claimed as confidential by the submitter in accordance with 40 CFR 122.7 (2000). Any such claim must be asserted at the time of submission in the manner prescribed on the application form or instructions or, in the case of other submissions, by stamping the words "secret formulae," "secret processes" "secret methods" on each page containing such information. If no claim is made at the time of submission, the department may make the information available to the public without further notice. If a claim is asserted, the information will be treated in accordance with the procedures in the Virginia Freedom of Information Act (§[2.2-3700](#) et seq. of the Code of Virginia).
3. This section shall not be construed to prohibit the disclosure of records related to inspection reports, notices of violation, and documents detailing the nature of any land-disturbing activity that may have occurred, or similar documents.

B. Claims of confidentiality for the following information will be denied:

1. The name and address of any permit applicant or permittee;
2. Permit applications, permits, and effluent data.

C. Information required by VSMP application forms provided by the department may not be claimed confidential. This includes information submitted on the forms themselves and any attachments used to supply information required by the forms.

#### **4VAC50-60-350. Guidance documents.**

The board may develop and use guidance, as appropriate, to implement technical and regulatory details of the VSMP permit program. Such guidance is distinguished from regulation by the fact that it is not binding on either the board or permittees. If a more appropriate methodology than that called for in guidance is available in a given situation, the more appropriate methodology shall be used to the extent it is consistent with applicable regulations and the Stormwater Management Act.

## **Part VII**

### **VSMP Permit Applications**

#### **4VAC50-60-360. Application for a permit.**

A. Duty to apply. Any person who discharges or proposes to discharge stormwater into or upon state waters from Municipal Separate Storm Sewer Systems or land-disturbing activities and who does not have an effective permit, except persons covered by general permits, excluded from the requirement for a permit by this chapter, shall submit a complete application to the department in accordance with this section.

B. Who applies. When a facility or activity is owned by one person but is operated by another person, it is the operator's duty to obtain a permit.

C. Time to apply. Any person proposing a new discharge, shall submit an application at least 180 days before the date on which the discharge is to commence, unless permission for a later date has been granted by the board. Stormwater discharges from large construction activities and stormwater discharges associated with small construction activities shall submit applications at least 90 days before the date on which construction is to commence. Different submittal dates may be required under the terms of applicable general permits. Persons proposing a new discharge are encouraged to submit their applications well in advance of the 90- or 180- day requirements to avoid delay.

D. Duty to reapply. All permittees with a currently effective permit shall submit a new application at least 180 days before the expiration date of the existing permit unless permission for a later date has been granted by the board. The board shall not grant permission for applications to be submitted later than the expiration date of the existing permit.

E. Completeness. The board shall not issue a permit before receiving a complete application for a permit except for VSMP general permits. An application for a permit is complete when the board receives an application form and any supplemental information which are completed to its

satisfaction. The completeness of any application for a permit shall be judged independently of the status of any other permit application or permit for the same facility or activity.

F. Information requirements. All applicants for VSMP permits shall provide the following information to the department using the application form provided by the department.

1. The activities conducted by the permit applicant which require it to obtain a VSMP permit;
2. Name, mailing address, and location of the facility for which the application is submitted;
3. Up to four SIC codes which best reflect the principal products or services provided by the facility;
4. The operator's name, address, telephone number, ownership status, and status as federal, state, private, public, or other entity;
5. Whether the facility is located on Indian lands;
6. A listing of all permits or construction approvals received or applied for under any of the following programs:
  - a. Hazardous Waste Management program under RCRA (42 USC §6921);
  - b. UIC program under SDWA (42 USC §300h);
  - c. VPDES program under the CWA and the State Water Control Law;
  - d. Prevention of Significant Deterioration (PSD) program under the Clean Air Act (42 USC §4701 et seq.);
  - e. Nonattainment program under the Clean Air Act (42 USC §4701 et seq.);
  - f. National Emission Standards for Hazardous Pollutants (NESHAPS) preconstruction approval under the Clean Air Act (42 USC §4701 et seq.);
  - g. Ocean dumping permits under the Marine Protection Research and Sanctuaries Act (33 USC §14 et seq.);
  - h. Dredge or fill permits under §404 of the CWA;
  - i. VSMP program under the CWA and the Virginia Stormwater Management Act; and
  - j. Other relevant environmental permits, including state permits.
7. A topographic map (or other map if a topographic map is unavailable) extending one mile beyond the property boundaries of the source, which depicts: the facility and (i) each of its intake and discharge structures; (ii) each of its hazardous waste treatment, storage, or disposal facilities; (iii) each well where fluids from the facility are injected underground; and (iv) those wells, springs, other surface water bodies, and drinking water wells listed in public records or otherwise known to the permit applicant in the map area; and
8. A brief description of the nature of the business.

G. Variance requests. A discharger which is not a publicly owned treatment works (POTW) may request a variance from otherwise applicable effluent limitations under any of the following statutory or regulatory provisions within the times specified in this subsection:

1. Fundamentally different factors.
  - a. A request for a variance based on the presence of fundamentally different factors from those on which the effluent limitations guideline was based shall be filed as follows:
    - (1) For a request from best practicable control technology currently available (BPT), by the close of the public comment period for the draft permit; or
    - (2) For a request from best available technology economically achievable (BAT) and/or best conventional pollutant control technology (BCT), by no later than 180 days after the date on

which an effluent limitation guideline is published in the Federal Register for a request based on an effluent limitation guideline promulgated on or after February 4, 1987.

b. The request shall explain how the requirements of the applicable regulatory or statutory criteria have been met.

2. A request for a variance from the BAT requirements for CWA §301(b)(2)(F) pollutants (commonly called nonconventional pollutants) pursuant to §301(c) of the CWA because of the economic capability of the owner or operator, or pursuant to §301(g) of the CWA (provided, however, that a §301(g) variance may only be requested for ammonia, chlorine, color, iron, total phenols (when determined by the administrator to be a pollutant covered by §301(b)(2)(F) of the CWA) and any other pollutant that the administrator lists under §301(g)(4) of the CWA) must be made as follows:

a. For those requests for a variance from an effluent limitation based upon an effluent limitation guideline by:

(1) Submitting an initial request to the regional administrator, as well as to the department, stating the name of the discharger, the permit number, the outfall number(s), the applicable effluent guideline, and whether the discharger is requesting a §301(c) or §301(g) of the CWA modification, or both. This request must have been filed not later than 270 days after promulgation of an applicable effluent limitation guideline; and

(2) Submitting a completed request no later than the close of the public comment period for the draft permit demonstrating that: (i) all reasonable ascertainable issues have been raised and all reasonably available arguments and materials supporting their position have been submitted; and (ii) that the applicable requirements of 40 CFR Part 125 (2000) have been met. Notwithstanding this provision, the complete application for a request under §301(g) of the CWA shall be filed 180 days before EPA must make a decision (unless the Regional Administrator establishes a shorter or longer period); or

b. For those requests for a variance from effluent limitations not based on effluent limitation guidelines, the request need only comply with subdivision 2 a (2) of this subsection and need not be preceded by an initial request under subdivision 2 a (1) of this subsection.

3. A modification under §302(b)(2) of the CWA of requirements under §302(a) of the CWA for achieving water quality related effluent limitations may be requested no later than the close of the public comment period for the draft permit on the permit from which the modification is sought.

4. A variance for alternate effluent limitations for the thermal component of any discharge must be filed with a timely application for a permit under this section, except that if thermal effluent limitations are established on a case-by-case basis or are based on water quality standards the request for a variance may be filed by the close of the public comment period for the draft permit. A copy of the request shall be sent simultaneously to the department.

#### H. Expedited variance procedures and time extensions.

1. Notwithstanding the time requirements in subsection G of this section, the board may notify a permit applicant before a draft permit is issued that the draft permit will likely contain limitations which are eligible for variances. In the notice the board may require the permit applicant as a condition of consideration of any potential variance request to submit a request explaining how the requirements of 40 CFR Part 125 (2000) applicable to the variance have been met and may require its submission within a specified reasonable time after receipt of the notice. The notice

may be sent before the permit application has been submitted. The draft or final permit may contain the alternative limitations which may become effective upon final grant of the variance.

2. A discharger who cannot file a timely complete request required under subdivisions G 2 a (2) or G 2 b of this section may request an extension. The extension may be granted or denied at the discretion of the board. Extensions shall be no more than six months in duration.

I. Recordkeeping. Permit applicants shall keep records of all data used to complete permit applications and any supplemental information submitted under this section for a period of at least three years from the date the application is signed.

#### **4VAC50-60-370. Signatories to permit applications and reports.**

A. All permit applications shall be signed as follows:

1. For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means: (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy-making or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions that govern the operation of the regulated facility, including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;
2. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or
3. For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a federal agency includes (i) the chief executive officer of the agency, or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

B. All reports required by permits, and other information requested by the board shall be signed by a person described in subsection A of this section, or by a duly authorized representative of that person. A person is a duly authorized representative only if:

1. The authorization is made in writing by a person described in subsection A of this section;
2. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. A duly authorized representative may thus be either a named individual or any individual occupying a named position; and
3. The written authorization is submitted to the department.

C. If an authorization under subsection B of this section is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new

authorization satisfying the requirements of subsection B of this section must be submitted to the department prior to or together with any reports, or information to be signed by an authorized representative.

D. Any person signing a document under subsection A or B of this section shall make the following certification:

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

#### **4VAC50-60-380. Stormwater discharges.**

A. Permit requirements.

1. Prior to October 1, 1994, discharges composed entirely of stormwater shall not be required to obtain a VSMP permit except:

- a. A discharge with respect to which a permit has been issued prior to February 4, 1987;
- b. A stormwater discharge associated with large construction activity;
- c. A discharge from a large municipal separate storm sewer system;
- d. A discharge from a medium municipal separate storm sewer system; or
- e. A discharge that either the board or the regional administrator determines to contribute

to a violation of a water quality standard or is a significant contributor of pollutants to surface waters. This designation may include a discharge from any conveyance or system of conveyances used for collecting and conveying stormwater runoff or a system of discharges from municipal separate storm sewers, except for those discharges from conveyances that do not require a permit under subdivision 2 of this subsection or agricultural stormwater runoff that is exempted from the definition of point source.

The board may designate discharges from municipal separate storm sewers on a system-wide or jurisdiction-wide basis. In making this determination the board may consider the following factors:

- (1) The location of the discharge with respect to surface waters;
- (2) The size of the discharge;
- (3) The quantity and nature of the pollutants discharged to surface waters; and
- (4) Other relevant factors.

2. The board may not require a permit for discharges of stormwater runoff from mining operations or oil and gas exploration, production, processing or treatment operations, or transmission facilities, composed entirely of flows that are from conveyances or systems of conveyances (including but not limited to pipes, conduits, ditches, and channels) used for collecting and conveying precipitation runoff and that are not contaminated by contact with or that has not come into contact with, any overburden, raw material, intermediate products, finished product, by-product or waste products located on the site of such operations.

3. a. Permits must be obtained for all discharges from large and medium municipal separate storm sewer systems.

b. The board may either issue one system-wide permit covering all discharges from municipal separate storm sewers within a large or medium municipal storm sewer system or issue distinct permits for appropriate categories of discharges within a large or medium municipal separate storm sewer system including, but not limited to: all discharges owned or operated by the same municipality; located within the same jurisdiction; all discharges within a system that discharge to the same watershed; discharges within a system that are similar in nature; or for individual discharges from municipal separate storm sewers within the system.

c. The operator of a discharge from a municipal separate storm sewer that is part of a large or medium municipal separate storm sewer system must either:

(1) Participate in a permit application (to be a permittee or a co-permittee) with one or more other operators of discharges from the large or medium municipal storm sewer system that covers all, or a portion of all, discharges from the municipal separate storm sewer system;

(2) Submit a distinct permit application that only covers discharges from the municipal separate storm sewers for which the operator is responsible; or

(3) A regional authority may be responsible for submitting a permit application under the following guidelines:

(a) The regional authority together with permit co-applicants shall have authority over a stormwater management program that is in existence, or shall be in existence at the time Part 1 of the application is due;

(b) The permit applicant or co-applicants shall establish their ability to make a timely submission of Part 1 and Part 2 of the municipal application;

(c) Each of the operators of municipal separate storm sewers within large or medium municipal separate storm sewer systems, that are under the purview of the designated regional authority, shall comply with the application requirements of subsection C of this section.

d. One permit application may be submitted for all or a portion of all municipal separate storm sewers within adjacent or interconnected large or medium municipal separate storm sewer systems. The board may issue one system-wide permit covering all, or a portion of all municipal separate storm sewers in adjacent or interconnected large or medium municipal separate storm sewer systems.

e. Permits for all or a portion of all discharges from large or medium municipal separate storm sewer systems that are issued on a system-wide, jurisdiction-wide, watershed or other basis may specify different conditions relating to different discharges covered by the permit, including different management programs for different drainage areas that contribute stormwater to the system.

f. Co-permittees need only comply with permit conditions relating to discharges from the municipal separate storm sewers for which they are operators.

4. In addition to meeting the requirements of subsection B of this section, an operator of a stormwater discharge associated with a large construction activity that discharges through a large or medium municipal separate storm sewer system shall submit to the operator of the municipal separate storm sewer system receiving the discharge no later than May 15, 1991, or 180 days prior to commencing such discharge: the name of the facility; a contact person and phone number; the location of the discharge; a description, including Standard Industrial Classification, that best reflects the principal products or services provided by each facility; and any existing VSMP permit number.

5. The board may issue permits for municipal separate storm sewers that are designated under subdivision A 1 e of this section on a system-wide basis, jurisdiction-wide basis, watershed basis or other appropriate basis, or may issue permits for individual discharges.

6. Conveyances that discharge stormwater runoff combined with municipal sewage are point sources that must obtain VPDES permits in accordance with the procedures of 4VAC50-60-360 and are not subject to the provisions of this section.

7. Whether a discharge from a municipal separate storm sewer is or is not subject to regulation under this subsection shall have no bearing on whether the owner or operator of the discharge is eligible for funding under Title II, Title III or Title VI of the CWA.

8. a. On and after October 1, 1994, for discharges composed entirely of stormwater, that are not required by subdivision 1 of this subsection to obtain a permit, operators shall be required to obtain a VSMP permit only if:

(1) The discharge is from a small MS4 required to be regulated pursuant to 4VAC50-60-400 B;

(2) The discharge is a stormwater discharge associated with small construction activity as defined in 4VAC50-60-10;

(3) The board or the EPA regional administrator determines that stormwater controls are needed for the discharge based on wasteload allocations that are part of "total maximum daily loads" (TMDLs) that address the pollutant(s) of concern; or

(4) The board or the EPA regional administrator determines that the discharge, or category of discharges within a geographic area, contributes to a violation of a water quality standard or is a significant contributor of pollutants to surface waters.

b. Operators of small MS4s designated pursuant to subdivisions 8 a (1), (3), and (4) of this subsection shall seek coverage under a VSMP permit in accordance with 4VAC50-60-400 C through E. Operators of nonmunicipal sources designated pursuant to subdivisions 8 a (2), (3), and (4) of this subsection shall seek coverage under a VSMP permit in accordance with subdivision B 1 of this section.

c. Operators of stormwater discharges designated pursuant to subdivisions 8 a (3) and (4) of this subsection shall apply to the board for a permit within 180 days of receipt of notice, unless permission for a later date is granted by the board.

B. Application requirements for stormwater discharges associated with large and small construction activity.

1. Dischargers of stormwater associated with large and small construction activity are required to apply for an individual permit or seek coverage under a promulgated stormwater general permit. Facilities that are required to obtain an individual permit, or any discharge of stormwater that the board is evaluating for designation under subdivision A 1 e of this section and is not a municipal separate storm sewer, shall submit a VSMP application in accordance with the requirements of 4VAC50-60-360 as modified and supplemented by the provisions of this subsection.

a. The operator of an existing or new stormwater discharge that is associated with a large or small construction activity shall provide a narrative description of:

(1) The location (including a map) and the nature of the construction activity;

(2) The total area of the site and the area of the site that is expected to undergo excavation during the life of the permit;

(3) Proposed measures, including best management practices, to control pollutants

in stormwater discharges during construction, including a brief description of applicable state and local erosion and sediment control requirements;

(4) Proposed measures to control pollutants in stormwater discharges that will occur after construction operations have been completed, including a brief description of applicable state or local erosion and sediment control requirements;

(5) An estimate of the runoff coefficient of the site and the increase in impervious area after the construction addressed in the permit application is completed, the nature of fill material and existing data describing the soil or the quality of the discharge; and

(6) The name of the receiving water.

(7) Location of Chesapeake Bay Preservation Areas.

b. Permit applicants shall provide such other information the board may reasonably require to determine whether to issue a permit.

C. Application requirements for large and medium municipal separate storm sewer discharges. The operator of a discharge from a large or medium municipal separate storm sewer or a municipal separate storm sewer that is designated by the board under subdivision A 1 e of this section, may submit a jurisdiction-wide or system-wide permit application. Where more than one public entity owns or operates a municipal separate storm sewer within a geographic area (including adjacent or interconnected municipal separate storm sewer systems), such operators may be a permit coapplicant to the same application. Permit applications for discharges from large and medium municipal storm sewers or municipal storm sewers designated under subdivision A 1 e of this section shall include;

1. Part 1 of the application shall consist of:

a. The permit applicants' name, address, telephone number of contact person, ownership status, and status as a state or local government entity;

b. A description of existing legal authority to control discharges to the municipal separate storm sewer system. When existing legal authority is not sufficient to meet the criteria provided in subdivision 2 a of this subsection, the description shall list additional authorities as will be necessary to meet the criteria and shall include a schedule and commitment to seek such additional authority that will be needed to meet the criteria;

c. Source identification.

(1) A description of the historic use of ordinances, guidance or other controls that limited the discharge of nonstormwater discharges to any publicly owned treatment works serving the same area as the municipal separate storm sewer system.

(2) A USGS 7.5 minute topographic map (or equivalent topographic map with a scale between 1:10,000 and 1:24,000, if cost effective) extending one mile beyond the service boundaries of the municipal storm sewer system covered by the permit application. The following information shall be provided:

(a) The location of known municipal storm sewer system outfalls discharging to surface waters;

(b) A description of the land use activities (e.g., divisions indicating undeveloped, residential, commercial, agricultural, and industrial uses) accompanied with estimates of population densities and projected growth for a 10-year period within the drainage area served by the separate storm sewer. For each land use type, an estimate of an average runoff coefficient shall be provided;

(c) The location and a description of the activities of the facility of each currently operating or closed municipal landfill or other treatment, storage or disposal facility for municipal waste;

(d) The location and the permit number of any known discharge to the municipal storm sewer that has been issued a VSMP permit;

(e) The location of major structural controls for stormwater discharge (retention basins, detention basins, major infiltration devices, etc.); and

(f) The identification of publicly owned parks, recreational areas, and other open lands;

d. Discharge characterization.

(1) Monthly mean rain and snow fall estimates (or summary of weather bureau data) and the monthly average number of storm events.

(2) Existing quantitative data describing the volume and quality of discharges from the municipal storm sewer, including a description of the outfalls sampled, sampling procedures and analytical methods used.

(3) A list of water bodies that receive discharges from the municipal separate storm sewer system, including downstream segments, lakes and estuaries, where pollutants from the system discharges may accumulate and cause water degradation and a brief description of known water quality impacts. At a minimum, the description of impacts shall include a description of whether the water bodies receiving such discharges have been:

(a) Assessed and reported in §305(b) of the CWA reports submitted by the state, the basis for the assessment (evaluated or monitored), a summary of designated use support and attainment of the State Water Control Law and the CWA goals (fishable and swimmable waters), and causes of nonsupport of designated uses;

(b) Listed under §§304(l)(1)(A)(i), 304(l)(1)(A)(ii), or §304(l)(1)(B) of the CWA that is not expected to meet water quality standards or water quality goals;

(c) Listed in State Nonpoint Source Assessments required by §319(a) of the CWA that, without additional action to control nonpoint sources of pollution, cannot reasonably be expected to attain or maintain water quality standards due to storm sewers, construction, highway maintenance and runoff from municipal landfills and municipal sludge adding significant pollution (or contributing to a violation of water quality standards);

(d) Identified and classified according to eutrophic condition of publicly owned lakes listed in state reports required under §314(a) of the CWA (include the following: A description of those publicly owned lakes for which uses are known to be impaired; a description of procedures, processes and methods to control the discharge of pollutants from municipal separate storm sewers into such lakes; and a description of methods and procedures to restore the quality of such lakes);

(e) Areas of concern of the Great Lakes identified by the International Joint Commission;

(f) Designated estuaries under the National Estuary Program under §320 of the CWA;

(g) Recognized by the permit applicant as highly valued or sensitive waters;

(h) Defined by the state or U.S. Fish and Wildlife Service's National Wetlands Inventory as wetlands; and

(i) Found to have pollutants in bottom sediments, fish tissue or biosurvey data.

(4) Results of a field screening analysis for illicit connections and illegal dumping for either selected field screening points or major outfalls covered in the permit application. At a minimum, a screening analysis shall include a narrative description, for either each field screening point or major outfall, of visual observations made during dry weather periods. If any flow is observed, two grab samples shall be collected during a 24-hour period with a minimum period of four hours between samples. For all such samples, a narrative description of the color, odor, turbidity, the presence of an oil sheen or surface scum as well as any other relevant observations regarding the potential presence of nonstormwater discharges or illegal dumping shall be provided. In addition, a narrative description of the results of a field analysis using suitable methods to estimate pH, total chlorine, total copper, total phenol, and detergents (or surfactants) shall be provided along with a description of the flow rate. Where the field analysis does not involve analytical methods approved under 40 CFR Part 136 (2000), the permit applicant shall provide a description of the method used including the name of the manufacturer of the test method along with the range and accuracy of the test. Field screening points shall be either major outfalls or other outfall points (or any other point of access such as manholes) randomly located throughout the storm sewer system by placing a grid over a drainage system map and identifying those cells of the grid which contain a segment of the storm sewer system or major outfall. The field screening points shall be established using the following guidelines and criteria:

(a) A grid system consisting of perpendicular north-south and east-west lines spaced 1/4 mile apart shall be overlaid on a map of the municipal storm sewer system, creating a series of cells;

(b) All cells that contain a segment of the storm sewer system shall be identified; one field screening point shall be selected in each cell; major outfalls may be used as field screening points;

(c) Field screening points should be located downstream of any sources of suspected illegal or illicit activity;

(d) Field screening points shall be located to the degree practicable at the farthest manhole or other accessible location downstream in the system, within each cell; however, safety of personnel and accessibility of the location should be considered in making this determination;

(e) Hydrological conditions; total drainage area of the site; population density of the site; traffic density; age of the structures or buildings in the area; history of the area; and land use types;

(f) For medium municipal separate storm sewer systems, no more than 250 cells need to have identified field screening points; in large municipal separate storm sewer systems, no more than 500 cells need to have identified field screening points; cells established by the grid that contain no storm sewer segments will be eliminated from consideration; if fewer than 250 cells in medium municipal sewers are created, and fewer than 500 in large systems are created by the overlay on the municipal sewer map, then all those cells which contain a segment of the sewer system shall be subject to field screening (unless access to the separate storm sewer system is impossible); and

(g) Large or medium municipal separate storm sewer systems which are unable to utilize the procedures described in subdivisions 1 d (4) (a) through (f) of this subsection, because a sufficiently detailed map of the separate storm sewer systems is unavailable, shall field screen no more than 500 or 250 major outfalls respectively (or all major

outfalls in the system, if less); in such circumstances, the permit applicant shall establish a grid system consisting of north-south and east-west lines spaced 1/4 mile apart as an overlay to the boundaries of the municipal storm sewer system, thereby creating a series of cells; the permit applicant will then select major outfalls in as many cells as possible until at least 500 major outfalls (large municipalities) or 250 major outfalls (medium municipalities) are selected; a field screening analysis shall be undertaken at these major outfalls.

(5) Information and a proposed program to meet the requirements of subdivision 2 c of this subsection. Such description shall include: the location of outfalls or field screening points appropriate for representative data collection under subdivision 2 c (1) of this subsection, a description of why the outfall or field screening point is representative, the seasons during which sampling is intended, and a description of the sampling equipment. The proposed location of outfalls or field screening points for such sampling should reflect water quality concerns (see subdivision 1 d (3) of this subsection) to the extent practicable;

e. Management programs.

(1) A description of the existing management programs to control pollutants from the municipal separate storm sewer system. The description shall provide information on existing structural and source controls, including operation and maintenance measures for structural controls, that are currently being implemented. Such controls may include, but are not limited to, procedures to control pollution resulting from construction activities, floodplain management controls, wetland protection measures, best management practices for new subdivisions; and emergency spill response programs. The description may address controls established under state law as well as local requirements.

(2) A description of the existing program to identify illicit connections to the municipal storm sewer system. The description should include inspection procedures and methods for detecting and preventing illicit discharges, and describe areas where this program has been implemented; and

f. Fiscal resources. A description of the financial resources currently available to the municipality to complete Part 2 of the permit application. A description of the municipality's budget for existing stormwater programs, including an overview of the municipality's financial resources and budget, including overall indebtedness and assets, and sources of funds for stormwater programs.

2. Part 2 of the application shall consist of:

a. A demonstration that the permit applicant can operate pursuant to legal authority established by statute, ordinance or series of contracts that authorizes or enables the permit applicant at a minimum to:

(1) Control through ordinance, permit, contract, order or similar means, the contribution of pollutants to the municipal storm sewer by stormwater discharges associated with industrial activity and the quality of stormwater discharged from sites of industrial activity;

(2) Prohibit through ordinance, order or similar means, illicit discharges to the municipal separate storm sewer;

(3) Control through ordinance, order or similar means the discharge to a municipal separate storm sewer of spills, dumping or disposal of materials other than stormwater;

(4) Control through interagency agreements among permit coapplicants the

contribution of pollutants from one portion of the municipal system to another portion of the municipal system;

(5) Require compliance with conditions in ordinances, permits, contracts or orders; and

(6) Carry out all inspection, surveillance and monitoring procedures necessary to determine compliance and noncompliance with permit conditions including the prohibition on illicit discharges to the municipal separate storm sewer;

b. The location of any major outfall that discharges to surface waters that was not reported under subdivision 1 c (2) (a) of this subsection. Provide an inventory, organized by watershed of the name and address, and a description (such as SIC codes) that best reflects the principal products or services provided by each facility that may discharge, to the municipal separate storm sewer, stormwater associated with industrial activity;

c. When quantitative data for a pollutant are required under subdivision 2 c (1) (c) of this subsection, the permit applicant must collect a sample of effluent in accordance with 4VAC50-60-390 and analyze it for the pollutant in accordance with analytical methods approved under 40 CFR Part 136 (2000). When no analytical method is approved the permit applicant may use any suitable method but must provide a description of the method. The permit applicant must provide information characterizing the quality and quantity of discharges covered in the permit application, including:

(1) Quantitative data from representative outfalls designated by the board (based on information received in Part 1 of the application, the board shall designate between five and 10 outfalls or field screening points as representative of the commercial, residential and industrial land use activities of the drainage area contributing to the system or, where there are less than five outfalls) covered in the application, the board shall designate all outfalls developed as follows:

(a) For each outfall or field screening point designated under this subsection, samples shall be collected of stormwater discharges from three storm events occurring at least one month apart in accordance with the requirements at 4VAC50-60-390 (the board may allow exemptions to sampling three storm events when climatic conditions create good cause for such exemptions);

(b) A narrative description shall be provided of the date and duration of the storm event or events sampled, rainfall estimates of the storm event which generated the sampled discharge and the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event;

(c) For samples collected and described under subdivisions 2 c (1) (a) and (1) (b) of this subsection, quantitative data shall be provided for: the organic pollutants listed in Table II; the pollutants listed in Table III (toxic metals, cyanide, and total phenols) of 40 CFR Part 122 Appendix D (2000), and for the following pollutants:

Total suspended solids (TSS)

Total dissolved solids (TDS)

COD

BOD<sub>5</sub>

Oil and grease

Fecal coliform

Fecal streptococcus  
pH  
Total Kjeldahl nitrogen  
Nitrate plus nitrite  
Dissolved phosphorus  
Total ammonia plus organic nitrogen  
Total phosphorus

(d) Additional limited quantitative data required by the board for determining permit conditions (the board may require that quantitative data shall be provided for additional parameters, and may establish sampling conditions such as the location, season of sample collection, form of precipitation (snow melt, rainfall) and other parameters necessary to ensure representativeness);

(2) Estimates of the annual pollutant load of the cumulative discharges to surface waters from all identified municipal outfalls and the event mean concentration of the cumulative discharges to surface waters from all identified municipal outfalls during a storm event (as described under 4VAC50-60-390) for BOD<sub>5</sub>, COD, TSS, dissolved solids, total nitrogen, total ammonia plus organic nitrogen, total phosphorus, dissolved phosphorus, cadmium, copper, lead, and zinc. Estimates shall be accompanied by a description of the procedures for estimating constituent loads and concentrations, including any modeling, data analysis, and calculation methods;

(3) A proposed schedule to provide estimates for each major outfall identified in either subdivision 2 b or 1 c (2) (a) of this subsection of the seasonal pollutant load and of the event mean concentration of a representative storm for any constituent detected in any sample required under subdivision 2 c (1) of this subsection; and

(4) A proposed monitoring program for representative data collection for the term of the permit that describes the location of outfalls or field screening points to be sampled (or the location of instream stations), why the location is representative, the frequency of sampling, parameters to be sampled, and a description of sampling equipment;

d. A proposed management program that covers the duration of the permit. It shall include a comprehensive planning process that involves public participation and, where necessary, intergovernmental coordination to reduce the discharge of pollutants to the maximum extent practicable using management practices, control techniques and system, design and engineering methods, and such other provisions that are appropriate. The program shall also include a description of staff and equipment available to implement the program. Separate proposed programs may be submitted by each permit coapplicant. Proposed programs may impose controls on a system wide basis, a watershed basis, a jurisdiction basis, or on individual outfalls. Proposed programs will be considered by the board when developing permit conditions to reduce pollutants in discharges to the maximum extent practicable. Proposed management programs shall describe priorities for implementing controls. Such programs shall be based on:

(1) A description of structural and source control measures to reduce pollutants from runoff from commercial and residential areas that are discharged from the municipal storm sewer system that are to be implemented during the life of the permit, accompanied with an estimate of the expected reduction of pollutant loads and a proposed schedule for implementing such controls. At a minimum, the description shall include:

(a) A description of maintenance activities and a maintenance schedule for structural controls to reduce pollutants (including floatables) in discharges from municipal separate storm sewers;

(b) A description of planning procedures including a comprehensive master plan to develop, implement and enforce controls to reduce the discharge of pollutants from municipal separate storm sewers which receive discharges from areas of new development and significant redevelopment. Such plan shall address controls to reduce pollutants in discharges from municipal separate storm sewers after construction is completed. Controls to reduce pollutants in discharges from municipal separate storm sewers containing construction site runoff are addressed in subdivision 2 d (4) of this subsection;

(c) A description of practices for operating and maintaining public streets, roads and highways and procedures for reducing the impact on receiving waters of discharges from municipal storm sewer systems, including pollutants discharged as a result of deicing activities;

(d) A description of procedures to assure that flood management projects assess the impacts on the water quality of receiving water bodies and that existing structural flood control devices have been evaluated to determine if retrofitting the device to provide additional pollutant removal from stormwater is feasible;

(e) A description of a program to monitor pollutants in runoff from operating or closed municipal landfills or other treatment, storage or disposal facilities for municipal waste, which shall identify priorities and procedures for inspections and establishing and implementing control measures for such discharges (this program can be coordinated with the program developed under subdivision 2 d (3) of this subsection); and

(f) A description of a program to reduce to the maximum extent practicable, pollutants in discharges from municipal separate storm sewers associated with the application of pesticides, herbicides and fertilizer that will include, as appropriate, controls such as educational activities, permits, certifications and other measures for commercial applicators and distributors, and controls for application in public right-of-ways and at municipal facilities;

(2) A description of a program, including a schedule, to detect and remove (or require the discharger to the municipal separate storm sewer to obtain a separate VSMP permit for) illicit discharges and improper disposal into the storm sewer. The proposed program shall include:

(a) A description of a program, including inspections, to implement and enforce an ordinance, orders or similar means to prevent illicit discharges to the municipal separate storm sewer system; this program description shall address all types of illicit discharges, however the following category of nonstormwater discharges or flows shall be addressed where such discharges are identified by the municipality as sources of pollutants to surface waters: water line flushing, landscape irrigation, diverted stream flows, rising groundwaters, uncontaminated groundwater infiltration to separate storm sewers, uncontaminated pumped groundwater, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows

from riparian habitats and wetlands, dechlorinated swimming pool discharges, and street wash water (program descriptions shall address discharges or flows from fire fighting only where such discharges or flows are identified as significant sources of pollutants to surface waters);

(b) A description of procedures to conduct on-going field screening activities during the life of the permit, including areas or locations that will be evaluated by such field screens;

(c) A description of procedures to be followed to investigate portions of the separate storm sewer system that, based on the results of the field screen, or other appropriate information, indicate a reasonable potential of containing illicit discharges or other sources of nonstormwater (such procedures may include: sampling procedures for constituents such as fecal coliform, fecal streptococcus, surfactants (Methylene Blue Active Substances—MBAS), residual chlorine, fluorides and potassium; testing with fluorometric dyes; or conducting in storm sewer inspections where safety and other considerations allow. Such description shall include the location of storm sewers that have been identified for such evaluation);

(d) A description of procedures to prevent, contain, and respond to spills that may discharge into the municipal separate storm sewer;

(e) A description of a program to promote, publicize, and facilitate public reporting of the presence of illicit discharges or water quality impacts associated with discharges from municipal separate storm sewers;

(f) A description of educational activities, public information activities, and other appropriate activities to facilitate the proper management and disposal of used oil and toxic materials; and

(g) A description of controls to limit infiltration of seepage from municipal sanitary sewers to municipal separate storm sewer systems where necessary;

(3) A description of a program to monitor and control pollutants in stormwater discharges to municipal systems from municipal landfills, hazardous waste treatment, disposal and recovery facilities, industrial facilities that are subject to §313 of Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA, 42 USC §11023), and industrial facilities that the municipal permit applicant determines are contributing a substantial pollutant loading to the municipal storm sewer system. The program shall:

(a) Identify priorities and procedures for inspections and establishing and implementing control measures for such discharges;

(b) Describe a monitoring program for stormwater discharges associated with the industrial facilities identified in subdivision 2 d (3) of this subsection, to be implemented during the term of the permit, including the submission of quantitative data on the following constituents: any pollutants limited in effluent guidelines subcategories, where applicable; any pollutant listed in an existing VPDES permit for a facility; oil and grease, COD, pH, BOD<sub>5</sub>, TSS, total phosphorus, total Kjeldahl nitrogen, nitrate plus nitrite nitrogen, and any information on discharges required under 4VAC50-60-390 F and G; and

(4) A description of a program to implement and maintain structural and

nonstructural best management practices to reduce pollutants in stormwater runoff from construction sites to the municipal storm sewer system, which shall include:

(a) A description of procedures for site planning that incorporate consideration of potential water quality impacts;

(b) A description of requirements for nonstructural and structural best management practices;

(c) A description of procedures for identifying priorities for inspecting sites and enforcing control measures that consider the nature of the construction activity, topography, and the characteristics of soils and receiving water quality; and

(d) A description of appropriate educational and training measures for construction site operators;

e. Estimated reductions in loadings of pollutants from discharges of municipal storm sewer constituents from municipal storm sewer systems expected as the result of the municipal stormwater quality management program. The assessment shall also identify known impacts of stormwater controls on groundwater;

f. For each fiscal year to be covered by the permit, a fiscal analysis of the necessary capital and operation and maintenance expenditures necessary to accomplish the activities of the programs under subdivisions 2 c and d of this subsection. Such analysis shall include a description of the source of funds that are proposed to meet the necessary expenditures, including legal restrictions on the use of such funds;

g. Where more than one legal entity submits an application, the application shall contain a description of the roles and responsibilities of each legal entity and procedures to ensure effective coordination; and

h. Where requirements under subdivisions 1 d (5), 2 b, 2 c (2), and 2 d of this subsection are not practicable or are not applicable, the board may exclude any operator of a discharge from a municipal separate storm sewer that is designated under subdivision A 1 e of this section, or that is located in the counties listed in 40 CFR Part 122 Appendix H or Appendix I (2000) (except municipal separate storm sewers that are located in the incorporated places, townships or towns within such counties) from such requirements. The board shall not exclude the operator of a discharge from a municipal separate storm sewer identified in 40 CFR Part 122 Appendix F, G, H or I (2000) from any of the permit application requirements under this subdivision except where authorized under this subsection.

#### D. Petitions.

1. Any operator of a municipal separate storm sewer system may petition the appropriate authority, the Virginia Soil and Water Conservation Board or the State Water Control Board, to require a separate permit for any discharge into the municipal separate storm sewer system.

2. Any person may petition the board to require a VSMP permit for a discharge which is composed entirely of stormwater which contributes to a violation of a water quality standard or is a significant contributor of pollutants to surface waters.

3. Any person may petition the board for the designation of a large, medium or small municipal separate storm sewer system as defined by this chapter.

4. The board shall make a final determination on any petition received under this section within 90 days after receiving the petition with the exception of petitions to designate a small MS4, in

which case the board shall make a final determination on the petition within 180 days after its receipt.

#### **4VAC50-60-390. Effluent sampling procedures.**

VSMP permit applicants for discharges from large and small municipal storm sewers or municipal storm sewers designated under 4VAC50-60-380 A 1 e shall provide the following information to the department, using application forms provided by the department.

A. Information on stormwater discharges that is to be provided as specified in 4VAC50-60-380. When quantitative data for a pollutant are required, the permit applicant must collect a sample of effluent and analyze it for the pollutant in accordance with analytical methods approved under 40 CFR Part 136 (2000). When no analytical method is approved the permit applicant may use any suitable method but must provide a description of the method. When an a permit applicant has two or more outfalls with substantially identical effluents, the board may allow the permit applicant to test only one outfall and report that the quantitative data also apply to the substantially identical outfalls. The requirements in e and f of this subdivision that an a permit applicant must provide quantitative data for certain pollutants known or believed to be present do not apply to pollutants present in a discharge solely as the result of their presence in intake water; however, an applicant must report such pollutants as present. Grab samples must be used for pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, fecal coliform, and fecal streptococcus. For all other pollutants, 24-hour composite samples must be used. However, a minimum of one grab sample may be taken for effluents from holding ponds or other impoundments with a retention period greater than 24 hours. In addition, for discharges other than stormwater discharges, the board may waive composite sampling for any outfall for which the permit applicant demonstrates that the use of an automatic sampler is infeasible and that the minimum of four grab samples will be a representative sample of the effluent being discharged.

B. For stormwater discharges, all samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inch and at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. Where feasible, the variance in the duration of the event and the total rainfall of the event should not exceed 50% from the average or median rainfall event in that area. For all permit applicants, a flow-weighted composite shall be taken for either the entire discharge or for the first three hours of the discharge. The flow-weighted composite sample for a stormwater discharge may be taken with a continuous sampler or as a combination of a minimum of three sample aliquots taken in each hour of discharge for the entire discharge or for the first three hours of the discharge, with each aliquot being separated by a minimum period of 15 minutes. However, a minimum of one grab sample may be taken for stormwater discharges from holding ponds or other impoundments with a retention period greater than 24 hours. For a flow-weighted composite sample, only one analysis of the composite of aliquots is required. For stormwater discharge samples taken from discharges associated with industrial activities, quantitative data must be reported for the grab sample taken during the first 30 minutes (or as soon thereafter as practicable) of the discharge for all pollutants specified in 4VAC50-60-380 C 1. For all stormwater permit applicants taking flow-weighted composites, quantitative data must be reported for all pollutants specified in 4VAC50-60-380 except pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, fecal coliform, and fecal

streptococcus. The board may allow or establish appropriate site-specific sampling procedures or requirements, including sampling locations, the season in which the sampling takes place, the minimum duration between the previous measurable storm event and the storm event sampled, the minimum or maximum level of precipitation required for an appropriate storm event, the form of precipitation sampled (snow melt or rain fall), protocols for collecting samples under 40 CFR Part 136 (2000), and additional time for submitting data on a case-by-case basis. A permit applicant is expected to know or have reason to believe that a pollutant is present in an effluent based on an evaluation of the expected use, production, or storage of the pollutant, or on any previous analyses for the pollutant. (For example, any pesticide manufactured by a facility may be expected to be present in contaminated stormwater runoff from the facility.)

C. Every permit applicant must report quantitative data for every outfall for the following pollutants:

Biochemical oxygen demand (BOD<sub>5</sub>)

Chemical oxygen demand

Total organic carbon

Total suspended solids

Ammonia (as N)

Temperature (both winter and summer)

pH

D. The board may waive the reporting requirements for individual point sources or for a particular industry category for one or more of the pollutants listed in subsection C of this section if the permit applicant has demonstrated that such a waiver is appropriate because information adequate to support issuance of a permit can be obtained with less stringent requirements.

E. Each permit applicant with processes in one or more primary industry category (see 40 CFR Part 122 Appendix A (2000)) contributing to a discharge must report quantitative data for the following pollutants in each outfall containing process wastewater:

1. The organic toxic pollutants in the fractions designated in Table I of 40 CFR Part 122 Appendix D (2000) for the permit applicant's industrial category or categories unless the permit applicant qualifies as a small business under subdivision 8 of this subsection. Table II of 40 CFR Part 122 Appendix D (2000) lists the organic toxic pollutants in each fraction. The fractions result from the sample preparation required by the analytical procedure that uses gas chromatography/mass spectrometry. A determination that a permit applicant falls within a particular industrial category for the purposes of selecting fractions for testing is not conclusive as to the permit applicant's inclusion in that category for any other purposes; and
2. The pollutants listed in Table III of 40 CFR Part 122 Appendix D (2000) (the toxic metals, cyanide, and total phenols).

F. 1. Each permit applicant must indicate whether it knows or has reason to believe that any of the pollutants in Table IV of 40 CFR Part 122 Appendix D (2000) (certain conventional and nonconventional pollutants) is discharged from each outfall. If an applicable effluent limitations guideline either directly limits the pollutant or, by its express terms, indirectly limits the pollutant through limitations on an indicator, the permit applicant must report quantitative data. For every pollutant discharged that is not so limited in an effluent limitations guideline, the permit

applicant must either report quantitative data or briefly describe the reasons the pollutant is expected to be discharged.

2. Each applicant must indicate whether it knows or has reason to believe that any of the pollutants listed in Table II or Table III of 40 CFR Part 122 Appendix D (2000) (the toxic pollutants and total phenols) for which quantitative data are not otherwise required under subdivision 7 e of this subsection, is discharged from each outfall. For every pollutant expected to be discharged in concentrations of 10 ppb or greater the permit applicant must report quantitative data. For acrolein, acrylonitrile, 2,4 dinitrophenol, and 2-methyl-4,6 dinitrophenol, where any of these four pollutants are expected to be discharged in concentrations of 100 ppb or greater the permit applicant must report quantitative data. For every pollutant expected to be discharged in concentrations less than 10 ppb, or in the case of acrolein, acrylonitrile, 2,4 dinitrophenol, and 2-methyl-4,6 dinitrophenol, in concentrations less than 100 ppb, the permit applicant must either submit quantitative data or briefly describe the reasons the pollutant is expected to be discharged. A permit applicant qualifying as a small business under subdivision 8 of this subsection is not required to analyze for pollutants listed in Table II of 40 CFR Part 122 Appendix D (2000) (the organic toxic pollutants).

G. Each permit applicant must indicate whether it knows or has reason to believe that any of the pollutants in Table V of 40 CFR Part 122 Appendix D (2000) (certain hazardous substances and asbestos) are discharged from each outfall. For every pollutant expected to be discharged, the permit applicant must briefly describe the reasons the pollutant is expected to be discharged, and report any quantitative data it has for any pollutant.

H. Each permit applicant must report qualitative data, generated using a screening procedure not calibrated with analytical standards, for 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD) if it:

1. Uses or manufactures 2,4,5-trichlorophenoxy acetic acid (2,4,5,-T); 2-(2,4,5-trichlorophenoxy) propanoic acid (Silvex, 2,4,5,-TP); 2-(2,4,5-trichlorophenoxy) ethyl, 2,2-dichloropropionate (Erbon); O,O-dimethyl O-(2,4,5-trichlorophenyl) phosphorothioate (Ronnel); 2,4,5-trichlorophenol (TCP); or hexachlorophene (HCP); or
2. Knows or has reason to believe that TCDD is or may be present in an effluent.

#### **4VAC50-60-400. Small municipal separate storm sewer systems.**

A. Objectives of the stormwater regulations for small MS4s.

1. Subsections A through G of this section are written in a "readable regulation" format that includes both rule requirements and guidance that is not legally binding. The recommended guidance is distinguished from the regulatory requirements by putting the guidance in a separate subdivision headed by the word "Note."

2. Under the statutory mandate in §402(p)(6) of the Clean Water Act, the purpose of this portion of the stormwater program is to designate additional sources that need to be regulated to protect water quality and to establish a comprehensive stormwater program to regulate these sources.

3. Stormwater runoff continues to harm the nation's waters. Runoff from lands modified by human activities can harm surface water resources in several ways including by changing natural hydrologic patterns and by elevating pollutant concentrations and loadings. Stormwater runoff may contain or mobilize high levels of contaminants, such as sediment, suspended solids, nutrients, heavy metals, pathogens, toxins, oxygen-demanding substances, and floatables.

4. The board strongly encourages partnerships and the watershed approach as the management framework for efficiently, effectively, and consistently protecting and restoring aquatic ecosystems and protecting public health.

B. As an operator of a small MS4, am I regulated under the VSMP stormwater program?

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

a. Your small MS4 is located in an urbanized area as determined by the latest decennial census by the Bureau of the Census (If your small MS4 is not located entirely within an urbanized area, only the portion that is within the urbanized area is regulated); or

b. You are designated by the board, including where the designation is pursuant to subdivisions C 3 a and b of this section or is based upon a petition under 4VAC50-60-380 D.

2. You may be the subject of a petition to the board to require a VSMP permit for your discharge of stormwater. If the board determines that you need a permit, you are required to comply with subsections C through E of this section.

3. The board may waive the requirements otherwise applicable to you if you meet the criteria of subdivision 4 or 5 of this subsection. If you receive a waiver under this section, you may subsequently be required to seek coverage under a VSMP permit in accordance with subdivision C 1 of this section if circumstances change. (See also subdivision E 2 of this section).

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

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

b. If you discharge any pollutants that have been identified as a cause of impairment of any water body to which you discharge, stormwater controls are not needed based on wasteload allocations that are part of an EPA approved or established "total maximum daily load" (TMDL) that addresses the pollutants of concern.

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

a. The board has evaluated all surface waters, including small streams, tributaries, lakes, and ponds, that receive a discharge from your MS4;

b. For all such waters, the board has determined that stormwater controls are not needed based on wasteload allocations that are part of an EPA approved or established TMDL that addresses the pollutants of concern or, if a TMDL has not been developed or approved, an equivalent analysis that determines sources and allocations for the pollutants of concern;

c. For the purpose of subdivision 5 of this subsection, the pollutants of concern include biochemical oxygen demand (BOD), sediment or a parameter that addresses sediment (such as total suspended solids, turbidity or siltation), pathogens, oil and grease, and any pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from your MS4; and

d. The board has determined that future discharges from your MS4 do not have the potential to result in exceedances of water quality standards, including impairment of designated uses, or other significant water quality impacts, including habitat and biological impacts.

C. If I am an operator of a regulated small MS4, how do I apply for a VSMP permit and when do I have to apply?

1. If you operate a regulated small MS4 under subsection B of this section, you must seek coverage under a VSMP permit issued by the board.

2. You must seek authorization to discharge under a general or individual VSMP permit, as follows:

a. If the board has issued a general permit applicable to your discharge and you are seeking coverage under the general permit, you must submit a registration statement that includes the information on your best management practices and measurable goals required by subdivision D 4 of this section. You may file your own registration statement, or you and other municipalities or governmental entities may jointly submit a registration statement. If you want to share responsibilities for meeting the minimum measures with other municipalities or governmental entities, you must submit a registration statement that describes which minimum measures you will implement and identify the entities that will implement the other minimum measures within the area served by your MS4. The general permit will explain any other steps necessary to obtain permit authorization.

b. (1) If you are seeking authorization to discharge under an individual permit and wish to implement a program under subsection D of this section, you must submit an application to the board that includes the information required under 4VAC50-60-360 F and subdivision D 4 of this section, an estimate of square mileage served by your small MS4, and any additional information that the board requests. A storm sewer map that satisfies the requirement of subdivision D 2 c (1) of this section will satisfy the map requirement in 4VAC50-60-360 F 7.

(2) If you are seeking authorization to discharge under an individual permit and wish to implement a program that is different from the program under subsection D of this section, you will need to comply with the permit application requirements of 4VAC50-60-380 C. You must submit both parts of the application requirements in 4VAC50-60-380 C 1 and 2 by March 10, 2003. You do not need to submit the information required by 4VAC50-60-380 C 1 b and C 2 regarding your legal authority, unless you intend for the permit writer to take such information into account when developing your other permit conditions.

(3) If allowed by the board, you and another regulated entity may jointly apply under either subdivision 2 b (1) or (2) of this subsection to be co-permittees under an individual permit.

c. If your small MS4 is in the same urbanized area as a medium or large MS4 with a VSMP stormwater permit and that other MS4 is willing to have you participate in its stormwater program, you and the other MS4 may jointly seek a modification of the other MS4 permit to include you as a limited co-permittee. As a limited co-permittee, you will be responsible for compliance with the permit's conditions applicable to your jurisdiction. If you choose this option you will need to comply with the permit application requirements of 4VAC50-60-380, rather than the requirements of subsection D of this section. You do not need to comply with the specific application requirements of 4VAC50-60-380 C 1 c and d and 4VAC50-60-380 C 2 c (discharge characterization). You may satisfy the requirements in 4VAC50-60-380 C 1 e and 2 d (identification of a management program) by referring to the other MS4's stormwater management program.

d. NOTE: In referencing an MS4's stormwater management program, you should briefly describe how the existing plan will address discharges from your small MS4 or would need to be supplemented in order to adequately address your discharges. You should also explain your role

in coordinating stormwater pollutant control activities in your MS4 and detail the resources available to you to accomplish the plan.

3. If you operate a regulated small MS4:

a. Designated under subdivision B 1 a of this section, you must apply for coverage under a VSMP permit or apply for a modification of an existing VSMP permit under subdivision 2 c of this subsection by March 10, 2003.

b. Designated under subdivision B 1 b of this section, you must apply for coverage under a VSMP permit or apply for a modification of an existing VPDES permit under subdivision 2 c of this subsection within 180 days of notice, unless the board grants a later date.

D. As an operator of a regulated small MS4, what will my VSMP MS4 stormwater permit require?

1. Your VSMP MS4 permit will require at a minimum that you develop, implement, and enforce a stormwater management program designed to reduce the discharge of pollutants from your MS4 to the maximum extent practicable (MEP), to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act, the Virginia Stormwater Management Act, and the State Water Control Law. Your stormwater management program must include the minimum control measures described in subdivision 2 of this subsection unless you apply for a permit under 4VAC50-60-380 C. For purposes of this section, narrative effluent limitations requiring implementation of best management practices (BMPs) are generally the most appropriate form of effluent limitations when designed to satisfy technology requirements (including reductions of pollutants to the maximum extent practicable) and to protect water quality. Implementation of best management practices consistent with the provisions of the stormwater management program required pursuant to this section and the provisions of the permit required pursuant to subsection C of this section constitutes compliance with the standard of reducing pollutants to the maximum extent practicable. The board will specify a time period of up to five years from the date of permit issuance for you to develop and implement your program.

2. Minimum control measures.

a. Public education and outreach on stormwater impacts.

(1) You must implement a public education program to distribute educational materials to the community or conduct equivalent outreach activities about the impacts of stormwater discharges on water bodies and the steps that the public can take to reduce pollutants in stormwater runoff.

(2) NOTE: You may use stormwater educational materials provided by the state, your tribe, EPA, environmental, public interest or trade organizations, or other MS4s. The public education program should inform individuals and households about the steps they can take to reduce stormwater pollution, such as ensuring proper septic system maintenance, ensuring the proper use and disposal of landscape and garden chemicals including fertilizers and pesticides, protecting and restoring riparian vegetation, and properly disposing of used motor oil or household hazardous wastes. The board recommends that the program inform individuals and groups how to become involved in local stream and beach restoration activities as well as activities that are coordinated by youth service and conservation corps or other citizen groups. The board recommends that the public education program be tailored, using a mix of locally appropriate strategies, to target specific audiences and communities. Examples of strategies include: distributing brochures or fact sheets, sponsoring speaking engagements before

community groups, providing public service announcements, implementing educational programs targeted at school-age children, and conducting community-based projects such as storm drain stenciling, and watershed and beach cleanups. In addition, the board recommends that some of the materials or outreach programs be directed toward targeted groups of commercial, industrial, and institutional entities likely to have significant stormwater impacts. For example, providing information to restaurants on the impact of grease clogging storm drains and to garages on the impact of oil discharges. You are encouraged to tailor your outreach program to address the viewpoints and concerns of all communities, particularly minority and disadvantaged communities, as well as any special concerns relating to children.

b. Public involvement/participation.

(1) You must, at a minimum, comply with state, tribal, and local public notice requirements when implementing a public involvement/participation program.

(2) The board recommends that the public be included in developing, implementing, and reviewing your stormwater management program and that the public participation process should make efforts to reach out and engage all economic and ethnic groups. Opportunities for members of the public to participate in program development and implementation include serving as citizen representatives on a local stormwater management panel, attending public hearings, working as citizen volunteers to educate other individuals about the program, assisting in program coordination with other pre-existing programs, or participating in volunteer monitoring efforts. (Citizens should obtain approval where necessary for lawful access to monitoring sites.)

c. Illicit discharge detection and elimination.

(1) You must develop, implement and enforce a program to detect and eliminate illicit discharges (as defined in 4VAC50-60-10) into your small MS4.

(2) You must:

(a) Develop, if not already completed, a storm sewer system map, showing the location of all outfalls and the names and location of all surface waters that receive discharges from those outfalls;

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

(c) Develop and implement a plan to detect and address nonstormwater discharges, including illegal dumping, to your system; and

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

(3) You need to address the following categories of nonstormwater discharges or flows (i.e., illicit discharges) only if you identify them as significant contributors of pollutants to your small MS4: water line flushing, landscape irrigation, diverted stream flows, rising groundwaters, uncontaminated groundwater infiltration (as defined in 40 CFR 35.2005(20) (2000)), uncontaminated pumped groundwater, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, and street wash water. (Discharges or flows from fire-fighting activities are excluded from the effective prohibition

against nonstormwater and need only be addressed where they are identified as significant sources of pollutants to surface waters.)

(4) NOTE: The board recommends that the plan to detect and address illicit discharges include the following four components: (i) procedures for locating priority areas likely to have illicit discharges, (ii) procedures for tracing the source of an illicit discharge, (iii) procedures for removing the source of the discharge, and (iv) procedures for program evaluation and assessment. The board recommends visually screening outfalls during dry weather and conducting field tests of selected pollutants as part of the procedures for locating priority areas. Illicit discharge education actions may include storm drain stenciling; a program to promote, publicize, and facilitate public reporting of illicit connections or discharges; and distribution of outreach materials.

d. Construction site stormwater runoff control.

(1) You must develop, implement, and enforce a program to reduce pollutants in any stormwater runoff to your small MS4 from construction activities that result in a land disturbance of greater than or equal to one acre, or equal to or greater than 2,500 square feet in all areas of the jurisdictions designated as subject to the Chesapeake Bay Preservation Area Designation and Management Regulations adopted pursuant to the Chesapeake Bay Preservation Act. Reduction of stormwater discharges from construction activity disturbing less than one acre must be included in your program if that construction activity is part of a larger common plan of development or sale that would disturb one acre or more. If the board waives requirements for stormwater discharges associated with small construction activity in accordance with the definition in 4VAC50-60-10, you are not required to develop, implement, and/or enforce a program to reduce pollutant discharges from such sites.

(2) Your program must include the development and implementation of, at a minimum:

(a) An ordinance or other regulatory mechanism to require erosion and sediment controls, as well as sanctions to ensure compliance, to the extent allowable under state, tribal, or local law;

(b) Requirements for construction site operators to implement appropriate erosion and sediment control best management practices;

(c) Requirements for construction site operators to control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality;

(d) Procedures for site plan review which incorporate consideration of potential water quality impacts;

(e) Procedures for receipt and consideration of information submitted by the public; and

(f) Procedures for site inspection and enforcement of control measures.

(3) NOTE: Examples of sanctions to ensure compliance include nonmonetary penalties, fines, bonding requirements and/or permit denials for noncompliance. The board recommends that procedures for site plan review include the review of individual pre-construction site plans to ensure consistency with local sediment and erosion control requirements. Procedures for site inspections and enforcement of control measures could include steps to identify priority sites for inspection and enforcement based on the nature of the construction activity, topography, and the characteristics of soils and receiving water quality.

You are encouraged to provide appropriate educational and training measures for construction site operators. You may wish to require a stormwater pollution prevention plan for construction sites within your jurisdiction that discharge into your system. (See 4VAC50-60-460 L and subdivision E 2 of this section.) The board may recognize that another government entity may be responsible for implementing one or more of the minimum measures on your behalf.

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

(1) You must develop, implement, and enforce a program to address stormwater runoff from new development and redevelopment projects that disturb greater than or equal to one acre, including projects less than one acre that are part of a larger common plan of development or sale, that discharge into your small MS4. Your program must ensure that controls are in place that would prevent or minimize water quality impacts.

(2) You must:

(a) Develop and implement strategies that include a combination of structural and/or nonstructural best management practices (BMPs) appropriate for your community;

(b) Use an ordinance or other regulatory mechanism to address post-construction runoff from new development and redevelopment projects to the extent allowable under state, tribal or local law; and

(c) Ensure adequate long-term operation and maintenance of BMPs.

(3) NOTE: If water quality impacts are considered from the beginning stages of a project, new development and potentially redevelopment provide more opportunities for water quality protection. The board recommends that the BMPs chosen be appropriate for the local community, minimize water quality impacts, and attempt to maintain pre-development runoff conditions. In choosing appropriate BMPs, the board encourages you to participate in locally based watershed planning efforts that attempt to involve a diverse group of stakeholders, including interested citizens. When developing a program that is consistent with this measure's intent, the board recommends that you adopt a planning process that identifies the municipality's program goals (e.g., minimize water quality impacts resulting from post-construction runoff from new development and redevelopment), implementation strategies (e.g., adopt a combination of structural and/or nonstructural BMPs), operation and maintenance policies and procedures, and enforcement procedures. In developing your program, you should consider assessing existing ordinances, policies, programs and studies that address stormwater runoff quality. In addition to assessing these existing documents and programs, you should provide opportunities to the public to participate in the development of the program. Nonstructural BMPs are preventative actions that involve management and source controls such as: (i) policies and ordinances that provide requirements and standards to direct growth to identified areas, protect sensitive areas such as wetlands and riparian areas, maintain and/or increase open space (including a dedicated funding source for open space acquisition), provide buffers along sensitive water bodies, minimize impervious surfaces, and minimize disturbance of soils and vegetation; (ii) policies or ordinances that encourage infill development in higher density urban areas, and areas with existing infrastructure; (iii) education programs for developers and the public about project designs that minimize water quality impacts; and (iv) measures such as minimization of percent impervious area after development and minimization of directly connected impervious areas. Structural BMPs include: storage practices such as wet ponds and extended-detention outlet structures; filtration practices such as grassed swales, sand filters and filter strips; and infiltration practices such as infiltration basins and infiltration trenches. The board recommends that you ensure the

appropriate implementation of the structural BMPs by considering some or all of the following: pre-construction review of BMP designs; inspections during construction to verify BMPs are built as designed; post-construction inspection and maintenance of BMPs; and penalty provisions for the noncompliance with design, construction or operation and maintenance. Stormwater technologies are constantly being improved, and the board recommends that your requirements be responsive to these changes, developments or improvements in control technologies.

f. Pollution prevention/good housekeeping for municipal operations.

(1) You must develop and implement an operation and maintenance program that includes a training component and has the ultimate goal of preventing or reducing pollutant runoff from municipal operations. Using training materials that are available from EPA, state, tribe, or other organizations, your program must include employee training to prevent and reduce stormwater pollution from activities such as park and open space maintenance, fleet and building maintenance, new construction and land disturbances, and stormwater system maintenance.

(2) NOTE: The board recommends that, at a minimum, you consider the following in developing your program: maintenance activities, maintenance schedules, and long-term inspection procedures for structural and nonstructural stormwater controls to reduce floatables and other pollutants discharged from your separate storm sewers; controls for reducing or eliminating the discharge of pollutants from streets, roads, highways, municipal parking lots, maintenance and storage yards, fleet or maintenance shops with outdoor storage areas, salt/sand storage locations and snow disposal areas operated by you, and waste transfer stations; procedures for properly disposing of waste removed from the separate storm sewers and areas listed above (such as dredge spoil, accumulated sediments, floatables, and other debris); and ways to ensure that new flood management projects assess the impacts on water quality and examine existing projects for incorporating additional water quality protection devices or practices. Operation and maintenance should be an integral component of all stormwater management programs. This measure is intended to improve the efficiency of these programs and require new programs where necessary. Properly developed and implemented operation and maintenance programs reduce the risk of water quality problems.

3. If an existing qualifying local program requires you to implement one or more of the minimum control measures of subdivision 2 of this subsection, the board may include conditions in your VPDES permit that direct you to follow that qualifying program's requirements rather than the requirements of subdivision 2 of this subsection. A qualifying local program is a local, state or tribal municipal stormwater management program that imposes, at a minimum, the relevant requirements of subdivision 2 of this subsection.

4. a. In your permit application (either a registration statement for coverage under a general permit or an individual permit application), you must identify and submit to the board the following information:

(1) The best management practices (BMPs) that you or another entity will implement for each of the stormwater minimum control measures provided in subdivision 2 of this subsection;

(2) The measurable goals for each of the BMPs including, as appropriate, the months and years in which you will undertake required actions, including interim milestones and the frequency of the action; and

(3) The person or persons responsible for implementing or coordinating your stormwater management program.

b. If you obtain coverage under a general permit, you are not required to meet any measurable goals identified in your registration statement in order to demonstrate compliance with the minimum control measures in subdivisions 2 c through f of this subsection unless, prior to submitting your registration statement, EPA or the board has provided or issued a menu of BMPs that addresses each such minimum measure. Even if no regulatory authority issues the menu of BMPs, however, you still must comply with other requirements of the general permit, including good faith implementation of BMPs designed to comply with the minimum measures.

c. NOTE: Either EPA or the board will provide a menu of BMPs. You may choose BMPs from the menu or select others that satisfy the minimum control measures.

5. a. You must comply with any more stringent effluent limitations in your permit, including permit requirements that modify or are in addition to the minimum control measures based on an approved total maximum daily load (TMDL) or equivalent analysis. The board may include such more stringent limitations based on a TMDL or equivalent analysis that determines such limitations are needed to protect water quality.

b. NOTE: The board strongly recommends that until the evaluation of the stormwater program in subsection G of this section, no additional requirements beyond the minimum control measures be imposed on regulated small MS4s without the agreement of the operator of the affected small MS4, except where an approved TMDL or equivalent analysis provides adequate information to develop more specific measures to protect water quality.

6. You must comply with other applicable VSMP permit requirements, standards and conditions established in the individual or general permit developed consistent with the provisions of 9VAC25-31-190 through 9VAC25-31-250, as appropriate.

7. Evaluation and assessment.

a. You must evaluate program compliance, the appropriateness of your identified best management practices, and progress towards achieving your identified measurable goals. The board may determine monitoring requirements for you in accordance with monitoring plans appropriate to your watershed. Participation in a group monitoring program is encouraged.

b. You must keep records required by the VSMP permit for at least three years. You must submit your records to the department only when specifically asked to do so. You must make your records, including a description of your stormwater management program, available to the public at reasonable times during regular business hours (see 4VAC50-60-340 for confidentiality provision). You may assess a reasonable charge for copying. You may require a member of the public to provide advance notice.

c. Unless you are relying on another entity to satisfy your VSMP permit obligations under subdivision E 1 of this section, you must submit annual reports to the department for your first permit term. For subsequent permit terms, you must submit reports in years two and four unless the department requires more frequent reports. Your report must include:

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

(2) Results of information collected and analyzed, including monitoring data, if any, during the reporting period;

(3) A summary of the stormwater activities you plan to undertake during the next reporting cycle;

(4) A change in any identified best management practices or measurable goals for any of the minimum control measures; and

(5) Notice that you are relying on another governmental entity to satisfy some of your permit obligations (if applicable).

E. As an operator of a regulated small MS4, may I share the responsibility to implement the minimum control measures with other entities?

1. You may rely on another entity to satisfy your VSMP permit obligations to implement a minimum control measure if:

a. The other entity, in fact, implements the control measure;

b. The particular control measure, or component thereof, is at least as stringent as the corresponding VSMP permit requirement; and

c. The other entity agrees to implement the control measure on your behalf. In the reports you must submit under subdivision D 7 c of this section, you must also specify that you rely on another entity to satisfy some of your permit obligations. If you are relying on another governmental entity regulated under the VSMP permit program to satisfy all of your permit obligations, including your obligation to file periodic reports required by subdivision D 7 c of this section, you must note that fact in your registration statement, but you are not required to file the periodic reports. You remain responsible for compliance with your permit obligations if the other entity fails to implement the control measure (or component thereof). Therefore, the board encourages you to enter into a legally binding agreement with that entity if you want to minimize any uncertainty about compliance with your permit.

2. In some cases, the board may recognize, either in your individual VSMP permit or in a VSMP general permit, that another governmental entity is responsible under a VSMP permit for implementing one or more of the minimum control measures for your small MS4. Where the board does so, you are not required to include such minimum control measure(s) in your stormwater management program. Your permit may be reopened and modified to include the requirement to implement a minimum control measure if the entity fails to implement it.

F. As an operator of a regulated small MS4, what happens if I don't comply with the application or permit requirements in subsections C through E of this section?

VSMP permits are enforceable under the Clean Water Act and the Virginia Stormwater Management Act. Violators may be subject to the enforcement actions and penalties described in Clean Water Act §§309 (b), (c), and (g) and 505 or under §§[10.1-603.12:1](#) through [10.1-603.14](#) of the Code of Virginia. Compliance with a permit issued pursuant to §402 of the Clean Water Act is deemed compliance, for purposes of §§309 and 505, with §§301, 302, 306, 307, and 403, except any standard imposed under §307 for toxic pollutants injurious to human health. If you are covered as a co-permittee under an individual permit or under a general permit by means of a joint registration statement, you remain subject to the enforcement actions and penalties for the failure to comply with the terms of the permit in your jurisdiction except as set forth in subdivision E 2 of this section.

G. Will the small MS4 stormwater program regulations at subsections B through F of this section change in the future?

The board will evaluate the small MS4 regulations at subsections B through F of this section after December 10, 2012, and make any necessary revisions. (EPA intends to conduct an enhanced research effort and compile a comprehensive evaluation of the NPDES MS4 stormwater program. The board will reevaluate the regulations based on data from the EPA

NPDES MS4 stormwater program, from research on receiving water impacts from stormwater, and the effectiveness of best management practices (BMPs), as well as other relevant information sources.)

#### **4VAC50-60-410. General permits.**

A. The board may issue a general permit in accordance with the following:

1. The general permit shall be written to cover one or more categories or subcategories of discharges, except those covered by individual permits, within a geographic area. The area should correspond to existing geographic or political boundaries, such as:
  - a. Designated planning areas under §§208 and 303 of CWA;
  - b. Sewer districts or sewer authorities;
  - c. City, county, or state political boundaries;
  - d. State highway systems;
  - e. Standard metropolitan statistical areas as defined by the Office of Management and Budget;
  - f. Urbanized areas as designated by the Bureau of the Census according to criteria in 30 FR 15202 (May 1, 1974); or
  - g. Any other appropriate division or combination of boundaries.
2. The general permit may be written to regulate one or more categories within the area described in subdivision 1 of this subsection, where the sources within a covered subcategory of discharges are stormwater point sources.
3. Where sources within a specific category of dischargers are subject to water quality-based limits imposed pursuant to 4VAC50-60-460, the sources in that specific category or subcategory shall be subject to the same water quality-based effluent limitations.
4. The general permit must clearly identify the applicable conditions for each category or subcategory of dischargers covered by the permit.
5. The general permit may exclude specified sources or areas from coverage.

B. Administration.

1. General permits may be issued, modified, revoked and reissued, or terminated in accordance with applicable requirements of this chapter.
2. Authorization to discharge.
  - a. Except as provided in subdivisions 2 e and 2 f of this subsection, dischargers seeking coverage under a general permit shall submit to the department a written notice of intent to be covered by the general permit. A discharger who fails to submit a notice of intent in accordance with the terms of the permit is not authorized to discharge, under the terms of the general permit unless the general permit, in accordance with subdivision 2 e of this subsection, contains a provision that a notice of intent is not required or the board notifies a discharger (or treatment works treating domestic sewage) that it is covered by a general permit in accordance with subdivision 2 f of this subsection. A complete and timely notice of intent (NOI) to be covered in accordance with general permit requirements fulfills the requirements for permit applications for the purposes of this chapter.
  - b. The contents of the notice of intent shall be specified in the general permit and shall require the submission of information necessary for adequate program implementation, including at a minimum, the legal name and address of the owner or operator, the facility name and

address, type of facility or discharges, and the receiving stream or streams. All notices of intent shall be signed in accordance with 4VAC50-60-370.

c. General permits shall specify the deadlines for submitting notices of intent to be covered and the date or dates when a discharger is authorized to discharge under the permit.

d. General permits shall specify whether a discharger that has submitted a complete and timely notice of intent to be covered in accordance with the general permit and that is eligible for coverage under the permit, is authorized to discharge in accordance with the permit either upon receipt of the notice of intent by the department, after a waiting period specified in the general permit, on a date specified in the general permit, or upon receipt of notification of inclusion by the board. Coverage may be terminated or revoked in accordance with subdivision 3 of this subsection.

e. Stormwater discharges associated with small construction activity may, at the discretion of the board, be authorized to discharge under a general permit without submitting a notice of intent where the board finds that a notice of intent requirement would be inappropriate. In making such a finding, the board shall consider the (i) type of discharge, (ii) expected nature of the discharge, (iii) potential for toxic and conventional pollutants in the discharges, (iv) expected volume of the discharges, (v) other means of identifying discharges covered by the permit, and (vi) estimated number of discharges to be covered by the permit. The board shall provide in the public notice of the general permit the reasons for not requiring a notice of intent.

f. The board may notify a discharger that it is covered by a general permit, even if the discharger has not submitted a notice of intent to be covered. A discharger so notified may request an individual permit under subdivision 3 c of this subsection.

### 3. Requiring an individual permit.

a. The board may require any discharger authorized by a general permit to apply for and obtain an individual VSMP permit. Any interested person may request the board to take action under this subdivision. Cases where an individual VSMP permit may be required include the following:

(1) The discharger is not in compliance with the conditions of the general VSMP permit;

(2) A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source;

(3) Effluent limitation guidelines are promulgated for point sources covered by the general VSMP permit;

4) A water quality management plan, established by the State Water Control Board pursuant to 9VAC25-720, containing requirements applicable to such point sources is approved;

(5) Circumstances have changed since the time of the request to be covered so that the discharger is no longer appropriately controlled under the general permit, or either a temporary or permanent reduction or elimination of the authorized discharge is necessary;

(6) The discharge(s) is a significant contributor of pollutants. In making this determination, the board may consider the following factors:

(a) The location of the discharge with respect to surface waters;

(b) The size of the discharge;

(c) The quantity and nature of the pollutants discharged to surface waters;

and

(d) Other relevant factors;

b. Permits required on a case-by-case basis.

(1) The board may determine, on a case-by-case basis, that certain stormwater discharges, and certain other facilities covered by general permits that do not generally require an individual permit may be required to obtain an individual permit because of their contributions to water pollution.

(2) Whenever the board decides that an individual permit is required under this subsection, except as provided in subdivision 3 b (3) of this subsection, the board shall notify the discharger in writing of that decision and the reasons for it, and shall send an application form with the notice. The discharger must apply for a permit within 60 days of notice, unless permission for a later date is granted by the board. The question whether the designation was proper will remain open for consideration during the public comment period for the draft permit and in any subsequent public hearing.

(3) Prior to a case-by-case determination that an individual permit is required for a stormwater discharge under this subsection, the board may require the discharger to submit a permit application or other information regarding the discharge under the Act and §308 of the CWA. In requiring such information, the board shall notify the discharger in writing and shall send an application form with the notice. The discharger must apply for a permit under 4VAC50-60-380 A 1 within 60 days of notice or under 4VAC50-60-380 A 8 within 180 days of notice, unless permission for a later date is granted by the board. The question whether the initial designation was proper will remain open for consideration during the public comment period for the draft permit and in any subsequent public hearing.

c. Any owner or operator authorized by a general permit may request to be excluded from the coverage of the general permit by applying for an individual permit. The owner or operator shall submit an application under 4VAC50-60-360 with reasons supporting the request. The request shall be processed under the applicable parts of this chapter. The request shall be granted by issuing of an individual permit if the reasons cited by the owner or operator are adequate to support the request.

d. When an individual VSMP permit is issued to an owner or operator otherwise subject to a general VSMP permit, the applicability of the general permit to the individual VSMP permittee is automatically terminated on the effective date of the individual permit.

e. A source excluded from a general permit solely because it already has an individual permit may request that the individual permit be revoked, and that it be covered by the general permit. Upon revocation of the individual permit, the general permit shall apply to the source.

**4VAC50-60-420. New sources and new dischargers.**

A. Criteria for new source determination.

1. Except as otherwise provided in an applicable new source performance standard, a source is a new source if it meets the definition of new source in this chapter, and

a. It is constructed at a site at which no other source is located; or

b. It totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or

c. Its processes are substantially independent of an existing source at the same site. In determining whether these processes are substantially independent, the board shall consider such factors as the extent to which the new facility is integrated with the existing plant and the extent to which the new facility is engaged in the same general type of activity as the existing source.

2. A source meeting the requirements of subdivisions 1 a, b, or c of this subsection is a new source only if a new source performance standard is independently applicable to it. If there is no such independently applicable standard, the source is a new discharger.
3. Construction on a site at which an existing source is located results in a permit modification subject to 4VAC50-60-630 rather than a new source (or a new discharger) if the construction does not create a new building, structure, facility, or installation meeting the criteria of subdivisions 1 b or c of this subsection but otherwise alters, replaces, or adds to existing process or production equipment.
4. Construction of a new source has commenced if the owner or operator has:
  - a. Begun, or caused to begin as part of a continuous on-site construction program:
    - (1) Any placement, assembly, or installation of facilities or equipment; or
    - (2) Significant site preparation work including clearing, excavation or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or
  - b. Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility engineering, and design studies do not constitute a contractual obligation under the paragraph.

B. Effect of compliance with new source performance standards. The provisions of this subsection do not apply to existing sources which modify their pollution control facilities or construct new pollution control facilities and achieve performance standards, but which are neither new sources or new dischargers or otherwise do not meet the requirements of this subdivision.

1. Except as provided in subdivision 2 of this subsection, any new discharger, the construction of which commenced after October 18, 1972, or new source which meets the applicable promulgated new source performance standards before the commencement of discharge, may not be subject to any more stringent new source performance standards or to any more stringent technology-based standards under §301(b)(2) of the CWA for the soonest ending of the following periods:

- a. Ten years from the date that construction is completed;
- b. Ten years from the date the source begins to discharge process or other nonconstruction related wastewater; or
- c. The period of depreciation or amortization of the facility for the purposes of §167 or §169 (or both) of the Internal Revenue Code of 1954 (26 USC 167 and 26 USC 169, respectively).

2. The protection from more stringent standards of performance afforded by subdivision 1 of this subsection does not apply to:

- a. Additional or more stringent permit conditions that are not technology based; for example, conditions based on water quality standards, or toxic effluent standards or prohibitions under the Act and §307(a) of the CWA; or
- b. Additional permit conditions controlling toxic pollutants or hazardous substances that are not controlled by new source performance standards. This includes permit conditions controlling pollutants other than those identified as toxic pollutants or hazardous substances

when control of these pollutants has been specifically identified as the method to control the toxic pollutants or hazardous substances.

3. When a VPDES or VSMP permit issued to a source with a protection period under subdivision 1 of this subsection will expire on or after the expiration of the protection period, that permit shall require the owner or operator of the source to comply with the requirements of §301 of the CWA and any other then applicable requirements of the CWA and the Act immediately upon the expiration of the protection period. No additional period for achieving compliance with these requirements may be allowed except when necessary to achieve compliance with requirements promulgated less than three years before the expiration of the protection period.

4. The owner or operator of a new source, a new discharger which commenced discharge after August 13, 1979, or a recommencing discharger shall install and have in operating condition, and shall start-up all pollution control equipment required to meet the conditions of its permits before beginning to discharge. Within the shortest feasible time (not to exceed 90 days), the owner or operator must meet all permit conditions. The requirements of this paragraph do not apply if the owner or operator is issued a permit containing a compliance schedule under 4VAC50-60-490 A 2.

5. After the effective date of new source performance standards, it shall be unlawful for any owner or operator of any new source to operate the source in violation of those standards applicable to the source.

## **Part VIII**

### **VSMP Permit Conditions**

#### **4VAC50-60-430. Conditions applicable to all permits.**

The following conditions apply to all VSMP permits. Additional conditions applicable to VSMP permits are in 4VAC50-60-440. All conditions applicable to VSMP permits shall be incorporated into the permits either expressly or by reference. If incorporated by reference, a specific citation to this regulation must be given in the permit.

A. The permittee shall comply with all conditions of the permit. Any permit noncompliance constitutes a violation of the Act and the CWA, except that noncompliance with certain provisions of the permit may constitute a violation of the Act but not the CWA. Permit noncompliance is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application.

The permittee shall comply with effluent standards or prohibitions established under §307(a) of the CWA for toxic pollutants within the time provided in the chapters that establish these standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

B. If the permittee wishes to continue an activity regulated by the permit after the expiration date of the permit, the permittee must apply for and obtain a new permit.

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

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

E. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) that are installed or used by the permittee to achieve compliance with the conditions of the permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems that are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

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

G. Permits do not convey any property rights of any sort, or any exclusive privilege.

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

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

1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of the permit;
2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit;
3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under the permit; and
4. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the CWA and the Act, any substances or parameters at any location.

J. Monitoring and records.

1. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.
2. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by the permit, and records of all data used to complete the application for the permit, for a period of at least three years from the date of the sample, measurement, report or application. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to the permittee, or as requested by the board.
3. Records of monitoring information shall include:
  - a. The date, exact place, and time of sampling or measurements;
  - b. The individual or individuals who performed the sampling or measurements;
  - c. The date or dates analyses were performed;
  - d. The individual or individuals who performed the analyses;
  - e. The analytical techniques or methods used; and
  - f. The results of such analyses.
4. Monitoring results must be conducted according to test procedures approved under 40 CFR Part 136 (2000) or alternative EPA approved methods, unless other test procedures have been specified in the permit.

K. All applications, reports, or information submitted to the permit-issuing authority shall be signed and certified as required by 4VAC50-60-370.

L. Reporting requirements.

1. The permittee shall give notice to the department as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:
  - a. The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in 4VAC50-60-420 A; or
  - b. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants that are not subject to effluent limitations in the permit.
2. The permittee shall give advance notice to the department of any planned changes in the permitted facility or activity that may result in noncompliance with permit requirements.
3. Permits are not transferable to any person except after notice to the department. The board may require modification or revocation and reissuance of permits to change the name of the permittee and incorporate such other requirements as may be necessary under the Act or the CWA.
4. Monitoring results shall be reported at the intervals specified in the permit.
  - a. Monitoring results must be reported on a Discharge Monitoring Report (DMR) or forms provided or specified by the department.
  - b. If the permittee monitors any pollutant specifically addressed by the permit more frequently than required by the permit using test procedures approved under 40 CFR Part 136 (2000) or as otherwise specified in the permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR or reporting form specified by the department.

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

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

6. If any unusual or extraordinary discharge including a bypass or upset should occur from a facility and such discharge enters or could be expected to enter state waters, the permittee shall promptly notify, in no case later than 24 hours, the Department of Environmental Quality and the department by telephone after the discovery of such discharge. This notification shall provide all available details of the incident, including any adverse affects on aquatic life and the known number of fish killed. The permittee shall reduce the report to writing and shall submit it to the Department of Environmental Quality and the department within five days of discovery of the discharge in accordance with subdivision 7 a of this subsection. Unusual and extraordinary discharges include but are not limited to any discharge resulting from:

- a. Unusual spillage of materials resulting directly or indirectly from processing operations;
- b. Breakdown of processing or accessory equipment;
- c. Failure or taking out of service of the treatment plant or auxiliary facilities (such as sewer lines or wastewater pump stations); and
- d. Flooding or other acts of nature.

7. Twenty-four hour reporting.

a. The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within five days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

b. The following shall be included as information which must be reported within 24 hours under this subdivision:

- (1) Any unanticipated bypass that exceeds any effluent limitation in the permit.
- (2) Any upset that exceeds any effluent limitation in the permit.
- (3) Violation of a maximum daily discharge limitation for any of the pollutants listed in the permit to be reported within 24 hours.

c. The board may waive the written report on a case-by-case basis for reports under this subdivision if the oral report has been received within 24 hours.

8. The permittee shall report all instances of noncompliance not reported under subdivisions 4, 5, 6, and 7 of this subsection, in writing at the time the next monitoring reports are submitted. The reports shall contain the information listed in subdivision 7 of this subsection.

9. Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the department, it shall promptly submit such facts or information.

M. Bypass.

1. The permittee may allow any bypass to occur that does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of subdivisions 2 and 3 of this subsection.

2. Notice.

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

b. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in subdivision L 7 of this section (24-hour notice).

3. Prohibition of bypass.

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

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

(2) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass that occurred during normal periods of equipment downtime or preventive maintenance; and

(3) The permittee submitted notices as required under subdivision 2 of this subsection.

b. The board may approve an anticipated bypass, after considering its adverse effects, if the board determines that it will meet the three conditions listed in subdivision 3 a of this subsection.

N. Upset.

1. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology based permit effluent limitations if the requirements of subdivision 2 of this subsection are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

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

a. An upset occurred and that the permittee can identify the cause or causes of the upset;

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

c. The permittee submitted notice of the upset as required in subdivision L 7 b (2) of this section (24-hour notice); and

d. The permittee complied with any remedial measures required under subsection D of this section.

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

**4VAC50-60-440. Additional conditions applicable to Municipal Separate Storm Sewer System VSMP permits.**

In addition to those conditions set forth in 4VAC50-60-430, the operator of a large or medium municipal separate storm sewer system or a municipal separate storm sewer that has been designated by the board under 4VAC50-60-380 A 1 e must submit an annual report by a date specified in the permit for such system. The report shall include:

1. The status of implementing the components of the stormwater management program that are established as permit conditions;
2. Proposed changes to the stormwater management programs that are established as permit condition. Such proposed changes shall be consistent with 4VAC50-60-380 C 2 d;
3. Revisions, if necessary, to the assessment of controls and the fiscal analysis reported in the permit application;
4. A summary of data, including monitoring data, that is accumulated throughout the reporting year;
5. Annual expenditures and budget for year following each annual report;
6. A summary describing the number and nature of enforcement actions, inspections, and public education programs; and
7. Identification of water quality improvements or degradation.

**4VAC50-60-450. Establishing permit conditions.**

A. In addition to conditions required in all permits, the board shall establish conditions, as required on a case-by-case basis, to provide for and assure compliance with all applicable requirements of the Stormwater Management Act, the State Water Control Law, the CWA, and attendant regulations. These shall include conditions under 4VAC50-60-480 (duration of permits), 4VAC50-60-490 (schedules of compliance) and 4VAC50-60-460 (monitoring).

B. 1. An applicable requirement is a state statutory or regulatory requirement which takes effect prior to final administrative disposition of a permit. An applicable requirement is also any requirement that takes effect prior to the modification or revocation and reissuance of a permit to the extent allowed in Part X of this chapter.

2. New or reissued permits, and to the extent allowed under Part X of this chapter modified or revoked and reissued permits, shall incorporate each of the applicable requirements referenced in 4VAC50-60-460 and 4VAC50-60-470.

C. All permit conditions shall be incorporated either expressly or by reference. If incorporated by reference, a specific citation to the applicable regulations or requirements must be given in the permit.

**4VAC50-60-460. Establishing limitations, standards, and other permit conditions.**

In addition to the conditions established under 4VAC50-60-450 A, each VSMP permit shall include conditions meeting the following requirements when applicable.

A. 1. Technology-based effluent limitations and standards based on effluent limitations and standards promulgated under §301 of the CWA, on new source performance standards

promulgated under §306 of CWA, on case-by-case effluent limitations determined under §402(a)(1) of CWA, or a combination of the three. For new sources or new dischargers, these technology-based limitations and standards are subject to the provisions of 4VAC50-60-420 B (protection period).

2. The board may authorize a discharger subject to technology-based effluent limitations guidelines and standards in a VSMP permit to forego sampling of a pollutant found at 40 CFR Subchapter N (2000) if the discharger has demonstrated through sampling and other technical factors that the pollutant is not present in the discharge or is present only at background levels from intake water and without any increase in the pollutant due to activities of the discharger. This waiver is good only for the term of the permit and is not available during the term of the first permit issued to a discharger. Any request for this waiver must be submitted when applying for a reissued permit or modification of a reissued permit. The request must demonstrate through sampling or other technical information, including information generated during an earlier permit term, that the pollutant is not present in the discharge or is present only at background levels from intake water and without any increase in the pollutant due to activities of the discharger. Any grant of the monitoring waiver must be included in the permit as an express permit condition and the reasons supporting the grant must be documented in the permit's fact sheet or statement of basis. This provision does not supersede certification processes and requirements already established in existing effluent limitations guidelines and standards.

B. Other effluent limitations and standards under §§301, 302, 303, 307, 318 and 405 of the CWA. If any applicable toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is promulgated under §307(a) of the CWA for a toxic pollutant and that standard or prohibition is more stringent than any limitation on the pollutant in the permit, the board shall institute proceedings under this chapter to modify or revoke and reissue the permit to conform to the toxic effluent standard or prohibition.

C. Water quality standards and state requirements. Any requirements in addition to or more stringent than promulgated effluent limitations guidelines or standards under §§301, 304, 306, 307, 318 and 405 of the CWA necessary to:

1. Achieve water quality standards established under the State Water Control Law and §303 of the CWA, including state narrative criteria for water quality.

a. Limitations must control all pollutants or pollutant parameters (either conventional, nonconventional, or toxic pollutants) which the board determines are or may be discharged at a level that will cause, have the reasonable potential to cause, or contribute to an excursion above any Virginia water quality standard, including Virginia narrative criteria for water quality.

b. When determining whether a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above a narrative or numeric criteria within a Virginia water quality standard, the board shall use procedures that account for existing controls on point and nonpoint sources of pollution, the variability of the pollutant or pollutant parameter in the effluent, the sensitivity of the species to toxicity testing (when evaluating whole effluent toxicity), and where appropriate, the dilution of the effluent in the receiving water.

c. When the board determines, using the procedures in subdivision 1 b of this subsection, that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above the allowable ambient concentration of a Virginia numeric criteria within a

Virginia water quality standard for an individual pollutant, the permit must contain effluent limits for that pollutant.

d. Except as provided in this subdivision, when the board determines, using the procedures in subdivision 1 b of this subsection, toxicity testing data, or other information, that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above a narrative criterion within an applicable Virginia water quality standard, the permit must contain effluent limits for whole effluent toxicity. Limits on whole effluent toxicity are not necessary where the board demonstrates in the fact sheet or statement of basis of the VSMP permit, using the procedures in subdivision 1 b of this subsection, that chemical-specific limits for the effluent are sufficient to attain and maintain applicable numeric and narrative Virginia water quality standards.

e. Where Virginia has not established a water quality criterion for a specific chemical pollutant that is present in an effluent at a concentration that causes, has the reasonable potential to cause, or contributes to an excursion above a narrative criterion within an applicable Virginia water quality standard, the board must establish effluent limits using one or more of the following options:

(1) Establish effluent limits using a calculated numeric water quality criterion for the pollutant which the board demonstrates will attain and maintain applicable narrative water quality criteria and will fully protect the designated use. Such a criterion may be derived using a proposed Virginia criterion, or an explicit policy or regulation interpreting Virginia's narrative water quality criterion, supplemented with other relevant information which may include: EPA's Water Quality Standards Handbook, August 1994, risk assessment data, exposure data, information about the pollutant from the Food and Drug Administration, and current EPA criteria documents; or

(2) Establish effluent limits on a case-by-case basis, using EPA's water quality criteria, published under §307(a) of the CWA, supplemented where necessary by other relevant information; or

(3) Establish effluent limitations on an indicator parameter for the pollutant of concern, provided:

(a) The permit identifies which pollutants are intended to be controlled by the use of the effluent limitation;

(b) The fact sheet required by 4VAC50-60-520 sets forth the basis for the limit, including a finding that compliance with the effluent limit on the indicator parameter will result in controls on the pollutant of concern which are sufficient to attain and maintain applicable water quality standards;

(c) The permit requires all effluent and ambient monitoring necessary to show that during the term of the permit the limit on the indicator parameter continues to attain and maintain applicable water quality standards; and

(d) The permit contains a reopener clause allowing the board to modify or revoke and reissue the permit if the limits on the indicator parameter no longer attain and maintain applicable water quality standards.

f. When developing water quality-based effluent limits under this subdivision the board shall ensure that:

(1) The level of water quality to be achieved by limits on point sources established under this subsection is derived from, and complies with all applicable water quality standards; and

(2) Effluent limits developed to protect a narrative water quality criterion, a numeric water quality criterion, or both, are consistent with the assumptions and requirements of any available wasteload allocation for the discharge prepared by Virginia and approved by EPA pursuant to 40 CFR 130.7 (2000);

2. Attain or maintain a specified water quality through water quality related effluent limits established under the State Water Control Law and §302 of the CWA;

3. Conform to the conditions of a Virginia Water Protection Permit (VWPP) issued under the State Water Control Law and §401 of the CWA;

4. Conform to applicable water quality requirements under §401(a)(2) of the CWA when the discharge affects a state other than Virginia;

5. Incorporate any more stringent limitations, treatment standards, or schedule of compliance requirements established under the Act or regulations in accordance with §301(b)(1)(C) of the CWA;

6. Ensure consistency with the requirements of a Water Quality Management plan established by the State Water Control Board pursuant to 9VAC25-720 and approved by EPA under §208(b) of the CWA;

7. Incorporate §403(c) criteria under 40 CFR Part 125, Subpart M (2000), for ocean discharges; or

8. Incorporate alternative effluent limitations or standards where warranted by fundamentally different factors, under 40 CFR Part 125, Subpart D (2000).

D. Technology-based controls for toxic pollutants. Limitations established under subsections A, B, or C of this section, to control pollutants meeting the criteria listed in subdivision 1 of this subsection. Limitations will be established in accordance with subdivision 2 of this subsection. An explanation of the development of these limitations shall be included in the fact sheet.

1. Limitations must control all toxic pollutants that the board determines (based on information reported in a permit application or in a notification required by the permit or on other information) are or may be discharged at a level greater than the level that can be achieved by the technology-based treatment requirements appropriate to the permittee; or

2. The requirement that the limitations control the pollutants meeting the criteria of subdivision 1 of this subsection will be satisfied by:

a. Limitations on those pollutants; or

b. Limitations on other pollutants that, in the judgment of the board, will provide treatment of the pollutants under subdivision 1 of this subsection to the levels required by the Stormwater Management Act, the State Water Control Law, and 40 CFR Part 125, Subpart A (2000).

E. A notification level that exceeds the notification level of 4VAC50-60-440 A 1 a, b, or c, upon a petition from the permittee or on the board's initiative. This new notification level may not exceed the level which can be achieved by the technology-based treatment requirements appropriate to the permittee.

F. Twenty-four-hour reporting. Pollutants for which the permittee must report violations of maximum daily discharge limitations under 4VAC50-60-430 L 7 b (3) (24-hour reporting) shall be listed in the permit. This list shall include any toxic pollutant or hazardous substance, or any pollutant specifically identified as the method to control a toxic pollutant or hazardous substance.

G. Durations for permits, as set forth in 4VAC50-60-480.

H. Monitoring requirements. The following monitoring requirements:

1. Requirements concerning the proper use, maintenance, and installation, when appropriate, of monitoring equipment or methods (including biological monitoring methods when appropriate);
2. Required monitoring including type, intervals, and frequency sufficient to yield data that are representative of the monitored activity including, when appropriate, continuous monitoring;
3. Applicable reporting requirements based upon the impact of the regulated activity and as specified in 4VAC50-60-430 and in subdivisions 5 through 8 of this subsection. Reporting shall be no less frequent than specified in the above regulation;
4. To assure compliance with permit limitations, requirements to monitor:
  - a. The mass (or other measurement specified in the permit) for each pollutant limited in the permit;
  - b. The volume of effluent discharged from each outfall;
  - c. Other measurements as appropriate including pollutants; frequency, rate of discharge, etc., for noncontinuous discharges; pollutants subject to notification requirements; or as determined to be necessary on a case-by-case basis pursuant to the Stormwater Management Act, the State Water Control Law, and §405(d)(4) of the CWA; and
  - d. According to test procedures approved under 40 CFR Part 136 (2000) for the analyses of pollutants having approved methods under that part, or alternative EPA approved methods, and according to a test procedure specified in the permit for pollutants with no approved methods;
5. Except as provided in subdivisions 7 and 8 of this subsection, requirements to report monitoring results shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the discharge, but in no case less than once a year;
6. Requirements to report monitoring results for stormwater discharges associated with industrial activity that are subject to an effluent limitation guideline shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the discharge, but in no case less than once a year;
7. Requirements to report monitoring results for stormwater discharges (other than those addressed in subdivision 6 of this subsection) shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the discharge. At a minimum, a permit for such a discharge must require:
  - a. The discharger to conduct an annual inspection of the facility site to identify areas contributing to a stormwater discharge and evaluate whether measures to reduce pollutant loading identified in a stormwater pollution prevention plan are adequate and properly implemented in accordance with the terms of the permit or whether additional control measures are needed;
  - b. The discharger to maintain for a period of three years a record summarizing the results of the inspection and a certification that the facility is in compliance with the plan and the permit, and identifying any incidents of noncompliance;
  - c. Such report and certification be signed in accordance with 4VAC50-60-370; and
8. Permits which do not require the submittal of monitoring result reports at least annually shall require that the permittee report all instances of noncompliance not reported under 4VAC50-60-430 L 1, 4, 5, 6, and 7 at least annually.

I. Best management practices to control or abate the discharge of pollutants when:

1. Authorized under §402(p) of the CWA for the control of stormwater discharges;
2. Numeric effluent limitations are infeasible; or
3. The practices are reasonably necessary to achieve effluent limitations and standards or to carry out the purposes and intent of the Stormwater Management Act, the State Water Control Law, and the CWA.

J. Reissued permits.

1. In the case of effluent limitations established on the basis of §402(a)(1)(B) of the CWA, a permit may not be renewed, reissued, or modified on the basis of effluent guidelines promulgated under §304(b) of the CWA subsequent to the original issuance of such permit, to contain effluent limitations that are less stringent than the comparable effluent limitations in the previous permit. In the case of effluent limitations established on the basis of §301(b)(1)(C) or §303(d) or (e) of the CWA, a permit may not be renewed, reissued, or modified to contain effluent limitations that are less stringent than the comparable effluent limitations in the previous permit except in compliance with §303(d)(4) of the CWA.

2. Exceptions. A permit with respect to which subdivision 1 of this subsection applies may be renewed, reissued, or modified to contain a less stringent effluent limitation applicable to a pollutant, if:

a. Material and substantial alterations or additions to the permitted facility occurred after permit issuance that justify the application of a less stringent effluent limitation;

b. (1) Information is available that was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and that would have justified the application of a less stringent effluent limitation at the time of permit issuance; or

(2) The board determines that technical mistakes or mistaken interpretations of the Act were made in issuing the permit under §402(a)(1)(B) of the CWA;

c. A less stringent effluent limitation is necessary because of events over which the permittee has no control and for which there is no reasonably available remedy;

d. The permittee has received a permit modification under the Stormwater Management Act, the State Water Control Law, and §§301(c), 301(g), 301(h), 301(i), 301(k), 301(n), or §316(a) of the CWA; or

e. The permittee has installed the treatment facilities required to meet the effluent limitations in the previous permit and has properly operated and maintained the facilities but has nevertheless been unable to achieve the previous effluent limitations, in which case the limitations in the reviewed, reissued, or modified permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by effluent guidelines in effect at the time of permit renewal, reissuance, or modification).

Subdivision 2 b of this subsection shall not apply to any revised waste load allocations or any alternative grounds for translating water quality standards into effluent limitations, except where the cumulative effect of such revised allocations results in a decrease in the amount of pollutants discharged into the concerned waters, and such revised allocations are not the result of a discharger eliminating or substantially reducing its discharge of pollutants due to complying with the requirements of the Act or the CWA or for reasons otherwise unrelated to water quality.

3. In no event may a permit with respect to which subdivision 2 of this subsection applies be renewed, reissued, or modified to contain an effluent limitation that is less stringent than required by effluent guidelines in effect at the time the permit is renewed, reissued, or modified. In no

event may such a permit to discharge into waters be renewed, issued, or modified to contain a less stringent effluent limitation if the implementation of such limitation would result in a violation of a Virginia water quality standard applicable to such waters.

K. Navigation. Any conditions that the Secretary of the Army considers necessary to ensure that navigation and anchorage will not be substantially impaired in accordance with 4VAC50-60-570.

L. Qualifying state, tribal, or local programs.

1. For stormwater discharges associated with small construction activity identified in 4VAC50-60-10, the board may include permit conditions that incorporate qualifying state, tribal, or local erosion and sediment control program requirements by reference. Where a qualifying state, tribal, or local program does not include one or more of the elements in this subdivision, then the board must include those elements as conditions in the permit. A qualifying state, tribal, or local erosion and sediment control program is one that includes:

a. Requirements for construction site operators to implement appropriate erosion and sediment control best management practices;

b. Requirements for construction site operators to control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality;

c. Requirements for construction site operators to develop and implement a stormwater pollution prevention plan. A stormwater pollution prevention plan includes site descriptions; descriptions of appropriate control measures; copies of approved state, tribal or local requirements; maintenance procedures; inspection procedures; and identification of nonstormwater discharges; and

d. Requirements to submit a site plan for review that incorporates consideration of potential water quality impacts.

2. For stormwater discharges from construction activity that does not meet the definition of a small construction activity, the board may include permit conditions that incorporate qualifying state, tribal, or local erosion and sediment control program requirements by reference. A qualifying state, tribal or local erosion and sediment control program is one that includes the elements listed in subdivision 1 of this subsection and any additional requirements necessary to achieve the applicable technology-based standards of "best available technology" and "best conventional technology" based on the best professional judgment of the permit writer.

#### **4VAC50-60-470. Calculating VSMP permit conditions.**

A. Permit effluent limitations, monitoring requirements, standards and prohibitions shall be established for each outfall or discharge point of the permitted facility, except as otherwise provided under 4VAC50-60-460.

B. All permit effluent limitations, standards, or prohibitions for a metal shall be expressed in terms of total recoverable metal as defined in 40 CFR Part 136 (2000) unless:

1. An applicable effluent standard or limitation has been promulgated under the CWA and specifies the limitation for the metal in the dissolved or valent or total form; or

2. In establishing permit limitations on a case-by-case basis under 40 CFR 125.3 (2000), it is necessary to express the limitation on the metal in the dissolved or valent or total form to carry

out the provisions of the CWA, Stormwater Management Act and the State Water Control Law;  
or

3. All approved analytical methods for the metal inherently measure only its dissolved form (e.g., hexavalent chromium).

C. Discharges that are not continuous, as defined in 4VAC50-60-10, shall be particularly described and limited, considering the following factors, as appropriate:

1. Frequency;
2. Total mass;
3. Maximum rate of discharge of pollutants during the discharge; and
4. Prohibition or limitation of specified pollutants by mass, concentration, or other appropriate measure.

D. Mass Limitations.

1. All pollutants limited in permits shall have limitations, standards or prohibitions expressed in terms of mass except:

a. For pH, temperature, radiation, or other pollutants that cannot appropriately be expressed by mass;

b. When applicable standards and limitations are expressed in terms of other units of measurement; or

c. If in establishing technology-based permit limitations on a case-by-case basis, limitations expressed in terms of mass are infeasible because the mass of the pollutant discharged cannot be related to a measure of operation (for example, discharges of TSS from certain mining operations), and permit conditions ensure that dilution will not be used as a substitute for treatment.

2. Pollutants limited in terms of mass additionally may be limited in terms of other units of measurement, and the permit shall require the permittee to comply with both limitations.

#### **4VAC50-60-480. Duration of permits.**

A. VSMP permits shall be effective for a fixed term not to exceed five years.

B. Except as provided in 4VAC50-60-330, the term of a permit shall not be extended by modification beyond the maximum duration specified in this section.

C. The board may issue any permit for a duration that is less than the full allowable term under this section.

D. A permit may be issued to expire on or after the statutory deadline set forth in §§301(b)(2) (A), (C), and (E) of the CWA, if the permit includes effluent limitations to meet the requirements of §§301(b)(2) (A), (C), (D), (E) and (F) of the CWA, whether or not applicable effluent limitations guidelines have been promulgated or approved.

#### **4VAC50-60-490. Schedules of compliance.**

A. The permit may, when appropriate, specify a schedule of compliance leading to compliance with the Act, the CWA and regulations.

1. Any schedules of compliance under this section shall require compliance as soon as possible, but not later than the applicable statutory deadline under the CWA.

2. The first VSMP permit issued to a new source or a new discharger shall contain a schedule of compliance only when necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised after commencement of construction but less than three years before commencement of the relevant discharge. For recommencing dischargers, a schedule of compliance shall be available only when necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised less than three years before recommencement of discharge.

3. Schedules of compliance may be established in permits for existing sources that are reissued or modified to contain new or more restrictive water quality-based effluent limitations. The schedule may allow a reasonable period of time, not to exceed the term of the permit, for the discharger to attain compliance with the water quality-based limitations.

4. Except as provided in subdivision B 1 b of this section, if a permit establishes a schedule of compliance that exceeds one year from the date of permit issuance, the schedule shall set forth interim requirements and the dates for their achievement.

a. The time between interim dates shall not exceed one year.

b. If the time necessary for completion of any interim requirement is more than one year and is not readily divisible into stages for completion, the permit shall specify interim dates for the submission of reports of progress toward completion of the interim requirements and indicate a projected completion date.

5. The permit shall be written to require that no later than 14 days following each interim date and the final date of compliance, the permittee shall notify the department in writing of its compliance or noncompliance with the interim or final requirements, or submit progress reports if subdivision 4 b of this subsection is applicable.

B. A VSMP permit applicant or permittee may cease conducting regulated activities (by terminating of direct discharge for VSMP sources) rather than continuing to operate and meet permit requirements as follows:

1. If the permittee decides to cease conducting regulated activities at a given time within the term of a permit that has already been issued:

a. The permit may be modified to contain a new or additional schedule leading to timely cessation of activities; or

b. The permittee shall cease conducting permitted activities before noncompliance with any interim or final compliance schedule requirement already specified in the permit;

2. If the decision to cease conducting regulated activities is made before issuance of a permit whose term will include the termination date, the permit shall contain a schedule leading to termination which will ensure timely compliance with applicable requirements no later than the statutory deadline;

3. If the permittee is undecided whether to cease conducting regulated activities, the board may issue or modify a permit to contain two schedules as follows:

a. Both schedules shall contain an identical interim deadline requiring a final decision on whether to cease conducting regulated activities no later than a date that ensures sufficient time to comply with applicable requirements in a timely manner if the decision is to continue conducting regulated activities;

b. One schedule shall lead to timely compliance with applicable requirements no later than the statutory deadline;

c. The second schedule shall lead to cessation of regulated activities by a date that will ensure timely compliance with applicable requirements no later than the statutory deadline; and

d. Each permit containing two schedules shall include a requirement that after the permittee has made a final decision under subdivision 3 a of this subsection it shall follow the schedule leading to compliance if the decision is to continue conducting regulated activities, and follow the schedule leading to termination if the decision is to cease conducting regulated activities; and

4. The permit applicant's or permittee's decision to cease conducting regulated activities shall be evidenced by a firm public commitment satisfactory to the board, such as a resolution of the board of directors of a corporation.

## **Part IX**

### **Public Involvement**

#### **4VAC50-60-500. Draft permits.**

A. Once an application is complete, the board shall tentatively decide whether to prepare a draft permit or to deny the application.

B. If the board tentatively decides to deny the permit application, the owner shall be advised of that decision and of the changes necessary to obtain approval. The owner may withdraw the application prior to board action. If the application is not withdrawn or modified to obtain the tentative approval to issue, the board shall provide public notice and opportunity for a public hearing prior to board action on the application.

C. If the board tentatively decides to issue a VSMP general permit, a draft general permit shall be prepared under subsection D of this section.

D. If the board decides to prepare a draft permit, the draft permit shall contain the following information:

1. All conditions under 4VAC50-60-430 and 4VAC50-60-450;
2. All compliance schedules under 4VAC50-60-490;
3. All monitoring requirements under 4VAC50-60-460; and
4. Effluent limitations, standards, prohibitions and conditions under 4VAC50-60-430, 4VAC50-60-440, and 4VAC50-60-460, and all variances that are to be included.

#### **4VAC50-60-510. Statement of basis.**

A statement of basis shall be prepared for every draft permit for which a fact sheet under 4VAC50-60-520 is not prepared. The statement of basis shall briefly describe the derivation of the conditions of the draft permit and the reasons for them or, in the case of notices of intent to deny or terminate, reasons supporting the tentative decision. The statement of basis shall be sent to the permit applicant and, on request, to any other person.

#### **4VAC50-60-520. Fact sheet.**

A. A fact sheet shall be prepared for every draft permit for a major VSMP facility or activity, for every VSMP general permit, for every VSMP draft permit that incorporates a variance or requires an explanation under subsection B 8 of this section, and for every draft permit that the board finds is the subject of wide-spread public interest or raises major issues. The fact sheet shall briefly set forth the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the draft permit. The board shall send this fact sheet to the permit applicant and, on request, to any other person.

B. The fact sheet shall include, when applicable:

1. A brief description of the type of facility or activity that is the subject of the draft permit;
2. The type and quantity of wastes, fluids, or pollutants that are proposed to be or are being treated, stored, disposed of, injected, emitted, or discharged;
3. A brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions;
4. Reasons why any requested variances or alternatives to required standards do or do not appear justified;
5. A description of the procedures for reaching a final decision on the draft permit including:
  - a. The beginning and ending dates of the comment period for the draft permit and the address where comments will be received;
  - b. Procedures for requesting a public hearing and the nature of that hearing; and
  - c. Any other procedures by which the public may participate in the final decision;
6. Name and telephone number of a person to contact for additional information;
7. Any calculations or other necessary explanation of the derivation of specific effluent limitations and conditions or standards for sewage sludge use or disposal, including a citation to the applicable effluent limitation guideline, performance standard, or standard for sewage sludge use or disposal and reasons why they are applicable or an explanation of how the alternate effluent limitations were developed;
8. When the draft permit contains any of the following conditions, an explanation of the reasons why such conditions are applicable:
  - a. Limitations to control toxic pollutants;
  - b. Limitations on indicator pollutants;
  - c. Technology-based limitations set on a case-by-case basis;
  - d. Limitations to meet the criteria for permit issuance under 4VAC50-60-310; or
  - e. Waivers from monitoring requirements granted under 4VAC50-60-460 A; and
9. When appropriate, a sketch or detailed description of the location of the discharge or regulated activity described in the application.

#### **4VAC50-60-530. Public notice of permit actions and public comment period.**

##### **A. Scope.**

1. The board shall give public notice that the following actions have occurred:
  - a. A draft permit has been prepared under 4VAC50-60-500D;
  - b. A public hearing has been scheduled under 4VAC50-60-550; or
  - c. A VSMP new source determination has been made under 4VAC50-60-420.
2. No public notice is required when a request for permit modification, revocation and reissuance, or termination is denied under 4VAC50-60-610 B. Written notice of that denial shall be given to the requester and to the permittee. Public notice shall not be required for submission or approval of plans and specifications or conceptual engineering reports not required to be submitted as part of the application.
3. Public notices may describe more than one permit or permit actions.

##### **B. Timing.**

1. Public notice of the preparation of a draft permit required under subsection A of this section shall allow at least 30 days for public comment.
2. Public notice of a public hearing shall be given at least 30 days before the hearing. (Public notice of the hearing may be given at the same time as public notice of the draft permit and the two notices may be combined.)

##### **C. Methods. Public notice of activities described in subdivision A 1 of this section shall be given by the following methods:**

1. By mailing a copy of a notice to the following persons (any person otherwise entitled to receive notice under this subdivision may waive his rights to receive notice for any classes and categories of permits):
  - a. The permit applicant (except for VSMP general permits when there is no permit applicant);
  - b. Any other agency that the board knows has issued or is required to issue a VPDES permit;
  - c. Federal and state agencies with jurisdiction over fish, shellfish, and wildlife resources and over coastal zone management plans, the Advisory Council on Historic Preservation, State Historic Preservation Officers, including any affected states (Indian Tribes);
  - d. Any state agency responsible for plan development under §208(b)(2), 208(b)(4) or §303(e) of the CWA and the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service and the National Marine Fisheries Service;
  - e. Persons on a mailing list developed by:
    - (1) Including those who request in writing to be on the list;
    - (2) Soliciting persons for area lists from participants in past permit proceedings in that area; and
    - (3) Notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press, and in such publications as EPA regional and state funded newsletters, environmental bulletins, or state law journals. (The board may update the mailing list from time to time by requesting written indication of continued interest from those

listed. The board may delete from the list the name of any person who fails to respond to such a request.);

f. (1) Any unit of local government having jurisdiction over the area where the facility is proposed to be located; and

(2) Each state agency having any authority under state law with respect to the construction or operation of such facility;

2. By publication once a week for two successive weeks in a newspaper of general circulation in the area affected by the discharge. The cost of public notice shall be paid by the owner; and

3. Any other method reasonably calculated to give actual notice of the action in question to the persons potentially affected by it, including press releases or any other forum or medium to elicit public participation.

#### D. Contents.

1. All public notices issued under this part shall contain the following minimum information:

a. Name and address of the office processing the permit action for which notice is being given;

b. Name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit, except in the case of VSMP draft general permits;

c. A brief description of the business conducted at the facility or activity described in the permit application or the draft permit, for VSMP general permits when there is no application;

d. Name, address and telephone number of a person from whom interested persons may obtain further information, including copies of the draft permit or draft general permit, as the case may be, statement of basis or fact sheet, and the application;

e. A brief description of the procedures for submitting comments and the time and place of any public hearing that will be held, including a statement of procedures to request a public hearing (unless a hearing has already been scheduled) and other procedures by which the public may participate in the final permit decision;

f. A general description of the location of each existing or proposed discharge point and the name of the receiving water. For draft general permits, this requirement will be satisfied by a map or description of the permit area; and

g. Any additional information considered necessary or proper.

2. In addition to the general public notice described in subdivision 1 of this subsection, the public notice of a public hearing under 4VAC50-60-550 shall contain the following information:

a. Reference to the date of previous public notices relating to the permit;

b. Date, time, and place of the public hearing;

c. A brief description of the nature and purpose of the public hearing, including the applicable rules and procedures; and

d. A concise statement of the issues raised by the persons requesting the public hearing.

E. In addition to the general public notice described in subdivision D 1 of this section, all persons identified in subdivisions C 1 a through 1 d of this section shall be mailed a copy of the fact sheet or statement of basis, the permit application (if any) and the draft permit (if any).

**4VAC50-60-540. Public comments and requests for public hearings.**

During the public comment period provided under 4VAC50-60-530, any interested person may submit written comments on the draft permit and may request a public hearing, if no public hearing has already been scheduled. A request for a public hearing shall be in writing and shall state the nature of the issues proposed to be raised in the public hearing. All comments shall be considered in making the final decision and shall be answered as provided in 4VAC50-60-560.

**4VAC50-60-550. Public hearings.**

- A. 1. The board shall hold a public hearing whenever it finds, on the basis of requests, a significant degree of public interest in a draft permit or permits.
- 2. The board may also hold a public hearing at its discretion, whenever, for instance, such a hearing might clarify one or more issues involved in the permit decision.
- 3. Public notice of the public hearing shall be given as specified in 4VAC50-60-530 of this chapter.
- 4. Any public hearing convened pursuant to this section shall be held in the geographical area of the proposed discharge, or in another appropriate area. Related groups of permit applications may be considered at any such public hearing.

B. Any person may submit oral or written statements and data concerning the draft permit. Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may be required. The public comment period for the draft permit shall automatically be extended to the close of any public hearing under this section. The hearing officer may also extend the comment period by so stating at the public hearing.

C. A tape recording or written transcript of the hearing shall be made available to the public.

**4VAC50-60-560. Response to comments.**

A. At the time that a final permit is issued, the board shall issue a response to comments. This response shall:

- 1. Specify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change; and
- 2. Briefly describe and respond to all significant comments on the draft permit raised during the public comment period, or during any public hearing.

B. The response to comments shall be available to the public.

**4VAC50-60-570. Conditions requested by the Corps of Engineers and other government agencies.**

A. If during the comment period for an VSMP draft permit, the district engineer advises the department in writing that anchorage and navigation of any of the waters of the United States would be substantially impaired by the granting of a permit, the permit shall be denied and the permit applicant so notified. If the district engineer advised the department that imposing

specified conditions upon the permit is necessary to avoid any substantial impairment of anchorage or navigation, then the board shall include the specified conditions in the permit. Review or appeal of denial of a permit or of conditions specified by the district engineer shall be made through the applicable procedures of the Corps of Engineers, and may not be made through the procedures provided in this part. If the conditions are stayed by a court of competent jurisdiction or by applicable procedures of the Corps of Engineers, those conditions shall be considered stayed in the VSMP permit for the duration of that stay.

B. If during the comment period the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, or any other state or federal agency with jurisdiction over fish, wildlife, or public health advises the department in writing that the imposition of specified conditions upon the permit is necessary to avoid substantial impairment of fish, shellfish, or wildlife resources, the board may include the specified conditions in the permit to the extent they are determined necessary to carry out the provisions of this regulation, the Act and of the CWA.

C. In appropriate cases the board may consult with one or more of the agencies referred to in this section before issuing a draft permit and may reflect their views in the statement of basis, the fact sheet, or the draft permit.

#### **4VAC50-60-580. Decision on variances.**

A. The board may grant or deny requests for variances requested pursuant to 4VAC50-60-360 G 4, subject to EPA objection. Decisions on these variances shall be made according to the criteria of 40 CFR Part 125, Subpart H (2000).

B. The board may deny, or forward to the regional administrator with a written concurrence, or submit to EPA without recommendation a completed request for:

1. A variance based on the economic capability of the permit applicant submitted pursuant to 4VAC50-60-360 G 2; or
2. A variance based on water quality related effluent limitations submitted pursuant to 4VAC50-60-360 G 3.

C. If the EPA approves the variance, the board may prepare a draft permit incorporating the variance. Any public notice of a draft permit for which a variance or modification has been approved or denied shall identify the applicable procedures for appealing that decision.

D. The board may deny or forward to the administrator with a written concurrence a completed request for:

1. A variance based on the presence of fundamentally different factors from those on which an effluent limitations guideline was based, made according to the criteria and standards of 40 CFR Part 125, Subpart D (2000); or
2. A variance based upon certain water quality factors submitted pursuant to 4VAC50-60-360 G 2.

E. If the administrator approves the variance, the board may prepare a draft permit incorporating the variance. Any public notice of a draft permit for which a variance or modification has been approved or denied shall identify the applicable procedures for appealing that decision.

**4VAC50-60-590. Appeals of variances.**

When the board issues a permit on which EPA has made a variance decision, separate appeals of the VSMP permit and of the EPA variance decision are possible.

**4VAC50-60-600. Computation of time.**

A. Any time period scheduled to begin on the occurrence of an act or event shall begin on the day after the act or event.

B. Any time period scheduled to begin before the occurrence of an act or event shall be computed so that the period ends on the day before the act or event.

C. If the final day of any time period falls on a weekend or legal holiday, the time period shall be extended to the next working day.

D. Whenever a party or interested person has the right or is required to act within a prescribed period after the service of notice or other paper upon him by mail, three days shall be added to the prescribed time.

**Part X**

**Transfer, Modification, Revocation and Reissuance, and Termination of VSMP Permits**

**4VAC50-60-610. Modification, revocation and reissuance, or termination of permits.**

A. Permits may be modified, revoked and reissued, or terminated either at the request of any interested person (including the permittee) or upon the board's initiative. When the department receives any information (for example, inspects the facility, receives information submitted by the permittee as required in the permit, receives a request for modification or revocation and reissuance, or conducts a review of the permit file) it may determine whether one or more of the causes listed in this section for modification or revocation and reissuance, or both, exist. However, permits may only be modified, revoked and reissued, or terminated for the reasons specified in 4VAC50-60-630 or 4VAC50-60-650. All requests shall be in writing and shall contain facts or reasons supporting the request. If cause does not exist under these sections, the board shall not modify, revoke and reissue or terminate the permit. If a permit modification satisfies the criteria for minor modifications, the permit may be modified without a draft permit or public review. Otherwise, a draft permit must be prepared and other procedures in Part IX (4VAC50-60-500 et seq.) followed.

B. If the board decides the request is not justified, it shall send the requester a brief written response giving a reason for the decision. Denials of requests for modification, revocation and reissuance, or termination are not subject to public notice, comment, or public hearings.

C. 1. If the board tentatively decides to modify or revoke and reissue a permit, it shall prepare a draft permit incorporating the proposed changes. The board may request additional information and, in the case of a modified permit, may require the submission of an updated application. In the case of revoked and reissued permits, the board shall require the submission of a new application.

2. In a permit modification under this section, only those conditions to be modified shall be reopened when a new draft permit is prepared. All other aspects of the existing permit shall remain in effect for the duration of the unmodified permit. When a permit is revoked and reissued under this section, the entire permit is reopened just as if the permit had expired and was being reissued and the permit is reissued for a new term. During any revocation and reissuance proceeding the permittee shall comply with all conditions of the existing permit until a new final permit is reissued.

3. Minor modifications as defined in 4VAC50-60-640 are not subject to the requirements of this section.

D. If the board tentatively decides to terminate a permit under 4VAC50-60-650, where the permittee objects, it shall issue a notice of intent to terminate. A notice of intent to terminate is a type of draft permit that follows the same procedures as any draft permit.

#### **4VAC50-60-620. Transfer of permits.**

A. Except as provided in subsection B of this section, a permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued, or a minor modification made, to identify the new permittee and incorporate such other requirements as may be necessary under the Virginia Stormwater Management Act and the CWA.

B. Automatic transfers. As an alternative to transfers under subsection A of this section, any VSMP permit may be automatically transferred to a new permittee if:

1. The current permittee notifies the department at least 30 days in advance of the proposed transfer date in subdivision 2 of this subsection;
2. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and
3. The board does not notify the existing permittee and the proposed new permittee of its intent to modify or revoke and reissue the permit. A modification under this subdivision may also be a minor modification. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in subdivision 2 of this subsection.

#### **4VAC50-60-630. Modification or revocation and reissuance of permits.**

A. Causes for modification. The following are causes for modification but not revocation and reissuance of permits except when the permittee requests or agrees.

1. There are material and substantial alterations or additions to the permitted facility or activity that occurred after permit issuance that justify the application of permit conditions that are different or absent in the existing permit.
2. The department has received new information. Permits may be modified during their terms for this cause only if the information was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and would have justified the application of different permit conditions at the time of issuance. For VSMP general permits this cause includes any information indicating that cumulative effects on the environment are unacceptable. For new source or new discharger VSMP permits this cause shall include any significant information derived from effluent testing required on the permit application after issuance of the permit.
3. The standards or regulations on which the permit was based have been changed by promulgation of amended standards or regulations or by judicial decision after the permit was issued. Permits may be modified during their terms for this cause only as follows:
  - a. For promulgation of amended standards or regulations, when:
    - (1) The permit condition requested to be modified was based on a promulgated effluent limitation guideline, EPA approved or promulgated water quality standards;
    - (2) EPA has revised, withdrawn, or modified that portion of the regulation or effluent limitation guideline on which the permit condition was based, or has approved a state action with regard to a water quality standard on which the permit condition was based; and
    - (3) A permittee requests modification in accordance with this chapter within 90 days after Federal Register notice of the action on which the request is based;
  - b. For judicial decisions, a court of competent jurisdiction has remanded and stayed EPA promulgated regulations or effluent limitation guidelines, if the remand and stay concern that portion of the regulations or guidelines on which the permit condition was based and a request is filed by the permittee in accordance with this chapter within 90 days of judicial remand; or
  - c. For changes based upon modified state certifications of VSMP permits.
4. The board determines good cause exists for modification of a compliance schedule, such as an act of God, strike, flood, or materials shortage or other events over which the permittee has little or no control and for which there is no reasonably available remedy. However, in no case may a VSMP compliance schedule be modified to extend beyond an applicable CWA statutory deadline.
5. When the permittee has filed a request for a variance pursuant to 4VAC50-60-360 G within the time specified in this chapter.
6. When required to incorporate an applicable CWA §307(a) toxic effluent standard or prohibition.
7. When required by the reopener conditions in a permit that are established under 4VAC50-60-460 B.
8. Upon failure to notify another state whose waters may be affected by a discharge.
9. When the level of discharge of any pollutant that is not limited in the permit exceeds the level that can be achieved by the technology-based treatment requirements appropriate to the permittee.
10. To establish a notification level as provided in 4VAC50-60-460 E.
11. To correct technical mistakes, such as errors in calculation, or mistaken interpretations of law made in determining permit conditions.
12. When the discharger has installed the treatment technology considered by the permit writer in setting effluent limitations imposed under the Act and §402(a)(1) of the CWA and has

properly operated and maintained the facilities but nevertheless has been unable to achieve those effluent limitations. In this case, the limitations in the modified permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by a subsequently promulgated effluent limitations guideline).

13. For a small MS4, to include an effluent limitation requiring implementation of a minimum control measure or measures as specified in 4VAC50-60-400 D 2 when:

- a. The permit does not include such measures based upon the determination that another entity was responsible for implementation of the requirements; and
- b. The other entity fails to implement measures that satisfy the requirements.

B. Causes for modification or revocation and reissuance. The following are causes to modify or, alternatively, revoke and reissue a permit:

1. Cause exists for termination under 4VAC50-60-650, and the board determines that modification or revocation and reissuance is appropriate; or
2. The department has received notification of a proposed transfer of the permit. A permit also may be modified to reflect a transfer after the effective date of an automatic transfer but will not be revoked and reissued after the effective date of the transfer except upon the request of the new permittee.

#### **4VAC50-60-640. Minor modifications of permits.**

Upon the consent of the permittee, the board may modify a permit to make the corrections or allowances for changes in the permitted activity listed in this section, without following the procedures of Part IX of this chapter. Any permit modification not processed as a minor modification under this section must be made for cause and with draft permit and public notice. Minor modifications may only:

1. Correct typographical errors;
2. Require more frequent monitoring or reporting by the permittee;
3. Change an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date requirement;
4. Allow for a change in ownership or operational control of a facility where the board determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittees has been submitted to the department;
5. a. Change the construction schedule for a discharger which is a new source. No such change shall affect a discharger's obligation to have all pollution control equipment installed and in operation prior to discharge.  
b. Delete a point source outfall when the discharge from that outfall is terminated and does not result in discharge of pollutants from other outfalls except in accordance with permit limits.

#### **4VAC50-60-650. Termination of permits.**

A. The following are causes for terminating a permit during its term, or for denying a permit renewal application, after public notice and opportunity for a public hearing by the board.

1. The permittee has violated any regulation or order of the board, any order of the permit-issuing authority, any provision of the Virginia Stormwater Management Act or this chapter, or any order of a court, where such violation results in the unreasonable degradation of properties, water quality, stream channels, and other natural resources, or the violation is representative of a pattern of serious or repeated violations that in the opinion of the board, demonstrates the permittee's disregard for or inability to comply with applicable laws, regulations, permit conditions, orders, rules, or requirements;
2. Noncompliance by the permittee with any condition of the permit;
3. The permittee's failure to disclose fully all relevant material facts, or the permittee's misrepresentation of any relevant material facts in applying for a permit, or in any other report or document required under the Act or this chapter;
4. A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination;
5. A change in any condition that requires either a temporary or permanent reduction or elimination of any discharge controlled by the permit; or
6. The activity for which the permit was issued causes unreasonable degradation of properties, water quality, stream channels, and other natural resources
7. There exists a material change in the basis on which the permit was issued that requires either a temporary or a permanent reduction or elimination of any discharge or land-disturbing activity controlled by the permit necessary to prevent unreasonable degradation of properties, water quality, stream channels, and other natural resources.

B. The board shall follow the applicable procedures in this chapter in terminating any VSMP permit under this section, except that if the entire discharge is permanently terminated by elimination of the flow or by connection to a POTW or a PVOTW (but not by land application or disposal into a well), the board may terminate the permit by notice to the permittee. Termination by notice shall be effective 30 days after notice is sent, unless the permittee objects within that time. If the permittee objects during that period, the board shall follow the applicable procedures for termination under 4VAC50-60-610 D. Expedited permit termination procedures are not available to permittees that are subject to pending state or federal enforcement actions including citizen suits brought under state or federal law. If requesting expedited permit termination procedures, a permittee must certify that it is not subject to any pending state or federal enforcement actions including citizen suits brought under state or federal law.

## **Part XI**

### **Enforcement of VSMP Permits**

#### **4VAC50-60-660. Enforcement.**

- A. The board may enforce the provisions of this chapter by:
1. Issuing directives in accordance with the Act;
  2. Issuing special orders in accordance with the Act;
  3. Issuing emergency special orders in accordance with the Act;
  4. Seeking injunction, mandamus or other appropriate remedy as authorized by the Act;
  5. Seeking civil penalties under the Act; or
  6. Seeking remedies under the Act, the CWA or under other laws including the common law.

B. The board encourages citizen participation in all its activities, including enforcement. In particular:

1. The board will investigate citizen complaints and provide written response to all signed, written complaints from citizens concerning matters within the board's purview;
2. The board will not oppose intervention in any civil enforcement action when such intervention is authorized by statute or Supreme Court rule; and
3. At least 30 days prior to the final settlement of any civil enforcement action or the issuance of any consent special order, the board will publish public notice of such settlement or order in a newspaper of general circulation in the county, city or town in which the discharge is located, and in The Virginia Register of Regulations. This notice will identify the owner, specify the enforcement action to be taken and specify where a copy of the settlement or order can be obtained. A consent special order is a special order issued without a public hearing and with the written consent of the affected owner. For the purpose of this chapter, an emergency special order is not a consent special order. The board shall consider all comments received during the comment period before taking final action.

C. When a permit is amended solely to reflect a new owner, and the previous owner had been issued a consent special order that, at the time of permit amendment was still in full force and effect, a consent special order issued to the new owner does not have to go to public notice provided that:

- a. The permit amendment does not have to go to public notice; and
- b. The terms of the new consent order are the same as issued to the previous owner.

D. Notwithstanding subdivision B 3 of this subsection, a special order may be issued by agreement at a board meeting without further notice when a public hearing has been scheduled to issue a special order to the affected owner, whether or not the public hearing is actually held.

## **Part XII**

### **Miscellaneous**

#### **4VAC50-60-670. Delegation of authority.**

Upon the U.S. Environmental Protection Agency's authorization for delegation of program authority to the board, the director may perform any act of the board provided under the Act and this chapter, except as limited by §[10.1-603.2:1](#) of the Code of Virginia.

#### **4VAC50-60-680. Transition.**

Upon the effective date of this chapter the following will occur:

1. All applications received after the effective date of this chapter will be processed in accordance with these procedures.
2. A National Pollutant Discharge Elimination System Permit issued by the board has the same effect as a VSMP permit.
3. Permits issued by the State Water Control Board allowing the discharge of stormwater into state waters from Municipal Separate Storm Sewer Systems or land-disturbing activities that

have not expired or been revoked or terminated before or on the program transfer date to the board shall continue to remain in effect until their specified expiration dates.

#### **4VAC50-60-690. [Reserved]**

### **Part XIII Fees**

#### **4VAC50-60-700. Purpose.**

Sections [10.1-603.4](#) and [10.1-603.5](#) of the Code of Virginia authorize the establishment of a statewide fee schedule for stormwater management and state agency projects. These regulations in this part establish the fee assessment and collection system.

#### **4VAC50-60-710. Definitions.**

The following words and terms used in this chapter have the following meanings:

"Permit applicant" means for the purposes of this part any person submitting a permit application for issuance, reissuance, or modification, except as exempted by 4VAC50-60-740, of a permit or filing a registration statement or permit application for coverage under a general permit issued pursuant to the Act and this chapter.

"Permit application" means for the purposes of this part the forms approved by the Virginia Soil and Water Conservation Board for applying for issuance or reissuance of a permit or for filing a registration statement or application for coverage under a general permit issued in response to the Act and this chapter. In the case of modifications to an existing permit requested by the permit holder and not exempted by 4VAC50-60-740, the application shall consist of the formal written request and any accompanying documentation submitted by the permit holder to initiate the modification.

#### **4VAC50-60-720. Authority.**

The authority for this part is pursuant to §§10.1-604.4 and [10.1-603.4:1](#) of the Code of Virginia and enactment clause 7 governing the transfer of the relevant provisions of Fees for Permits and Certificates Regulations, 9VAC25-20, in accordance with Chapter 372 of the 2004 Virginia Acts of Assembly.

#### **4VAC50-60-730. Applicability.**

A. This part applies to:

1. All permit applicants for issuance of a new permit or reissuance of an existing permit, except as specifically exempt under 4VAC50-60-740 A. The fee due shall be as specified under 4VAC50-60-800 or 4VAC50-60-820.
2. All permittees who request that an existing permit be modified, except as specifically exempt under 4VAC50-60-740 A 1 of this chapter. The fee due shall be as specified under 4VAC50-60-810.

B. An applicant for a permit involving a permit that is to be revoked and reissued shall be considered an applicant for a new permit. The fee due shall be as specified under 4VAC50-60-800.

C. Permit maintenance fees apply to each Virginia Stormwater Management Permit (VSMP) permit holder. The fee due shall be as specified under 4VAC50-60-830.

**4VAC50-60-740. Exemptions.**

No permit application fees will be assessed to:

1. Permittees who request minor modifications or minor amendments to permits as defined in 4VAC50-60-10.
2. Permittees whose permits are modified or amended at the initiative of the permit-issuing authority.

**4VAC50-60-750. Due dates for Virginia Stormwater Management Program (VSMP) Permits.**

A. Permit application fees for all new permit applications are due on the day a permit application is submitted and shall be paid in accordance with 4VAC50-60-760. Applications will not be processed without payment of the required fee.

B. A permit application fee is due on the day a permit application is submitted for a major modification that occurs (and becomes effective) before the stated permit expiration date. There is no application fee for a major modification or amendment that is made at the permit-issuing authority's initiative.

C. Permit maintenance fees shall be paid to the permit-issuing authority by October 1 of each year. No permit will be reissued or automatically continued without payment of the required fee. Effective April 1, 2005, any permit holder whose permit is effective as of April 1 of a given year (including permits that have been administratively continued) shall pay the permit maintenance fee or fees to the permit-issuing authority by October 1 of that same year.

**4VAC50-60-760. Method of payment.**

A. Fees shall be submitted electronically or be paid by check, draft or postal money order payable to the Treasurer of Virginia, to the permit-issuing authority, and must be in U.S. currency, except that agencies and institutions of the Commonwealth of Virginia may submit Interagency Transfers for the amount of the fee. To pay electronically, go to the Department of Conservation and Recreation's stormwater management section of the Department's public website at <http://www.dcr.virginia.gov>. Fees not submitted electronically shall be sent to the following address: Virginia Department of Conservation and Recreation, Division of Finance, Accounts Payable, 203 Governor Street, Richmond, VA 23219.

B. Required information. All applicants for new permit issuance, permit reissuance, or permit modification shall submit the following information along with the fee payment or utilize the Department of Conservation and Recreation Permit Application Fee Form:

1. Applicant name, address and daytime phone number.
2. Applicant Federal Identification Number (FIN).
3. The name of the facility/activity, and the facility/activity location.
4. The type of permit applied for.
5. Whether the application is for a new permit issuance, permit reissuance or permit modification.
6. The amount of fee submitted.
7. The existing permit number, if applicable.

#### **4VAC50-60-770. Incomplete payments and late payments.**

All incomplete payments will be deemed as nonpayments.

Interest may be charged for late payments at the underpayment rate set out by the U.S. Internal Revenue Service established pursuant to §6621(a)(2) of the Internal Revenue Code. This rate is prescribed in §[58.1-15](#) of the Code of Virginia and is calculated on a monthly basis at the applicable periodic rate.

A 10% late payment fee may be charged to any delinquent (over 90 days past due) account.

The permit-issuing authority is entitled to all remedies available under the Code of Virginia in collecting any past due amount and may recover any attorney's fees and/or other administrative costs incurred in pursuing and collecting any past due amount.

#### **4VAC50-60-780. Deposit and use of fees.**

All fees collected by the board or department in response to this chapter shall be deposited into a special nonreverting fund known as the Virginia Stormwater Management Fund established by, and used and accounted for as specified in §[10.1-603.4:1](#) of the Code of Virginia. Fees collected shall be exempt from statewide indirect costs charged and collected by the Department of Accounts.

Whenever the board has delegated a stormwater management program to a locality or is required to do so by the Act, no more than 30% of the total revenue generated by the statewide stormwater management fees collected within the locality shall be remitted to the State Treasurer for deposit in the Virginia Stormwater Management Fund.

#### **4VAC50-60-790. General.**

Each permit application for a new permit each permit application for reissuance of a permit, each permit application for major modification of a permit, and each revocation and reissuance of a permit is a separate action and shall be assessed a separate fee, as applicable. The fees for each type of permit that the permit-issuing authority has the authority to issue, reissue or modify will be as specified in this part.

**4VAC50-60-800. Fee schedules for VSMP Municipal Separate Storm Sewer System new permit issuance.**

The following fee schedule applies to permit applications for issuance of a new VSMP

Municipal Separate Storm Sewer System permit.

VSMP Municipal Stormwater / MS4 Individual (Large and Medium)	\$21,300
VSMP Municipal Stormwater / MS4 Individual (Small)	\$2,000
VSMP Municipal Stormwater / MS4 General Permit (Small)	\$600

**4VAC50-60-810. Fee schedules for major modification of individual permits or certificates requested by the permittee.**

The following fee schedules apply to applications for major modification of an individual permit requested by the permittee:

The permit application fees listed in the table below apply to a major modification of a VSMP Municipal Separate Storm Sewer Systems Permit that occurs (and becomes effective) before the stated permit expiration date.

VSMP Municipal Stormwater / MS4 Individual (Large and Medium)	\$10,650
VSMP Municipal Stormwater / MS4 Individual (Small)	\$1,000

**4VAC50-60-820. Fees for filing permit applications (registration statements) for general permits issued by the permit-issuing authority.**

The following fees apply to filing of permit applications (registration statements) for all general permits issued by the permit-issuing authority, except VSMP Stormwater Construction General Permits.

The fee for filing a permit application (registration statement) for coverage under a VSMP stormwater general permit issued by the permit-issuing authority shall be:

VSMP General / Stormwater Management--Phase I Land Clearing (Large Construction Activity--Sites or common plans of development equal to or greater than 5 acres)	\$500
VSMP General / Stormwater Management--Phase II Land Clearing (Small Construction Activity--Sites or common plans of development equal to or greater than 1 acre and less than 5 Acres)	\$300

**4VAC50-60-830. Permit maintenance fees.**

A. The following annual permit maintenance fees apply to each VSMP permit identified below, including expired permits that have been administratively continued:

VSMP Municipal Stormwater / MS4 Individual (Large and Medium)	\$3,800
VSMP Municipal Stormwater / MS4 Individual (Small)	\$400
VSMP General / Stormwater Management--Phase I Land Clearing (Large Construction Activity--Sites or common plans of development equal to or greater than 5 acres)	\$0
VSMP General / Stormwater Management--Phase II Land Clearing (Small Construction Activity--Sites or common plans of development equal to or greater than 1 acre and less than 5 Acres)	\$0

B. An additional permit maintenance fee of \$1,000 shall be paid annually by permittees in a toxics management program. Any facility that performs acute or chronic biological testing for compliance with a limit or special condition requiring monitoring in a VPDES permit is included in the toxics management program.

**Part XIV**

**General Virginia Stormwater Management Program (VSMP)  
Permit for Discharges of Stormwater from Construction Activities**

**4VAC50-60-840 to 4VAC50-60-1000. [Reserved]**

**4VAC50-60-1100. Definitions.**

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

"Commencement of construction" means the initial disturbance of soils associated with clearing, grading, or excavating activities or other construction activities.

"Final stabilization" means that one of the following situations has occurred:

1. All soil disturbing activities at the site have been completed and a permanent vegetative cover has been established on denuded areas not otherwise permanently stabilized. Permanent vegetation shall not be considered established until a ground cover is achieved that is uniform, mature enough to survive, and will inhibit erosion.
2. For individual lots in residential construction, final stabilization can occur by either:
  - a. The homebuilder completing final stabilization as specified in subdivision 1 of this definition; or
  - b. The homebuilder establishing temporary stabilization, including perimeter controls for an individual lot prior to occupation of the home by the homeowner, and informing the homeowner of the need for, and benefits of, final stabilization.

3. For construction projects on land used for agricultural purposes (e.g., pipelines across crop or range land), final stabilization may be accomplished by returning the disturbed land to its preconstruction agricultural use. Areas disturbed that were not previously used for agricultural activities, such as buffer strips immediately adjacent to surface waters, and areas that are not being returned to their preconstruction agricultural use must meet the final stabilization criteria specified in subdivision 1 or 2 of this definition.

**4VAC50-60-1110. Purpose.**

This general permit regulation governs stormwater discharges from construction activities. For the purposes of this part, these discharges are defined as stormwater discharges associated with large construction activity, and stormwater discharges associated with small construction activity. Stormwater discharges associated with other types of industrial activity shall not have coverage under this general permit. This general permit covers only discharges through a point source to a surface water or through a municipal or nonmunicipal separate storm sewer system to surface waters. Stormwater discharges associated with industrial activity that originate from the site after construction activities have been completed and the site has undergone final stabilization are not authorized by this permit.

**4VAC50-60-1120. Effective date of the permit.**

This general permit became effective on July 1, 2004. The general permit will expire on June 30, 2009.

**4VAC50-60-1130. Authorization to discharge.**

A. Any operator governed by this general permit is authorized by this to discharge to surface waters of the Commonwealth of Virginia provided that the operator files a complete and accurate registration statement in accordance with 4VAC50-60-1140, any fees required by 4VAC50-60-700 et seq. (Part XIII) complies with the requirements of 4VAC50-60-1150, and provided that:

1. The operator shall not have been required to obtain an individual permit according to 4VAC50-60-410 B;
2. The operator shall not be authorized by this general permit to discharge to state waters specifically named in other State Water Control Board regulations or policies that prohibit such discharges;
3. Prior to commencing construction, the operator shall obtain approval of an erosion and sediment control plan from the locality in which the construction activity is to occur or from another appropriate plan approving authority authorized under the Erosion and Sediment Control Regulations, 4VAC50-30, unless the operator receives an "agreement in lieu of a plan" from the locality, or is exempt from the requirement to submit an erosion and sediment control plan by 4VAC50-30;
4. Stormwater discharges which the permit-issuing authority determines cause, may reasonably be expected to cause, or contribute to a violation of water quality standards (9VAC25-260) are not covered by this permit;
5. The stormwater discharge authorized by this permit may be combined with other sources of stormwater that are not required to be covered under a VSMP permit, so long as the combined

discharge is in compliance with this permit. Any discharge authorized by a different VSMP or a VPDES permit may be commingled with discharges authorized by this permit; and

6. Discharges to waters for which a "total maximum daily load" (TMDL) allocation for sediment or a parameter that addresses sediment (such as total suspended solids, turbidity, or siltation) has been established by the State Water Control Board and approved by EPA are not eligible for coverage under this permit unless the stormwater pollution prevention plan (SWPPP) developed by the operator incorporates measures and controls that are consistent with the assumptions and requirements of such TMDL. To be eligible for coverage under this general permit, the SWPPP must incorporate any conditions applicable to discharges from the construction site that are necessary for consistency with the assumptions and requirements of the TMDL. If a specific wasteload allocation has been established that would apply to discharges from the construction site, the operator must incorporate that allocation into the SWPPP and implement necessary steps to meet that allocation.

B. This permit may also be used to authorize stormwater discharges from support activities (e.g., concrete or asphalt batch plants, equipment staging yards, material storage areas, excavated material disposal areas, borrow areas) located on-site or off-site provided that:

1. The support activity is directly related to a construction site that is required to have VSMP permit coverage for discharges of stormwater associated with construction activity;
2. The support activity is not a commercial operation serving multiple unrelated construction projects by different operators, and does not operate beyond the completion of the construction activity at the last construction project it supports; and
3. Appropriate controls and measures are identified in a stormwater pollution prevention plan covering the discharges from the support activity areas.

C. Support activities located off-site are not required to be covered under this general permit. Discharges of stormwater from off-site support activities may be authorized under another VSMP or a VPDES permit. Where stormwater discharges from off-site support activities are not authorized under this general permit, the land area of the off-site support activity need not be included in determining the total land disturbance acreage of the construction activity seeking general permit coverage.

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

E. The board may waive the otherwise applicable requirements in this general permit regulation for a stormwater discharge from small construction activity where stormwater controls are not needed based on a "total maximum daily load" (TMDL) established by the board and approved by EPA that addresses the pollutants of concern or, for nonimpaired waters that do not require TMDLs, an equivalent analysis that determines allocations for small construction sites for the pollutants of concern or that determines that such allocations are not needed to protect water quality based on consideration of existing in-stream concentrations, expected growth in pollutant contributions from all sources, and a margin of safety. For the purpose of this section, the pollutants of concern include sediment or a parameter that addresses sediment (such as total suspended solids, turbidity or siltation) and any other pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the construction activity. In

order to obtain this waiver, prior to the commencement of construction the operator must certify to the board that the construction activity will take place, and stormwater discharges will occur, within the drainage area addressed by a TMDL, or within the drainage area addressed by an equivalent analysis.

#### **4VAC50-60-1140. Qualifying state, tribal and local programs.**

Qualifying state, tribal, or local erosion and sediment control program requirements may be incorporated by reference into the Stormwater Pollution Prevention Plan (SWPPP) required by 4VAC50-60-1170 of this permit. Where a qualifying state, tribal, or local program does not include one or more of the elements in this section, then the permittee must include those elements as part of the SWPPP required by 4VAC50-60-1170 of this permit. A qualifying state, tribal, or local erosion and sediment control program is one that includes:

1. Requirements for construction site operators to implement appropriate erosion and sediment control best management practices;
2. Requirements for construction site operators to control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality;
3. Requirements for construction site operators to develop and implement an SWPPP. (An SWPPP includes site descriptions, descriptions of appropriate control measures, copies of approved state, tribal or local requirements, maintenance procedures, inspection procedures, and identification of nonstormwater discharges); and
4. Requirements to submit a site plan for review that incorporates consideration of potential water quality impacts.

Statutory Authority

#### **4VAC50-60-1150. Permit application (registration statement).**

A. Deadlines for submitting registration statement.

1. Except as provided in subdivision 3 of this subsection, operators must submit a complete and accurate registration statement in accordance with the requirements of this section prior to the commencement of construction activities (i.e., the initial disturbance of soils associated with clearing, grading, excavation activities, or other construction activities).
2. For stormwater discharges from construction projects where the operator changes, including instances where an operator is added after a registration statement has been submitted, the new operator must submit a complete and accurate registration statement prior to assuming operational control over site specifications or commencing work on-site.
3. In order to continue permit coverage, operators of ongoing construction activity projects as of July 1, 2004, that received authorization to discharge for those projects under the construction stormwater general permit issued in 1999 must:
  - a. Submit a complete and accurate registration statement by July 1, 2004; and
  - b. Update their stormwater pollution prevention plan to comply with the requirements of this general permit within 30 days after the date of coverage under this general permit.
4. Effective date of permit coverage. The operator of a construction activity is authorized to discharge stormwater from those construction activities under the terms and conditions of this permit immediately upon submission of a complete and accurate registration statement to the

permit-issuing authority, but in no event earlier than the effective date of this permit, except as noted in subdivision 3 of this subsection. For the purposes of this regulation, a registration statement that is mailed is considered to be submitted once it is postmarked. Operators are not authorized to discharge if the registration statement is incomplete or incorrect, or if the discharge(s) was not eligible for coverage under this permit.

5. Late notifications. Operators are not prohibited from submitting registration statements after initiating clearing, grading, excavation activities, or other construction activities. When a late registration statement is submitted, authorization for discharges occurs no earlier than the submission date of the registration statement. The permit-issuing authority reserves the right to take enforcement action for any unpermitted discharges or permit noncompliance that occurs between the commencement of construction and discharge authorization.

B. Registration statement. The operator shall submit a registration statement that shall contain the following information:

1. Name, mailing address and telephone number of the construction activity operator (NOTE: The permit will be issued to this operator, and the certification in subdivision 13 of this subsection must be signed by the appropriate person associated with this operator);
2. Name and location of the construction activity and all off-site support activities to be covered under the permit. If a street address is unavailable, provide latitude and longitude;
3. Status of the activity: federal, state, public, or private;
4. Nature of the construction project (e.g., commercial, industrial, residential, agricultural, oil and gas, etc.);
5. Name of the receiving water(s);
6. If the discharge is through a municipal separate storm sewer system (MS4), the name of the municipal operator of the storm sewer;
7. Estimated project start date and completion date;
8. Total land area of development and estimated area to be disturbed by construction activity (to the nearest quarter acre);
9. Whether the area to be disturbed by the construction activity is part of a larger common plan of development or sale;
10. A topographic map or other map that clearly shows the location of the construction activity, the area to be disturbed (including off-site support activities), and the receiving stream or streams for the stormwater discharges;

NOTE: A stormwater pollution prevention plan (SWPPP) must be prepared in accordance with the requirements of the VSMP General Permit for Stormwater Discharges from Construction Activities prior to submitting this registration statement. By signing this registration statement you are certifying that the SWPPP has been prepared;

11. The location of where the SWPPP may be viewed, and the name and phone number of a contact person (NOTE: The contact person should be a person knowledgeable in the principles and practice of erosion and sediment controls, that is a licensed professional engineer, responsible land disturber (RLD), or other knowledgeable person that (i) holds a certificate of competence from the board in the area of project inspection; or (ii) is enrolled in the board's training program for project inspection or combined administrator and successfully completes such program within one year of enrollment); and
12. A list of the permanent BMPs (both structural and nonstructural) that will be installed at the construction activity site. For each BMP that will be installed, include the following information:

- a. Type of permanent BMP to be installed;
- b. Geographic location (county—state Hydrologic Unit Code);
- c. Waterbody the BMP will discharge into;
- d. Number of acres that will be treated (to the nearest one-tenth acre).

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

C. The registration statement shall be signed in accordance with 4VAC50-60-1170, Section III K.

D. Where to submit. The registration statement shall be submitted to the permit-issuing authority.

#### **4VAC50-60-1160. Termination of permit coverage.**

A. Requirements. The operator of the construction activity may only submit a notice of termination after one or more of the following conditions have been met:

1. Final stabilization has been achieved on all portions of the site for which the operator is responsible;
2. Another operator has assumed control over all areas of the site that have not been finally stabilized;
3. Coverage under an alternative VPDES or VSMP permit has been obtained; or
4. For residential construction only, temporary stabilization has been completed and the residence has been transferred to the homeowner.

The notice of termination must be submitted within 30 days of one of the above conditions being met. Authorization to discharge terminates seven days after the notice of termination is submitted. For the purposes of this regulation, a notice of termination that is mailed is considered to be submitted once it is postmarked.

B. Notice of termination. The notice of termination shall contain the following information:

1. Name, mailing address and telephone number of the construction activity operator.
2. Name and location of the construction activity. If a street address is unavailable, provide latitude and longitude.
3. The VSMP stormwater general permit number.
4. The basis for submission of the notice of termination, including:
  - a. Final stabilization has been achieved on all portions of the site for which the operator is responsible;
  - b. Another operator has assumed control over all areas of the site that have not been finally stabilized;
  - c. Coverage under an alternative VPDES or VSMP permit has been obtained; or

d. For residential construction only, temporary stabilization has been completed and the residence has been transferred to the homeowner.

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

C. The notice of termination shall be signed in accordance with 4VAC50-60-1170, Section III K.

D. Where to submit. The notice of termination shall be submitted to the permit-issuing authority.

**4VAC50-60-1170. General permit.**

Any operator whose registration statement is accepted by the permit-issuing authority will receive the following permit and shall comply with the requirements in it and be subject to all requirements of the Virginia Stormwater Management Act (Chapter 6, Article 1.1 (§[10.1-603.1](#) et seq.) of Title 10.1 of the Code of Virginia) and the Virginia Stormwater Management Program (VSMP) Permit Regulations (4VAC50-60).

General Permit No.: DCR01

Effective Date: July 1, 2004

Expiration Date: June 30, 2009

**GENERAL PERMIT FOR DISCHARGES OF STORMWATER FROM CONSTRUCTION ACTIVITIES**

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

In compliance with the provisions of the Clean Water Act, as amended, and pursuant to the Virginia Stormwater Management Act and regulations adopted pursuant to that, operators of construction activities (those sites or common plans of development or sale that will result in the disturbance of one or more acres of total land area) with stormwater discharges from these construction activities are authorized to discharge to surface waters within the boundaries of the Commonwealth of Virginia, except those specifically named in State Water Control Board and Virginia Soil and Water Conservation Board regulations and policies or permit-issuing authority policies and ordinances which prohibit such discharges.

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

## SECTION I

### DISCHARGE AUTHORIZATION AND SPECIAL CONDITIONS

#### A. Coverage under this permit.

1. During the period beginning with the date of coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge stormwater from construction activities.
2. This permit also authorizes stormwater discharges from off-site support activities (e.g., concrete or asphalt batch plants, equipment staging yards, material storage areas, excavated material disposal areas, borrow areas) provided that:
  - a. The support activity is directly related to a construction site that is required to have VSMP permit coverage for discharges of stormwater associated with construction activity;
  - b. The support activity is not a commercial operation serving multiple unrelated construction projects by different operators, and does not operate beyond the completion of the construction activity at the last construction project it supports; and
  - c. Appropriate controls and pollution prevention measures for the discharges from the support activity areas are identified in the stormwater pollution prevention plan required for the construction activity under Section II D of this permit.
3. There shall be no discharge of floating solids or visible foam in other than trace amounts.

#### B. Limitation on coverage.

1. Post-construction discharges. This permit does not authorize stormwater discharges that originate from the site after construction activities have been completed and the site, including any temporary support activity site, has undergone final stabilization. Post-construction industrial stormwater discharges may need to be covered by a separate VPDES permit.
2. Discharges mixed with nonstormwater. This permit does not authorize discharges that are mixed with sources of nonstormwater, other than those discharges that are identified in Section I D 2 (Exceptions to prohibition of nonstormwater discharges) and are in compliance with Section II D 5 (Nonstormwater discharge management).
3. Discharges covered by another permit. This permit does not authorize stormwater discharges associated with construction activity that have been covered under an individual permit or required to obtain coverage under an alternative general permit in accordance with Part Section III X.
4. TMDL limitation. Discharges to waters for which a "total maximum daily load" (TMDL) allocation for sediment or a parameter that addresses sediment (such as total suspended solids, turbidity, or siltation) has been established by the State Water Control Board and approved by EPA are not eligible for coverage under this permit unless the stormwater pollution prevention plan (SWPPP) developed by the operator incorporates measures and controls that are consistent with the assumptions and requirements of such TMDL. To be eligible for coverage under this general permit, the SWPPP must incorporate any conditions applicable to discharges from the construction site that are necessary for consistency with the assumptions and requirements of the TMDL. If a specific wasteload allocation has been established that would apply to discharges from the construction site, the operator must incorporate that allocation into the SWPPP and implement necessary steps to meet that allocation.

C. Commingled discharges. Any discharge authorized by a different VSMP or VPDES permit may be commingled with discharges authorized by this permit.

D. Prohibition of nonstormwater discharges.

1. Except as provided in Sections I A 2, I C and I D 2, all discharges covered by this permit shall be composed entirely of stormwater associated with construction activity.

2. The following nonstormwater discharges from active construction sites are authorized by this permit provided the nonstormwater component of the discharge is in compliance with Section II D 5 (Nonstormwater discharges):

- a. Discharges from fire fighting activities;
- b. Fire hydrant flushings;
- c. Waters used to wash vehicles where detergents are not used;
- d. Water used to control dust;
- e. Potable water sources, including waterline flushings;
- f. Water used for hydrostatic testing of new pipeline construction;
- g. Routine external building wash down which does not use detergents;
- h. Pavement washwaters where spills or leaks of toxic or hazardous materials have not occurred (unless all spilled material has been removed) and where detergents are not used;
- i. Uncontaminated air conditioning or compressor condensate;
- j. Uncontaminated ground water or spring water;
- k. Foundation or footing drains where flows are not contaminated with process materials such as solvents;
- l. Uncontaminated excavation dewatering, and
- m. Landscape irrigation.

E. Releases of hazardous substances or oil in excess of reportable quantities. The discharge of hazardous substances or oil in the stormwater discharges from the construction site shall be prevented or minimized in accordance with the stormwater pollution prevention plan for the site. This permit does not relieve the permittee of the reporting requirements of 40 CFR Part 110 (2002), 40 CFR Part 117 (2002) and 40 CFR Part 302 (2002) or [§62.1-44.34:19](#) of the Code of Virginia.

Where a release containing a hazardous substance or oil in an amount equal to or in excess of a reportable quantity established under either 40 CFR Part 110 (2002), 40 CFR Part 117 (2002) or 40 CFR Part 302 (2002) occurs during a 24-hour period:

1. The permittee is required to notify the Department of Environmental Quality and the permit-issuing authority in accordance with the requirements of Section III G as soon as he has knowledge of the discharge;
2. Where a release enters a municipal separate storm sewer system (MS4), the permittee shall also notify the owner of the MS4 and the Department of Conservation and Recreation; and
3. The stormwater pollution prevention plan required under Section II D of this permit must be reviewed to identify measures to prevent the reoccurrence of such releases and to respond to such releases, and the plan must be modified where appropriate.

F. Spills. This permit does not authorize the discharge of hazardous substances or oil resulting from an on-site spill.

G. Termination of permit coverage.

1. The operator of the construction activity may only submit a notice of termination after one or more of the following conditions have been met:

- a. Final stabilization has been achieved on all portions of the site for which the operator is responsible;
  - b. Another operator has assumed control over all areas of the site that have not been finally stabilized;
  - c. Coverage under an alternative VPDES or VSMP permit has been obtained; or
  - d. For residential construction only, temporary stabilization has been completed and the residence has been transferred to the homeowner.
2. The notice of termination must be submitted within 30 days of one of the conditions in Section I G 1 being met. Authorization to discharge terminates seven days after the notice of termination is submitted.
  3. The notice of termination shall be signed in accordance with Section III K of this permit.

H. Water quality protection. The permittee must select, install, implement and maintain best management practices (BMPs) at the construction site that minimize pollutants in the discharge as necessary to meet applicable water quality standards. 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 an applicable water quality standard, 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 in accordance with 4VAC50-60-410 B 3.

## SECTION II

### STORMWATER POLLUTION PREVENTION PLAN

A stormwater pollution prevention plan (SWPPP) shall be developed and implemented for the construction activity covered by this permit. SWPPPs shall be prepared in accordance with good engineering practices. The SWPPP shall identify potential sources of pollution which may reasonably be expected to affect the quality of stormwater discharges from the construction site. In addition, the SWPPP shall describe and ensure the implementation of practices which will be used to reduce pollutants in stormwater discharges from the construction site, and to assure compliance with the terms and conditions of this permit.

The SWPPP requirements of this general permit may be fulfilled by incorporating by reference other state, tribal or local plans such as an erosion and sediment control (ESC) plan, a spill prevention control and countermeasure (SPCC) plan developed for the site under §311 of the federal Clean Water Act or best management practices (BMP) programs otherwise required for the facility provided that the incorporated plan meets or exceeds the SWPPP requirements of Section II D. If an erosion and sediment control plan for the construction activity is being incorporated by reference, the referenced plan must be approved by the locality in which the construction activity is to occur or by another appropriate plan approving authority authorized under the Erosion and Sediment Control Regulations (4VAC50-30) prior to the commencement of construction. All plans incorporated by reference into the SWPPP become enforceable under this permit. If a plan incorporated by reference does not contain all of the required elements of the SWPPP of Section II D, the permittee must develop the missing elements and include them in the required SWPPP.

Once a definable area has been finally stabilized, the operator may mark this on the SWPPP and no further SWPPP or inspection requirements apply to that portion of the site (e.g., earth-

disturbing activities around one of three buildings in a complex are done and the area is finally stabilized; one mile of a roadway or pipeline project is done and finally stabilized, etc.). The operator must implement the SWPPP as written from commencement of construction activity until final stabilization is complete.

A. Deadlines for SWPPP preparation and compliance.

1. The SWPPP shall be prepared prior to submittal of the registration statement and provide for compliance with the terms and schedule of the plan beginning with the initiation of construction activities.
2. 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.

B. Signature, plan review and making plans available.

1. The SWPPP shall be signed in accordance with Section III K.
2. The SWPPP shall be retained, along with a copy of this permit at the construction site from the date of commencement of construction activity to the date of final stabilization. Permittees with day-to-day operation control over SWPPP implementation shall have a copy of the plan available at a central location on-site for the use of all operators and those identified as having responsibilities under the plan whenever they are on the construction site. The SWPPP must be made available, in its entirety, to the department and the permit-issuing authority for review at the time of an on-site inspection.
3. The permittee shall make SWPPPs available upon request to the department; the permit-issuing authority; a state or local agency approving erosion and sediment plans, grading plans, or stormwater management plans; local government officials; or the operator of a municipal separate storm sewer system receiving discharges from the site.

C. Maintaining an updated SWPPP.

1. The permittee shall amend the SWPPP whenever there is a change in design, construction, operation, or maintenance that has a significant effect on the discharge of pollutants to surface waters and that has not been previously addressed in the SWPPP.
2. The SWPPP must be amended if during inspections or investigations by site staff, or by local, state or federal officials, it is determined that the discharges are causing water quality exceedances, or the SWPPP is ineffective in eliminating or significantly minimizing pollutants in stormwater discharges from the construction site.
3. Based on the results of an inspection, the SWPPP must be modified as necessary to include additional or modified BMPs designed to correct problems identified. Revisions to the SWPPP must be completed within seven calendar days following the inspection. Implementation of these additional or modified BMPs must be accomplished as described in Section II D 3 b.
4. The SWPPP must clearly identify for each measure identified in the plan, the contractor(s) or subcontractor(s) that will implement the measure. The SWPPP shall be amended to identify any new contractor that will implement a measure of the plan.

D. Stormwater pollution prevention plan contents. The SWPPP shall include the following items:

1. Site and activity description. Each SWPPP shall provide the following information:
  - a. A description of the nature of the construction activity, including the function of the project (e.g., low density residential, shopping mall, highway, etc.);

- b. The intended sequence and timing of activities that disturb soils at the site (e.g., grubbing, excavation, grading, utilities and infrastructure installation).
- c. Estimates of the total area expected to be disturbed by excavation, grading, or other construction activities including off-site borrow and fill areas;
- d. A description of any other potential pollution sources, such as vehicle fueling, storage of fertilizers or chemicals, sanitary waste facilities, etc.
- e. Identification of the nearest receiving waters at or near the construction site that will receive discharges from disturbed areas of the project;
- f. The location and description on any discharge associated with industrial activity other than construction at the site. This includes stormwater discharges from dedicated asphalt plants and dedicated concrete plants that are covered by this permit.

g. A site map indicating:

- (1) Directions of stormwater flow and approximate slopes anticipated after major grading activities;
- (2) Areas of soil disturbance and areas of the site which will not be disturbed;
- (3) Locations of major structural and nonstructural controls identified in the SWPPP, including those that will be permanent controls that will remain after construction activities have been completed;
- (4) Locations where stabilization practices are expected to occur;
- (5) Surface water bodies (including wetlands);
- (6) Locations where stormwater discharges to a surface water;
- (7) Locations of off-site material, waste, borrow or equipment storage areas covered by the plan;
- (8) Locations of other potential pollution sources, such as vehicle fueling, storage of chemicals, sanitary waste facilities, etc.; and
- (9) Areas where final stabilization has been accomplished and no further construction-phase permit requirements apply.

2. Controls to reduce pollutants. The SWPPP shall include a description of all pollution control measures that will be implemented as part of the construction activity to control pollutants in stormwater discharges. For each major activity identified in the project description, the SWPPP shall clearly describe appropriate control measures, the general sequencing during the construction process in which the measures will be implemented, and which operator is responsible for the control measure's implementation.

a. Erosion and sediment controls.

(1) Stabilization practices. The SWPPP shall include a description of interim and permanent stabilization practices for the site. Site plans should ensure that existing vegetation is preserved where attainable and that disturbed portions of the site are stabilized. Stabilization practices may include, but are not limited to: temporary seeding, permanent seeding, mulching, geotextiles, sod stabilization, vegetative buffer strips, protection of trees, preservation of mature vegetation, riprap, gabions, facines, biologs and other appropriate measures. Use of impervious surfaces for stabilization should be avoided.

(a) A record of the dates when major grading activities occur, when construction activities temporarily or permanently cease on a portion of the site, and when stabilization measures are initiated shall be maintained and included in the SWPPP.

(b) Except as provided in Section II D 2 a (1) (c), (d) and (e), stabilization measures shall be initiated as soon as practicable in portions of the site where

construction activities have temporarily or permanently ceased, but in no case more than seven days after the construction activity in that portion of the site has temporarily or permanently ceased.

(c) Where the initiation of stabilization measures by the seventh day after construction activity temporary or permanently ceased is precluded by snow cover or frozen ground conditions, stabilization measures shall be initiated as soon as practicable.

(d) Where construction activity on a portion of the site is temporarily ceased, and earth disturbing activities will be resumed within 30 days, temporary stabilization measures do not have to be initiated on that portion of the site.

(e) In drought-stricken areas where initiating perennial vegetative stabilization measures is not possible within seven days after construction activity has temporarily or permanently ceased, final vegetative stabilization measures shall be initiated as soon as practicable.

(2) Structural practices. The SWPPP shall include a description of structural practices to divert flows from exposed soils, retain/detain flows or otherwise limit runoff and the discharge of pollutants from exposed areas of the site. Such practices may include, but are not limited to: silt fences, earth dikes, drainage swales, sediment traps, check dams, subsurface drains, pipe slope drains, level spreaders, storm drain inlet protection, rock outlet protection, reinforced soil retaining systems, gabions, and temporary or permanent sediment basins. Structural practices should be located on upland soils to the degree attainable. The department and the permit-issuing authority encourages the use of a combination of erosion and sediment control measures in order to achieve maximum pollutant removal.

(a) Sediment basins: For common drainage locations that serve an area with three or more acres disturbed at one time, a temporary (or permanent) sediment basin providing 3,618 cubic feet of storage per acre drained, or equivalent control measures, shall be provided where attainable until final stabilization of the site. The 3,618 cubic feet of storage area per acre drained does not apply to flows from off-site areas and flows from on-site areas that are either undisturbed or have undergone final stabilization where such flows are diverted around both the disturbed area and the sediment basin. In determining whether installing a sediment basin is attainable, the permittee may consider factors such as site soils, slope, available area on site, etc. In any event, the permittee must consider public safety, especially as it relates to children, as a design factor for the sediment basin and alternative sediment controls shall be used where site limitations would preclude a safe design.

(b) For drainage locations that serve three or more acres at one time and where a temporary sediment basin or equivalent controls is not attainable, smaller sediment basins and/or sediment traps should be used. At a minimum, silt fences, vegetative buffer strips, or equivalent sediment controls are required for all down slope boundaries, and for those side slope boundaries deemed appropriate as dictated by individual site conditions.

(c) For drainage locations serving less than three acres, smaller sediment basins or sediment traps or both should be used. At a minimum, silt fences, vegetative buffer strips or equivalent sediment controls are required for all downslope boundaries, and for those side slope boundaries deemed appropriate as dictated by individual site conditions, of the construction area unless a sediment basin providing storage for 3,618 cubic feet of storage per acre drained is provided.

b. Management practices.

(1) All control measures must be properly selected, installed, and maintained in accordance with manufacturer specifications and good engineering practices. If periodic inspections or other information indicates a control has been used inappropriately, or incorrectly, the permittee must replace or modify the control for site situations as soon as practicable.

(2) If sediment escapes the construction site, off-site accumulations of sediment must be removed at a frequency sufficient to minimize off-site impacts.

(3) Litter, construction debris, and construction chemicals exposed to stormwater shall be prevented from becoming a pollutant source in stormwater discharges.

c. Stormwater management.

(1) The SWPPP shall include a description of, and all necessary calculations supporting, all post-construction stormwater management measures that will be installed during the construction process to control pollutants in stormwater discharges after construction operations have been completed. Structural measures should be placed on upland soils to the degree attainable. Such measures must be designed and installed in accordance with applicable local and/or state requirements.

(2) Such measures may include, but are not limited to: stormwater detention structures (including dry ponds); stormwater retention structures; flow attenuation by use of open vegetated swales and natural depressions; infiltration of runoff on-site; stormwater wetlands; sand filters; bioretention systems; water quality structures; and sequential systems (which combine several practices). The SWPPP shall include an explanation of the technical basis used to select the practices to control pollution and flows that exceed predevelopment levels.

(3) Outflows from a stormwater management facility or stormwater conveyance system shall be discharged to an adequate channel. In addition, the natural, physical, chemical, and biological characteristics and functions of the receiving waters must be maintained and protected (e.g., no significant changes in the hydrological regime of the receiving water).

d. Other controls.

(1) The SWPPP shall describe measures to prevent the discharge of solid materials, including building materials, garbage, and debris to surface waters of the state, except as authorized by a Clean Water Act §404 permit.

(2) Where construction vehicle access routes intersect paved public roads, provisions shall be made to minimize the transport of sediment by vehicular tracking onto the paved surface. Where sediment is transported onto a public road surface, the road shall be cleaned thoroughly at the end of each day. Sediment shall be removed from the roads by shoveling or sweeping and transported to a sediment control disposal area. Street washing shall be allowed only after sediment is removed in this manner.

(3) The SWPPP shall ensure and demonstrate compliance with applicable state or local waste disposal, sanitary sewer or septic system regulations.

(4) The SWPPP shall include a description of construction and waste materials expected to be stored on-site with updates as appropriate. The plan shall also include a description of controls to reduce pollutants from these materials, including storage practices to minimize exposure of the materials to stormwater, and for spill prevention and response.

(5) The SWPPP shall include a description of pollutant sources from areas other than construction (including stormwater discharges from dedicated asphalt plants and dedicated concrete plants), and a description of controls and measures that will be implemented at those sites to minimize pollutant discharges.

e. Applicable state or local programs.

The SWPPP shall be consistent with all applicable state or local requirements for erosion and sediment control and stormwater management including updates to the SWPPP as necessary to reflect any revisions to applicable state or local requirements for erosion and sediment control and stormwater management.

### 3. Maintenance of controls.

a. The SWPPP must include a description and schedule of procedures to maintain in good and effective operating conditions vegetation, erosion and sediment control measures and other protective measures during construction identified in the site plan. If site inspections required by Section II D 4 identify BMPs that are not operating effectively, maintenance shall be performed before the next anticipated storm event, or as soon as practicable to maintain the continued effectiveness of stormwater controls.

b. If existing BMPs need to be modified or if additional BMPs are necessary for any reason, implementation shall be completed before the next anticipated storm event. If implementation before the next anticipated storm event is impracticable, the situation shall be documented in the SWPPP and alternative BMPs shall be implemented as soon as practicable.

4. Inspections. Inspections by qualified personnel must be conducted of all areas of the site disturbed by construction activity, and areas used for storage of materials that are exposed to stormwater. "Qualified personnel" means a licensed professional engineer, responsible land disturber (RLD), or other knowledgeable person that (i) holds a certificate of competence from the board in the area of project inspection; or (ii) is enrolled in the board's training program for project inspection or combined administrator and successfully completes such program within one year of enrollment.

a. Inspections shall be conducted at least once every 14 calendar days and within 48 hours of the end of any runoff producing storm event. Where areas have been finally or temporarily stabilized or runoff is unlikely due to winter conditions (e.g., the site is covered with snow or ice, or frozen ground exists) such inspections shall be conducted at least once every month.

b. Inspectors must look for evidence of, or the potential for, pollutants entering the stormwater conveyance system. Erosion and sediment control measures identified in the SWPPP shall be observed to ensure proper operation. Discharge locations where accessible shall be inspected to ascertain whether erosion and sediment control measures are effective in preventing significant impacts to receiving waters. Where discharge locations are inaccessible, nearby downstream locations shall be inspected to the extent that such inspections are practicable. Locations where vehicles enter or exit the site shall be inspected for evidence of off-site sediment tracking.

c. Utility line installation, pipeline construction, and other examples of long, narrow, linear construction activities may limit the access of inspection personnel to the areas described in Section II D 4 b. Inspection of these areas could require that vehicles compromise temporarily or even permanently stabilized areas, cause additional disturbance of soils, and increase the potential for erosion. In these circumstances, controls must be inspected on the same frequencies as other construction projects, but representative inspections may be performed. For representative inspections, personnel must inspect controls along the construction site for 0.25 miles above and below each access point where a roadway, undisturbed right-of-way, or other similar feature intersects the construction site and allows access to the areas described above. The conditions of the controls along each inspected 0.25-mile segment may be considered as representative of the condition of controls along that reach extending from the end of the 0.25-

mile segment to either the end of the next 0.25-mile segment, or to the end of the project, whichever occurs first. Inspection locations must be listed in the report required by Section II D 4 e.

d. Based on the results of the inspection, the site and activity description identified in the plan in accordance with Section II D 1 of this permit and pollution prevention measures identified in the SWPPP in accordance with Section II D 2 of this permit shall be revised as appropriate within seven calendar days following the inspection.

e. A report summarizing the scope of the inspection, names and qualifications of personnel making the inspection, the dates of the inspection, major observations relating to the implementation of the SWPPP, and actions taken in accordance with Section II D 4 d of the permit shall be made and retained as part of the SWPPP in accordance with Section III B of this permit. Major observations should include:

- (1) The location(s) of discharges of sediment or other pollutants from the site;
- (2) Location(s) of BMPs that need to be maintained;
- (3) Location(s) of BMPs that failed to operate as designed or proved inadequate for a particular location;
- (4) Location(s) where additional BMPs are needed that did not exist at the time of inspection; and
- (5) Corrective action required including any changes to the SWPPP that are necessary and implementation dates.

The reports shall identify any incidents of noncompliance. Where a report does not identify any incidents of noncompliance, the report shall contain a certification that the facility is in compliance with the stormwater pollution prevention plan and this permit. The report shall be signed in accordance with Section III K of this permit.

5. Nonstormwater discharge management. The SWPPP shall identify all allowable sources of nonstormwater discharges listed in Section I D 2 of this permit that are combined with stormwater discharges from the construction activity at the site, except for flows from fire fighting activities. The SWPPP shall identify and ensure the implementation of appropriate pollution prevention measures for the nonstormwater components of the discharge.

### SECTION III

#### CONDITIONS APPLICABLE TO ALL VSMP PERMITS

NOTE: Monitoring is not required for this permit. If you choose to monitor your stormwater discharges or BMPs, you must comply with the requirements of subsections A, B, and C, as appropriate.

##### A. Monitoring.

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

##### B. Records.

1. Records of monitoring information shall include:

- a. The date, exact place, and time of sampling or measurements;
  - b. The individual(s) who performed the sampling or measurements;
  - c. The date(s) and time(s) analyses were performed;
  - d. The individual(s) who performed the analyses;
  - e. The analytical techniques or methods used; and
  - f. The results of such analyses.
2. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the registration statement for this permit, for a period of at least three years from the date of the sample, measurement, report or request for coverage. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to the permittee, or as requested by the board.

C. Reporting monitoring results.

1. The permittee shall submit the results of the monitoring required by this permit not later than the 10th day of the month after monitoring takes place, unless another reporting schedule is specified elsewhere in this permit. Monitoring results shall be submitted to the permit-issuing authority.
2. Monitoring results shall be reported on a discharge monitoring report (DMR) or on forms provided, approved or specified by the department.
3. If the permittee monitors any pollutant specifically addressed by this permit more frequently than required by this permit using test procedures approved under 40 CFR Part 136 or using other test procedures approved by the U.S. Environmental Protection Agency or using procedures specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR or reporting form specified by the department.
4. Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in this permit.

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

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

F. Unauthorized discharges. Except in compliance with this permit or another permit issued by the permit-issuing authority or the Department of Environmental Quality, it shall be unlawful for any person to:

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

G. Reports of unauthorized discharges. Any permittee who discharges or causes or allows a discharge of sewage, industrial waste, other wastes or any noxious or deleterious substance into or upon state waters in violation of Section III F, or who discharges or causes or allows a discharge that may reasonably be expected to enter state waters in violation of Section III F, shall notify the department, the Department of Environmental Quality, and the permit-issuing authority of the discharge immediately upon discovery of the discharge, but in no case later than 24 hours after said discovery. A written report of the unauthorized discharge shall be submitted to the department, the Department of Environmental Quality, and the permit-issuing authority within five days of discovery of the discharge. The written report shall contain:

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

Discharges reportable to the department, the Department of Environmental Quality, and the permit-issuing authority under the immediate reporting requirements of other regulations are exempted from this requirement.

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

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

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

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

- a. Any unanticipated bypass; and
- b. Any upset that causes a discharge to surface waters.

2. A written report shall be submitted within five days and shall contain:

- a. A description of the noncompliance and its cause;
- b. The period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and
- c. Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

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

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

NOTE: The immediate (within 24 hours) reports required in Section III G, H and I may be made to the department's Urban Program's Section of the Division of Soil and Water Conservation. Reports may be made by telephone or by fax. For reports outside normal working hours, leaving a recorded message shall fulfill the immediate reporting requirement. For emergencies, the Virginia Department of Emergency Management maintains a 24-hour telephone service at 1-800-468-8892.

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

J. Notice of planned changes.

1. The permittee shall give notice to the permit-issuing authority as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

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

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

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

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

2. The permittee shall give advance notice to the permit-issuing authority of any planned changes in the permitted facility or activity that may result in noncompliance with permit requirements.

K. Signatory requirements.

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

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

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

c. For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a public agency includes: (i) the chief executive officer of the agency or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

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

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

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

c. The written authorization is submitted to the department.

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

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

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

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

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

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

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

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

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

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

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

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

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

U. Bypass.

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

2. Notice.

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

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

3. Prohibition of bypass.

a. Bypass is prohibited, and the permit-issuing authority may take enforcement action against a permittee for bypass unless:

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

(2) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass that occurred during normal periods of equipment downtime or preventive maintenance; and

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

b. The permit-issuing authority may approve an anticipated bypass, after considering its adverse effects, if the permit-issuing authority determines that it will meet the three conditions listed in Section III U 3 a.

V. Upset.

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

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

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

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

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

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

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

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

1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;
2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and
4. Sample or monitor at reasonable times, for the purposes of ensuring permit compliance or as otherwise authorized by the Clean Water Act and the Virginia Stormwater Management Act, any substances or parameters at any location.

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

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

Y. Transfer of permits.

1. Permits are not transferable to any person except after notice to the permit-issuing authority. Except as provided in Section III Y 2, a permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued, or a minor modification made, to identify the new permittee and incorporate such other requirements as may be necessary under the Virginia Stormwater Management Act and the Clean Water Act.
2. As an alternative to transfers under Section III Y 1, this permit may be automatically transferred to a new permittee if:
  - a. The current permittee notifies the permit-issuing authority at least 30 days in advance of the proposed transfer of the title to the facility or property;
  - b. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and
  - c. The permit-issuing authority does not notify the existing permittee and the proposed new permittee of its intent to modify or revoke and reissue the permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in Section III Y 2 b.

Z. Severability. The provisions of this permit are severable, and if any provision of this permit or the application of any provision of this permit to any circumstance, is held invalid, the

application of such provision to other circumstances and the remainder of this permit shall not be affected thereby.

## **Part XV**

### **General Virginia Stormwater Management Program (VSMP) Permit for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems**

**4VAC50-60-1180 to 4VAC50-60-1190. [Reserved]**

#### **4VAC50-60-1200. Definitions.**

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

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

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

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

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

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

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

b. The small MS4 is designated by the board, including where the designation is pursuant to 40 CFR Part 123.35 (b)(3) or (b)(4) (2001), or is based upon a petition under 4VAC50-60-380 D.

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

3. The board may waive the requirements otherwise applicable to a small MS4 if it meets the criteria of subdivision 4 or 5 of this subsection. If a waiver is received under this subsection, the

owner may subsequently be required to seek coverage under a VSMP permit in accordance with 4VAC50-60-400 C 1 if circumstances change. (See also 40 CFR Part 123.35 (b) (2001))

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

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

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

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

a. The board has evaluated all surface waters, including small streams, tributaries, lakes, and ponds, that receive a discharge from the MS4;

b. For all such waters, the board has determined that stormwater controls are not needed based on wasteload allocations that are part of a State Water Control Board established and EPA approved TMDL that addresses the pollutants of concern or, if a TMDL has not been developed and approved, an equivalent analysis that determines sources and allocations for the pollutants of concern;

c. For the purpose of this subdivision, the pollutants of concern include biochemical oxygen demand (BOD), sediment or a parameter that addresses sediment (such as total suspended solids, turbidity or siltation), pathogens, oil and grease, and any pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the MS4; and

d. The board has determined that future discharges from the MS4 do not have the potential to result in exceedances of water quality standards, including impairment of designated uses, or other significant water quality impacts, including habitat and biological impacts.

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

#### **4VAC50-60-1220. Authorization to discharge.**

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

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

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

1. The nonstormwater discharges or flows are covered by a separate individual or general VPDES or VSMP permit for nonstormwater discharges; or
2. Nonstormwater discharges or flows in the following categories have not been identified by the permittee or by the board as significant contributors of pollutants to the small MS4: water line flushing, landscape irrigation, diverted stream flows, rising ground waters, uncontaminated ground water infiltration, uncontaminated pumped ground water, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, street wash water, and discharges or flows from fire fighting activities.

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

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

A. Deadline for submitting a registration statement

1. Owners of regulated small MS4's designated under 4VAC50-60-1210 A 1 a, that are applying for coverage under this VSMP general permit must submit a complete Registration Statement to the department by March 10, 2003, unless the MS4 serves a jurisdiction with a population under 10,000 and the board has established a schedule for phasing in permit coverage with a final deadline of March 8, 2007.
2. Owners of regulated small MS4's designated under 4VAC50-60-1210 A 1 b, that are applying for coverage under this VSMP general permit must submit a complete registration statement to the department within 180 days of notice of designation, unless the board grants a later date.

B. Registration statement.

The registration statement shall include the following information:

1. The name and location (county or city name) of the regulated small MS4 for which the registration statement is submitted;
2. The name, address, and telephone number of the owner of the regulated small MS4;
3. The name(s) of the receiving water(s);
4. The best management practices (BMPs) that the owner or another entity proposes to implement for each of the stormwater minimum control measures at 4VAC50-60-1240, Section II B;
5. The measurable goals for each of the BMPs including, as appropriate, the years in which the required actions will be undertaken, including interim milestones and the frequency of the action; and
6. The person or persons responsible for implementing or coordinating the stormwater management program.
7. The following certification: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information

submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

C. The registration statement shall be signed in accordance with 4VAC50-60-370.

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

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

#### **4VAC50-60-1240. General permit.**

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

General Permit No.: DCR02

Effective Date: December 9, 2002

Expiration Date: December 9, 2007

#### **GENERAL PERMIT FOR STORMWATER DISCHARGES OF STORMWATER FROM SMALL MUNICIPAL SEPARATE STORM SEWER SYSTEMS AUTHORIZATION TO DISCHARGE UNDER THE VIRGINIA STORMWATER MANAGEMENT PROGRAM AND THE VIRGINIA STORMWATER MANAGEMENT ACT**

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

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

## SECTION I

### DISCHARGE AUTHORIZATION AND SPECIAL CONDITIONS

A. Coverage under this permit. During the period beginning with the date of coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge stormwater from the small municipal separate storm sewer system identified in the registration statement.

#### B. Special Conditions.

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

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

## SECTION II

### STORMWATER MANAGEMENT PROGRAM

A. The permittee must develop, implement, and enforce a stormwater management program designed to reduce the discharge of pollutants from the MS4 to the maximum extent practicable (MEP), to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act and the Virginia Stormwater Management Act. The stormwater management program must include the minimum control measures described in paragraph B of this section. For purposes of this section, narrative effluent limitations requiring implementation of best management practices (BMPs) are generally the most appropriate form of effluent limitations when designed to satisfy technology requirements (including reductions of pollutants to the maximum extent practicable) and to protect water quality. Implementation of best management practices consistent with the provisions of the stormwater management program required pursuant to this Part constitutes compliance with the standard of reducing pollutants to the "maximum extent practicable." The stormwater management program must be developed and implemented in accordance with the Act by July 1, 2006, or by a later date if specified by the board.

B. Minimum control measures.

1. Public education and outreach on stormwater impacts. Implement a public education program to distribute educational materials to the community or conduct equivalent outreach activities about the impacts of stormwater discharges on water bodies and the steps that the public can take to reduce pollutants in stormwater runoff.

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

3. Illicit discharge detection and elimination.

a. Develop, implement and enforce a program to detect and eliminate illicit discharges, as defined at 4VAC50-60-1200, into the small MS4.

b. (1) Develop, if not already completed, a storm sewer system map, showing the location of all major outfalls and the names and location of all surface waters that receive discharges from those outfalls;

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

(3) Develop and implement a plan to detect and address nonstormwater discharges, including illegal dumping, to the system; and

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

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

4. Construction site stormwater runoff control.

a. Develop, implement, and enforce a program to reduce pollutants in any stormwater runoff to the small MS4 from construction activities that result in a land disturbance of greater than or equal to one acre or equal to or greater than 2,500 square feet in all areas of the jurisdictions designated as subject to the Chesapeake Bay Preservation Area Designation and Management Regulations adopted pursuant to the Chesapeake Bay Preservation Act. Additionally, reduction of stormwater discharges from construction activity disturbing less than one acre must be included in the program if that construction activity is part of a larger common plan of development or sale that would disturb one acre or more. If the board waives requirements for stormwater discharges associated with small construction activity in accordance with the definition in 4VAC50-60-10, the permittee is not required to develop, implement, and/or enforce a program to reduce pollutant discharges from such sites.

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

(1) An ordinance or other regulatory mechanism to require erosion and sediment controls, as well as sanctions to ensure compliance, to the extent allowable under state, tribal, or local law;

(2) Requirements for construction site operators to implement appropriate erosion

and sediment control best management practices;

(3) Requirements for construction site operators to control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality; or procedures to ensure that construction site operators have secured or will secure a VSMP construction permit;

(4) Procedures for site plan review which incorporate consideration of potential water quality and quantity impacts and ensures compliance with the Chesapeake Bay Preservation Act as implemented in Tidewater Virginia localities;

(5) Procedures for receipt and consideration of information submitted by the public, and

(6) Procedures for site inspection and enforcement of control measures.

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

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

(2) Total disturbed acreage.

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

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

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

(2) Use an ordinance or other regulatory mechanism to address post-construction runoff from new development and redevelopment projects to the extent allowable under state, tribal or local law; and

(3) Ensure adequate long-term operation and maintenance by the owner of BMPs through a maintenance agreement or some other mechanism that achieves an equivalent objective.

(4) If the MS4 discharges to the Chesapeake Bay watershed, track all permanent BMP's installed in the MS4 (structural and nonstructural), and submit the following information with the annual report required in Section II E 2:

(a) Type of BMP installed;

(b) Geographic location (Hydrologic Unit Code);

(c) Waterbody the BMP is discharging into;

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

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

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

6. Pollution prevention/good housekeeping for municipal operations. Develop and implement an operation and maintenance program that includes a training component and has the ultimate goal of preventing or reducing pollutant runoff from municipal operations. Using training materials that are available from EPA, state, tribe, or other organizations, the program must include employee training to prevent and reduce stormwater pollution from activities such as park and

open space maintenance, fleet and building maintenance, new construction and land disturbances, and stormwater system maintenance.

C. Qualifying state, tribal or local program. If an existing qualifying local program requires the implementation of one or more of the minimum control measures of Section II B, the permittee may follow that qualifying program's requirements rather than the requirements of Section II B. A qualifying local program is a local, state or tribal municipal stormwater management program that imposes, at a minimum, the relevant requirements of Section II B.

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

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

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

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

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

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

E. Evaluation and assessment.

1. Evaluation. The permittee must evaluate program compliance, the appropriateness of the identified best management practices, and progress towards achieving the identified measurable goals.

2. Annual reports. The permittee must submit an annual report to the director by the annual anniversaries of the date of coverage under this permit. The reports must include:

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

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

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

- d. A change in any identified best management practices or measurable goals for any of the minimum control measures;
- e. Notice that the permittee is relying on another government entity to satisfy some of the permit obligations (if applicable), and
- f. The approval status of any qualifying local programs (if appropriate), or the progress towards achieving full approval of these programs.

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

### SECTION III

#### CONDITIONS APPLICABLE TO ALL VSMP PERMITS

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

#### A. Monitoring.

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

#### B. Records.

1. Records of monitoring information shall include:
  - a. The date, exact place, and time of sampling or measurements;
  - b. The individual(s) who performed the sampling or measurements;
  - c. The date(s) and time(s) analyses were performed;
  - d. The individual(s) who performed the analyses;
  - e. The analytical techniques or methods used; and
  - f. The results of such analyses.
2. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the registration statement for this permit, for a period of at least three years from the date of the sample, measurement, report or request for coverage. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to the permittee, or as requested by the board.

C. Reporting monitoring results.

1. The permittee shall submit the results of the monitoring required by this permit not later than the 10th day of the month after monitoring takes place, unless another reporting schedule is specified elsewhere in this permit. Monitoring results shall be submitted to the department's Urban Program's Section of the Division of Soil and Water Conservation.
2. Monitoring results shall be reported on a Discharge Monitoring Report (DMR) or on forms provided, approved or specified by the department.
3. If the permittee monitors any pollutant specifically addressed by this permit more frequently than required by this permit using test procedures approved under 40 CFR Part 136 (2001) or using other test procedures approved by the U.S. Environmental Protection Agency or using procedures specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR or reporting form specified by the department.
4. Calculations for all limitations that require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in this permit.

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

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

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

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

G. Reports of unauthorized discharges. Any permittee who discharges or causes or allows a discharge of sewage, industrial waste, other wastes or any noxious or deleterious substance into or upon state waters in violation of Section III F; or who discharges or causes or allows a discharge that may reasonably be expected to enter state waters in violation of Section III F, shall notify the Department of Environmental Quality and the Department of Conservation and Recreation of the discharge immediately upon discovery of the discharge, but in no case later than 24 hours after said discovery. A written report of the unauthorized discharge shall be

submitted to the Department of Environmental Quality and the Department of Conservation and Recreation, within five days of discovery of the discharge. The written report shall contain:

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

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

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

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

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

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

- a. Any unanticipated bypass; and
- b. Any upset which causes a discharge to surface waters.

2. A written report shall be submitted within five days and shall contain:

- a. A description of the noncompliance and its cause;
- b. The period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and
- c. Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

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

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

NOTE: The immediate (within 24 hours) reports required in Sections III G, H and I may be made to the department's Urban Program's Section of the Division of Soil and Water Conservation. Reports may be made by telephone or by fax. For reports outside normal working hours, leave a message and this shall fulfill the immediate reporting requirement. For emergencies, the Virginia Department of Emergency Services maintains a 24-hour telephone service at 1-800-468-8892.

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

#### J. Notice of planned changes.

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

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

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

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

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

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

#### K. Signatory requirements.

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

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

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

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

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

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

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

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

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

c. The written authorization is submitted to the department.

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

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

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

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

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

M. Duty to reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee shall submit a new registration statement at least 90 days before the expiration date of the existing permit, unless permission for a later date has

been granted by the board. The board shall not grant permission for registration statements to be submitted later than the expiration date of the existing permit.

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

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

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

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

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

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

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

U. Bypass.

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

2. Notice.

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

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

3. Prohibition of bypass.

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

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

(2) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass that occurred during normal periods of equipment downtime or preventive maintenance; and

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

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

V. Upset.

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

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

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

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

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

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

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

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

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

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

3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

4. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act and the Virginia Stormwater Management Act, any substances or parameters at any location.

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

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

Y. Transfer of permits.

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

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

a. The current permittee notifies the department at least two days in advance of the proposed transfer of the title to the facility or property;

b. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and

c. The board does not notify the existing permittee and the proposed new permittee of its intent to modify or revoke and reissue the permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in Section III Y 2 b.

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

## **FORMS**

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

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

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

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

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