

**DRAFT – FEBRUARY 11, 2013**  
**NO BOARD ACTION NECESSARY – INFORMATION ONLY**

**FACT SHEET**  
**VIRGINIA STORMWATER MANAGEMENT PROGRAM (VSMP)**  
**GENERAL PERMIT FOR DISCHARGES OF STORMWATER FROM**  
**CONSTRUCTION ACTIVITIES**  
**Prepared pursuant to 4VAC50-60-520**

The Virginia Soil and Water Conservation Board (Board) is considering the reissuance of a Virginia Stormwater Management Program (VSMP) General Permit for Discharges of Stormwater from Construction Activities to surface waters of the Commonwealth of Virginia. Regulations developed under the federal Clean Water Act (33 USC §1251 et seq.) and the Virginia Stormwater Management Act (§10.1-603.1 et seq. of the Code of Virginia) require that VSMP permits be effective for a fixed term not to exceed five years (§10.1-603.2:2 (B)). The Virginia Soil and Water Conservation Board (Department of Conservation and Recreation) issued the existing 5-year general permit effective July 1, 2009 and expiring on June 30, 2014, thus necessitating the promulgation of a new general permit at this time. Operators covered under the expiring general permit who wish to continue to discharge under a general permit must file a registration statement and required permit fee for coverage under the new general permit.

Permit Number:           VAR10

Name of Permittee:       Any operator of a regulated construction activity discharging to surface waters of the Commonwealth of Virginia who seeks coverage under the General Permit.

Facility Location:       Commonwealth of Virginia

Receiving Waters:       Surface waters within the boundaries of the Commonwealth of Virginia, except those specifically named in State Water Control Board or Virginia Soil and Water Conservation Board regulations which prohibit such discharges.

Discharge Type:         Stormwater discharged from regulated construction activities.

This proposed general permit action is tentative. On the basis of preliminary review and application of lawful standards and regulations, the Board proposes to reissue this general permit subject to certain conditions and has prepared a draft general permit. The Board has determined that this category of discharges is appropriately controlled under a general permit. The category of discharges to be included involves facilities with the same or similar types of operations that discharge the same or similar types of stormwater.

**I. Facilities and Activities Subject to this General Permit**

The proposed general permit regulates stormwater discharges from construction activities. The term “construction activity” is defined in 4VAC50-60-10 as “...any clearing, grading or excavation associated with large construction activity or associated with small construction activity.” The terms “large construction activity” and “small construction activity” are likewise defined in that section as follows:

"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 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.

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

## **II. Type and Quantity of Discharge Authorized**

This general permit authorizes discharges of stormwater from regulated construction activities to surface waters within the boundaries of the Commonwealth of Virginia, except those specifically named in state regulations which prohibit such discharges. The Board has determined that this category of discharges is appropriately controlled under a general permit, as the category of discharges to be included involves facilities with the same or similar types of operations that discharge the same or similar types of stormwater.

## **III. Legal Basis for Draft Permit Conditions**

The General Permit for Discharges of Stormwater from Construction Activities is a permit issued through regulation by the Board pursuant to the federal Clean Water Act and the Virginia Stormwater Management Law.

Requirements set forth in 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, and its attendant regulations set forth in 40 CFR Parts 122, 123, 124 and 125, require states to establish a permitting program for the management of stormwater from construction activities.

The basis for this general permit under state law is the Virginia Stormwater Management Law, §10.1-603.1 et seq. of the Code of Virginia, and the Virginia Stormwater Management Program (VSMP) Permit regulations, 4VAC50-60-10 et seq. Specifically, §10.1-603.2:1 requires the Board to permit, regulate, and control stormwater runoff in the Commonwealth. In carrying out its responsibilities, the Board may issue, deny, revoke, terminate, amend and enforce general permits for the control of stormwater discharges from land disturbing activities (subsection 1), adopt regulations (subsection 2), and otherwise act to ensure the general health, safety and welfare of the citizens of the Commonwealth as well as protect the quality and quantity of surface waters from the potential harm of unmanaged stormwater. Additionally, §10.1-603.2:2(A) states that it shall be unlawful to cause a stormwater discharge from a land disturbing activity except in compliance with a permit. "Land disturbing activity" is defined in §10.1-603.2 as "...a man-made change to the land surface that potentially changes its runoff characteristics including clearing, grading, or excavation, except that term shall not include those exemptions specified in § 10.1-603.8."

On December 1, 2009, EPA promulgated effluent limitation guidelines (ELGs) and new source performance standards (NSPS) to control the discharge of pollutants from construction sites. See 74 Federal Register (FR) 62996 and 40 Code of Federal Regulations (CFR) Part 450. These requirements, known as the "Construction and Development Rule" or "C&D Rule", became effective on February 1, 2010. Since this general permit is being issued after the effective date of the C&D Rule, the permitting authority is required to incorporate the C&D Rule requirements into this general permit. For this reason, this general permit includes modifications to the 2008 general permit in order to reflect these requirements. EPA finalized a stay, effective January 4, 2011, for 40 CFR Part 450.22 (a) and (b); therefore, these requirements have not been incorporated into this general permit.

#### **IV. Public Comment and Procedures for General Permit Adoption by the Board**

Persons may comment in writing on the proposed issuance of the general permit during the public comment period, which will commence on **TO BE DETERMINED** and end at 5:00 p.m. on **TO BE DETERMINED**. The Board will consider only those comments received within this period. Comments should include the name and address or email address of the commenter. Only those comments received within this period will be considered by the Board. All comments should be submitted to:

Regulatory Coordinator  
Virginia Department of Conservation and Recreation  
203 Governor Street, Suite 302  
Richmond, Virginia 23219

Comments may also be faxed to the Regulatory Coordinator at (804) 786-6141 or submitted electronically on the Virginia Regulatory Town Hall by selecting "comment period" at:

<http://www.townhall.virginia.gov/L/ViewStage.cfm?stageid=4817> **(TO BE UPDATED)**.

In order to be considered, comments must be received by 5:00 PM on **TO BE DETERMINED**.

All pertinent information regarding this proposed regulation can be obtained at <http://www.dcr.virginia.gov/lr4b.shtml> **(TO BE UPDATED)**. Hard copies are on file and may be inspected. To make arrangements for inspection and copying, or for additional information, contact Mr. David Dowling at (804) 786-2291. Public hearings to receive comments on the proposed general permit regulations will be held at **TO BE DETERMINED**. Notice of the public hearings will be published in

newspapers and in the Virginia Register. Following the public hearing comment period, the Board will make its determination regarding adoption of a final permit regulation.

## **V. Draft Permit Conditions and Limitations**

This section has been written in an informal style and follows the structure of the draft general permit, but does not reflect verbatim the actual language used in the permit. It is intended to provide a summary of the general permit, including major proposed changes, to assist the regulated community and members of the public. If any confusion, omission, or conflict exists between this fact sheet and the actual general permit language, the operator must comply with the permit as written.

### ***A. Summary of Significant Changes from the 2009 Construction General Permit***

The key proposed revisions to the general permit include:

1. Definitions. Updated and added needed definitions such as “immediately”, “impaired waters”, “initiation of stabilization activities”, “measurable storm event”, and “minimize.”
2. State permit application (registration statement).
  - Added language indicating the operator must enter all required information into the electronic database provided by the department.
  - Updated the registration statement submission deadline (now 90 days prior to the effective date of this general permit) in order to continue state permit coverage.
  - Added language indicating that any construction activity covered under the 2009 general permit that fails to maintain uninterrupted permit coverage is considered an unauthorized discharge.
  - Added a statement indicating that by signing the registration statement the operator certifies that all required information has been completely and accurately into the electronic database provided by the department.
3. Termination of state permit coverage.
  - Added language indicating the operator must enter all required information into the electronic database provided by the department.
  - Updated the reporting requirements for the permanent control measures (both structural and nonstructural) that were installed or employed to meet the post-development stormwater quality criteria.
  - Added a requirement for any instrument recorded for the long term maintenance of a permanent stormwater management facility submitted to a VSMP authority be included in the notice of termination.
4. General Permit.
  - Updated the effective date to July 1, 2014 and the expiration date to June 30, 2019.
  - Updated the discharge authorization to indicate that operators of construction activities are authorized to discharge to “surface” waters, instead of “state” waters, within the boundaries of the Commonwealth of Virginia.

#### **Section I. Discharge Authorization and Special Conditions.**

- “Coverage under this state permit”, updated and added language indicating that stormwater discharges from new construction activities, previously covered construction activities, and emergency-related construction activities are authorized under this general permit.
- “Coverage under this state permit”, added language indicating that stormwater discharges from support activities may be authorized under this state permit provided that the support activity is identified in the registration statement and that all applicable federal, state, and local approvals

are obtained for the support activity. Updated and relocated the floating solids and visible foam limitation to the “Limitations on coverage” special condition.

- “Limitations on coverage”, deleted the “Discharges mixed with nonstormwater” limitation due to redundancy. Combined the “TMDL limitation” and the “Impaired waters limitation” for clarity purposes and updated the general permit requirements to provide consistency with EPA’s Construction General Permit (dated February 16, 2012). Added an exceptional waters limitation for new discharges to provide consistency with EPA’s Construction General Permit (dated February 16, 2012) and the Commonwealth’s antidegradation policy.
- “Commingled discharges”, updated the language for clarity purposes.
- “Prohibition of nonstormwater discharges”, updated the language to reflect promulgated Effluent Limitation Guidelines (ELGs) for the Construction and Development Point Source Category (40 CFR Part 450). Relocated the authorized nonstormwater discharges into a separate special condition for clarity purposes.
- “Authorized nonstormwater discharges”, updated language to reflect promulgated ELGs (40 CFR Part 450).
- “Releases of hazardous substances or oil in excess of reportable quantities”, deleted this special condition due to redundancy.
- “Spills”, deleted this special condition due to redundancy.
- “Water quality protection”, updated language to indicate that the department may take appropriate enforcement action against stormwater discharges that are causing, have reasonable potential to cause or are contributing to an excursion above any applicable water quality standard.

#### Section II. Stormwater Pollution Prevention Plan.

- Added a provision allowing operators of construction activities that are part of a common plan of development and disturb less than one (1) acre to utilize a Stormwater Pollution Prevention Plan (SWPPP) template provided by the department.
- Reorganized the SWPPP sections and modified the requirements to provide consistency with promulgated ELGs (40 CFR Part 450) and EPA’s Construction General Permit (dated February 16, 2012).
- Added SWPPP requirements for new stormwater discharges to exceptional waters to provide consistency with the general permit’s limitations on coverage and the Commonwealth’s antidegradation policy.
- “SWPPP Availability”, deleted the provision requiring the operator to make the SWPPP available on the internet or in hard copy for public review. This provision is currently not required by the Code of Virginia.
- “Corrective Actions”, added a provision indicating that the operator shall notify the department and obtain all applicable federal, state, and local authorizations, approvals, and permits prior to the removal of sediments accumulated in surface waters including wetlands.

#### ***B. Activities Covered Under this General Permit***

The general permit will authorize discharges of stormwater associated with new construction activities, previously covered construction activities, and emergency-related construction activities. For the purposes of this general permit, construction activity is defined as “. . .any clearing, grading, or excavation associated with large construction activity or associated with small construction activity” as defined in 4VAC50-60-10, and except as otherwise exempt pursuant to the Virginia Stormwater Management Act (§10.1-603.1 et seq.).

This general 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 activity applying for general permit coverage; (2) the support activity is not a commercial operation or does not serve 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; (3) the support activity is identified in the registration statement at the time of general permit coverage; (4) appropriate control measures that will be implemented to minimize pollutant discharges from the support activity are identified in a SWPPP covering the discharges from the support activity areas; and (5) all applicable federal, state, and local approvals are obtained for the support activity. Support activities located off-site are not required to be covered under this general permit and may be authorized under another state 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.

### *C. Limitations on Coverage*

Discharges to surface waters specifically named in State Water Control Board or Virginia Soil and Water Conservation Board regulations which prohibit such discharges are not authorized by this general permit.

The discharge of floating solids or visible foam in other than trace amounts is prohibited by this general permit.

This general permit does not authorize stormwater discharges that originate from the site after construction activities has been completed and the site, including any support activity sites covered under the general permit registration, has undergone final stabilization and general permit coverage has been terminated. Post-construction industrial stormwater discharges may need to be covered by a separate VPDES permit.

Stormwater discharges associated with construction activities that have been covered under an individual permit or required to obtain coverage under an alternative general permit are not authorized by this general permit.

Stormwater discharges to impaired waters, including stormwater discharges to surface water located within a TMDL watershed are not eligible for coverage under this general permit unless the operator develops, implements, and maintains a SWPPP that minimizes applicable sources identified in the 2012 305(b)/303(d) Water Quality Assessment Integrated Report, minimizes pollutants of concern identified in a TMDL approved prior to July 1, 2014 and is consistent with the assumptions and requirements of all associated TMDL wasteload allocations. This only applies when construction activities discharge or are reasonably expected to discharge an applicable observed source identified in the 2012 305(b)/303(d) Water Quality Assessment Integrated Report or a pollutant of concern identified in a TMDL approved prior to July 1, 2014.

Stormwater discharges from new construction activities to exceptional waters identified in 9VAC25-260-30 A 3 c are not eligible for coverage under this general permit unless the operator (1) identifies the exceptional water in the registration statement and in the SWPPP; (2) applies permanent or temporary soil stabilization to denuded areas within 7 days after final grade is reached on any portion of the site; and (3) implements a modified (i.e., more frequent) inspection schedule.

Discharges authorized by this general permit may be commingled. Discharges authorized by a separate VSMP or VPDES permit may be commingled with discharges authorized by this general permit.

All discharges covered by this general permit shall be composed entirely of stormwater associated with construction activities, with the following exception. The following nonstormwater discharges from construction activities are authorized by this general permit when discharged in compliance with this general permit: discharges from fire fighting activities; fire hydrant flushings; waters used to wash vehicles where detergents have not been used and the wash water has been treated; water used to control dust that has been filtered, settled, or similarly treated prior to discharge; potable water sources, including uncontaminated waterline flushings; routine external building wash down which does not use detergents, solvents, or other wash chemicals and that have been filtered, settled, or similarly treated prior to discharge; pavement wash waters where spills or leaks of toxic or hazardous materials have not occurred (or where all spilled material has been removed) and where detergents, solvents, or other wash chemicals are not used and that have been filtered, settled, or similarly treated prior to discharge; uncontaminated air conditioning or compressor condensate; uncontaminated ground water or spring water; foundation or footing drains where flow are not contaminated with process materials such as solvents; uncontaminated excavation dewatering, including dewatering or trenches and excavations that have been filtered, settled, or similarly treated prior to discharge; and landscape irrigation. In accordance with 40 CFR Part 450, the following nonstormwater discharges are explicitly prohibited by this general permit: wastewater from the washout of concrete, unless managed by an appropriate control; wastewater from the washout and cleanout of stucco, paint, form release oils, curing compounds, and other construction materials; fuels, oils or other pollutants used in vehicle and equipment operation and maintenance; oils, toxic substances or hazardous substances from spills or other releases; and soaps and solvents used in equipment and vehicle washing.

The operator must select, install, implement, and maintain control measures as identified in the SWPPP at the construction site that minimize pollutants in the discharge as necessary to ensure that the operator's discharge does not cause or contribute to an excursion above any applicable water quality standard (9VAC25-260). If the department determines, in consultation with the State Water Control Board, that the operator's discharges are causing, have reasonable potential to cause or are contributing to an excursion above any applicable water quality standard, the department may take appropriate enforcement action and require the operator to: (1) modify control measures to adequately address the identified water quality concerns; (2) submit valid and verifiable data and information that are representative of ambient conditions and indicate that the receiving water is attaining water quality standards; or (3) cease discharges of pollutants from the construction activity and submit an individual permit application according to 4VAC50-60-410 B 3.

#### ***D. Stormwater Pollution Prevention Plan (SWPPP)***

The Code of Federal Regulations (40 CFR Part 450) established effluent limitation guidelines (ELGs) and new source performance standards (NSPS) to control the discharge of pollutants from construction sites. These requirements, known as the "Construction and Development Rule" or "C&D Rule", became effective on February 1, 2010. EPA finalized a stay, effective January 4, 2011, for 40 CFR Part 450.22 (a) and (b); therefore, these requirements (i.e., numeric effluent limitations) have not been incorporated into this general permit.

The Best Practicable Technology Currently Available (BPT), Best Conventional Pollutant Control Technology (BCT), and Best Available Technology Economically Achievable (BAT) effluent limitation guidelines contained in 40 CFR Parts 450.21 through 450.23 apply to all existing sources (i.e.,

construction activities which commenced land disturbance prior to February 1, 2010). The New Source Performance Standards contained in 40 CFR Part 450.24 apply to all new sources (i.e., construction activities which commenced land disturbance on or after February 1, 2010). This general permit establishes BPT/BCT/BAT/NSPS requirements in terms of requirements to develop and implement stormwater pollution prevention plans and thus, is consistent with the requirements of the CWA.

The development of a pollution prevention plan maintains the flexibility for a site-specific plan to be developed and implemented. This adequately addresses the variable stormwater management/pollution prevention opportunities available at a construction site. Stormwater pollution prevention plans are required to achieve BPT/BCT/BAT/NSPS requirements. Pollution prevention measures are the most practicable and cost-effective approaches to reducing pollutants in stormwater discharges and provide for flexibility for developing tailored plans and strategies. This general permit identifies specific components that the plan must address and all the components of the plan are essential for reducing pollutants in stormwater discharges and are necessary to reflect BPT/BCT/BAT/NSPS. A specific list of traditional stormwater controls and sediment and erosion practices are not established because the significant variability in facilities covered by this permit precludes the identification of universal standards or practices that are appropriate or can be implemented by all operators.

#### Stormwater Pollution Prevention Plan Requirements

The operator is required to develop a stormwater pollution prevention plan prior to land disturbance. The SWPPP is intended to identify potential sources of pollutants which may reasonably be expected to affect the quality of stormwater discharges from the construction site and describe control measures which will be used to minimize pollutants in stormwater discharges from the construction site and comply with the terms and conditions of the general permit. All SWPPPs shall be prepared in accordance with good engineering practices.

##### 1. Deadlines for SWPPP Preparation

The stormwater pollution prevention plan must be developed prior to land disturbance to be covered under this general permit and updated in accordance with Section II B from commencement of construction activity until final stabilization is complete. For ongoing construction activities involving a change of operator, the new operator must accept and maintain the existing SWPPP or prepare and implement a new SWPPP prior to taking over operations at the site.

##### 2. Stormwater Pollution Prevention Plan Contents

Stormwater pollution prevention plans must include the following, at a minimum: general site information; erosion and sediment control measures, stormwater management measures; pollution prevention measures for any nonstormwater discharges that exist or may exist; and a description of maintenance and inspection procedures.

- a. General Information: Stormwater pollution prevention plans are based on an understanding of the pollution potential of the construction site. The SWPPP identifies potential sources of pollution that may reasonably be expected to affect the quality of stormwater discharges. In addition, SWPPPs provide a description of the site and the construction activities. This information is intended to provide a better understanding of construction site runoff and major pollutant sources. At a minimum, the general information section of the SWPPP must include the following: a copy of the signed Registration Statement; a copy of the Notice of Coverage; a description of the nature of the construction activity, including the function of the project (e.g., low density residential, shopping mall, highway); and a legible site plan

- which includes the following: directions of stormwater flow and approximate anticipated slopes after major grading activities; limits of land disturbance; steep slopes and natural buffers around surface waters that will not be disturbed; locations of major structural and nonstructural control measures that will be installed to increase sediment removal and maximize stormwater infiltration; locations of surface waters; locations where concentrated stormwater is discharged; location of an onsite rain gauge or a description of the methodology to identify measureable storm events; and locations of onsite and offsite support activities when applicable and when required by the VSMP authorities.
- b. Erosion and Sediment Control Plan: Stormwater pollution prevention plans must include an erosion and sediment control plan or an agreement in lieu of a plan, as defined in 4VAC50-30-10, approved by a board-approved Virginia Erosion and Sediment Control Program (VESCP) authority or, where appropriate, an erosion and sediment control plan designed in accordance with annual standards and specifications approved by the department. An erosion and sediment control plan or an agreement in lieu of a plan ensures the implementation of erosion and sediment controls to reduce pollutants in stormwater discharges from the construction site. In addition, all erosion and sediment control plans must include a statement describing the maintenance responsibilities required for all erosion and sediment controls employed, which serves to aid operators in maintenance activities. Unless there is evidence to the contrary, a properly designed and implemented erosion and sediment control plan or an agreement in lieu of a plan serves to: control the volume and velocity of stormwater runoff within the site to minimize erosion; control stormwater discharges, including peak flow rates and total stormwater volume, to minimize erosion at outfalls and to minimize downstream channel and stream bank erosion; minimize the disturbance of steep slopes; minimize the amount of soil exposed during the construction activity; minimize sediment discharges from the site in a manner that addresses the amount, frequency, intensity and duration of precipitation, the nature of resulting stormwater runoff and soil characteristics, including the range of soil particle sizes expected to be present; provide and maintain natural buffers around surface waters; direct stormwater to vegetated areas to increase sediment removal and maximize stormwater infiltration; minimize soil compaction; preserve topsoil where feasible; ensure that stabilization will be immediately upon installation of earthen structures and that stabilization of denuded areas will be initiated immediately upon reaching final grade or for areas that may not be at final grade but will remain dormant for longer than 14 days; ensure that temporary stabilization will be installed within 7 days of initiation; and discharge stormwater from the surface of basins and other impoundment structures when the impoundment is designed to include wet and dry storage.
- c. Stormwater Management Plan: Stormwater management plans ensure the implementation and maintenance of post-development stormwater management measures to reduce pollutants in stormwater discharges from the site after final stabilization and permit termination has occurred. Stormwater management measures that mitigate changes to pre-development runoff characteristics assist in protecting and maintaining the physical and biological characteristics of receiving streams and wetlands. Therefore, stormwater pollution prevention plans must include a stormwater management plan approved by a board-approved Virginia Stormwater Management Program (VSMP) authority or, where appropriate, a stormwater management plan developed in accordance with annual standards and specifications approved by the department. The operator of any land-disturbing activity that is not required to obtain stormwater management plan approval from a VSMP authority or is not required to adopt department-approved annual standards and specifications shall submit

- the stormwater management plan to the department for review and approval prior to land disturbance.
- d. Pollution Prevention Plan: Pollution prevention plans identify and address pollutant-generating activities from both onsite and offsite activities, including support activities, that may be reasonably expected to affect the quality of discharges. The plan must identify and ensure the implementation of applicable pollution prevention measures for each component(s) of the discharge. At a minimum, the pollution prevention plan shall: identify the pollutant-generating activities and the pollutants that are expected to be exposed to stormwater; describe the location where the pollutant-generating activities will occur (of identified on the site plan, reference the site plan); identify all nonstormwater discharges that are or will be commingled with stormwater discharges; identify the person responsible for implementing the pollution prevention measures for pollutant-generating activity; describe the procedures and practices that will be implemented to prevent and respond to leaks, spills, and other releases, describe the procedures and practices that will be implemented to eliminate the discharge of spilled and leaked fuels and chemicals from vehicle fueling and maintenance activities; describe the procedures and practices that will be implemented to prevent the discharge of soaps, detergents, solvents and wash water from construction materials; minimize the discharge of pollutants from equipment and vehicle washing, wheel wash water and other types of washing; direct concrete wash water into a leak-proof container or leak-proof settling basin that is designed so that no overflows can occur due to inadequate sizing or precipitation; minimize the discharge of pollutants from storage, handling and disposal of construction products, materials and wastes; prevent the discharge of fuels, oils and other petroleum products, hazardous or toxic wastes, and sanitary wastes; and describe procedures for providing pollution prevention awareness of all applicable wastes to personnel in order to comply with the conditions of this general permit.
  - e. Applicable State or Local Programs: Requirements of this general permit may be fulfilled by incorporating by reference other plans such as a spill prevention control and countermeasure plan developed for the construction site under §311 of the federal Clean Water Act or BMP programs otherwise required for the facility provided that the incorporated plan meets or exceeds the SWPPP requirements of this general permit. All plans incorporated by reference into the SWPPP become enforceable under this general permit. If a plan incorporated by reference does not contain all of the required elements of the SWPPP, the operator must develop the missing elements and include them in the SWPPP.
  - f. SWPPP Requirements for Discharges to Impaired Waters, Surface Waters located within a TMDL Watershed, and Exceptional Waters: The operator must develop, implement, and maintain a SWPPP that minimizes applicable observed sources identified in the 2012 305(b)/303(d) Water Quality Assessment Integrated Report, minimizes pollutants of concern identified in TMDLs approved prior July 1, 2014, and is consistent with the assumptions and requirements of all applicable TMDL wasteload allocations. In addition, procedures in the stormwater pollution prevention plan must provide that specified areas on the construction site are inspected by qualified personnel identified by the operator a minimum of once every 7 days and within 48 hours following any measurable storm event, or a minimum of once every 4 days. Also, representative inspections utilized for utility line installation, pipeline construction, or other similar linear construction activities shall inspect all outfalls discharging directly to an impaired water. For discharges to impaired waters, including discharges to surface waters located within a TMDL watershed, where sediment, a sediment

related parameter (e.g., total suspended solids or turbidity) or nutrients (e.g., nitrogen or phosphorus) are an applicable observed source identified in the 2012 305(b)/303(d) Water Quality Assessment Integrated Report or a pollutant of concern in a TMDL approved prior to July 1, 2014, the operator must also ensure that the SWPPP implements the following: permanent or temporary soil stabilization shall be applied to denuded areas within 7 days after final grade is reached on any portion of the site; and nutrients shall be applied in accordance with manufacturer's recommendations. These requirements only apply when construction activities discharge or are reasonably expected to discharge an applicable observed source identified in the 2012 305(b)/303(d) Water Quality Assessment Integrated Report or a pollutant of concern identified in a TMDL approved prior to July 1, 2014. It is anticipated that the modified (i.e., more frequent) inspection requirements will enhance an operator's ability to find and correct problems before a discharge of pollutants to impaired waters occurs. In addition, reducing the amount of time that exposed soil is left in an un-stabilized state is important for limiting the sediment and/or nutrient load to waters already degraded for pollutants associated with construction activities. The faster stabilization requirement for construction sites discharging to sediment and nutrient impaired waters is anticipated to minimize the erosion and sedimentation that is associated with large, exposed areas.

For new discharges (i.e., construction activities which commence land disturbance on or after July 1, 2014) to exceptional waters identified in 9VAC25-260-30 A 3 c, procedures in the stormwater pollution prevention plan must include the following: permanent or temporary soil stabilization shall be applied to denuded areas within 7 days after final grade is reached on any portion of the site; specified areas on the construction site must be inspected by qualified personnel identified by the operator a minimum of once every 7 days and within 48 hours following any measurable storm event, or a minimum of once every 4 days; and representative inspections utilized for utility line installation, pipeline construction, or other similar linear construction activities shall inspect all outfalls discharging directly to an exceptional water. This requirement serves to implement the Commonwealth's anitdegradation policy (9VAC25-260-30) for exceptional (i.e. Tier 3) surface waters.

2. SWPPP Modification, Updates and Records

The operator shall amend the stormwater pollution prevention plan whenever there is a change in design, construction, operation or maintenance that has a significant effect on the discharge of pollutants to surface waters. The SWPPP shall also be amended if, during inspections or investigations by the operator's qualified personnel, or by local, state, or federal officials, it is determined that the existing control measures are ineffective in minimizing pollutants in discharges from the construction site. Amendments to the SWPPP shall include additional or modified control measures designed and implemented to correct problems identified. In addition, the SWPPP shall be amended to identify any new contractor that will implement and maintain a control measure of the stormwater pollution prevention plan. The SWPPP shall be updated no later than 7 days following any implementation modification, unless approval by a VESCP authority, VSMP authority, or the department is necessary for the implementation of an additional or modified control measure. If VESCP authority, VSMP authority, or department approval is necessary, the SWPPP shall be updated no later than 7 days following approval.

Unless otherwise required above, the operator shall update the SWPPP to include the following: a record of dates when major grading activities occur, construction activities temporarily or permanently cause on a portion of the site, and stabilization measures or initiated; documentation

of replaced or modified control measures where periodic inspections or other information have indicated that the control measures have been used inappropriately or incorrectly; areas that have reached final stabilization and where no further SWPPP or inspection requirements apply; all properties that are no longer under the legal control of the operator and the dates on which the operator no longer had legal control; the date of any prohibited discharge, the discharge volume released, and actions taken to minimize the impact of the release; measures taken to prevent the reoccurrence of an prohibited discharge; measures taken to address inspection deficiencies; and actions taken necessary to reflect any revision to applicable federal, state, or local requirements that affect the control measures implemented at the site.

All modifications and/or updates to the SWPPP shall be signed and dated in accordance with Section III K 2 of this general permit.

3. Public Notification

Upon commencement of land disturbance, the operator shall post and maintain conspicuously near the main entrance of the construction activity: a copy of the Notice of Coverage letter. For linear projects, the operator shall post the required information at a publicly accessible location near an active portion of the construction site (e.g., where a pipeline project crosses a public road). In addition, the operator shall maintain the posted information until permit termination.

4. SWPPP Availability

The operator with day-to-day operational control over stormwater pollution prevention plan implementation shall have a copy of the SWPPP available at a central location onsite for use by those identified as having responsibilities under the SWPPP. In addition, the operator shall make the SWPPP and all updates available upon request to the department, the VSMP authority, the VESCP authority, the EPA, local government officials, or the operator of a municipal stormwater sewer system (MS4) receiving discharges from the construction site. If an onsite location is unavailable to site the SWPPP when no personnel are present, notice of the SWPPP location must be posted near the main entrance of the construction site.

5. SWPPP Implementation

The operator shall implement the stormwater pollution prevention plan (and subsequent updates) from commencement of land disturbance until permit termination.

All control measures must be properly maintained in effective operating condition in accordance with good engineering practices and, where applicable, manufacturer specifications. If site inspections required by Section II F identify control measures that are not operating effectively, corrective action shall be performed as soon as practicable, but no later than 7 days after discovery, to maintain the continued effectiveness of stormwater controls.

If site inspections required by Section III F identify existing control measures that need to be modified or if additional control measures are necessary for any reason, implementation shall be completed prior to the next anticipated storm event. If implementation prior to the next anticipated storm even is impracticable, then the situation shall be documented in the SWPPP and alternative control measures shall be implemented as soon as practicable, but no later than 7 days after discovery.

6. Inspections

Procedures in the stormwater pollution prevention plan must provide that specified areas on the construction site are inspected by qualified personnel identified by the operator a minimum of once every 14 days and within 48 hours following any measurable storm event, or a minimum of once every 7 days. Construction activities that discharge to impaired waters, surface waters located within a TMDL watershed, and exceptional waters shall be inspected a minimum of once every 7 days and within 48 hours following any measurable storm event, or a minimum of once every 4 days. Where areas have been temporarily stabilized or runoff is unlikely due to winter conditions, the inspection frequency may be reduced to once every 30 days. If unexpected weather conditions make discharges likely, the operator shall immediately resume the documented inspection frequency.

Representative inspections may be utilized for utility line installation, pipeline construction, or other similar linear construction activities provided that: temporary or permanent stabilization has been installed and where vehicle access may compromise temporary or permanent stabilization and potentially cause additional disturbance of soils; control measures are inspected along the construction site 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 without compromising temporary or permanent stabilization; and the inspection locations are identified in the required inspection report.

Areas of the construction site that must be observed during inspections include disturbed areas, areas used for the storage of construction materials that are exposed to precipitation, structural control measures, and locations where vehicles enter or exit the construction site. Disturbed areas and areas used for the storage of construction materials that are exposed to precipitation must be inspected for evidence of, or the potential for, pollutants entering stormwater discharges from the construction site. Erosion and sediment and pollution prevention control measures identified in the SWPPP must be observed to ensure that they are operating correctly and effectively and do not require maintenance; observations can be made during wet or dry weather conditions. Locations where vehicles enter or exit the construction site must be inspected for evidence of offsite sediment tracking.

Based on the results of the inspection, corrective action must be taken as soon as practicable after an inspection that reveals inadequacies. The inspection and SWPPP review process must provide for the timely implementation of any modifications to the stormwater pollution prevention plan no later than 7 days following the inspection unless regulatory authority approval of a corrective action is necessary. An inspection report that includes the following: date and time of the inspection; summarized findings of the inspection; location(s) of prohibited discharges; location(s) of control measures that require maintenance; location(s) of control measures that failed to operate as designed or proved inadequate for a particular location; location(s) where additional control measures are needed; a list of corrective actions required; documentation of any previously required corrective action that has yet to be implemented; and the date and signature of the qualified personnel and operator (or operator's authorized representative) must be retained for at least 3 years after the date of permit expiration or permit termination. The report must identify incidents of noncompliance. When the report does not identify any incidents of noncompliance, the report shall contain a certification that the facility is in compliance with the SWPPP and this general permit. The report must be signed in accordance with Section III K of this general permit. Diligent inspections are necessary to ensure adequate implementation of onsite sediment and erosion controls, particularly in the later stages of construction when the volume of runoff is greatest and the storage capacity of the sediment basins has been reduced.

7. Corrective Actions

The operator shall implement the corrective action(s) identified as a result of an inspection as soon as practicable but no later than 7 days after discovery. If approval by a regulatory authority (e.g., VSMP authority, VESCP authority) of a corrective action is necessary, additional control measures shall be implemented to minimize pollutants in stormwater discharges until such approvals can be obtained.

The operator may be required to remove accumulated sediment deposits located outside of the construction activity covered by this permit as soon as practicable in order to minimize environmental impacts. The operator shall notify the department and obtain all applicable federal, state, and local authorizations, approvals, and permits prior to the removal of sediments accumulated in surface waters including wetlands.

Proposed Monitoring Requirements

The operator is required to inspect disturbed areas of the construction site, areas used for the storage of construction materials that are exposed to precipitation, structural control measures, and locations where vehicles enter or exit the site. At a minimum, these inspections shall be conducted at least once every 14 days and no later than 48 hours following any measurable storm event. Records of these inspections are to be retained as part of the stormwater pollution prevention plan.

In establishing the minimum monitoring and reporting requirements for stormwater discharges from construction sites, it was determined that frequent and thorough inspections would allow for the identification of areas contributing to a stormwater discharge associated with industrial activity and the evaluation of whether measures to reduce pollutant loadings identified in the stormwater pollution prevention plan are adequate and properly implemented in accordance with the terms of the permit or whether additional control measures are needed. Because construction sites can be complex, transient operations, frequent inspections are necessary to ensure that new pollutant sources are identified, measures are implemented for new activities at the site, and existing measures are kept operational. Measures to reduce pollutants in stormwater discharges must be properly maintained in order to be effective. Often, these types of controls may become altered by construction activities or by storm events such that their ability to remove pollutants is severely limited. Frequent inspections for construction activities are appropriate and necessary for successful program implementation.

This general permit for stormwater discharges from construction sites does not contain numeric effluent limitations. Requirements in this general permit include the development of a stormwater pollution prevention plan. Discharge sampling information does not provide a direct link to compliance with this permit condition as it does with numeric limitations. Where permits require the implementation of stormwater pollution prevention measures and do not establish numeric effluent limitations, conducting inspections to identify sources of pollution and to evaluate whether the pollution prevention measures required by the permit are being effectively implemented and are in compliance with the terms of the permit will provide a better indication than discharge sampling of whether a facility is complying with the permit. This will also reduce discharge sampling burdens on the construction site. Also, due to the changing nature of the activity at a construction site, monitoring stormwater from this type of site would have limited usefulness. The operator is also required to maintain records summarizing the results of the inspection and a certification that the facility is in compliance with the permit. The requirement for adequate documentation of the inspection is particularly important given the lack of requirements to collect discharge monitoring data under the permit and the importance placed on using site inspections to ensure the effective implementation of stormwater pollution prevention plans.