



COMMONWEALTH of VIRGINIA

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MEMORANDUM

TO: Members of the State Water Control Board

FROM: Drew Hammond, Office of VPDES Permits

DATE: December 4, 2013

SUBJECT: General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Discharges of Stormwater from Construction Activities (9VAC25-880), Amendments to the Regulation and Reissuance of the General Permit (VAR10)

The State Water Control Board (Board) adopted regulations to implement Chapters 756 and 793 of the 2013 Acts of Assembly at the August 26-27, 2013 meeting. The primary purpose of the Board's action was to renumber the regulations, change statutory and regulatory citations, and change references to the Virginia Soil and Water Conservation Board/Department of Conservation and Recreation (DCR) to State Water Control Board/Department of Environmental Quality (DEQ). Also, at that meeting the Board authorized the regulatory action to reissue and amend, as necessary, the General Permit for Stormwater Discharges from Construction Activities (General Permit), 9VAC25-880. Amendments to the General Permit were previously proposed by the Virginia Soil and Water Conservation Board with a public comment period from April 8, 2013 through June 7, 2013, and three public hearings. Written comments were received from 550+ individuals.

Staff is bringing these final regulation amendments before the Board to request adoption of the regulation reissuing the General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Discharges of Stormwater from Construction Activities, VAR10. The current General Permit will expire on June 30, 2014, and the regulation is being amended to reissue the General Permit for another five-year term. These amendments are a result of further review of the regulation and review of the proposed General Permit and the public comments received by the Virginia Soil and Water Conservation Board on the proposed General Permit. In addition, a public comment period on the proposed amendments ran from October 18, 2013 through November 20, 2013. Written comments were received from 470+ individuals. Changes have been made to the proposed amendments to address the public comments. The amended

regulation and the list of comments received, along with the staff response are attached to this memorandum.

The following comments represent the vast majority of those received by the Department of Conservation and Recreation and DEQ during the two public comment periods.

COMMENT #1: Ms. Kate McAloon (Alexandria, VA) and others.

I understand that you're considering removing existing public access to a developer's SWPPP from the new Construction General Permit. This is the wrong direction to take. SWPPPs enable me to review what a developer must do under the permit and to alert my locality if the contractor isn't meeting his permit requirements. Please reconsider and revise the language in the new Construction General Permit to enable citizen review of contractor SWPPPs.

AGENCY RESPONSE #1: Thank you for your comment. The department has included a provision in the proposed general permit to make Stormwater Pollution Prevention Plans (SWPPPs) available for public review; please see Part II D 3 of the general permit.

COMMENT #2: Ms. Sharyn Lowry (Richmond, VA) and others.

I want to express my appreciation for DEQ reinstating the public access to the SWPPP in the Construction General Permit and ask that it remain in the final draft.

AGENCY RESPONSE #2: Thank you for your comment. This amendment has been carried forward in the proposed final regulation for consideration by the State Water Control Board.

COMMENT #3: Mr. George Rhodes (Manassas, VA) and others.

Restore the 0.25 inch rainfall or greater over a 24 hour period language in the definition of "measurable storm event" in 9VAC25-880-1 of the General VPDES Permit for Discharges of Stormwater from Construction Activities.

AGENCY RESPONSE #3: Thank you for your comment. The department has chosen not to move forward with the proposed amendment to the definition of "measurable storm event." The definition previously proposed by the Regulatory Advisory Panel (RAP) has been reinstated.

COMMENT #4: Mr. George Rhodes (Manassas, VA) and others.

Clarify that in determining the frequency of inspections in the General VPDES Permit for Discharges of Stormwater from Construction Activities, days should be defined as "normal working days" which would be Monday through Friday and excluding holidays.

AGENCY RESPONSE #4: Thank you for your comment. All operator inspection frequencies specified in the general permit have been clarified in terms of "business days." In addition, the term "business day" has been defined as Monday through Friday excluding state holidays; see 9VAC25-880-1.

COMMENT #5: Mr. George Rhodes (Manassas, VA) and others.

Move forward with the changes to the VSMP Regulation that eliminates the requirement for land disturbances of less than one (1) acre in a plan of development with stormwater facilities in place, from acquiring a VSMP Permit and paying a VSMP Permit fee.

AGENCY RESPONSE #5: Thank you for your comment. This amendment has been carried forward in the proposed final regulation for consideration by the State Water Control Board.

COMMENT #6: Mr. Craig Havenner (Oakton, VA) and others.

Please reinstate the timing of the SWPPP requirement to prior to land disturbance activities as opposed to prior to project registration.

AGENCY RESPONSE #6: Thank you for your comment. This proposed revision to the general permit has been made in order to resolve one of EPA's specific objections to the 2014 general permit. No additional changes to the general permit regulation have been proposed at this time.

Summary of Changes Since Proposed

- Updated the title of the regulation from "General Permit for Discharges of Stormwater from Construction Activities" to "General VPDES Permit for Discharges of Stormwater from Construction Activities."
- Updated all proposed references to Virginia Soil and Water Conservation Board/Department of Conservation and Recreation to State Water Control Board/Department of Environmental Quality.
- Updated all applicable references of permit "Section" to permit "Part."
- Updated all applicable references of "state permit" to "general permit."

9VAC25-880-1. Definitions.

- Updated the definition for "commence of construction"; revised to "commencement of land disturbance".
- Updated the definition for "immediately"; changed "work day" to "business day".
- Added a definition for "infeasible" consistent with EPA's final 2012 construction general permit.

9VAC25-880-10. Purpose.

- Reinstated the following language, "Stormwater discharges associated with other types of industrial activity shall not have coverage under this general permit."

9VAC25-880-15. Applicability of incorporated references based on the dates that they became effective.

- This section of the regulation was adopted by the Board after the proposed stage.
- Updated the applicable Code of Federal Regulation (CFR) references used in the general permit; now July 1, 2013.

9VAC25-880-20. Effective date of general permit.

- Updated the section title from “Effective date of the permit” to “Effective date of general permit”.

9VAC25-880-30. Authorization to discharge.

- Updated the regulation language for clarity and consistency with other general VPDES permits adopted by the Board.
- Deleted the impaired waters limitation due to redundancy.
- Updated the approved TMDL assumptions and requirements date from “July 1, 2014” to “prior to the term of this general permit.”
- Updated the continuation of general permit coverage deadline from 90 days prior to the effective date of the general permit to June 30, 2014.
- Expanded the continuation of general permit coverage language to include provisions if a construction activity operator is not in compliance with the 2009 general permit.

9VAC25-880-40. Delegation of authorities to state and local programs.

- No changes or revisions have been made to this section of the regulation.

9VAC25-880-50. General permit application (registration statement).

- Updated the regulation language for clarity and consistency with other general VPDES permits adopted by the Board.
- Deleted all references to an “available electronic database provided by the department.”
- Added registration statement provisions for new stormwater discharges from emergency-related construction activities. Added a registration statement waiver provision for single-family residences separately built, disturbing less than 1 acre and part of a larger common plan of development or sale.
- Updated the registration statement submission deadline for existing construction activities seeking continued coverage under this general permit; now June 1, 2014. Deleted the permit fee waiver provision for existing construction activities. Added a registration statement waiver provision for existing stormwater discharges from single-family residences, separately built disturbing less than 1 acre and part of a larger common plan of development or sale.
- Deleted the proposed amendment stating, “Any discharge from a construction activity that was previously permitted under the 2009 General Permit but failed to maintain uninterrupted permit coverage is considered an unauthorized discharge.”
- Added a registration statement requirement to provide an operator contact. Updated the registration statement requirements to provide the latitude and longitude of the construction activity in decimal degrees and the estimated area to be disturbed to the nearest one-hundredth of an acre. Deleted the registration statement requirements to provide information on impaired waters and applicable TMDL wasteload allocations; this information can be readily obtained by the department. Deleted the certification requirement pertaining to an “available electronic database provided by the department.”

- Reinstated the requirement for a stormwater pollution prevention plan (SWPPP) to be prepared prior to the submission of a registration statement in response to an EPA specific objection to the proposed general permit.
- Deleted the following statement due to redundancy, “Registration statements in the custody of the VSMP authority or the department are subject to requests made pursuant to the Virginia Freedom of Information Act (§2.2-3700 et seq. of the Code of Virginia.)”

9VAC25-880-60. Termination of general permit coverage.

- Updated the section title from “Termination of state permit coverage” to “Termination of general permit coverage”.
- Updated the regulation language for clarity and consistency with other general VPDES permits adopted by the Board.
- Deleted all references to an “electronic database provided by the department.”
- Added language to indicate that when applicable, long-term responsibility and maintenance requirements for permanent control measures shall be recorded in the local land records prior to the submission of a notice of termination.
- Included the authorization to discharge termination language adopted by the Board at its August 26-27, 2013 meeting.
- Reinstated the notice of termination requirements contained in the 2009 general permit with minor modifications. Added a notice of termination requirement to provide an operator contact. Updated the notice of termination requirements to provide the latitude and longitude of the construction activities, permanent control measures, and regional facilities in decimal degrees. Updated the notice of termination requirements to provide the total and impervious site acres treated by permanent control measures and regional facilities.
- Deleted the proposed notice of termination requirement to certify that any instrument recorded for the long-term maintenance of any permanent stormwater management facility has been submitted to the VSMP authority.

9VAC25-880-70. General permit.

Part I – Discharge Authorization and Special Conditions

- “Coverage under this general permit”, deleted the proposed amendments identifying new construction activities, previously covered construction activities, and emergency-related construction activities; these activities have been defined in Section 50 of the regulation.
- “Post-construction discharges”, deleted the proposed amendment indicating that general permit coverage must be terminated.
- “Discharges mixed with nonstormwater”, reinstated the discharges mixed with nonstormwater requirements contained in the 2009 general permit.
- “Impaired waters and TMDL limitation”, clarified that the general permit requirements apply to stormwater discharges to all surface waters identified as impaired or with an applicable TMDL wasteload allocation for (i) sediment or a sediment-related parameter or (ii) nutrients. Updated the permit requirements to indicate that nutrients can be applied in accordance with an approved nutrient management plan. Updated the inspection

frequency requirements from calendar days to business days; the resulting inspection frequency is approximately equivalent.

- “Exceptional waters limitation”, updated the permit requirements to indicate that nutrients can be applied in accordance with an approved nutrient management plan. Updated the inspection frequency requirements from calendar days to business days; the resulting inspection frequency is approximately equivalent.
- “Commingled discharges”, updated the general permit language for clarity purposes.
- “Prohibition of nonstormwater discharges”, updated the general permit language for clarity and consistency with promulgated effluent limitation guidelines (ELGs) for the Construction and Development Point Source Category (40 CFR Part 450).
- “Authorized nonstormwater discharges”, updated the general permit language for clarity and consistency with promulgated effluent limitation guidelines (ELGs) for the Construction and Development Point Source Category (40 CFR Part 450).
- “Termination of general permit coverage”, updated the subsection title from “Termination of state permit coverage” to “Termination of general permit coverage”. Expanded the regulation language for consistency with Section 60 of the regulation and other general VPDES permits adopted by the Board.
- “Water quality protection”, deleted the permit provision indicating that the Board can require an operator to cease discharges of pollutants from the construction activity if their discharges are causing or contributing to an excursion above any applicable water quality standard for consistency with 9VAC25-870-410 of the VSMP regulation.

Part II – Stormwater Pollution Prevention Plan

- Reinstated the requirement for a stormwater pollution prevention plan (SWPPP) to be prepared prior to the submission of a registration statement in response to an EPA specific objection to the proposed general permit.
- Added a provision requiring SWPPP updates 60 days after general permit coverage for existing construction activities.
- “Stormwater pollution prevention plan contents”, extended the SWPPP update requirement from 30 days to 60 days for existing construction activities, updated the erosion and sediment control ELGs for clarity and consistency with 9VAC25-870-54 F of the VSMP regulation. Updated the stormwater management plan requirements for clarity and consistency with the VSMP regulation; stormwater management plans for new construction activities must be approved or prepared in accordance with department-approved annual standards and specifications. Added a stormwater management plan provision for existing construction activities; the plan shall continue to comply with the Part II C stormwater management technical criteria of the VSMP regulation. Updated the pollution prevention plan requires for clarity and consistency with 9VAC25-870-56 of the VSMP regulation. Relocated the applicable state or local program provision to the beginning of Part II. Updated the permit requirements to indicate that nutrients can be applied in accordance with an approved nutrient management plan for discharges to impaired waters, surface waters with an approved TMDL, or exceptional waters.
- “SWPPP amendments, modification, and updates”, updated the title of this subsection from “SWPPP modification, updates, and records” to “SWPPP amendments, modification, and updates.” Deleted the proposed amendment which indicated that

SWPPP revisions were not required to be certified in accordance with Part III K of the general permit. Deleted the proposed amendment which indicated that SWPPP updates were necessary to reflect any revisions to applicable, federal, state, or local requirements that affect the control measures implemented at the site.

- “Public notification”, reorganized and updated the general permit language for clarity.
- “SWPPP availability”, reinstated the SWPPP public availability requirement included in the 2009 general permit. Updated the general permit language to recognize that the SWPPP may be provided to the public in electronic or hard copy format; deleted the requirement for it to be provided via the internet.
- “SWPPP implementation”, updated the general permit language for clarity. Added a provision enabling VSMP authorities to establish a correct action compliance period longer than 7 days as necessary; it is anticipated that a small percentage of corrections actions may potentially take longer than 7 days to implement and/or complete.
- “SWPPP inspections”, updated the title of this subsection from “Inspections” to “SWPPP inspections.” Reorganized and updated the general permit language for clarity. Updated the baseline inspection frequency from calendar days to business days (the resulting inspection frequency is equivalent to that included in the 2009 general permit). Updated the inspection report requirements for clarity and for consistency with other changes proposed in the general permit and EPA’s final 2012 construction general permit.
- “Corrective actions”, added a provision enabling VSMP authorities to establish a corrective action compliance period longer than 7 days as necessary; it is anticipated that a small percentage of corrections actions may potentially take longer than 7 days to implement and/or complete.

Part III – Conditions Applicable to All VPDES Permits

- Updated the title of this Part from “Conditions Applicable to All State Permits” to “Conditions Applicable to All VPDES Permits”.
- “Monitoring”, added a provision to the general permit requiring compliance with regulations adopted by the Department of General Services (1VAC30-45 or 1VAC30-46) for all analyses performed according to test procedures approved under 40 CFR Part 136.
- “Duty to mitigate”, deleted the word “reasonable” from the general permit. The term “minimize” has been defined to mean “to reduce or eliminate the discharge of pollutants to the extent achievable using stormwater controls that are technologically available and economically practicable.” Since practicability has been included in the definition of minimize it is no longer necessary to include a reasonableness qualification.

9VAC25-880-80. (Repealed.)

- No changes or revisions have been made to this section of the regulation.

9VAC25-880-82. (Repealed.)

- No changes or revisions have been made to this section of the regulation.

9VAC25-880-84. (Repealed.)

- No changes or revisions have been made to this section of the regulation.

9VAC25-880-86. (Repealed.)

- No changes or revisions have been made to this section of the regulation.

9VAC25-880-88. (Repealed.)

- No changes or revisions have been made to this section of the regulation.

9VAC25-880-90. (Repealed.)

- No changes or revisions have been made to this section of the regulation.

9VAC25-880-100. Delegation of authority.

- This section of the regulation was adopted by the Board after the proposed stage; no changes or revisions have been made to this section of the regulation.

EPA Review

The U.S. Environmental Protection Agency (EPA) has reviewed and commented on the General Permit. Revisions have been made to address EPA comments.

Attorney General Certification

The Office of Attorney General (OAG) is currently reviewing the revisions to the amended regulation for certification of statutory authority.

Attachments

Amended Construction General Permit Regulation, 9VAC25-880
Construction General Permit Fact Sheet
List of Comments with Staff Response

Cc: Melanie Davenport
Fred Cunningham
Cindy Berndt
Allan Brockenbrough