

## FACT SHEET

### REISSUANCE OF THE GENERAL VPDES PERMIT FOR DISCHARGES OF STORMWATER FROM CONSTRUCTION ACTIVITIES

The Virginia State Water Control Board has under consideration the reissuance of the general Virginia Pollutant Discharge Elimination System (VPDES) permit for point source discharges of stormwater from construction activities to surface waters.

- Permit Number:** VAR10
- Name of Permittee:** Any operator in the Commonwealth of Virginia agreeing to be regulated under the terms of this general permit.
- Facility Location:** Commonwealth of Virginia
- Receiving Waters:** Surface waters within the boundaries of the Commonwealth of Virginia except waters specifically named in Board regulations which prohibit such discharges.

On the basis of preliminary review and application of lawful standards and regulations, the State Water Control Board (Board) proposes to reissue the general permit subject to certain conditions and has prepared a draft permit. The category of discharges to be included involves stormwater discharges from construction activities with the same or similar types of operations, and discharging the same or similar types of wastes. The Board has determined that this category of discharges is appropriately controlled under a general permit. The draft general permit requires that all covered construction activities meet standardized permit conditions including the development and implementation of a stormwater pollution prevention plan (SWPPP). This general permit will maintain the water quality standards adopted by the Board. This general permit will replace the general permit VAR10 which expires on June 30, 2019. Operators covered under the expiring general permit who wish to continue to discharge under a general permit must register for coverage under the new permit.

All pertinent information is on file and may be inspected, and arrangements made for copying by contacting Ms. Jaime Robb at:

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#### **Administrative**

The general permit will have a fixed term of five (5) years effective, upon Board approval, July 1, 2019. Every authorization to discharge under this general permit will expire at the same time and all authorizations to discharge will be renewed on the same date. Discharges will be covered under the general permit upon approval of the Registration Statement and delivery of a copy of the general permit to the applicant.

This general permit does not apply to any new or increased discharge that will result in significant effects to the receiving waters. That determination is made in accordance with the State Water Control Board's Antidegradation Policy contained in the Virginia Water Quality Standards, 9VAC25-260-30. Anti-backsliding will also be considered prior to granting coverage under this general permit to construction activities currently discharging stormwater under another state or VPDES permit. If a discharge appears to qualify for this general permit, the operator must submit a general permit Registration Statement to

apply for general permit coverage. The Department will either send a copy of the general permit to those applicants that qualify, or send a copy of the Virginia Stormwater Management Program (VSMP) individual permit application to those that do not qualify.

The 2014 general permit was appealed by the Potomac and Shenandoah Riverkeepers in a petition filed on December 9, 2016 in the Circuit Court of the City of Richmond (Case No. CL14-762). In the petition, the Riverkeepers argued that in approving the 2014 general permit the Board (i) failed to comply with the Clean Water Act's public participation requirements; (ii) failed to provide public access to an individual operator's stormwater pollution prevention plan; and (iii) failed to adequately protect water quality. The Court found that for all three claims the Board acted in accordance with the law based on the administrative record and relevant statutory authority, and upheld the 2014 general permit. The provisions as upheld in this court decision, have been retained in the 2019 general permit.

### **Summary of Changes from the 2014 Construction General Permit (CGP)**

This general permit replaces the 2014 CGP which was issued for a five-year term on July 1, 2014. The following is a list of substantial changes included in the general permit as compared to the 2014 CGP:

#### **Section 1 – Definitions**

- Revised definition of “final stabilization” as it pertains to homebuilders establishing temporary stabilization to address new requirements for written documentation and certification that homeowners are provided with information regarding the importance of final stabilization.
- Revised definition of “impaired waters” to reflect most recent § 305(b)/303(d) Water Quality Assessment Integrated Report.

#### **Section 10 – Purpose**

No changes

#### **Section 15 – Applicability of incorporated references based on the dates that they became effective**

- Updated the applicable date of Code of Federal Regulation (CFR) references used in the general permit; now July 1, 2018 updates.

#### **Section 20 – Effective date of general permit**

- Updated the effective date and expiration date of the general permit.

#### **Section 30 – Authorization to discharge**

- Updated the regulation language for clarity and consistency with other general VPDES permits adopted by the Board and with other parts of this regulation.
- Deleted unnecessary language requiring operators to submit erosion and sediment control plans and stormwater management plans to the Department; by definition, the Department is defined as a Virginia Erosion and Sediment Control Program authority and Virginia Stormwater Management Program authority.
- Updated list of nonstormwater authorized discharges to indicate that discharges of potable water is only authorized when “managed in a manner to avoid an instream impact”.

#### **Section 40 – Delegation of authorities to state and local programs**

No changes

#### **Section 50 – General permit application (registration statement)**

- Updated the registration statement submission deadline for existing construction activities seeking continued coverage under this general permit; now 60 days prior to expiration.
- Updated the regulation language for clarity and consistency with other general VPDES permits adopted by the Board. Added language regarding transfer of permit due to change in ownership

to allow VSMP authority to request additional documents it deems necessary to process the transfer.

- Updated the registration statement provisions to require physical address to be provided if available and the latitude and longitude of the construction activity in decimal degrees to the ten-thousandths place. Added a registration statement provision to require a site map. Added a registration statement provision to require an annual standard specification form if the project is being conducted under a department approved annual standard specification program. Added registration statement provisions to provide the date of erosion and sediment control plan approval and date that land disturbing activities commenced, if applicable. Added clarifying language to the registration statement provision that the area of estimated land disturbance is equal to the area for which permit coverage is being sought. Updated the registration statement provision to provide the sixth order hydrologic unit code (HUC) information for the receiving water. Added a registration statement provision to provide documentation of nutrient credit availability if using nonpoint source credits to demonstrate compliance with post development stormwater quality technical criteria.

#### **Section 60 – Termination of general permit coverage**

- Updated language to clarify that operators are required to submit an accurate and complete notice of termination.
- Updated language to clarify that a notice of termination is not required for single-family residential structures that are not required to submit a registration statement.
- Updated and reorganized the regulation language for clarity.
- Revised notice of termination provisions to require final stabilization rather than temporary stabilization for individual lot in residential construction projects. The definition of final stabilization includes temporary stabilization for individual lots in residential construction.
- Updated the notice of termination provisions to require physical address to be provided if available and the latitude and longitude of the construction activity in decimal degrees to the ten-thousandths place. Added language to clarify that permanent control measure information is required for both water quantity and water quality measures. Revised the requirement that the area treated by the permanent control measure be provided to the nearest hundredths instead of the nearest tenth. Added requirement that construction record drawings be provided with notice of termination as required in 9VAC25-870-55 D of the Virginia Stormwater Management Program regulation. Revised notice of termination provision to clarify requirement to provide proof of recordation for stormwater management facility maintenance agreements. Added requirement that for individual lots in residential construction only, operators are to provide homeowners with written information about the importance of final stabilization and require documentation and signed certification from the permittee that the homeowner has been notified as part of the SWPPP documents that must be maintained for 3 years.

#### **Section 70 – General permit**

- Updated the effective date to July 1, 2019 and the expiration date to June 30, 2024. Updated the regulation language for clarity and consistency with other general VPDES permits adopted by the Board.

#### ***Part I – Discharge Authorization and Special Conditions***

- **Limitations on Coverage:** Updated the Water Quality Assessment Integrated Report date from 2012 to 2016. Updated the language regarding waters impaired for nutrients or sediment or for which a TMDL has been approved and exceptional waters for clarity. Moved SWPPP requirements for waters impaired for nutrients or sediment or for which a TMDL has been approved and exceptional waters to Part II B 5 and 7 and Part II G 2 of the permit regulation. Added requirements for discharges to waters deemed impaired or for which a TMDL has been approved for Polychlorinated biphenyl (PCB) unless in accordance with SWPPP requirements in Part II B 6 and Part II G 2.

- Authorized nonstormwater discharges: Updated list of nonstormwater authorized discharges to indicate that discharges of potable water is only authorized when “managed in a manner to avoid an instream impact”.
- Termination of general permit coverage: Updated and reorganized the regulation language for clarity. Updated language to clarify that a notice of termination is not required for single-family residential structures that are not required to submit a registration statement. Added language to clarify notice of termination requirement to provided construction record drawings as required by 9VAC25-870-55 of the VSMP regulation. Added requirement that for individual lots in residential construction only, operators are to provide homeowners with written information about the importance of final stabilization and require signed documentation from the permittee that the homeowner has been notified as part of the SWPPP documents that must be maintained for 3 years after project completion.

#### *Part II – Stormwater Pollution Prevention Plan*

- Several subsections have been reorganized and updated for clarity purposes.
- Contents: Deleted unnecessary language requiring operators to submit erosion and sediment control plans and stormwater management plans to the Department; by definition, the Department is defined as a Virginia Erosion and Sediment Control Program authority and Virginia Stormwater Management Program authority. Clarified that a stormwater management plan is not required for projects meeting the criteria in 9VAC25-870-47 B of the VSMP regulation. Added a provision prohibiting discharge of waste concrete. Added condition to the pollution prevention plan requirements that waste containers be covered at the end of the day and during precipitation events or employee similarly effective control measures.
- Added SWPPP requirements for waters impaired for nutrients or sediment or for which a TMDL has been approved or exceptional waters from Part I. Added SWPPP requirements for waters impaired for PCB or for which a TMDL has been approved applicable to construction activities involving demolition of structures 10,000 square foot or greater and that were built or renovated prior to January 1, 1980.
- Added language to require SWPPP be updated “as soon as possible” when determined necessary, but retained requirement that the update is performed no later than 7 days. Revised requirement for SWPPP inspections to be conducted within 24 hours after a measurable storm event instead of 48 hours in addition to once every 10 days, or once every 5 days. Clarified SWPPP inspection requirements for areas reaching final grade or that will remain dormant for more than 14 days. Added requirement for SWPPP inspection to be added to the SWPPP no later than 4 days after inspection is conducted. Added provision that allows for SWPPP inspection to be delayed in the event of adverse weather if SWPPP inspection cannot be safely conducted.

#### *Part III – Conditions Applicable to All VPDES Permits*

- Updated the regulation language for clarity and consistency with other general VPDES permits adopted by the Board.

#### **Section 100 – Delegation of authority**

No changes

#### **Activities Covered under this General Permit**

This general permit covers point source discharges of stormwater from construction activities to surface waters of the Commonwealth, including discharges through municipal or non-municipal separate storm sewer systems. The term “construction activity” is defined in 9VAC25-870-10 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.

Coverage under this general permit applies to the *Estimated Area To Be Disturbed* as reported by the operator on the registration statement. For projects that are planned in sections over an extended period of time exceeding the 5-year term of this permit, coverage is only required for those sections of the project where land disturbance will be occurring prior to June 30, 2024. If during the term of this permit the operator determines additional land disturbance is necessary as part of the project, a permit registration modification is required to be submitted.

This general permit also covers point source discharges of stormwater 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 that is required to have general permit coverage for discharges of stormwater from construction activities; (2) the support activity is not a commercial operation, nor does it serve multiple unrelated construction activities by different operators; (3) the support activity does not operate beyond the completion of the last construction activity it supports; (4) the support activity is identified in the registration statement at the time of general permit coverage; (5) appropriate control measures are identified in a stormwater pollution prevention plan and implemented to address the discharges from the support activity areas; and (6) all applicable, state, federal, and local approvals are obtained for the support activity.

Operators applying for coverage under this general permit are not required to include on-site or off-site support activities for which they do not have operational control. Any on-site or off-site support activity not included with an operators general permit coverage maybe required to obtain separate VDPES permit

coverage. On-site or off-site support activities that require land disturbance is required to obtain construction general permit coverage regardless of the extent of the land disturbing activity (i.e. even if less than 1 acre).

This general permit covers stormwater discharges from a wide variety of construction activities. The conditions which affect the presence of pollutants in stormwater at construction sites vary significantly. Therefore, the general permit contains stormwater pollution prevention plan (SWPPP) requirements that apply to all construction activities and does not specify erosion and sediment controls or stormwater management controls that are appropriate or can be implemented by all operators. The volume and quality of stormwater discharges associated with construction activity will depend on a number of factors, including the land-disturbing activities occurring at the site and the nature of precipitation. Pollutants in stormwater discharges from construction activities may be reduced using the following methods: eliminating pollution sources, implementing Best Management Practices (BMPs) to prevent pollution, and using traditional erosion and sediment controls.

The draft general permit follows the basic framework of the U.S. EPA final 2017 Construction General Permit (CGP) published in the Federal Register (FR) on January 19, 2017 (82 FR 6534). Readers are also referred to EPA's final 2017 CGP Fact Sheet (available on EPA's website at <https://www.epa.gov/npdes/epas-2017-construction-general-permit-cgp-and-related-documents>) for additional details.

### **Limitations on Coverage**

Because of the broad scope of this general permit, most construction activities currently regulated under the Virginia Stormwater Management Program are eligible to be covered under the general permit. There are, however, several types of stormwater discharges not covered under this general permit. If an operator has been required to obtain an individual VSMP permit for their stormwater discharges pursuant to 9VAC25-870-410 B (VSMP Regulation), they are not authorized for coverage under this general permit. Discharges to surface waters where a discharge is specifically prohibited by another regulation of the State Water Control Board are not authorized by this general permit. Discharges from VPDES permitted industrial activities are also not eligible for coverage under this general permit.

Other discharges of stormwater that are not authorized under the general permit are: (1) discharges that originate from the site after construction activities have been completed and the site has undergone final stabilization; (2) discharges that are mixed with sources of nonstormwater, other than those discharges that are identified in Part I E of the general permit; (3) discharges that cause, or may reasonably be expected to cause, or contribute to a violation of the Virginia Water Quality Standards (9VAC25-260); (4) discharges that violate or would violate the antidegradation policy in the Virginia Water Quality Standards (9VAC25-260-30); and (5) discharges that are not consistent with the assumptions and requirements of an applicable Total Maximum Daily Load (TMDL) approved prior to the term of this general permit.

In addition, there shall be no discharge of floating solids or visible foam in other than trace amounts from the construction activity.

### **Impaired Waters and TMDL Limitation**

Stormwater discharges from construction activities to surface waters identified as impaired in the 2016 § 305(b)/303(d) Water Quality Assessment Integrated Report or for which a TMDL wasteload allocation has been established and approved prior to the term of this general permit for (i) sediment or a sediment related parameter (i.e., total suspended solids or turbidity), (ii) nutrients (i.e., nitrogen or phosphorus), or (iii) polychlorinated biphenyls (PCBs) are not eligible for coverage under this general permit unless the operator develops, implements, and maintains a SWPPP that minimizes the pollutants of concern and, when applicable, is consistent with the assumptions and requirements of the approved TMDL. In addition, for impairments for (i) sediment or a sediment related parameter (i.e., total suspended solids or turbidity), (ii) nutrients (i.e., nitrogen or phosphorus), the operator must (i) identify the impaired water(s), approved TMDL(s), and pollutant(s) of concern, when applicable, in the SWPPP, (ii) apply permanent or temporary soil stabilization to denuded areas within seven days after final grade is reached on any portion of the

site, (iii) apply nutrients in accordance with manufacturer's recommendations or an approved nutrient management plan and not during rainfall events, and (iv) implement a more frequent SWPPP inspection schedule. For PCB impairments, the operator must (i) identify the impaired water(s), approved TMDL(s), and pollutant(s) of concern, when applicable, in the SWPPP, (ii) apply permanent or temporary soil stabilization to denuded areas within seven days after final grade is reached on any portion of the site, (iii) implement proper waste disposal in accordance local, state, and federal requirements, and (iv) implement a more frequent SWPPP inspection schedule.

#### Exceptional Waters Limitation

Discharges of stormwater from construction activities to exceptional waters identified in 9VAC25-260-60 A 3 c (Virginia Water Quality Standards) are not eligible for coverage under this general permit unless the operator (i) identifies the exceptional water(s) in the SWPPP, (ii) applies permanent or temporary soil stabilization to denuded areas within seven days after final grade is reached on any portion of the site, (iii) applies nutrients in accordance with manufacturer's recommendations or an approved nutrient management plan and not during rainfall events, and (iv) implements a more frequent SWPPP inspection schedule.

#### **Permit Special Conditions**

##### Commingled Discharges

Discharges covered by this general permit may be commingled with other sources of stormwater that are not required to be covered under a state permit, so long as the commingled discharge is in compliance with this general permit. Discharges authorized by a separate state or VPDES permit may be commingled with discharges authorized by this general permit so long as all such discharges comply with all applicable state and VPDES permit requirements.

##### Authorized Nonstormwater Discharges

The following nonstormwater discharges from construction activities are also covered by this general permit (1) discharges from fire fighting activities; (2) fire hydrant flushings; (3) water used to wash vehicles or equipment where soaps, solvents, or detergents have not been used and the wash water has been filtered, settled, or similarly treated prior to discharge; (4) water used to control dust that has been filtered, settled, or similarly treated prior to discharge; (5) potable water sources, including uncontaminated waterline flushings, managed in a manner to avoid an instream impact; (6) routine external building wash down where soaps, solvents, or detergents have not been used and the wash water has been filtered, settled, or similarly treated prior to discharge; (7) pavement wash water where spills or leaks of toxic or hazardous materials have not occurred (or where all spilled or leaked material has been removed prior to washing); where soaps, solvents, or detergents have not been used; and where the wash water has been filtered, settled, or similarly treated prior to discharge; (8) uncontaminated air conditioning or compressor condensate; (9) uncontaminated groundwater or spring water; (10) foundation or footing drains where flows are not contaminated with process materials such as solvents; (11) uncontaminated, excavation dewatering, including dewatering of trenches and excavations that have been filtered, settled, or similarly treated prior to discharge; and (12) landscape irrigations.

Potable water sources may contain chlorine or other chemicals commonly added to disinfect and prepare the water for public use. These chemicals may be toxic to fish and other aquatic life. When discharges of potable water at construction site is necessary, operators should consider the use of dechlorination measures or direct discharges to vegetated areas prior to discharging to surface waters.

##### Prohibition of Nonstormwater Discharges

All discharges covered by this general permit shall be composed entirely of stormwater associated with construction activities except as noted above. All other nonstormwater discharges including the following, which have been adapted from 40 Code of Federal Regulations (CFR) Part 450, are prohibited: (1) wastewater from the washout of concrete; (2) wastewater from the washout and cleanout of stucco, paint, form release oils, curing compounds, and other construction materials; (3) fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance; (4) oils, toxic substances, or hazardous

substances from spills or other releases; and (5) soaps, solvents, or detergents used in equipment and vehicle washing. All nonstormwater discharges not covered under this general permit shall either be eliminated or covered under a separate state or VDPES permit.

#### Termination of General Permit Coverage

Operators of construction activities are required to submit a notice of termination after one or more of the following conditions have been met: (1) necessary permanent control measures identified in the SWPPP are in place and functioning effectively and final stabilization as defined in 9VAC25-880-1 has been achieved on all portions of the site for which the operator has operational control; (2) another operator has assumed control over all areas of the site that have not been finally stabilized and obtained coverage for the ongoing discharge; (3) coverage under an alternate state or VPDES permit has been obtained; or (4) for residential construction only, temporary soil stabilization has been completed and the residence has been transferred to the homeowner. The notice of termination should be submitted no later than 30 days after one of the above conditions being met and must be signed in accordance with Part III K of the general permit. Notice of termination is not required for single-family residential structures that are not required to submit a registration statement.

For construction activities on land used for agricultural purposes (e.g., pipelines across crop or range land or staging areas for highway construction) construction activity operators may accomplish final stabilization by returning the disturbed land to its preconstruction agricultural use.

#### Water Quality Protection

Construction activity operators must select, install, implement, and maintain control measures as identified in the SWPPP 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. If the department determines 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 9VAC25-870-410 B 3.

#### Stormwater Pollution Prevention Plan (SWPPP)

EPA established effluent limitation guidelines (ELGs) and new source performance standards (NSPS) to control the discharge of pollutants from construction activities; see 40 CFR Part 450. These requirements, known as the "Construction and Development Rule" or "C&D Rule", were published in the Federal Register on December 1, 2009 (74 FR 62996) and became effective on February 1, 2010. On November 5, 2010, EPA finalized a stay (75 FR 68215), effective January 4, 2011, for 40 CFR Parts 450.22 (a) and (b). EPA published amendments to the C&D Rule (79 FR 12661) on March 6, 2014 and May 4, 2014 (80 FR 25235) with an effective date of May 5, 2014. The amendments lifted the indefinite stay, withdrew the numeric discharge standards, and changed several of the non-numeric provisions of the original rule.

Effluent limitation guidelines for the Best Practicable Technology Currently Available (BPT), Best Available Technology Economically Achievable (BAT), and Best Conventional Pollutant Control Technology (BCT), which are codified at 40 CFR Parts 450.21 through 450.23, respectively, apply to all existing sources (i.e., construction activities which commenced land disturbance prior to February 1, 2010). The New Source Performance Standards codified 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 Clean Water Act (CWA).

This general permit requires operators to develop and implement a site-specific stormwater pollution prevention plan. In doing so, 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, and pollution prevention measures are the most practicable and cost-effective approach to minimizing pollutants in stormwater discharges. They also provide for flexibility in developing tailored plans and strategies. This general permit identifies specific components that the SWPPP must include; all the components of the plan are essential for minimizing pollutants in stormwater discharges and are necessary to reflect BPT/BCT/BAT/NSPS. A specific list of erosion and sediment controls or stormwater management controls are not established in this general permit because the variability in covered construction activities precludes the identification of universal standards or practices that are appropriate or can be implemented by all operators.

#### Stormwater Pollution Prevention Plan Requirements

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 activity and describe control measures which will be used to minimize pollutant discharges and comply with the terms and conditions of the general permit. All SWPPPs shall be prepared in accordance with good engineering practices. SWPPP 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 are 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.

#### 1. Deadlines for SWPPP Preparation

To be covered under the general permit, the stormwater pollution prevention plan must be developed prior to the submission of a registration statement to the department. This SWPPP preparation requirement does not apply to the submission of a registration statement to a local VSMP authority; operators of private construction activities are required to submit registration statements for initial permit coverage or reissuance of permit coverage as well as transfer and modification of coverage, to local Virginia Stormwater Management Program (VSMP) authorities for review and acceptance on the department's behalf. It is the department's expectation that all components of the SWPPP, including any necessary approved plans, will be prepared by the operator prior to any local VSMP authority forwarding the complete registration statement to the department for issuance of general permit coverage.

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 construction activity.

#### 2. Stormwater Pollution Prevention Plan Contents

Stormwater pollution prevention plans must include the following: (1) general information; (2) erosion and sediment controls; (3) stormwater management controls; (4) pollution prevention practices for any applicable nonstormwater discharge(s); and (5) measures to address stormwater discharges to impaired waters, surface waters with a TMDL approved prior to the term of this general permit, and exceptional waters.

##### a. General Information

Stormwater pollution prevention plans are based on an understanding of the pollution potential of the construction activity. 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. The general information section of the SWPPP must include a copy of the signed Registration Statement, a copy of the Notice of Coverage letter upon receipt, a copy of the Construction General Permit upon receipt, 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 identifying the following: (1) directions of stormwater flow and approximate slopes

anticipated after major grading activities; (2) limits of land disturbance including steep slopes and natural buffers around surface waters that will not be disturbed; (3) locations of major structural and nonstructural control measures that will be installed to increase sediment removal and maximize stormwater infiltration; (4) locations of surface waters; (5) locations where concentrated stormwater is discharged; (6) locations of onsite and offsite support activities when applicable and when required by the VSMP authority; and (7) when application, the location of the on-site rain gauge, or methodology established in consultation with the VSMP authority, used to identify measurable storm events for inspection purposes.

#### b. Erosion and Sediment Control Plan

Stormwater pollution preventions plans must include an approved erosion and sediment control plan, an agreement in lieu of a plan, or an erosion and sediment control plan prepared in accordance with annual standards and specifications approved by the department for the *Estimated Area to be Disturbed* as reported on the registration statement. An erosion and sediment control plan or an agreement in lieu of a plan ensures the proper design and implementation of erosion and sediment controls to minimize pollutants in stormwater discharges from the construction activity. In addition, all erosion and sediment control plans must include a statement describing the maintenance responsibilities required for all controls employed, which serves to aid operators in maintenance activities. Unless there is evidence to the contrary, a properly implemented approved erosion and sediment control plan, an agreement in lieu of a plan, or an erosion and sediment control plan prepared in accordance with department-approved annual standards and specifications, adequately: (1) controls the volume and velocity of stormwater runoff within the site to minimize erosion; (2) controls stormwater discharges, including peak flow rates and total stormwater volume, to minimize erosion at outfalls and to minimize downstream channel and stream bank erosion; (3) minimizes the disturbance of steep slopes; (4) minimizes the amount of soil exposed during the construction activity; (5) minimizes 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; (6) provides and maintains natural buffers around surface waters; (7) directs stormwater to vegetated areas to increase sediment removal and maximize stormwater infiltration; (8) minimizes soil compaction and, unless infeasible, preserves topsoil; (9) ensures that stabilization will be initiated immediately whenever any clearing, grading, or excavating, or other land-disturbing activities have permanently ceased on any portion of the site, or temporarily ceased on any portion of the site and will not resume for a period exceeding 14 days; and (10) utilizes outlet structures that withdraw stormwater from the surface of impoundments, unless infeasible.

The 2009 general permit required operators to obtain approval of an erosion and sediment control *prior to the commencement of land-disturbing activities*. During the development of the 2014 general permit, EPA determined this requirement inadequate and, therefore, the department included a requirement in the 2014 general permit that the SWPPP contain an approved erosion and sediment control plan as part of the SWPPP requirements *prior to approval of general permit coverage*. The department recognized that operators with coverage under the 2009 permit who were reapplying for coverage under the 2014 permit would need additional time to meet this new requirement. Therefore, the department included a provision in the 2014 general permit that allowed those operators who had obtained coverage under the 2009 permit an additional 60 days after the 2014 permit coverage was issued to update their SWPPP. In order to obtain permit coverage under the 2019 general permit, all operators must have obtained approval of an erosion and sediment control plan for the *Estimated Area to be Disturbed* as reported on the registration statement.

#### c. Stormwater Management Plan

Stormwater management plans ensure the implementation and maintenance of post-development stormwater management controls to minimize pollutants in stormwater discharges from the site after final stabilization and general permit termination has occurred. Stormwater management controls 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 an approved stormwater management plan (or an agreement in lieu of a stormwater management plan) for new construction activities, a stormwater management plan or equivalent

documentation compliant with the requirements of 9VAC25-870-93 through 9VAC25-870-99 of the VSMP Regulation for ongoing construction activities previously covered under the 2009 permit, or a stormwater management plan prepared in accordance with department approved annual standards and specifications.

***Post-development Stormwater Technical Criteria Applicability***

In May 2011 new scientifically based post-development water quantity and water quality technical criteria (Part II B criteria) were adopted to protect receiving streams throughout the Commonwealth with an implementation date of July 1, 2014 as part of revisions to the VSMP regulation. The May 2011 regulatory revisions also included provisions allowing certain land-disturbing activities from having to implement the new post-development technical criteria so as not to delay or negatively impact projects that had been previously designed, were in the process of review and approval, or had initiated land disturbing projects. The VSMP regulation distinguishes between two categories of land disturbing activities allowed to proceed under the post-development technical criteria in effect prior to July 1, 2014 in Sections 47 and 48 (Part II C criteria).

***Part II C (Time limits on Applicability) Construction Activities***

The first category of land disturbing activities authorized to proceed with development under the Part II C criteria is addressed in Section 47 of the VSMP regulation (9VAC25-870-47). This section of the regulation authorizes land disturbing activities that obtain an initial general permit or commence land disturbance prior to July 1, 2014 to use the Part II C criteria until June 30, 2024. Those portions of the project not under construction as of July 1, 2024 must conform to the post-development technical criteria effective July 1, 2014.

Prior to the expiration of the 2009 permit and the effective date of the new Part II B criteria, the Department received several thousand applications for general permit coverage from operators preserving a project's eligibility to proceed with development in accordance with the Part II C criteria until July 1, 2024. Individual and multi-phase (e.g., large-scale residential, commercial, and industrial developments where development occurs within distinct sections of a larger project at separate times) projects that obtained coverage under the 2009 general permit remain subject to the Part II C criteria until July 1, 2024 provided that the SWPPP for the development included a description of, and necessary calculations supporting, development-wide post-construction stormwater management measures to be installed prior to the completion of construction to ensure compliance with the Part II C technical criteria. Those portions (i.e. separate and distinct sections of the total development project) that are not under construction as of July 1, 2024 must comply with the Part II B criteria. Additionally, in the case of multi-phase projects where the stormwater management plan did not include post-development stormwater management measures for subsequent phases yet to be built, then post-development stormwater management for those sections are to be designed and constructed in accordance with the Part II B criteria.

For those projects subject to the Part II C criteria where (1) land disturbance for other portions of the project has been completed and (2) additional portions remain to be developed but are not actively under construction, permit coverage is not necessary until such time that the operator intends to proceed with land disturbing activities for these remaining portions of the project. The department will continue to honor the Part II C criteria for those portions of projects until June 30, 2024 without a requirement to maintain continuous permit coverage. The department interprets the language in 9VAC25-870-47 to mean that if the project in part or in whole had permit coverage prior to July 1, 2014, then the entire project remains subject to the Part II C criteria until July 1, 2024 provided that the portions were included with the description of the development-wide post-construction stormwater management measures and the necessary calculations to demonstrate compliance with the Part II C technical criteria. Prior to commencement of land disturbing activities on these remaining portions, the operator must prepare a SWPPP in accordance with the requirements of the 2019 general permit, including obtaining approval of an erosion and sediment control plan from the Virginia Erosion and Sediment Control Program Authority, and obtain coverage under the 2019 general permit. The Part II C criteria remain

effective for these portions until June 30, 2024 at which time, the Part II B criteria becomes applicable to those portions of the project not under construction. See example in appendix A.

Additionally, as clarified in Guidance Memo 14-2014 issued by the Department on August 25, 2014, any land-disturbing activities served by an existing on-site or off-site stormwater management facility, including a regional (watershed-wide) stormwater management facility, designed and implemented in accordance with the old Part II C criteria remain subject to the Part II C criteria until July 1, 2024 as long as the land-use assumptions upon which the stormwater management facility was designed and implemented have not changed (e.g., an unanticipated increase in impervious cover). Permit coverage is not necessary for these projects until such time that the operator is ready to commence land disturbing activities. As described above, the operator is required to obtain erosion and sediment control plan approval and 2019 general permit coverage prior to initiating land disturbance on these parcels.

#### *Part II C (Grandfathered) Construction Activities*

The second category of land disturbing activities authorized to proceed development under the Part II C criteria is addressed in Section 48 of the VSMP regulation (9VAC25-870-48). This section of the regulation authorizes land disturbing activities to be considered “grandfathered” and use the Part II C criteria in effect criteria under the following condition:

##### Private construction activities:

- A proffered or conditional zoning plan, zoning with a plan of development, preliminary or final subdivision plat, preliminary or final site plan, or any document determined by the locality to be equivalent thereto was approved by the locality prior to July 1, 2012. The Department may require confirmation from the plan-approving locality to satisfy this regulatory requirement;
- The aforementioned plan, plat, or equivalent document provided a “layout” as defined in the VSMP Regulation (i.e., a conceptual drawing sufficient to provide for the specified stormwater management facilities required at the time of approval) including basic pre- and post-construction water quality and water quantity calculations. The Department may require confirmation from the plan-approving locality to satisfy this regulatory requirement;
- The aforementioned plan, plat, or equivalent document has not been subsequently modified or amended in a manner resulting in an increase in the amount of phosphorus leaving each point of discharge, or an increase in the volume or rate of runoff. The Department may require confirmation from the plan-approving locality to satisfy this regulatory requirement;
- The construction activity will comply with the old Part II C technical criteria at the time of final design;
- 2009 general permit coverage was not issued for the construction activity; and
- Land disturbance did not commence prior to July 1, 2014.

##### Locality, state, and federal construction activities:

- There has been an obligation of locality, state, or federal funding, in whole or in part, prior to July 1, 2012, or the Department has approved a stormwater management plan prior to July 1, 2012;
- 2009 general permit coverage was not issued for the construction activity; and
- Land disturbance did not commence prior to July 1, 2014.

Grandfathered land-disturbing activities as described Sections 48 A or B remain subject to the Part II C criteria until June 30, 2019. Those portions of any grandfathered project not under construction on or after July 1, 2019 become subject to the Part II B criteria that became effective on July 1, 2014. The department interprets portions to mean separate and distinct sections of the total development project. See example in appendix A.

Additionally, in accordance with Section 48 D in cases where governmental bonding or public debt financing was issued for a project prior to July 1, 2012 the project is to be considered “grandfathered” indefinitely.

*Part II B (new technical criteria) Construction Activities*

Those projects that received first time permit coverage under the 2014 general permit and for which a stormwater management plan designed in accordance with Part II B post development technical criteria was approved by the VSMP authority, remain authorized under the Part II B technical criteria for the 2019 permit term.

*Under Construction*

As stated above, the Part II C criteria apply until June 30, 2019 for eligible projects in accordance with Section 48 of the VSMP regulation and June 30, 2024 for eligible projects in accordance with Section 47. At those times, the portions of the project not under construction must comply with the requirements of the Part II B criteria. The department considers projects to be under construction if construction activities have commenced. Section 10 of the VSMP regulation (9VAC25-870-10) defines *construction activity* as “any clearing, grading, or excavation associated with large construction activity or associated with small construction activity.”

**See the flow chart in appendix B to determine the applicable post-development technical criteria.**

*Va. Code § 15.2-2209.1 Extensions of approvals to address housing crisis*

It should also be noted that the vesting requirements set out in Va, Code § 15.2-2209.1, which was promulgated to address the housing crisis and extends the approval of any subdivision recorded plat or final site plan that was outstanding as of January 1, 2017 to July 1, 2020 have no relationship to the provisions of Sections 47 and 48 of the VSMP regulation and the technical criteria that are applicable to a given project.

d. Pollution Prevention Plan

Pollution prevention plans identify and address pollutant-generating activities from both on-site and off-site activities, including support activities, which may be reasonably expected to affect the quality of discharges. The plan must identify and ensure the implementation of applicable pollution prevention practices for each component of the discharge. The pollution prevention plan shall include: (1) the identification of pollutant-generating activities and the pollutants that are expected to be exposed to stormwater; (2) the location where the pollutant-generating activities will occur (or if identified on the site plan, reference the site plan); (3) the identification of all nonstormwater discharges that are or will be commingled with stormwater discharges; (4) the identification of the person responsible for implementing the pollution prevention practice(s) for each pollutant-generating activity; (5) a description of the procedures and practices that will be implemented to (i) prevent and respond to leaks, spills, and other releases, (ii) eliminate the discharge of spilled and leaked fuels and chemicals from vehicle fueling and maintenance activities, (iii) prevent the discharge of soaps, solvents, detergents, and wash water from construction materials, (iv) minimize the discharge of pollutants from equipment and vehicle washing, wheel wash water and other types of washing, (v) direct concrete wash water into a leak-proof container or leak-proof settling basin, (vi) minimize the discharge of pollutants from storage, handling and disposal of construction products, materials and wastes, (vii) prevent the discharge of fuels, oils and other petroleum products, hazardous or toxic wastes, waste concrete, and sanitary wastes; and (6) a description of the procedures for providing pollution prevention awareness of all applicable wastes to personnel in order to comply with the conditions of this general permit.

e. Measures to address stormwater discharges to impaired waters, surface waters with a TMDL approved prior to the term of this general permit, and exceptional waters

Operators must develop, implement, and maintain a SWPPP that minimizes the pollutants of concern (i.e., sediment or a sediment-related parameter or nutrients) when discharging to surface waters identified as impaired on the 2016 305(b)/303(d) Water Quality Assessment Integrated Report or for which a TMDL

has been approved prior to the term of this general permit. Operators must also (i) identify the impaired water(s), approved TMDL(s), and pollutant(s) of concern, when applicable, in the SWPPP, (ii) apply permanent or temporary soil stabilization to denuded areas within 7 days after final grade is reached on any portion of the site, (iii) apply nutrients in accordance with manufacturer's recommendations or approved nutrient management plan and not during rainfall events, and (iv) perform site inspections at a frequency of at least once every 4 business days or, at least once every 5 business days and no later than 24 hours following a measurable storm event. In addition, operators shall inspect all outfalls discharging to impaired waters when employing representative inspections for utility line installations, pipeline construction, or other similar linear construction activities.

When construction activities discharge to surface waters identified as PCB impaired on the 2016 305(b)/303(d) Water Quality Assessment Integrated Report or for which a TMDL has been approved prior to the term of this general permit and the activities include the demolition of a building 10,000 square feet or greater built or renovated prior to January 1, 1980, operators must develop, implement, and maintain a SWPPP that minimizes the exposure of building materials containing PCBs to precipitation and stormwater.

Operators must also (i) identify the impaired water(s), approved TMDL(s), and pollutant(s) of concern, when applicable, in the SWPPP, (ii) perform site inspections at a frequency of at least once every 4 business days or, at least once every 5 business days and no later than 24 hours following a measurable storm event, and (iii) ensure disposal building materials is in accordance with local, state, and federal requirements.

It is anticipated that the implementation and maintenance of traditional erosion and sediment controls in accordance with an approved Erosion and Sediment Control Plan, an "agreement in lieu of a plan", or an Erosion and Sediment Control Plan prepared in accordance with department-approved annual standards and specifications will minimize (i.e., reduce or eliminate) the discharge of (i) sediment or a sediment related parameter or (ii) nutrients from construction activities. The implementation and maintenance of traditional erosion and sediment controls is also expected to minimize the discharge of pollutants typically bound to sediment particles such as heavy metals or polychlorinated biphenyl (PCB). Also, 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 or nutrient load to waters already degraded for pollutants associated with construction activities. The faster stabilization requirement for construction activities discharging to sediment or nutrient impaired waters is anticipated to minimize the erosion losses and downstream sedimentation issues that are associated with large, exposed areas. In the absence of information demonstrating otherwise, it is anticipated that compliance with the conditions of this general permit will result in stormwater discharges being controlled as necessary such that an operator's stormwater discharges will not cause or contribute to a water quality impairment and are consistent with the assumptions and requirements of all applicable TMDLs approved prior to the term of this general permit.

The Chesapeake Bay TMDL established and approved by EPA in December 2010 was developed to address water quality impairments associated with excess sediment and nutrient loadings. Since discharges of stormwater from construction activities are an identified source of sediment and nutrients, all construction activities occurring within the Bay watershed must implement the provisions of Part II B 5 of the general permit as discussed above.

For stormwater discharges to exceptional waters identified in the Virginia Water Quality Standards operators must (i) identify the exceptional water(s) in the SWPPP, (ii) apply permanent or temporary soil stabilization to denuded areas within 7 days after final grade is reached on any portion of the site, (iii) apply nutrients in accordance with manufacturer's recommendations and not during rainfall events, and (iv) perform site inspections at a frequency of at least once every 4 days or, at least once every 7 days and no later than 24 hours following a measurable storm event. In addition, operators must inspect all outfalls discharging to exceptional waters when employing representative inspections for utility line installations, pipeline construction, or other similar linear construction activities. These general permit

requirements serve to implement the Commonwealth's antidegradation policy for exceptional (i.e., Tier 3) waters.

### 3. SWPPP Amendments, Modification, and Updates

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 must 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 activity. While a qualified person is not required to hold a certification in erosion and sediment control and stormwater management, he must be knowledgeable in the principles and practices of erosion and sediment and stormwater management controls and be able to assess conditions at the construction site that could impact stormwater quality and quantity and to assess the effectiveness of any sediment and erosion control measures or stormwater management facilities selected to control the quality and quantity of stormwater discharges from the construction activity. Knowledge and skills may have been obtained through various training course, other state's certification programs, or career experience. See 9VAC 25-870-10 of the VSMP regulation for the complete definition of "qualified personnel."

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 modifications to its implementation, unless approval by a Virginia Erosion and Sediment Control Program (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: (1) a record of dates when major grading activities occur, construction activities temporarily or permanently cause on a portion of the site, and stabilization measures are initiated; (2) documentation of replaced or modified controls where periodic inspections or other information have indicated that the controls have been used inappropriately or incorrectly; (3) areas that have reached final stabilization and where no further SWPPP or inspection requirements apply; (4) 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; (5) the date of any prohibited discharge, the discharge volume released, and actions taken to minimize the impact of the release; (6) measures taken to prevent the reoccurrence of an prohibited discharge; (7) measures taken to address any inspection deficiencies.

All amendments, modifications, or updates to the SWPPP shall be signed in accordance with Part III K of the general permit.

### 4. Public Notification

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

### 5. SWPPP Availability

The operator with day-to-day operational control over stormwater pollution prevention plan implementation is required to have a copy of the SWPPP available at a central location on-site for use by those identified as having responsibilities under the SWPPP. In addition, the general permit requires the operator to make the SWPPP and all updates available upon request to the department, the VSMP authority, the EPA, the VESCP authority, local government officials, or the operator of a municipal

stormwater sewer system (MS4) receiving discharges from the construction activity. If an on-site location is unavailable to store the SWPPP when no personnel are present, notice of the SWPPP's location must be posted near the main entrance of the construction site.

The general permit also requires the operator to make the SWPPP available for public review in an electronic format or in hard copy. Information for public access to the SWPPP is required to be posted and maintained in accordance with the SWPPP public notification requirements, above. If the operator does not provide the SWPPP electronically, then public access to the SWPPP may be arranged upon request at a time (during normal business hours) and at a publicly accessible location convenient to the operator or his designee. Please note that information not required to be contained within the SWPPP by this general permit is not required to be released by the operator.

#### 6. SWPPP Implementation

The operator is required to implement the stormwater pollution prevention plan and subsequent amendments, modifications, and updates from the commencement of land disturbance until termination of general permit coverage.

All control measures must be properly maintained in effective operating condition in accordance with good engineering practices and, where applicable, manufacturer specifications. If required site inspections identify control measures that are not operating effectively, corrective action(s) shall be performed as soon as practicable, but no later than 7 days after discovery or a longer period as established by the VSMP authority, to maintain the continued effectiveness of the control measures.

If required site inspections 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 measurable storm event. If implementation prior to the next anticipated measurable storm event is impracticable, then alternative control measures shall be implemented as soon as practicable, but no later than 7 days after discovery or a longer period as established by the VSMP authority.

#### 7. SWPPP Inspections

Diligent site inspections are necessary to ensure adequate implementation of on-site erosion and sediment controls, particularly in the later stages of construction when the volume of runoff is greatest and the storage capacity of sediment basins or sediment traps have been reduced.

Inspection 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 10 business days and no later than 24 hours following a measurable storm event, or a minimum of once every 5 business days. Construction activities that discharge to impaired waters, surface waters with a TMDL approved prior to the term of this general permit, and exceptional waters shall be inspected a minimum of once every 5 business days and no later than 24 hours following a measurable storm event, or a minimum of once every 4 business days. Where areas have been temporarily stabilized or land disturbing activities will be suspended due to continuous frozen ground conditions and stormwater discharges are unlikely, the inspection frequency may be reduced to once per month. If weather conditions (such as above freezing temperatures or rain or snow events) make discharges likely, the operator shall immediately resume the regular inspection frequency.

For this general permit a "measurable storm event" is defined as a rainfall event producing 0.25 inches of rain or greater over 24 hours. EPA believes that storm events with rainfall totals between 0.25 and 0.5 inches have the potential to produce discharges of stormwater that could lead to discharges of pollutants to surface waters, particularly if stormwater controls are not functioning effectively. Furthermore, EPA also believes that storm events in this size range may compromise stormwater controls on the construction site. Readers are referred to EPA's final 2017 CGP Fact Sheet for additional details.

Representative inspections may be utilized for utility line installation, pipeline construction, or other similar linear construction activities provided that: (1) temporary or permanent soil stabilization has been installed

and vehicle access may compromise the temporary or permanent soil stabilization and potentially cause additional land disturbance; inspections occur on the same frequency as other construction activities; (3) control measures are inspected along the construction site 0.25 miles above and below each access point (i.e., where a roadway, undisturbed right-of-way, or other similar feature intersects the construction site and access does not compromise temporary or permanent soil stabilization; (4) and the inspection locations are identified in the required inspection report.

Areas of the construction site that must be observed during inspections include, but are not limited to: 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 controls and pollution prevention 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 off-site sediment tracking.

SWPPP inspection reports must include the following information: (1) the date and time of the inspection and when applicable, the date and rainfall amount of the last measurable storm event; (2) summarized findings of the inspection; (3) the location(s) of prohibited discharges; (4) the location(s) of control measures that require maintenance; (5) the location(s) of control measures that failed to operate as designed or proved inadequate or inappropriate for a particular location; (6) the location(s) where an erosion and sediment control plan or an agreement in lieu of a plan has not been properly implemented; (7) the location(s) where any additional control measures are needed; (8) a list of corrective actions required including any changes to the SWPPP that are necessary; (9) documentation of any previously required corrective action that has yet to be implemented; and (10) the date and signature of the qualified personnel and operator or the operator's authorized representative. Inspection reports must also identify any incidents of noncompliance. When the report does not identify any incidents of noncompliance, the report shall contain a certification that the construction activity is in compliance with the SWPPP and the general permit. Inspection report must be signed in accordance with Part III K of the general permit and must be retained for at least 3 years after the date of general permit expiration or termination of general permit coverage.

Based on the results of a site inspection, corrective action(s) must be taken as soon as practicable. The inspection and SWPPP review process must provide for the timely modification of the stormwater pollution prevention plan no later than 7 days following the inspection, or a longer period as approved by the VSMP authority, unless regulatory authority approval of a corrective action is necessary.

If adverse weather causes the safety of the inspection personnel to be in jeopardy, the SWPPP inspection may be delayed until the next business day on which it is safe to perform the inspection. Any time inspections are delayed due to adverse weather conditions, evidence of the adverse weather conditions must be included in the SWPPP with the dates of occurrence.

#### 8. Corrective Actions

The general permit requires the operator to implement any corrective action identified as a result of an inspection as soon as practicable but no later than 7 days after discovery or a longer period as approved by the VSMP authority. If approval of a corrective action by a regulatory authority (e.g., VSMP authority, VESCP authority, the department) is necessary, the operator is further required to implement additional control measures 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 general permit as soon as practicable in order to minimize environmental impacts. The general permit requires that the operator notify the VSMP authority and the department as well as obtain all applicable federal, state, and local authorizations, approvals, and permits prior to the removal of sediments accumulated in surface waters including wetlands.

### **Numeric Effluent Limitations and Monitoring Requirements**

As previously noted, on November 5, 2010, EPA finalized a stay (75 FR 68215), effective January 4, 2011, for 40 CFR Parts 450.22 (a) and (b). EPA published amendments to the C&D Rule (79 CFR 12661) on March 6, 2014 and May 4, 2014 (80 CFR 25235) with an effective date of May 5, 2014 that lifted the indefinite stay and withdrew the numeric effluent limitation. Therefore, the numeric effluent limitations for turbidity have not been incorporated into the general permit for stormwater discharges from construction activities. 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 effluent 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 construction activity is complying with the general permit. This will also reduce discharge sampling burdens on the operator. 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 an inspection as well as certify that the construction activity is in compliance with the general permit. The requirement for adequate documentation of an inspection is particularly important given the lack of requirements to collect discharge monitoring data under the general permit and the importance placed on using site inspections to ensure the effective implementation of stormwater pollution prevention plans.

The areas of the construction site that must be observed during operator or qualified personnel inspections include, but are not limited to: 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. At a minimum, these inspections shall be conducted at least once every 10 business days and no later than 24 hours following a 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 activities, the Board determined that frequent and thorough inspections would allow for the identification of areas contributing to a stormwater discharge and the evaluation of whether measures to minimize pollutant loadings identified in the stormwater pollution prevention plan are adequate and properly implemented in accordance with the terms of the general permit or whether additional control measures are needed.

Because construction activities can be complex, transient operations, frequent inspections are necessary to ensure that new pollutant sources are identified, control measures are implemented for new activities at the site, and existing control measures are kept operational. Control measures to minimize 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 limited. Frequent inspections for construction activities are appropriate and necessary for successful program implementation.

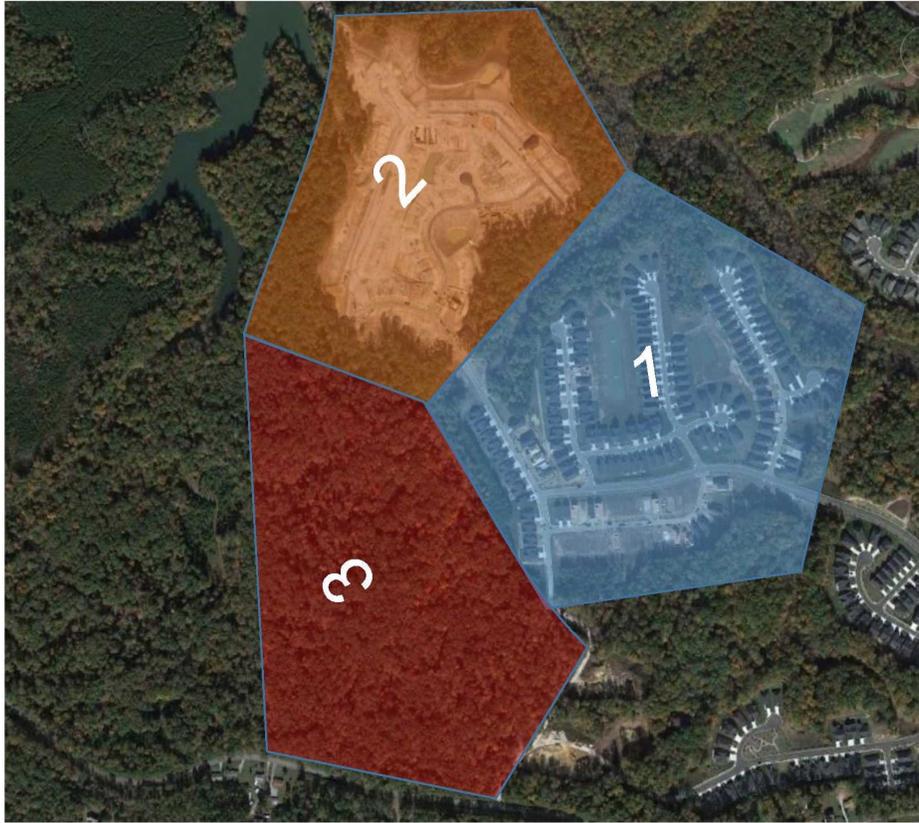
### **Chesapeake Bay Total Maximum Daily Load**

The Commonwealth in its Chesapeake Bay TMDL Watershed Implementation Plan (WIP) pledged to incorporate the established effluent limitation guidelines and new source performance standards for construction activities into the general permit. In addition, the Commonwealth committed to including by reference the provisions necessary to offset future growth in Virginia resulting from the development of agricultural and forest lands into residential and commercial urban uses.

As previously noted, this general permit includes the construction and development point source category effluent limitation guidelines and new source performance standards established in 40 CFR Part 450. Readers are referred to 74 FR 62996, 75 FR 68215, 79 FR 12661, and 80 FR 25235 for additional details. In addition, this general permit requires construction activity operators to develop a SWPPP which includes an approved stormwater management plan or a stormwater management plan prepared in accordance with department-approved annual standards and specifications for new construction

activities. As of July 1, 2014, these stormwater management plans must comply with the Commonwealth's new stormwater management technical criteria, including newly revamped water quantity and water quality requirements. These new technical criteria have been developed in order to offset future growth in Virginia resulting from the development of agricultural and forest lands into residential and commercial uses.

## Appendix A



The illustration above depicts an example of a residential development project that has been broken into three sections. Section 1 represents construction activity that is substantially complete, and few lots remain undeveloped. Section 2 demonstrates construction activity that has recently commenced. Section 3 is a forested area on which the third phase of the subdivision is planned but land disturbing activities have not commenced.

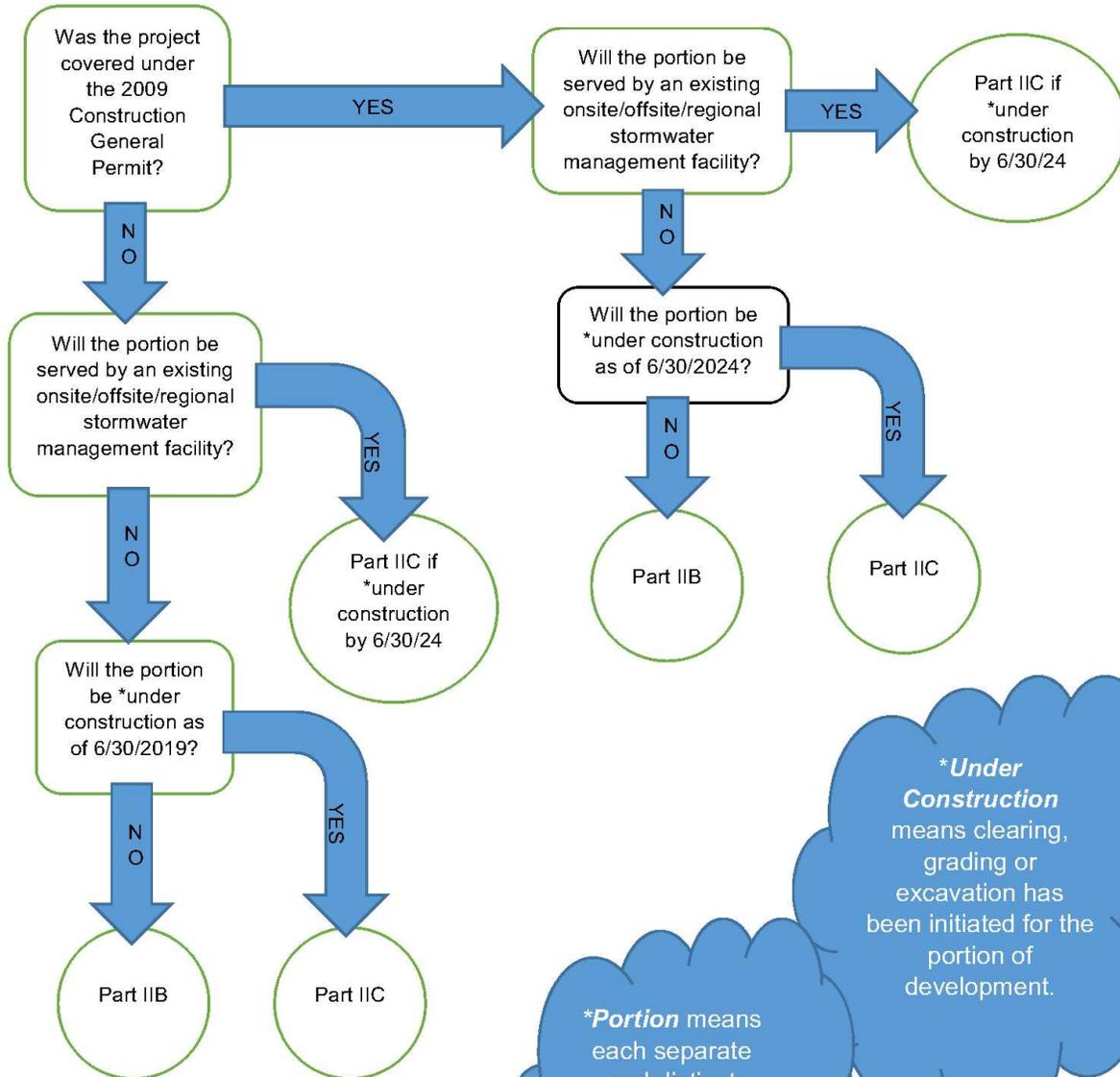
Assuming the project met the requirements of Section 48 (Grandfathering) of the VSMP regulation, Sections 1 and 2 are under construction, the construction activities in those sections may continue to utilize the Part II C post-development stormwater management criteria. If the operator does not commence construction on Section 3 prior to July 1, 2019, then the operator is required to comply with Part II B post-development stormwater management criteria for Section 3.

This same example can be used for purposes of Section 47 (Time limits on applicability) of the VSMP regulation. Since Sections 1 and 2 are under construction, the construction activities in those sections may continue to utilize the Part II C post-development stormwater management criteria. If the operator does not commence construction on Section 3 prior to July 1, 2024, then the operator is required to comply with the Part II B post-development stormwater management criteria for Section 3.

## Appendix B

### Post-development stormwater technical criteria applicability

For **EACH PORTION** of a development project, answer the following questions to determine the applicable post-development stormwater technical criteria for that phase:



**\*Portion** means each separate and distinct development activity of a project.

**\*Under Construction** means clearing, grading or excavation has been initiated for the portion of development.