

Module 5: Administering a VSMP: Construction and Post-Construction Requirements

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Objectives

- Describe what must be included in a VSMP authority inspection of a land-disturbing activity and recall the frequency at which these inspections must be conducted.
- Recall the maximum civil penalty the court can assess per violation per day.
- List all the requirements the operator must meet before the Construction General permit can be terminated.
- State the frequency at which the VSMP authority must inspect a stormwater management facility after construction.

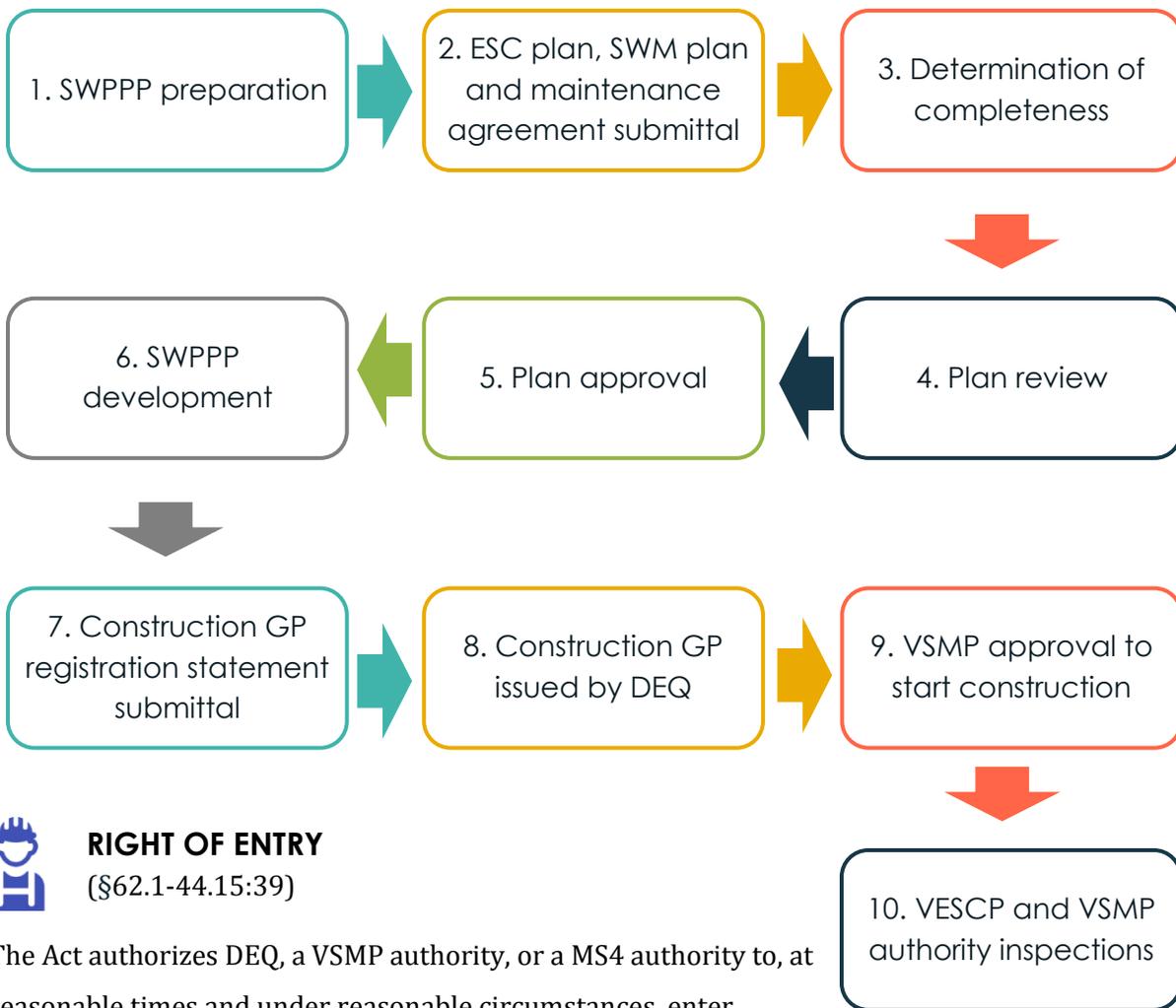
5a. Overview

This module discusses the following requirements for a VSMP authority during and after construction:

- When to inspect a land-disturbing activity,
- What to look for while inspecting a land-disturbing activity,
- Enforcement procedures,
- Permit termination requirements, and
- Post-construction inspection requirements.

It is important for the program administrator to know the above information so they can ensure their program meets the regulatory requirements. Program Administrators should read through and become familiar with the Construction General Permit Regulations.

5b. Construction Inspection Requirements



RIGHT OF ENTRY (§62.1-44.15:39)

The Act authorizes DEQ, a VSMP authority, or a MS4 authority to, at reasonable times and under reasonable circumstances, enter establishments or properties for the purpose of obtaining information, conducting surveys or investigations necessary to enforce the Act.

In accordance with a performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement, a VSMP authority may also enter any establishment or upon any property for the purpose of initiating or maintaining appropriate actions that are required by the permit conditions when a permittee, after proper notice, has failed to take acceptable action within the time specified.

INSPECTION FREQUENCY

VSMP authority inspections

(§62.1-44.15:37, 9VAC25-870-114)

The VSMP authority must ***periodically*** inspect a land-disturbing activity for:

- Compliance with the approved erosion and sediment control plan;
- Compliance with the approved stormwater management plan;
- Development, updating, and implementation of a P2 plan; and
- Development and implementation of any additional control measures necessary to address a TMDL.

NOTE:

The VSMP authority may require monitoring and reports from the person responsible for carrying out the permit conditions.

State projects with annual standards and specifications inspections

(§62.1-44.15:37, 9VAC25-870-114, 200)

State employees or contractors performing programmatic level inspections under annual standards and specifications (similar to inspections of private projects by locality VSMP authorities) must conduct periodic inspections to determine compliance with the VSMP. State employees or contractors performing SWPPP inspections under the Construction GP must follow the inspection schedule in the Construction GP (9VAC25-880-70 Part I B 4 and II F 2). DEQ is required to randomly inspect state projects with annual standards and specifications.

CONSTRUCTION GENERAL PERMIT REQUIREMENTS

SWPPP inspections by a qualified person

(9VAC25-880-70 PART II F 2)

The operator must have a qualified person conduct inspections to ensure compliance with the SWPPP. The inspections must be completed:

- At least once every five business days; or
- At least once every 10 business days and no later than 48 hours following a measurable storm event.

NOTE:

Qualified person is defined as a person knowledgeable in the principles and practices of erosion and sediment and stormwater management controls who possesses the skills to assess conditions at the construction site for the operator 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 (9VAC25-870-10).

Requirements for TMDLs, impaired waterways and exceptional waterways

(9VAC25-870-70 PART II A 5)

The Construction GP includes additional requirements for discharges of stormwater from construction activities to surface waters identified as impaired in the 2012 § 305(b)/303(d) Water Quality Assessment Integrated Report or for which a TMDL wasteload allocation has been established and approved before July 1, 2014 for (i) sediment or a sediment-related parameter (i.e., total suspended solids or turbidity) or (ii) nutrients (i.e., nitrogen or phosphorus).

In order to be eligible for coverage under Construction GP, the operator **must** develop, implement, and maintain a SWPPP that includes the additional requirements listed in Module 4 on page 25. In addition, the SWPPP inspection requirements specified in Part II F 2 (listed above) must be amended as follows:

1. Inspections shall be conducted at a frequency of (i) at least once every four business days or (ii) at least once every five business days and no later than 48 hours following a measurable storm event. In the event that a measurable storm event occurs when there are more than 48 hours between business days, the inspection shall be conducted on the next business day; and
2. Representative inspections used by utility line installation, pipeline construction, or other similar linear construction activities shall inspect all outfalls discharging to surface waters identified as impaired or for which a TMDL wasteload allocation has been established and approved prior to the term of this general permit.

Operators discharging to exceptional waters identified in 9VAC25-260-30 A 3 c are only eligible for coverage under the Construction GP if they implement the same requirements listed above for TMDLs and impaired waterways.

During inspections, the inspector must check for compliance with the above requirements.

Comparison of Qualified Person's SWPPP Inspection Requirements

Standard SWPPP Inspection Frequency	SWPPP Inspection Frequency for TMDLs, Impaired Waters, Exceptional Waterways
<ul style="list-style-type: none"> • At least once every five business days; OR • At least once every ten business days and no later than 48 hours following a measurable storm event. 	<ul style="list-style-type: none"> • At least once every four business days; OR • At least once every five business days and no later than 48 hours following a measurable storm event.

Duty of the operator to provide information

(§ 62.1-44.15:40)

The Board, DEQ, or the VSMP authority may require every permit applicant, every permittee, or any person subject to state permit requirements to furnish when requested such application materials, plans, specifications, and other pertinent information as may be necessary to

determine the effect of their discharge on the quality of state waters, or such other information as may be necessary to accomplish the purposes of the Act.

Signatory requirements

(9VAC25-880-70 PART III K)

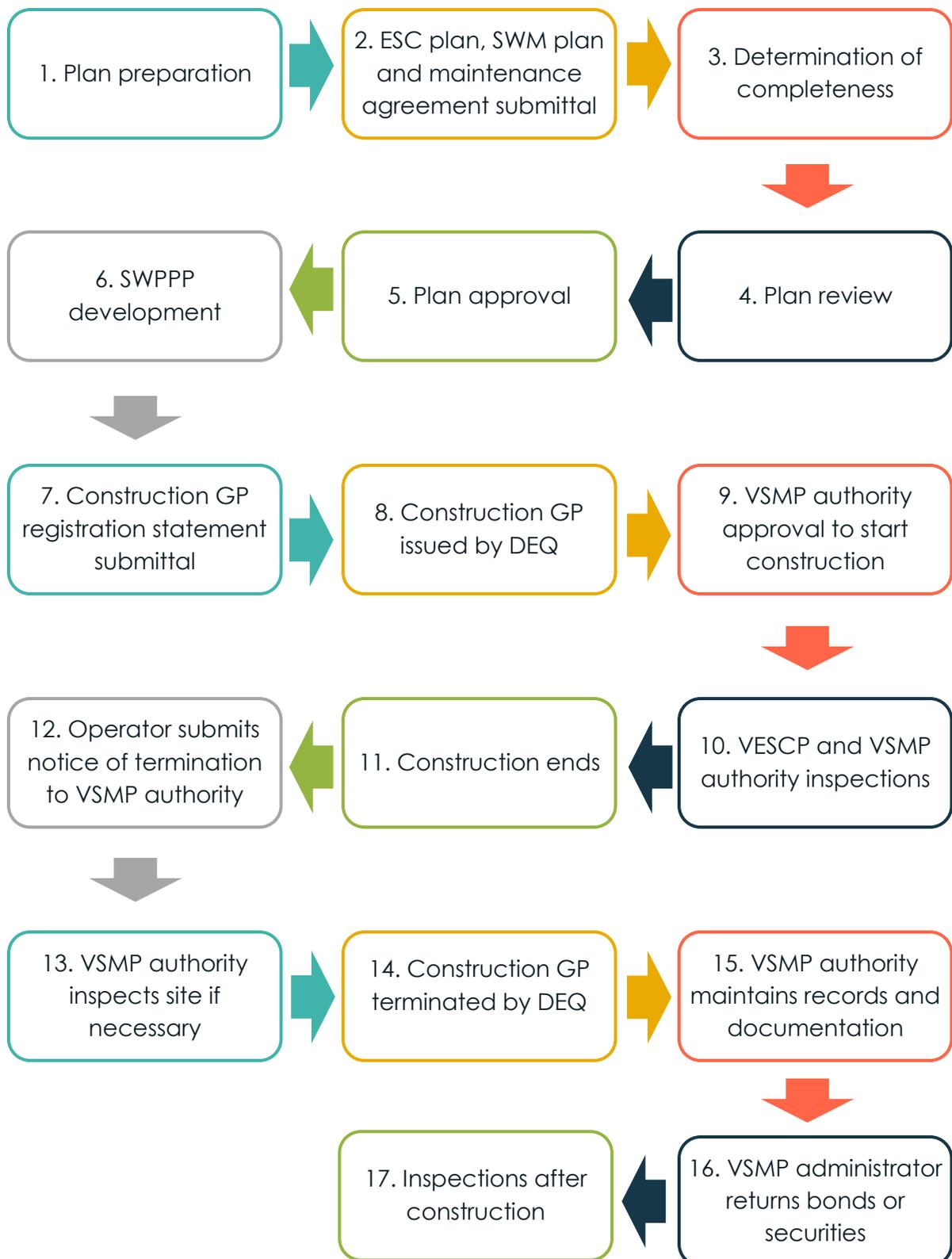
The Construction GP requires reports, including inspection reports, to be signed by the operator. The operator may be the same person that signed the registration statement, or that person may authorize a representative to sign on their behalf. The representative may be an individual or a position having responsibility for the overall operation of the regulated facility or activity.

NOTE:

The registration statement can be signed:

- Corporations – Responsible corporate officer
 - Partnership or sole proprietorship – General partner or the proprietor
 - Municipality, state, federal, other public agency – Principal executive office or ranking elected official
-

5c. Permit Termination Requirements



Permit termination checklist for the VSMP authority

When an operator is ready to terminate their Construction GP coverage, they submit the DEQ Notice of Termination form to the VSMP authority. Before entering the information on the form into the Construction GP System, the VSMP authority should confirm the following has been completed:

Permit termination checklist

- Permit termination requirements met
- DEQ Notice of Termination form completed
 - Confirmation long-term maintenance agreement(s) recorded in local land records (when applicable)
 - Information on permanent control measures recorded (when applicable)
- Construction record drawing(s) for permanent stormwater management facilities submitted to VSMP authority (when applicable)
- Notice of Termination information entered into Construction General Permit System

DEQ Notice of Termination form and Construction GP termination requirements (9VAC25-880-60)

The operator must submit the DEQ Notice of Termination form to the VSMP authority within 30 days of meeting one or more of the following conditions:

1. Necessary permanent control measures included in the SWPPP for the site are in place and functioning effectively and final stabilization has been achieved on all portions of the site for which the operator is responsible. ***When applicable, long-term responsibility and maintenance requirements for permanent control measures must be recorded in the local land records before the submission of the Notice of Termination;***

2. Another operator has assumed control over all areas of the site that have not been fully stabilized and obtained coverage for the ongoing discharge;
3. Coverage under an alternative VPDES or state 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 DEQ Notice of Termination form can be downloaded from:

<http://www.deq.virginia.gov/Portals/0/DEQ/Water/Publications/CGPNoticeofTermination2014.pdf>

A copy of the DEQ Notice of Termination form and instruction can be found on the next four pages.

Notice of Termination
General VPDES Permit for Discharges of Stormwater from Construction Activities (VAR10)

(Please Type or Print All Information)

1. Construction Activity Operator:

Name: _____

Contact: _____

Mailing Address: _____

City: _____ State: _____ Zip: _____ Phone: _____

Email address (if available): _____

2. Name and Location of the Construction Activity: (As listed on the Registration Statement.)

Name: _____

Address (if available): _____

City: _____ State: _____ Zip: _____

County (if not located within a City): _____

Latitude (decimal degrees): _____ Longitude (decimal degrees): _____

3. General Permit Registration Number: _____

4. Reason for Terminating Coverage Under the General Permit: (The operator shall submit a Notice of Termination after one or more of the following conditions have been met.)

- A. Necessary permanent control measures included in the SWPPP for the site are in place and functioning effectively and final stabilization has been achieved on all portions of the site for which the operator is responsible. 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;
- B. Another operator has assumed control over all areas of the site that have not been finally stabilized and obtained coverage for the ongoing discharge;
- C. Coverage under an alternative VPDES or state permit has been obtained; or
- D. 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. Authorization to discharge terminates at midnight on the date that the notice of termination is submitted for the conditions set forth in subsections B through D above, unless otherwise notified by the VSMP authority or the Department. Termination of authorizations to discharge for the conditions set forth in subsection A above shall be effective upon notification from the Department that the provisions of subsection A have been met or 60 days after submittal of the notice of terminations, whichever occurs first.

5. Permanent Control Measures Installed: (When applicable, a list of the on-site and off-site permanent control measures (both structural and nonstructural) that were installed to comply with the stormwater management technical criteria. Attach a separate list if additional space is needed.)

Permanent Control Measure #1

Type of Permanent Control Measure: _____

Date Functional: _____

Address (if available): _____

City: _____ State: _____ Zip: _____

County (if not located within a City): _____

Latitude (decimal degrees): _____ Longitude (decimal degrees): _____

Receiving Water: _____

Total Acres Treated: _____ Impervious Acres Treated: _____

Permanent Control Measure #2

Type of Permanent Control Measure: _____

Date Functional: _____

Address (if available): _____

City: _____ State: _____ Zip: _____

County (if not located within a City): _____

Latitude (decimal degrees): _____ Longitude (decimal degrees): _____

Receiving Water: _____

Total Acres Treated: _____ Impervious Acres Treated: _____

Permanent Control Measure #3

Type of Permanent Control Measure: _____

Date Functional: _____

Address (if available): _____

City: _____ State: _____ Zip: _____

County (if not located within a City): _____

Latitude (decimal degrees): _____ Longitude (decimal degrees): _____

Receiving Water: _____

Total Acres Treated: _____ Impervious Acres Treated: _____

6. **Participation in a Regional Stormwater Management Plan:** (When applicable, information related to the participation in a regional stormwater management plan. Attach a separate list if additional space is needed.)

Regional Stormwater Management Facility

Type of Regional Stormwater Management Facility: _____

Address (if available): _____

City: _____ State: _____ Zip: _____

County (if not located within a City): _____

Latitude (decimal degrees): _____ Longitude (decimal degrees): _____

Total Site Acres Treated: _____ Impervious Site Acres Treated: _____

7. **Perpetual Nutrient Credits:** (When applicable, information related to perpetual nutrient credits that were acquired in accordance with § 62.1-44.15:35 of the Code of Virginia. Attach a separate list if additional space is needed.)

Nonpoint Nutrient Credit Generating Entity

Name: _____

Perpetual Nutrient Credits Acquired (lbs/acre/year): _____

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

Printed Name: _____ Title: _____

Signature: _____ Date: _____

(Please sign in INK. This Certification must be signed by the appropriate person associated with the operator identified in Item #1.)

Instructions for Completing the Notice of Termination General VDPES Permit for Discharges of Stormwater from Construction Activities (VAR10)

GENERAL

A Notice of Termination must be submitted when an operator no longer wishes to be covered under the General VDPES Permit for Discharges of Stormwater from Construction Activities (VAR10).

All Notice of Terminations should be submitted to:

**Department of Environmental Quality
Office of Stormwater Management, 10th Floor
P.O. Box 1105
Richmond, VA 23218**

LINE-BY-LINE INSTRUCTIONS

Item 1: Construction Activity Operator Information.

Provide the legal name (do not use a colloquial name), contact, mailing address, telephone number, and email address (if available) of the construction activity operator that was issued general permit coverage.

Item 2: Name and Location of the Construction Activity Information.

Provide the official name, street address (if available), city or county (if not located within a City) of the construction activity. Also, provide the latitude and longitude in decimal degrees of the approximate center of the construction activity (e.g., N 37.5000, W 77.5000). NOTE: This information can be obtained from the previously submitted Registration Statement.

Item 3: General Permit Registration Number.

Provide the existing general permit registration number for the construction activity identified in Item 2.

Item 4: Reason for Termination.

Indicate the appropriate reason for submitting this Notice of Termination. The Notice of Termination may only be submitted after one or more of the following conditions have been met:

- a. Necessary permanent control measures included in the SWPPP for the site are in place and functioning effectively and final stabilization has been achieved on all portions of the site for which the operator is responsible. 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;
- b. Another operator has assumed control over all areas of the site that have not been finally stabilized and obtained coverage for the ongoing discharge;
- c. Coverage under an alternative VDPES or state permit has been obtained; or
- d. 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.

Item 5: Permanent Control Measures (when applicable).

For each on-site and off-site permanent control measure (both structural and non-structural) that was installed to comply with the stormwater management technical criteria provide the following information:

- a. The type of permanent control measure;

- b. The date that the permanent control measure became functional as a post-development stormwater management control;
- c. The street address (if available), City or County (if not located within a City) of the permanent control measure;
- d. The latitude and longitude in decimal degrees of the approximate center of the permanent control measure;
- e. The receiving water of the permanent control measure; and
- f. The number of total and impervious acres treated by the permanent control measure (to the nearest one-tenth of an acre).

Attach a separate list if additional space is needed.

Item 6: Participation in a Regional Stormwater Management Plan (when applicable).

For each Regional Stormwater Management Facility provide the following information:

- a. The type of regional facility to which the site contributes;
- b. The street address (if available), City or County (if not located within a City) of the regional facility;
- c. The latitude and longitude in decimal degrees of the approximate center of the regional facility; and
- d. The number of total and impervious site acres treated by the regional facility (to the nearest one-tenth of an acre).

Attach a separate list if additional space is needed.

Item 7: Perpetual Nutrient Credits (when applicable).

Provide the following information related to perpetual nutrient credits that were acquired in accordance with § 62.1-44.15:35 of the Code of Virginia:

- a. The name of the nonpoint nutrient credit generating entity from which perpetual nutrient credits were acquired; and
- b. The number of perpetual nutrient credits acquired (lbs. per acre per year).

Attach a separate list if additional space is needed.

Item 8: Certification.

A properly authorized individual associated with the operator identified in Item 1 of the Registration Statement is responsible for certifying and signing the Registration Statement. **Please sign the Registration Statement in INK.**

State statutes provide for severe penalties for submitting false information on the Registration Statement. State regulations require that the Registration Statement be signed as follows:

- a. For a corporation: by a responsible corporate officer. For the purpose of this part, a responsible corporate officer means:
 - (i) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy-making or decision-making functions for the corporation, or
 - (ii) the manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions that govern the operation of the regulated

facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long-term compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively.

c. For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this part, a principal executive officer of a public agency includes:

(i) The chief executive officer of the agency, or

(ii) A senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

Long-term maintenance agreements

(9VAC25-870-112, 9VAC25-880-60)

When the operator is filling out the DEQ Notice of Termination form, they have to confirm, when applicable, that the long-term maintenance agreement has been submitted.

Remember, the VSMP authority may choose not to require such recorded instruments for stormwater management facilities designed to treat stormwater runoff primarily from an ***individual residential lot***, provided it is demonstrated to the satisfaction of the VSMP authority that future maintenance of such facilities will be addressed through an enforceable mechanism at the discretion of the VSMP authority.

4. **Reason for Terminating Coverage under the General Permit:** (The operator shall submit a Notice of Termination after one or more of the following conditions have been met.)
- A. Necessary permanent control measures included in the SWPPP for the site are in place and functioning effectively and final stabilization has been achieved on all portions of the site for which the operator is responsible. 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;
 - B. Another operator has assumed control over all areas of the site that have not been finally stabilized and obtained coverage for the ongoing discharge;
 - C. Coverage under an alternative VPDES or state permit has been obtained; or
 - D. For residential construction only, temporary soil stabilization has been completed and the residence has been transferred to the homeowner.
- 

Excerpt from DEQ Notice of Termination form, page 1

Information on permanent control measures

(9VAC25-870-55)

When applicable, the operator must include a list of on-site and off-site permanent control measures on the DEQ Notice of Termination form.

5. **Permanent Control Measures Installed:** (When applicable, a list of the on-site and off-site permanent control measures (both structural and nonstructural) that were installed to comply with the stormwater management technical criteria. Attach a separate list if additional space is needed.)



Permanent Control Measure #1

Type of Permanent Control Measure: _____

Date Functional: _____

Address (if available): _____

City: State: Zip: _____

County (if not located within a City): _____

Latitude (decimal degrees): _____ Longitude (decimal degrees) _____

Receiving Water: _____

Total Acres Treated: _____ Impervious Acres Treated: _____

Excerpt from DEQ Notice of Termination form, page 1

Construction record drawings

(9VAC25-870-55, 108, 112)

Once construction is complete, a construction record drawing for permanent stormwater management facilities must be submitted to the VSMP authority. The construction record drawing must be appropriately sealed and signed by a professional registered in the Commonwealth of Virginia, certifying that the stormwater management facilities have been constructed in accordance with the approved plan.

Remember, a VSMP authority may elect not to require construction record drawings for stormwater management facilities designed to treat stormwater runoff primarily from an *individual residential lot* on which they are located.

Construction General Permit System

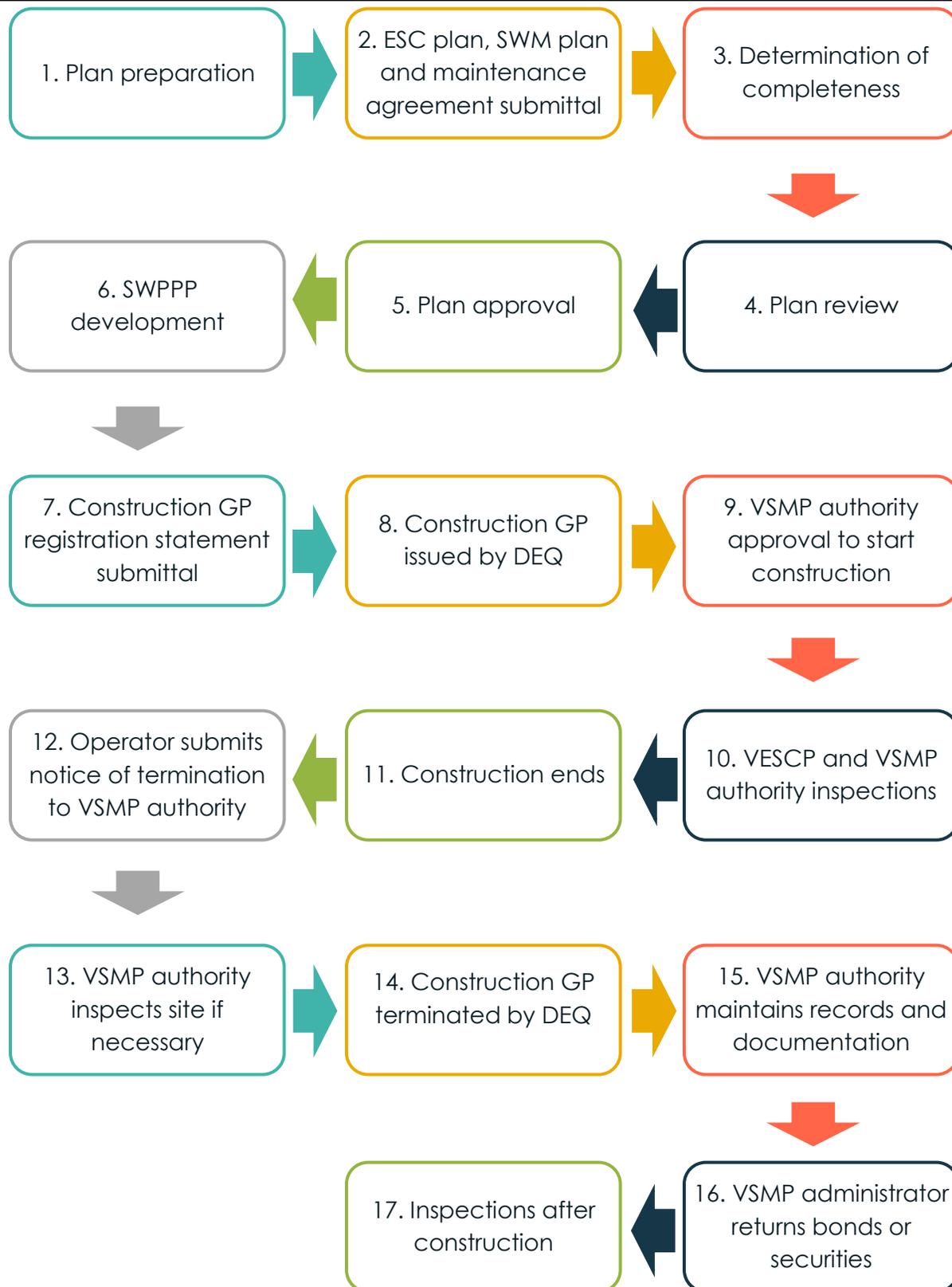
Once the locality VSMP authority determines a project is ready for permit termination, it finds the permit in the Construction GP system and enters the required information. Then DEQ processes the termination, and the operator is sent a termination letter via email or US Postal Service. The locality VSMP authority will also receive the email notification.

SECURITY FOR PERFORMANCE

(§ 62.1-44.15:34)

Within 60 days of completing the requirements of the permit conditions, the VSMP authority must return or terminate any bonds or securities provided by the operator at the onset of the project.

5d. Post-Construction Inspection Requirements





INSPECTION FREQUENCY

(9VAC25-870-114)

VSMP authorities must ensure stormwater management facilities are inspected by the VSMP authority or its designee at least ***once every five years***. The inspections must be documented by records.

The VSMP authority may utilize the inspection reports of the owner of a stormwater management facility as part of its established inspection program if the inspection is conducted by a person who is licensed as a professional engineer, architect, landscape architect, or land surveyor; or a person who works under the direction and oversight of the licensed professional; or a person who holds an appropriate certificate of competence from the board.

Remember, if a recorded long-term maintenance agreement is not required ([9VAC25-870-112](#)) then the facility is not subject to the VSMP authority post-construction inspection requirements.

STATE AGENCY ANNUAL STANDARDS AND SPECIFICATIONS

(9VAC25-870-200)

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

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

Knowledge Check Questions

Answer the following questions with the reference from the Act and/or Regulations

1. How often must a VSMP authority inspect a land-disturbing activity?
2. What must a VSMP authority inspect a land-disturbing activity for?
3. What type of stormwater discharges are covered by the Construction General Permit?
4. What must the operator submit to the VSMP authority before the Construction General Permit is terminated that certifies that the stormwater management facilities have been constructed in accordance with the approved stormwater management plan?
5. How often must the VSMP authority ensure stormwater management facilities are inspected after construction?

Knowledge Check Answers

1. How often must a VSMP authority inspect a land-disturbing activity?

Periodically (§62.1-44.15:37, 9VAC25-870-114).

2. What must a VSMP authority inspect a land-disturbing activity for?

(9VAC25-870-114)

- *Compliance with the approved erosion and sediment control plan;*
- *Compliance with the approved stormwater management plan;*
- *Development, updating, and implementation of a P2 plan; and*
- *Development and implementation of any additional control measures necessary to address a TMDL.*

3. What type of stormwater discharges are covered by the Construction General Permit?

Stormwater discharges from large and small construction activities that are greater than or equal to once acre or part of a larger common plan of development or sale that is greater than or equal to one acre (9VAC25-880).

4. What must the operator submit to the VSMP authority before the Construction General Permit is terminated that certifies that the stormwater management facilities have been constructed in accordance with the approved stormwater management plan?

Construction record drawings (9VAC25-870-55, 108).

5. How often must the VSMP authority ensure stormwater management facilities are inspected after construction?

At least once every five years (9VAC25-870-114).