

FACT SHEET
REISSUANCE OF A GENERAL VPDES PERMIT FOR DISCHARGES OF STORMWAER FROM
SMALL MUNICIPAL SEPARATE STORM SEWER SYSTEMS
Effective November 1, 2018

The Virginia State Water Control Board has under consideration the reissuance of a VPDES general permit for point source discharges of stormwater from small municipal separate storm sewer systems (MS4s) to the surface waters of the Commonwealth of Virginia.

Permit Number: VAR04

Name of Permittee: Any operator of a qualifying small municipal separate storm sewer system with point source discharges to the surface waters of the Commonwealth of Virginia.

Facility Location: Commonwealth of Virginia

Receiving Waters: Surface waters within the boundaries of the Commonwealth of Virginia, except those 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 proposes to reissue the general VPDES permit subject to certain conditions. The Board has determined that this category of discharges is appropriately controlled under a general permit. The category of discharges to be included involves facilities with the same or similar types of operations that discharge the same or similar types of stormwater. The general permit requires that all covered facilities develop, implement, and enforce a MS4 program designed to reduce the discharge of pollutants from the small MS4 to the maximum extent practicable (MEP), to protect water quality, and to satisfy the appropriate water quality requirements of the State Water Control Law and its attendant regulations.

Three public hearings were held in the following locations: on February 9, 2018 at the Department of Environmental Quality's (DEQ's) Northern Office in Woodbridge; on February 12, 2018 at the DEQ's Central Office in Richmond; and on February 14, 2018 at the DEQ's office in Roanoke. Three comments were received during the hearings. The public notice comment period was January 8, 2018 to March 9, 2018. The notice of the public comment period/public hearing were published in the The Roanoke Times, the Richmond Times Dispatch, The Washington Times and the Virginia Register. During the public comment period, twelve comment letters were received from various organizations including: Hampton Roads Planning District Commission (HRPDC), Virginia Municipal Stormwater Association (VAMSA), environmental groups and permittees for consideration and response. Comments were also received from US EPA Region 3 and US EPA Washington, DC Office. DEQ staff reviewed comments received, drafted responses, and made revisions to the final permit regulation as appropriate. The State Water Control Board adopted the general permit regulation on August 21, 2018. The regulation is effective for all covered facilities on November 1, 2018. Every authorization to discharge under this general permit will expire October 31, 2023.

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Activities covered by this general permit

This general permit authorizes the point source discharges of stormwater from small municipal storm sewer systems (MS4) to surface waters of the Commonwealth of Virginia. A small MS4 is regulated if it is owned or operated by a federal, state, tribal, or local government entity and is located in an urbanized area as determined by the latest decennial census performed by the U.S. Bureau of the Census; is designated by the Board pursuant to 9VAC25-870-400 B.1.b; or is based upon a petition under 9VAC25-870-400 B.2. If the small MS4 is not located entirely within an urbanized area, only the portion that is within the urbanized area is regulated. A small MS4 operator may alternatively choose to apply for and obtain coverage under an individual permit as allowed by 9VAC 25-870-400 C.2. Additionally, the Board may waive the requirements for a regulated small MS4 to obtain permit coverage if the criteria list in 9VAC25-870-400 B.4 or 5 are met.

Any operator is authorized to discharge to surface waters of the Commonwealth of Virginia under this general permit if the owner submits and receives acceptance by the Board of the registration statement per 9VAC25-890-30, submits any permit fee required by 9VAC25-870-700, if applicable, complies with the requirements of 9VAC25-890-40, and provided that the Department has not notified the owner that the discharge is not eligible for coverage because of one of the following:

1. The permittee is required to obtain an individual permit in accordance with 9VAC25-870-410 B.3;
2. The permittee is proposing discharges to surface waters specifically named in other board regulations that prohibit such discharges;
3. The permittee fails to implement BMPs to reduce pollutants to the maximum extent practicable (MEP) standard in order to demonstrate progress toward meeting the water quality requirements as listed in 9 VAC 25-31-220 D.1.a

The regulation also contains section 9VAC25-890-20 K which allows for continuation of permit coverage when an owner authorized to discharge under the general permit submits a complete and timely registration statement and is not violating conditions under the expiring or expired general permit.

Considerations

As a result of the partial remand of the Phase II stormwater regulations by the U.S. Court of Appeals for the Ninth Circuit, the U.S. Environmental Protection Agency (EPA) promulgated revised regulations on January 9, 2017 governing how small municipal separate storm sewer systems (MS4s) obtain coverage under National Pollutant Discharge Elimination System (NPDES) general permits. This change promotes greater public engagement through clear requirements on the opportunities for public participation in the permitting process. The final MS4 General Permit Remand Rule established two alternative approaches, traditional general permit approach and procedural approach, for issuing and administering coverage under Small MS4 General Permits. Both approaches ensure that the permitting authority establishes what is necessary for the MS4 to “reduce the discharge of pollutants from the MS4 to the maximum extent practicable, to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act,” referred to as the “MS4 permit standard,” and that the public participation requirements of the Clean Water Act (CWA) are met. (40 CFR 122). Conditions in the proposed permit revise, incorporate, and clarify requirements in accordance with the *traditional* general permit approach as allowed in the federal regulations for small MS4 general permits.

The permittee is required to develop an MS4 Program Plan that describes how the permittee will implement the MS4 Program to demonstrate compliance with the requirements of the permit. The plan is required to contain information as specified in the permit and may incorporate documents by reference as long as the documents are

readily available upon request. Because the MS4 permit contains specific permit requirements in accordance with EPA's small MS4 remand rule *traditional* approach, it is not necessary for the details of the MS4 Program Plan to be included as enforceable terms of the permit.

In the preamble to the MS4 Remand Rule published in the December 9, 2016 Federal Register (Vol. 81, No. 237), EPA provides clarification as to the role of the MS4 Program Plan on page 89339 as stated below:

“...EPA clarifies that, under EPA's small MS4 regulations, the details included in the permittee's SWMP document are not directly enforceable as effluent limitations of the permit. The SWMP document is intended to be a tool that describes the means by which the MS4 establishes its stormwater controls and engages in the adaptive management process during the term of the permit. While the requirement to develop a SWMP document is an enforceable condition of the permit (see § 122.34(b) of the final rule), the contents of the SWMP document and the SWMP document itself are not enforceable as effluent limitations of the permit, unless the document or the specific details within the SMWP are specifically incorporated by the permitting authority into the permit.”

In accordance with EPA's revised small MS4 regulation, the Department interprets that the program plans are meant to describe how permittees will meet the requirements of the permit and allow for the plans to be revised in accordance with the adaptive management approach. All enforceable provisions of the MS4 Program are contained within the permit. Approval by the Department in part or as a whole of the program plan is not necessary. Additionally, public participation requirements of the VPDES permit program outside of the general permit regulatory development process is not required. The Department may request that the MS4 Program plans be submitted for review to determine that those elements required by the permit for inclusion in the program plan have been appropriately included.

Summary of Requirements, Rationale and Changes

9VAC 25-890-1 Definitions

Added *High-priority municipal facilities*: This phrase was defined in the text of the 2013 general permit and has been moved to the definition section.

Deleted *MS4 Program Plan*: Part I.C includes the requirements of what constitutes an MS4 program plan.

Deleted *Operator*: This term is defined in 9VAC 25-870-10 of the Virginia Stormwater Management Program Regulations.

Added *MS4 Regulated Service Area*: This phrase was added to clarify where provisions of the Small MS4 general permit are applicable.

Added *Pollutants of concern*: This phrase was previously defined in the Chesapeake Bay TMDL special condition. It has been moved to the definition section of this general permit regulation as it is applicable to the local TMDL special condition as well.

9VAC 25-890-10 Purpose; Delegation of Authority; Effective Date of the State Permit

A - Clarified that nonstormwater or wastewater discharges are not authorized under the permit except in accordance with 9VAC 25-890-20 D.

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

C - Moved the delegation of authority from 9VAC 25-890-50 for consistency with other general permits.

9VAC 25-890-15 Applicability of Incorporated References Based on the Dates That They Became Effective

Updated the Title 40 CFR publication date.

9VAC 25-890-20 Authorization to Discharge

C - Added criteria by which the board may find that a discharge is not eligible for coverage under the general permit consistent with other general permits.

D.3 - Added the list of authorized non-stormwater discharges as listed in 9VAC 25-400 D.2.c(3) for clarity including an item required by the amendment to Virginia Code section 15.2-2114.1, approved 4/6/2018, for noncommercial fundraising car washes if the washing uses only biodegradable, phosphate free, water-based cleaners.

D.4 - Revised permit condition addressing the discharge of material to prevent loss to address the “immediate” discharge of materials to “protect life and property.” Clarified that emergency management personnel or the fire department as authority to make the determination that the discharge is necessary.

G and H – revised language and separated out condition to clarify that if activities require a VPDES industrial stormwater permit, then the VPDES industrial stormwater permit applies. If activities requiring a VPDES industrial stormwater permit cease and coverage is terminated, the MS4 permit applies.

K.2 – Include conditions for expiring or expired general permit not in compliance with the terms of the expired/expiring permit.

9VAC 25-890-30 – Registration Statement

A.2 – Revise registration due date to June 1, 2018.

B.3 and 5 – Require as part of the registration statement contact and mailing information.

B.5 (2013 permit) – Delete requirement for permittees to provide a list of TMDL wasteloads allocated to the permittee. This is information already developed and maintained by the Department.

B.7 and 8 (2013 permit) – Delete requirement for existing permittees to submit an MS4 Program Plan with the registration statement. In accordance with EPA’s Remand Rule traditional approach, the MS4 Program Plan is an implementation tool to demonstrate compliance with the permit, and is not an extension of the permit. Therefore, it is not necessary for permittees to submit the MS4 program plan with the registration statement.

B.6 – Require MS4 receiving water information be submitted with the registration statement. Information was required to be collected and maintained by the permittee part of Minimum Control Measure (MCM) 3 in the 2013 permit.

B.8 (2013 permit) – Moved requirements for new permittees receiving initial permit coverage to develop an implementation schedule to Part I.C. of 9VAC 25-890-40. Remove requirement for new permittees to provide a

list of BMPs since the permit includes the required BMPs in accordance with the MS4 Remand Rule traditional approach.

B.9 – Added a requirement that permittees discharging to the Chesapeake Bay watershed submit a draft action plan to address the next phase of required reductions. This requirement is necessary because it is part of the 2013 Chesapeake Bay TMDL Special Condition.

C – Updated the registration statement signatory requirements citation.

E – Updated that registration statements may be submitted by mail or electronically to DEQ Central Office.

9VAC 25-890-40 – General Permit

As part of the 2018 general permit, a variety of non-substantive revisions have been made to clarify requirements, re-organize permit conditions to enhance the reader's ability to understand the requirements of the permit, and establish practically enforceable permit conditions. Below is a list of the substantive changes and or permit condition rationale:

PART I Discharge Authorization and Special Conditions

A. This special condition describes the authorization and coverage under the small MS4 General Permit.

B. The permit requires the permittee to develop, implement and enforce an MS4 program such that the discharge of pollutants from the MS4 is "reduced to the maximum extent practicable (MEP). MEP for this permit term has been established by DEQ as the implementation of the minimum control measures in Part I.E. and the Chesapeake Bay and local TMDL requirements in Part II of the permit. This section was further clarified to recognize that MEP established under this permit constitutes adequate progress in meeting water quality standards and satisfies the appropriate water quality requirements of the State Water Control Law and its attendant regulations."

The Clean Water Act Section 402(p)(3)(B)(iii) specifies that National Pollutant Discharge Elimination System (NPDES) permits for discharges from MS4s "shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods" rather than through end of pipe limitations typically associated with point source discharges.

The Board considers narrative effluent limitations requiring implementation of Best Management Practices (BMPs), rather than water quality based standards, to be the appropriate form of effluent limitations for MS4s. CWA section 402(p)(3)(b)(iii) establishes a process for narrative rather than numeric effluent limits for MS4s, for example, by reference to "management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants." 33 U.S.C. 1342(p)(3)(B)(iii). Additionally, it is not technically feasible to establish numeric effluent limits for MS4 stormwater discharges due to the highly variable stormwater flow and sources of pollutants from each the systems. Water quality based effluent limits are based on low flow conditions for end-of-pipe discharges. Low flow condition assessments are not applicable to stormwater discharges from an MS4. For example, the highest concentrations are often found in the first flush, which are not low flow conditions. Stormwater discharges are also variable based on the storm event itself, with varying flow conditions on a two-year, ten-year, or 100-year event.

MS4 operators need flexibility to optimize reductions in stormwater pollutants on a location-by-location basis given the unique local hydrologic and geologic concerns that may exist and the differing possible pollutant control

FACT SHEET

General Permit for Small MS4s

Effective November 1, 2018

Page 6

strategies. Continued implementation of MS4 programs through an adaptive, iterative process allows MS4 permittees to evaluate those specific strategies that work best for reducing pollutants associated with stormwater discharges from their MS4. Permittees must still comply with the requirements of the permit, and through time, adaptive management of the MS4 program results in reduced pollutant loads from the MS4. Part I.C, D, and E establish the minimum requirements of the MS4 program. Selection of strategies to demonstrate compliance with the permit conditions is left to the permittee. The MS4 program plan acts as an implementation tool to demonstrate compliance with the terms of the permit. The permittee can modify the MS4 program through the adaptive, iterative approach which provides them the flexibility necessary to deal with unique circumstances specific to their MS4. This approach is consistent with the traditional permitting approach of EPA's Small MS4 Remand Rule described above.

Due to the nature of an MS4, stormwater discharge is received from a variety of sources including both public and private properties. Since MS4s are operated by federal, state, and local government entities, the authority to regulate discharges to the MS4 may be limited. In order to reduce pollutants to the MEP, permittees should use the legal authorities available to them to control the discharge of pollutants to and from the MS4. This includes, but is not limited to statutes, ordinances, regulations, permits, policies, contract language.

C. MS4 Program Plan

An operator of a regulated small MS4 is required to develop, implement, and enforce a stormwater management program. The MS4 program plan is to be used as a tool to implement the requirements of the permit described in Part I.E (Minimum Control Measures) and Part II.A and B (TMDL Special Conditions for the Chesapeake Bay and local receiving waters). The MS4 program plan can and should be updated through the adaptive, iterative process by the permittees including the revision or replacement of BMPs and strategies in compliance with the requirements of the permit.

Existing permittees permitted under the 2013 MS4 general permit, are required to update their program plans in accordance with the requirements of the 2018 general permit. Revisions to the MS4 program plan are expected throughout the permit cycle as part of the iterative process to reduce pollutant loading to the MEP and protect water quality. The changes to the MS4 program plan do not require modification of the permit, but require the permittee to summarize revisions made to the MS4 program plan as part of the annual report described in Part I.D.2. With this revised for requirement MS4 program implementation, the underlying permit requirements are not changed, only the strategy used by the permittee to comply with the permitting requirement. Note that permittees receiving initial coverage under the 2018 general permit are required to submit a schedule of program development that does not exceed the expiration date of this general permit to the Department within 6 months of permit coverage.

D. Annual reporting requirements

In accordance with 9VAC25-870-400 D.7, permittees are required to submit an annual report to the Department by October 1st of each year that describes the implementation of the MS4 program for the immediate preceding reporting period of July 1st through June 30th. The annual report will include those annual reporting items for each MCM, a signed certification statement by a responsible official or his designee, an overall evaluation of the MS4 program implementation to determine the program's effectiveness and determine whether or not changes are needed to the program. The annual report will also include a status update of TMDL action plan implementation, as applicable.

E. Minimum control measures (MCM)

1. Public education and outreach

In accordance with 9VAC25-870-400 D.2.a and 40 CFR 122.34(b)(1), this general permit requires the permittee to implement public education and outreach programs. The permit requires the permittee to identify three high priority stormwater issues on which to educate the public including the importance of the issue and what actions the public can take to minimize the impact associated with the stormwater issue. The permit identifies a variety of strategies that the permittee can use in the messaging. To ensure a diverse audience receives the message, the permittee must choose at least two of the messaging strategies.

The 2013 permit required the message to focus on water quality issues and this 2018 permit requires the messaging to be focused on stormwater specifically. Additionally, the 2013 permit requires that the outreach program be designed and implemented to reach 20% of the estimated target audience for the message. However, Department staff have determined it is not practically enforceable to determine compliance or for a permittee to demonstrate compliance with the requirement. Values used by permittees in the past have been best guess estimates, and therefore, not practically enforceable.

This general permit continues to allow for coordination between MS4 operators and requires evaluation of the delivery methods to ensure that the target audiences are adequately reached.

2. Public participation and involvement

9VAC25-870-400 D.2.b and 40 CFR 122.34(b)(2) require the permittee to provide for public participation and public involvement of the MS4 program. The permittee is required to develop procedures for the public to report illicit discharges to the MS4, receive public input on the MS4 program or complaints regarding stormwater management pertaining to the MS4, and respond to input and complaints. Additionally, permittees are required to develop and maintain webpages dedicated to the MS4 program and stormwater pollution prevention so that information can be readily available to the public, or at a minimum inform the public how the information can be accessed.

The 2013 MS4 general permit required permittees to notify the public of the ability to comment on the MS4 program plans that would be submitted with the reapplication package. This requirement was previously included to address concerns raised under the Ninth Circuit Court's remand of portions of EPA's small MS4 regulation as it pertained to the opportunity for adequate public comment on small MS4 general permits being issued across the country. As described above, EPA has promulgated revised regulations for small MS4s to address the Ninth Circuit Court's ruling. States have been provided the option to follow a traditional permit approach in which all requirements of the permittee are included within the general permit, a procedural approach which requires the permitting authority to provide for public notice on each small MS4's program plan if the program plan is used to provide the specific permit requirement, or a hybrid of the traditional and procedural approaches.

Virginia has chosen to implement the traditional permit approach and considers the MS4 program plan to be an implementation tool for use by the permittee. Therefore, there is no longer a need for the permittee to offer a public comment period on the MS4 program plan. In accordance with the traditional permitting approach, the registration statement requirements in 9VAC25-890-30 do not require the permittee to submit the MS4 program plan with the registration statement. Lastly, EPA determined that if the procedural approach were to be used, the opportunity for public comment on the MS4 Program plan must be provided for by the permitting authority and not the permittee, and the 2013 permit requirement for the public comment period would no longer be valid.

This general permit also requires the permittee to engage in a minimum of four local activities pertaining to improvement of water quality and support of local restoration and clean-up projects. The permit provides a list of opportunities with examples that permittees may choose from for implementation. To ensure that the permittee engages in diverse activities, the permittee must choose from at least two different opportunities.

3. Illicit discharge detection and elimination

In accordance with 9VAC 25-870-400 D.2.c and 40 CFR 122.34(b)(3), the 2018 permit continues to require that permittees implement a program to detect and eliminate illicit discharges to the MS4. As part of the program, permittees are required to maintain an updated map of the MS4. The permit requires the map to include outfalls, regulated service area, and stormwater management facilities and associated information. Most of the information table requirements remain unchanged from the 2013 permit, however, certain requirements have been clarified. Through the technical advisory committee, it was brought to the Department's attention that there was concern and confusion regarding cases in which an MS4 outfall discharges to underground channelized receiving waters. With this permit reissuance, the permit provides clarification on how permittees may handle this situation. The permit also requires permittees to update the maps annually.

Additionally, for the first time, this reissuance of the MS4 general permit will require MS4 permittees to provide the Department with GIS-compatible shapefile(s) of the MS4 map. Alternatively, if a permittee does not have their MS4 mapped in a GIS format, the permittee may provide the map as a PDF electronic file. This information will be used by the Department when reviewing MS4 program annual reports, during identification of illicit discharges, and other general purposes. Mapping information may also be used in the development of local TMDLs by the Department. Additionally, for those permittees located within the Chesapeake Bay watershed, the maps will be used in delineation of the MS4 service area as part of the Chesapeake Bay Watershed modeling efforts. It is the intent of the Department to require permittees to submit the GIS or PDF maps at least once each permit term moving forward.

As part of the illicit discharge and detection program, permittees are required to implement a dry weather screening program and establish procedures for responding to reports or discoveries of illicit discharges. The 2018 general permit proposes to revise the dry weather screening requirements. In the 2013 MS4 general permit, permittees with less than 50 outfalls were required to screen all outfalls. Permittees with greater than 50 outfalls were required to screen 50 outfalls, at a minimum. The 2018 general permit retains the number of outfalls to be screened; however, if a permittee has more than 50 outfalls, at least 50% of the outfalls screened must be different than the year before. The intent of this condition is to require that permittees look at different outfalls and not limit their screening program to the same outfalls every year. Alternatively, if 100% of the outfalls are screened in a 3 year period, then the 50% requirement does not apply. The condition also requires specific items to be observed and documented during the screening event.

In many cases illicit discharges discovered by or reported to the permittee are one time occurrences. The 2018 permit clarifies how permittees are to address a single illicit discharge occurrence.

4. Construction stormwater runoff control

In accordance with 9VAC25-870-400 D.2.d and 40 CFR 122.34(b)(4), MS4 permittees are required to implement a program to control runoff associated with construction activities. Polluted stormwater runoff from active construction sites often flows to MS4s and ultimately is discharged into local waterbodies.

FACT SHEET

General Permit for Small MS4s

Effective November 1, 2018

Page 9

Stormwater discharges from construction sites generally include sediment and other pollutants such as phosphorus and nitrogen, pesticides, petroleum derivatives, construction chemicals, and solid wastes that may become mobilized when land surfaces are disturbed. The Virginia Erosion and Sediment Control (VESC) regulations (9VAC 25-840) contain the criteria and requirements entities must meet for land disturbing activities related to development or redevelopment (development on prior developed lands). This 2018 general permit requires MS4 permittees to continue implementation of an ESC program in accordance with the Virginia Erosion and Sediment Control Law (§ 62.1-44.15:51) and the attendant regulations.

The VESC regulations and the Virginia Erosion and Sediment Control Law provide for among other programmatic requirements, specific provisions to:

- Require the use of an ordinance or other regulatory mechanism mandating the use of erosion and sediment controls (§ 62.1-44.15:54 and 9VAC25-840-90).
- The establishment of appropriate sanctions to ensure compliance (9VAC25-840-90).
- Require construction site operators to implement appropriate erosion and sediment control measures (§ 62.1-44.15:55 and 9VAC25-840-40).
- Require plan review procedures that account for water quantity as well as water quality where appropriate (§ 62.1-44.15:55 and 9VAC25-840-40).
- Require procedures for site stormwater management facility inspection and maintenance (9VAC25-840-60).

This 2018 general permit requires permittees to implement appropriate controls to prevent non-stormwater discharges from construction sites (Part I.E.4.b.) as well as implement procedures for receipt and consideration of information submitted by the public (Part I.E.2.a.(1)).

The 2013 permit included specific regulatory thresholds for land disturbance thresholds, requirements for plan review, and inspection frequency requirements. These requirements did not differentiate varying legal and program authorities among MS4 permittees. Local governments are responsible for implementing the Virginia Erosion and Sediment Control Program (VESCP) for private and local public projects within their jurisdictions. The Department is the VESCP authority for projects implemented by state agencies and federal entities and is responsible for plan review and compliance inspections.

It should be noted that in accordance with Section 62.1-44.15.56 VESC law, state agencies must and federal entities may submit ESC Annual Standards and Specification to the Department for review and approval which allows them to implement the VESCP for their projects. Under the ESC Annual Standards and Specification program, DEQ remains the VESCP authority and maintains oversight of the program for these projects; however, the ESC Annual Standards and Specification program allows those entities to implement an ESC program similarly to a local government in such that they are able to approve their own ESC plans and must conduct inspections of projects. The ESC Annual Standards and Specifications program must conform to meet the minimum requirements of the VESC law and VESCP regulations.

All MS4 permittees are still required to implement an ESC program for runoff associated with construction activities. However, the 2018 permit includes requirements based on the VESCP authority for each potential type of MS4 permittee as follows:

- Cities, counties, or towns with an approved VESCP;
- Towns that rely on the surrounding county to implement the VESCP;

FACT SHEET

General Permit for Small MS4s

Effective November 1, 2018

Page 10

- State agencies or federal entities with Department approved annual standards and specifications for erosion and sediment control;
- State agencies or federal entities without Department approved annual standards and specifications; and
- Subdivisions of local government that operate as separate entities from the local government itself (i.e., school boards)

Also as part of the proposed 2018 general permit, programmatic requirements have been incorporated by reference for the purposes of streamlining current regulatory requirements. Note that in 2016, the Virginia General Assembly passed legislation that consolidated the VESC law and the Virginia Stormwater Management Act (2016 Va. Acts Ch. 758.). Under this law, the Department is required to promulgate regulations that combine the VESCP regulations and the VSMP regulations to make the requirements consistent, among other things. While it is unclear at this time what regulatory changes may occur, it is likely that local government ordinances and programs will require revisions. Additionally, Virginia has seen multiple legislative initiatives related to stormwater over the past several years. The potential for contradictory requirements in the MS4 general permit and future regulation is minimized by incorporating regulatory requirement by reference.

5. Post-construction stormwater management for new development and development on prior developed lands

In accordance with 9VAC25-870-400 D.2.e and 40 CFR 122.34(b)(5), MS4 permittees must implement a program to address post construction stormwater runoff from new development and redevelopment projects. Post construction stormwater management in areas undergoing new development or redevelopment is necessary because runoff from these areas has been shown to significantly affect receiving waterbodies. Post construction runoff has the potential to cause substantial impacts in two forms: increased discharge of pollutants and increased quantity of water discharging to a receiving stream. The Virginia Stormwater Management Program (VSMP) regulations contain specific water quantity and quality criteria that must be met for new development and redevelopment projects. This 2018 general permit requires MS4 permittees to continue implementation of a post development stormwater program. The post development stormwater program must include strategies which may include both structural and non-structural BMPs in accordance with 9VAC870-63 and 9VAC25-870-65. Permittees must use an ordinance or other regulatory mechanism to address post-construction stormwater runoff as required in 9VAC25-870-106. The post development stormwater program must ensure adequate long term operation and maintenance of post-construction BMPs under 9VAC25-870-112 and 9VAC25-870-114.

The 2013 permit referenced the Virginia Stormwater Program requirements, but did not differentiate between permittees with varying types of legal and program authorities. In Virginia, local governments with an MS4 program are responsible for implementing the Virginia Stormwater Management Program (VSMP) for private and local public projects within their jurisdictions including plan review and inspections. The Department is the VSMP authority for projects implemented by state agencies and federal entities and is responsible for plan review and compliance inspections.

In accordance with Section 62.1-44.15.31 of the Virginia Stormwater Management Act, state agencies are required to and federal entities may submit Annual Standards and Specifications consistent with the Virginia Stormwater Management Program. DEQ retains the authority of the stormwater management program with oversight, however, these entities are authorized to approve their own stormwater management plans and must conduct inspections. The Stormwater Annual Standards and Specifications program must conform to meet the minimum requirements of the Virginia Stormwater Management Act and VSMP regulations.

The 2018 permit has been revised to reflect the type of stormwater management authority that the permittee may have. These are the same categories identified under MCM 4, which are:

- Cities, counties, or towns with an approved VSMP;
- Towns that rely on the surrounding county to implement the VSMP;
- State agencies or federal entities with Department approved annual standards and specifications for stormwater management;
- State agencies or federal entities without Department approved annual standards and specifications; and
- Subdivisions of local government that operate as separate entities from the local government itself (i.e., school boards)

For the same reasons explained in the construction stormwater runoff requirements in MCM 4, the post construction stormwater requirements have been streamlined to incorporate by reference the VSMA and VSMP regulations.

Requirements for development and implementation of a stormwater management facility inspection program from the 2013 permit have been retained. These conditions require that permittee owned stormwater management facilities be inspected once per year; and if the permittee is a VSMP authority then the privately owned stormwater management facilities must be inspected once per five years. The permit also includes a provision under which a permittee can propose an alternative inspection frequency for permittee owned BMPs that is less than once per year. The VSMP regulations require inspections at a frequency of once per five years. DEQ believes that in certain circumstances such as when a BMP is first installed or maintenance is performed, inspections of once per year may not be necessary, and the permittee may want to focus resources in other areas. As such, an alternative frequency with the appropriate rationale can be implemented, but by no means can the reduced frequency be less than once per five years, as required by the VSMP regulations.

A new requirement has been added that permittees use the DEQ Construction Stormwater Database or other application as specified by DEQ, to report each stormwater management facility installed after July 1, 2014 that is used to control post construction runoff from land disturbing activities for which the permittee is required to obtain a General VPDES Permit for Discharges of Stormwater from Construction Activities. Additionally, a reporting requirement has been added that permittees report all other stormwater management facilities and BMPs electronically using DEQ's BMP Warehouse. These requirements replace the condition in the 2013 permit that required permittees to electronically submit stormwater management facilities using a spreadsheet or database.

6. Pollution prevention and good housekeeping for facilities owned or operated by the permittee

In accordance with 9VAC25-870-400 D.2.f and 40 CFR 122.34(b)(6), MS4 permittees are required to continue implementation of a pollution prevention and good housekeeping program. The title of the section has been revised to reflect that the conditions of this MCM apply to those facilities that are owned or operated by the permittee. Pollution prevention and good housekeeping are key elements for minimizing the impact from any activity exposed to stormwater that has the potential to discharge to surface waters. The minimum control measure requires the small MS4 permittee to evaluate and revise, as appropriate, standard operating procedures to help ensure a reduction in the amount and type of pollution that collects at municipal facilities and is discharged into local waterways.

In the 2013 permit, permittees were required to identify municipal high-priority facilities and develop a Stormwater Pollution Prevention Plan (SWPPP) for those with a high potential to discharge pollutants. The 2018 permit has been revised to require permittees to maintain and continue to implement the SWPPP.

Additionally, permittees must annually review the list of high priority facilities for which a SWPPP has not been developed to determine if any changes at the facility have resulted in the potential discharge of pollutants, and if so, then develop a SWPPP. If activities at a facility change such that it is no longer a high priority facility with a high potential to discharge, permittees may remove it from the list with explanation in the annual report. Additionally, the permittee will be required to perform a SWPPP inspection at least once per year at each high priority facility with a high potential to discharge.

The 2013 permittee required permittees to implement turf and landscape nutrient management plans (NMPs) for all lands where nutrients were applied to a contiguous area greater than one acre. The permit has been updated to require that these NMPs be maintained and implemented.

A requirement has been added to the 2018 permit that contractors employed by the permittee and engaging in activities with the potential to discharge pollutants, must implement those control measures necessary to minimize discharges to the MS4. This is to be implemented through the use of such measures as contact language, training, and standard operating procedures, or other measures as appropriate.

The 2018 permit continues the requirements for training employees of the permittees as well as their contractors, as appropriate, in a variety of good housekeeping and pollution prevention measures. The 2018 permit clarifies that the biennial training frequency means not less than once per 24 months. A provision has been added to the permit that recognizes that training completed by emergency responders such as law enforcement and fire fighters as part of a larger emergency response program, satisfies the training requirement for emergency response.

Part II TMDL SPECIAL CONDITIONS

A. Chesapeake Bay TMDL Special Condition

MS4 permittees are required to reduce the loadings of nutrients and sediment from existing sources (pervious and impervious regulated urban lands developed prior to July 1, 2009) equivalent to the Level 2 (L2) scoping run reductions simulated in the Chesapeake Bay Watershed Model. Level 2 implementation equates to an average reduction of 9% of nitrogen loads, 16% of phosphorus loads, and 20% of sediment loads from impervious regulated acres and 6% of nitrogen loads, 7.25% of phosphorus loads and 8.75% sediment loads from pervious regulated acres beyond 2009 progress loads and beyond urban nutrient management reductions for pervious regulated acreage. Calculations are based on an average tributary loading rate.

In the Phase I and II Watershed Implementation Plans (WIPs) and the Chesapeake Bay TMDL, the Commonwealth and EPA committed to using a phased approach for the MS4 sector affording MS4 permittees three full five year permit cycles to implement necessary reductions as follows:

- 5% of L2 achieved by the end of the first permit term;
- 35% of the necessary reductions in the second permit term (totaling at least 40% of the necessary reductions no later than the end of the second permit term); and
- 60% of the necessary reductions from the third permit term (totaling 100% of the necessary reductions no later than the end of the third permit term).

Due to multiple delays in permit reissuance, three full permit terms now extends beyond the Chesapeake Bay Program partnership's 2025 goal for implementation of all controls necessary to meet the TMDL. Under the Phase I and II WIPs, Virginia has recognized the right to adjust this plan and take different approaches to meet the 2025 goal. Virginia is committed to a phased approach that allows multiple permit terms for MS4 permittees

FACT SHEET

General Permit for Small MS4s

Effective November 1, 2018

Page 13

to fully implement nutrient and sediment reductions necessary to meet the Chesapeake Bay TMDL wasteload allocations. Virginia will adjust its commitments, if necessary, as part of its Phase III WIP to ensure that practices are in place by 2025 that are necessary to meet water quality standards in the Chesapeake Bay and its tidal tributaries.

The “first permit term” in which the 5% reduction is required became effective on July 1, 2013 and expires on June 30, 2018. During the 2013 permit cycle (“first permit cycle”), each MS4 permittee was required to develop and submit for approval a Chesapeake Bay TMDL Action Plan that included BMPs and strategies to reduce existing source loadings of total nitrogen, total phosphorus, and total suspended solids by 5% of the required L2 reductions no later than the permit’s expiration of June 30, 2018. DEQ received and approved Chesapeake Bay Action Plans from each existing small MS4 permittee for the proposed reductions to meet the 5% of L2 reduction requirement or greater.

Nutrient and sediment loadings associated with construction and post-construction from new sources are addressed through the implementation of the ESC Law, the Stormwater Management Act, the Chesapeake Bay Preservation Act and their attendant regulations and compliance with MCMs 4 and 5 (Part I.E.4 and 5) in this permit. These regulatory programs represent a framework that will provide the State and EPA with reasonable assurance that the pollutant reductions necessary to address the Chesapeake Bay TMDL will be met. By implementing the requirements for the control of post-construction runoff from new and redevelopment, this general permit implements the Commonwealth’s strategies for addressing increased loads associated with growth.

Since July 1, 2009, the Commonwealth has implemented post development criteria considered to be nutrient neutral. Until July 1, 2014, localities had the option of implementing the state’s criteria of 0.45 lb of total phosphorus per acre per year based on the states average land cover condition of 16% impervious cover or adopting an alternative criterion that was reflective of their local land cover conditions. While many localities implemented the Commonwealth’s post development criteria, some MS4 localities choose to adopt an alternative land cover condition greater than 16% as allowed. As of July 1, 2014, the Commonwealth established that all new sources meet a post development criterion of 0.41 pounds per acre per year of total phosphorus for new development. Use of an adopted land cover condition to determine loading from new sources is no longer allowed except under two specific circumstances allowed in the VSMP regulations as projects that are “grandfathered” or meet “time limits of applicability” requirements. Both of these project circumstances have associated sunset dates. Additionally, any increased loads from projects associated with these two circumstances, must be offset by the MS4 permittee as described above. As part of the Chesapeake Bay TMDL Special Condition, MS4 permittees that authorized new source pollutant loads between July 1, 2009 and June 30, 2014 at rates higher than the 16% average land cover condition must offset the increased load calculated as the difference between the pollutant load generated at 16% average land cover condition and pollutant load generated at the adopted land cover condition for the source.

It should also be noted that in 2013 and 2015 the Virginia General Assembly passed legislation directing state agencies to remove the Lynnhaven and Little Creek watersheds from inclusion in the James River Basin for purposes of implementing the Chesapeake Bay Watershed Implementation Plan (Acts of Assembly, Va. Code 2013, c.41 and Va. Code 2015, c.184, respectively). DEQ staff has compared the loading and reductions rates for the James River, Lynnhaven, and Little Creek Watersheds and determined that the values are similar enough that it is appropriate to use the James River loading rate and reduction rates values for calculating the loading and reductions needed in the Lynnhaven and Little Creek watersheds.

Additionally, by the expiration of this permit, permittees must also provide for reductions from any adjustments as a result of changes to the urbanized area served by the MS4 based on the 2010 Census. Compliance with reductions in loading rate will be measured based on the total required reductions as calculated using the tables in Parts II.A of the general permit and the reported implementation of BMPs.

This general permit also enables MS4 operators to utilize any pollutant trading or offset program in accordance with §10.1-603.15:1 et seq. of the Code of Virginia to meet the Chesapeake Bay TMDL reduction requirements.

B. Local TMDL Special Condition

Permittees are required to update previously developed TMDL action plans for those pollutants for which they were given a wasteload allocation in a TMDL approved by EPA prior to July 1, 2013 and develop TMDL action plans for those pollutants for which they were given a wasteload allocation in a TMDL approved by EPA between July 1, 2013 and June 30, 2018. Permittees are not required to develop action plans during this permit term for TMDLs approved by EPA after July 1, 2018 as requiring such would be a self-modifying permit condition. Permittees may obtain a list of EPA approved TMDLs and the associated approvals dates from the Department's website

(<http://www.deq.virginia.gov/Programs/Water/WaterQualityInformationTMDLs/TMDL/TMDLDevelopment/ApprovedTMDLReports.aspx>) or by contacting Department staff.

The 2013 permit required permittees to develop TMDL action plans and included a list of items to be addressed in the action plan, but did not specify BMPs acceptable for implementation. The 2018 permit includes a section of requirements to be included in all TMDL action plans as well as requirements for specific pollutants for which a TMDL has been developed as follows: bacteria, nutrients, sediment, and PCBs. Each pollutant specific section identifies the acceptable BMPs that permittees may implement as part of the TMDL action plan.

For TMDLs for bacteria impairments, a table of sources and related reduction strategies is included in the permit. For those permittees that are an approved VSMP authority, at least three of the strategies must be implemented. It is expected that through a robust IDDE program and public education efforts the contribution of anthropogenic sources of bacteria in impaired waters from the MS4s will be reduced. For permittees that are not an approved VSMP authority, at least one strategy must be implemented. The Department decided to create differing requirements based on whether or not a permittee is an VSMP authority due to varying extend of authorities of the two categories of permittees. Permittees that are not an approved VSMP authority include those non-traditional MS4 permittees such as state agencies, federal entities, and institutes of higher education. These non-traditional MS4 permittees have limited legal authorities, are not able to implement ordinances, and usually constitute a relatively small footprint compared to the traditional (local government) MS4 permittees.

For local TMDLs for nitrogen, phosphorus, and sediment impairments, permittees are able to pick a variety of BMPs previously reviewed and approved for use through the Virginia BMP Clearinghouse or the Chesapeake Bay Program. BMPs approved under both the Clearinghouse and Bay Program have to undergo a rigorous review and approval process. The Virginia BMP Clearinghouse included those BMPs approved for use to meet Virginia's post development stormwater quality criteria which are reviewed by technical experts. As part of the Clearinghouse approval specifications, an associated nitrogen and phosphorus reduction efficiency is assigned. The Bay Program uses an expert panel to review and recommend BMPs for approval to achieve reduction of loads to the Chesapeake Bay watershed. Under the Bay Program, reduction efficiencies for nitrogen, phosphorus and sediment are typically assigned to BMPs. When sediment reduction efficiencies are not available permittees may use the Chesapeake Bay Program retrofit curves using runoff storage to establish a reduction efficiency for sediment.

To address WLAs for PCBs, permittees are required to identify potentially significant sources of PCBs owned or operated by the permittee that drain to the MS4. As part of the identification process, permittees must determine if the activities have been terminated and identify any measures being implemented or planned to be implemented to limit exposure to stormwater. Additionally, if during the term of the permit, the permittee discovers a source

FACT SHEET

General Permit for Small MS4s

Effective November 1, 2018

Page 15

of PCBs draining within the MS4 service area that is not owned or operated by the permittee, the permittee is required to notify the Department.

Permittees may use the adaptive, iterative process to achieve wasteload allocations over multiple permit terms. However, permittees are required to provide the Department an estimate of the date by which wasteload allocations for sediment, nitrogen, and phosphorus will be achieved.

In the 2018 permit, a requirement has been added that TMDL action plans be made available by the permittee for a public comment period of no less than 15 days. This is consistent with the requirements associated with the Chesapeake Bay TMDL special condition.

Basis for Conditions Applicable to all VPDES Permits Part III

Part III is based on 9VAC25-870-430 of the Virginia Stormwater Management Program Regulation. Substantial differences include:

- The Virginia environmental laboratory accreditation program requirements are included requiring that samples taken “shall be analyzed in accordance with 1VAC30-45: Certification for Noncommercial Environmental Laboratories, or 1VAC30-46: Accreditation for Commercial Environmental Laboratories.”
- The paragraph M "Duty to reapply" has been updated to required submittal of a registration statement 90 days before expiration instead of 180 days to match the same new deadline in the regulation at 9VAC 25-890-30.

Administrative

The general permit has a fixed term of five years. Every authorization under this general permit will expire at the same time and all authorizations will be renewed on the same date, provided a complete registration statement has been filed prior to the general permit's expiration date.

All operators desiring to be covered by this general permit must register with the Department by filing a registration statement and paying applicable fees. Small MS4s that are discharging to surface waters on the effective date of this general permit, and which have not been issued an individual VPDES permit, may submit the registration statement. During the term of this general permit, any small MS4s identified by the Department as regulated or that become regulated based on newly designated urbanized areas as part of the 2020 census shall submit a registration statement within 180 days of notice of designation or a later date a designated by the Board.

This general permit does not cover the discharge of stormwater associated with industrial activities or construction activities. Additionally, this general permit does not authorize non-stormwater discharges except those authorized under 9VAC25-890-20 D.3. Any operator not wishing to be covered or limited by this general permit may make application for an individual VSMP/VPDES permit, in accordance with VSMP/VPDES procedures, stating the reasons supporting the request.

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 Anti-degradation Policy contained in the Virginia Water Quality Standards, 9VAC25-260-30. Compliance with this general permit will maintain the Water Quality Standards adopted by the Board.

FACT SHEET

General Permit for Small MS4s

Effective November 1, 2018

Page 16

All facilities that the board determines are eligible for coverage under this general permit will be authorized to discharge under the terms and conditions of the permit after a complete registration statement is submitted, the applicable permit fee is paid, and the Department sends a copy of the general permit to the applicant. If this general permit is inappropriate, the applicant will be so notified.