



Virginia Stormwater Management Program (VSMP) Frequently Asked Questions (FAQ)

Revisions to the Virginia Stormwater Management Regulations (SWM) (effective September 13, 2011) are an important part of the state's efforts to protect the quality of state waters and the Chesapeake Bay. During its 2012 session, the General Assembly passed legislation that requires localities throughout the state, except for towns that are not holding Municipal Separate Storm Sewer System (MS4) permits, to adopt local Virginia Stormwater Management Programs (VSMPs).

This FAQ, the second in a series of FAQs regarding the VSMP program, is intended to assist localities in developing their local VSMP programs. While it does not answer every possible question, it does address those questions which get raised frequently. If you have additional questions, please contact the DEQ regional office that covers your area. A link to contact information and the coverage of those offices can be found at the following location on our website: <http://www.deq.virginia.gov/Locations.aspx>

1. What is the deadline for a locality to adopt the local VSMP and to whom should all required documents be submitted?

Preliminary final versions of the VSMP application package, including a funding and staffing plan, ordinance and policies and procedures to administer the program, are to be sent to the DEQ regional office by January 15, 2014. Final packages are due to the regional office by May 15, 2014. Please note that these dates reflect a revision to the previous adoption schedule.

2. Which localities (counties, cities and towns) have to adopt a local VSMP program?

All localities in the Commonwealth, excluding towns (unless such towns operate a regulated MS4) are required to adopt a VSMP program that is consistent with the stormwater management regulations and the 2014 General Permit for Discharges of Stormwater from Construction Activities.

3. What are the consequences if a locality that is required to adopt a VSMP chooses not to adopt?

The Stormwater Management Act passed by the General Assembly requires all counties, cities and MS4 towns to adopt a VSMP. DEQ's efforts are focused on providing assistance to local governments that are required by state law to adopt programs. DEQ envisions that every locality required to adopt a program will do so.

In the event that a locality fails to adopt a VSMP, such locality would be in violation of VA Code § 62.1-44.15:27 and subject to informal and formal enforcement methods.

4. Does a VSMP authority that has a town or towns within its jurisdiction have to include language in its VSMP ordinance stating that the ordinance covers those towns that are not adopting their own VSMP programs?

9VAC25-870-150 of the VSMP regulations requires counties with towns lying within their jurisdiction to account for those towns in the developing of their VSMP program. DEQ interprets this provision to allow the County VSMP to account for the towns through their ordinances, plans, policies or procedures. However, a locality may choose to add general verbiage in their ordinance indicating that the ordinance applies to all towns in their jurisdiction (unless the town is adopting its own program). It is further recommended that if a County has either a town that has chosen to adopt its own program or one that must adopt because it is an MS4, the ordinance should be sure to state that it does not apply to that town.

5. Is a locality required to include civil penalties in its ordinance as an enforcement measure?

Yes. Virginia's construction stormwater program is delegated to the Commonwealth by the Environmental Protection Agency under the Clean Water Act. To maintain this delegation, the program must meet certain minimum requirements, which include provisions for civil penalties. The Stormwater Management Act, § 62.1-44.15:48, authorizes a VSMP authority to issue summons for the collection of civil penalties and provides that such action may be prosecuted in the appropriate court. Further, 9VAC25-870-148 A lists enforcement procedures and civil penalties as one of the items that must be incorporated into a local stormwater program. Subsection B of that section further states that enforcement and civil penalties shall be adopted and enforced through a locality's ordinance. Finally, 9VAC25-870-116 C (Enforcement) authorizes a locality's VSMP authority to impose a maximum penalty of up to \$32,500 per violation per day.

6. Does DEQ have specific inspection frequency recommendations for local SWM inspections since there are none specified in the regulations? Will once every month or two be deemed sufficient, even though some of the requirements that localities are expected to enforce specify more frequent efforts (i.e., an operator must inspect once every 7 days or within 48 hours of a rainfall)?

Please review pages 56 and 57 of the background document (link shown below) in support of the regulatory amendments related to general permit fees. This document discussed the allocation of four inspections per year per project including annual BMP inspections as one of the assumptions used to develop the fee schedule. It is important to point out that the Regulations provide for local flexibility in terms of the frequency of inspections. Locally adopted inspection program should describe the inspection frequency selected by the locality and how the inspection schedule demonstrates compliance with the provisions of 9VAC25-870-114 (Inspections).

http://townhall.virginia.gov/L/GetFile.cfm?File=C:\TownHall\docroot\116\1915\5106\AgencyStatement_D CR_5106_v1.pdf

7. Do single family residential lots need to obtain VSMP permit coverage?

Yes. Under § 62.1-44.15:34 of the Stormwater Management Act, single family lots meeting the following criteria must obtain coverage under the Construction General Permit:

- a) There will be one acre or greater of land disturbance; or
- b) The lot is within a common plan of development or sale that is greater than one acre.

Amendments to the 2014 Construction General Permit were approved by the Virginia Water Control Board on December 17, 2013 to provide for a streamline process for lots within a common plan of development or sale that is greater than one acre. Such lots are no longer required to submit a registration statement and do not have to pay the state's portion of the State Fee Scheduled. DEQ has developed a user-friendly "template" SWPPP for developers of lots in common plans of development.

8. When are additional control measures that address particular TMDLs and associated pollutants required in a Stormwater Pollution Prevention Plan (SWPPP) for a construction activity? What are those additional control measures?

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 2012 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. Implementation and maintenance of erosion and sediment controls in accordance with an approved Erosion and Sediment Control Plan or an “agreement in lieu of a plan” will minimize (i.e., reduce or eliminate) the discharge of (i) sediment or a sediment-related parameter or (ii) nutrients from construction activities. Upon obtaining coverage under the 2014 Construction General Permit, DEQ will determine if the land disturbing activity will discharge to a TMDL water body and identify any additional measures needed to address the TMDL. In addition, operators must also (i) apply permanent or temporary soil stabilization to denuded areas within 7 days after final grade is reached on any portion of the site, (ii) apply nutrients in accordance with manufacturer’s recommendations or and approved nutrient management plan and not during rainfall events, and (iii) 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 48 hours following a measurable storm event.

9. How will a locality know whether a project will discharge to a water body with an established TMDL and when to apply the additional control measures discussed in question 7 above?

Upon obtaining coverage under the 2014 Construction General Permit, DEQ will determine if the project site land disturbing activity will discharge to a TMDL water body and identify any additional measures needed to address the TMDL.

10. § 62.1-44.15:45 states that VSMP authorities holding hearings shall do so in a manner consistent with § 62.1-44.26, (which requires that a verbatim record of the proceeding be taken). Can a voice recording constitute compliance with the “verbatim record” requirement?

Yes, as such recordings do record everything that is actually stated at the hearings.

11. § 62.1-44.15:45 of the Stormwater Management Act states that VSMP authority hearings shall be conducted in a manner consistent with § 62.1-44.26 A. of the Water Control Law, which states that formal hearings may be conducted by the “Board itself at a regulator or special meeting of the Board, or by at least one member of the Board designated by the chairman to conduct such hearings on behalf of the Board.” The Board referenced in this section is the Virginia Water Control Board. What local Board or other person or entity should conduct such hearings?

The intent of § 62.1-44.15:45 is that a locality establish a formal process where a presentation of the facts and a review of a decision or decisions can be carried out. This formal process is intended to provide relief at the local level and, in some cases, may preclude an aggrieved party having to go to court for relief. The locality’s options for complying with this requirement may include: a) the use of a locality’s existing, or establishment of a new, administrative review process consistent with the guidelines below, carried out by local staff or an elected local official; b) adding VSMP hearing duties to the duties of an existing Board (i.e. Wetlands Board or Bay Act Board); or c) establishing a new Board whose sole responsibility would be to hear VSMP appeals. Whatever option is chosen, the criteria for the conduct of such proceedings is provided for in 62.1-44.26 A. Those criteria establish that:

- a.** The hearing should be a formal proceeding; and
- b.** That a verbatim record be taken.

DEQ further recommends that the party conducting the hearing is an individual or individuals not involved with the original decision.

Note: a local Board of Zoning Appeals may not conduct these required hearings unless the local stormwater ordinance is incorporated into the local zoning ordinance. BZAs are authorized by State law to conduct hearings and appeals for zoning ordinances only.

12. How will requests for the reissuance of permits for existing, permitted projects that are not yet complete be processed?

DEQ will process and reissue coverage under the 2014 construction general permit to construction activity operators authorized to discharge under the 2009 construction general permit, and who intend on continuing coverage under the 2014 construction general permit. For this reissuance, DEQ will assess and collect the applicable “total fee to be paid by applicant” as established in 9VAC25-870-820 of the VSMP Regulations. Following reissuance, DEQ will retain the “Department portion of total fee to be paid by applicant” as established in 9VAC25-870-820 of the VSMP Regulations. The remaining balance will be remitted to the applicable VSMP authority for compliance and enforcement of the reissued permits. At this time, DEQ has not established the mechanism(s) or timing in which permit fee balances will be remitted to the VSMP authorities.

13. How is “Common Plan of Development” defined? For existing common plans of development, how far back is a locality expected to apply the VSMP requirements?

9VAC25-870-10 (Definitions) of the VSMP regulations describes a common plan of development as “a contiguous area where separate and distinct construction activities may be taking place at different times on different schedules.” Examples of these “common plans of development” meeting this definition include site plans and subdivision plans as defined in § 15.2-2201 (Definitions) of the Planning, Subdivision of Land and Zoning chapter of the Code of Virginia, or as defined by a locality in an ordinance adopted pursuant to this chapter.

For the purposes of the VSMP regulations (9VAC25-870), individual lots within existing residential, commercial or industrial site plans and subdivision plans that were platted prior to July 1, 2004 may be considered separate land-disturbing activities. This is the date that provisions for common plans of development were first incorporated into the Virginia Stormwater Management Act. Previous to that date, the term was not used or defined. Lots within such platted plans or subdivisions that disturb less than one acre do not have to obtain coverage under 2014 Construction General Permit. Lots within such platted plans or subdivisions that disturb one acre or greater would have to obtain coverage under the 2014 Construction General Permit.

This interpretation of a Common Plan of Development is intended to address circumstances such as infill lots in older, residential, commercial or industrial subdivisions, including the development of out-parcels within commercial sites. It is not intended to supersede recent regulatory changes regarding grandfathered projects and the time limits of applicability for the technical criteria in the VSMP regulations.