

FACT SHEET
ISSUANCE OF A GENERAL VPDES PERMIT
TO DISCHARGE TO STATE WATERS AND STATE
CERTIFICATION UNDER THE STATE WATER CONTROL LAW

The Virginia State Water Control Board (Board) has under consideration the issuance of a general permit for discharges of storm water from small municipal separate storm sewer systems.

Permit Number: VAR040

Name of Permittee: Any owner of a regulated small municipal separate storm sewer system in the Commonwealth of Virginia requesting coverage under this general permit.

Facility Location: Commonwealth of Virginia

Receiving Waters: Surface waters within the boundaries of the Commonwealth of Virginia, except waters specifically named in Board regulations or policies which prohibit such discharges.

On the basis of preliminary review and application of lawful standards and regulations, the Board proposes to issue this general permit subject to certain conditions and has prepared a draft permit. The category of discharges proposed for this general permit is regulated small municipal separate storm sewer systems (MS4s). The Board has determined that this category of discharges is appropriately controlled under a general permit. The draft general permit requires all covered MS4s to develop, implement and enforce a system-specific storm water management program designed 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 and the State Water Control Law.

Persons may comment in writing on the proposed issuance of the general permit within 60 days from May 6, 2002. Comments should be addressed to the contact person listed below. Comments shall include the name, address, and telephone number of the writer, and shall contain a complete, concise statement of the factual basis for comments. Only those comments received within this period will be considered by the Board.

All pertinent information is on file and may be inspected, and arrangements made for copying by contacting Burt Tuxford at:

Virginia Department of Environmental Quality
P.O. Box 10009
Richmond, Virginia 23240
(804) 698-4086

Public hearings will be held on this draft permit on June 11, 2002 and June 13, 2002. Notice of the public hearings will be published in newspapers and in the Virginia Register. Following the public hearing comment period, the Board will make its determinations regarding the proposed issuance.

I. Administrative

The general permit will have a fixed term of five (5) years effective December 9, 2002. Every authorization to discharge under this general permit will expire at the same time and all

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authorizations to discharge will be renewed on the same date.

Operators of small MS4s wishing to be authorized to discharge under the terms and conditions of this permit must register with the Department by filing a complete registration statement and paying the applicable permit fee. The Department will review the registration statements received and send a copy of the general permit to those MS4s that qualify for coverage. If this general permit is inappropriate, the applicant will be so notified and will be instructed to file an individual permit application.

II. Activities Covered Under This General Permit

This general permit will cover storm water discharges from "regulated" small MS4s to surface waters of the Commonwealth. Unless the MS4 qualifies for a waiver (see below), owners are "regulated" if they operate a small MS4, including but not limited to systems operated by federal, state, tribal, and local governments, including the Virginia Department of Transportation; and, (a) the small MS4 is located in an urbanized area as determined by the latest Decennial Census by the Bureau of the Census. (If the small MS4 is not located entirely within an urbanized area, only the portion that is within the urbanized area is regulated); or (b) the small MS4 is designated by the Board.

An MS4 may be the subject of a petition to the Board to require a VPDES permit for their discharge of storm water. If the Board determines that an MS4 needs a permit and the owner applies for coverage under this general permit, the owner is required to comply with the permit requirements.

The Board may waive the requirements otherwise applicable to a small MS4 if it meets the criteria of either sections A or B below. If a waiver is received, the owner may be required to seek coverage under a VPDES permit if circumstances change.

A. The Board may waive permit coverage if the MS4 serves a population of less than 1,000 within the urbanized area and meets the following criteria: (a) the system is not contributing substantially to the pollutant loadings of a physically interconnected MS4 that is regulated by the VPDES storm water program; and, (b) if pollutants are discharged that have been identified as a cause of impairment of any water body to which the MS4 discharges, storm water controls are not needed based on wasteload allocations that are part of a Department established and EPA approved "total maximum daily load" (TMDL) that addresses the pollutants of concern.

B. The Board may waive permit coverage if the MS4 serves a population under 10,000 and meets the following criteria: (a) the Board has evaluated all surface waters, including small streams, tributaries, lakes, and ponds, that receive a discharge from the MS4; (b) for all such waters, the Board has determined that storm water controls are not needed based on wasteload allocations that are part of a Department established and EPA approved TMDL that addresses the pollutants of concern or, if a TMDL has not been developed and approved, an equivalent analysis that determines sources and allocations for the pollutants of concern; (c) for the purpose of this waiver, the pollutants of concern include biochemical oxygen demand (BOD), sediment or a parameter that addresses sediment (such as total suspended solids, turbidity or siltation), pathogens, oil and grease, and any pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the MS4; and, (d) the Board has determined that future discharges from the MS4 do not have the potential to result in exceedances of water quality

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standards, including impairment of designated uses, or other significant water quality impacts, including habitat and biological impacts.

In EPA's Phase 2 storm water rule (Phase 2 rule), which was incorporated into the VPDES Permit Regulation (9 VAC 25-31-10 et seq.) effective September 27, 2000, all small MS4s located in an urbanized area are automatically designated as "regulated" small MS4s, provided that they were not previously designated into the Phase 1 storm water program. Unlike medium and large MS4s under the Phase 1 storm water regulations, not all small MS4s are designated under the Phase 2 rule, which distinguishes between "small" MS4s and "regulated small" MS4s.

Discharges are "regulated" under the Phase 2 rule if they are from a small MS4 that is in an urbanized area (and has not received a waiver), or they are designated by the Board. The Phase 2 rule does not regulate the county, city, or town, the rule regulates the MS4. Therefore, even though a county may be listed in Appendix 6 (Government Entities Located Fully or Partially Within an Urbanized Area) of the preamble to EPA's Phase 2 regulation, if that county does not own or operate the municipal storm sewer systems, the county does not have to submit an application or develop a storm water management program. If another entity does own or operate an MS4 within the county (for example, a regional utility district), that other entity needs to submit the application and develop the program.

Due to the great variety of situations, EPA decided that only MS4s in the urbanized area would be automatically designated. Studies and data show a high correlation between degree of development/urbanization and adverse impacts on receiving waters due to storm water. The population densities associated with the Census Bureau's designation of urbanized areas provide the basis for designation of these areas to protect water quality. This focused designation provides for consistency and allows for flexibility on the part of the MS4 and the Board. In those situations where an incorporated place or a town is not entirely within an "urbanized area", there is a good possibility that it is served by more than one MS4. In those cases where the area is served by the same MS4, it makes sense to develop a storm water program for the whole area. The Board may also decide to designate all MS4s within a county or town, if this is necessary to protect water quality.

Under the Census Bureau's definition of "urbanized area" that EPA adopted for the purposes of the Phase 2 rule, "an urbanized area comprises a place and the adjacent densely settled surrounding territory that together have a minimum population of 50,000 people." There are 405 urbanized areas in the United States that cover 2 percent of total U.S. land area and contain approximately 63 percent of the nation's population. Urbanized areas constitute the largest and most dense areas of settlement. The purpose of determining an "urbanized area" is to delineate the boundaries of development and map the actual built-up urban area. Using data from the latest decennial census, the Census Bureau applies the urbanized area definition nationwide and determines which places and counties are included within each urbanized area. For each urbanized area, the Bureau provides full listings of who is included, as well as detailed maps.

Additional designations based on subsequent census years will be governed by the Census Bureau's definition of an urbanized area in effect for that year. Based on historical trends, EPA expects that any area determined by the Census Bureau to be included within an urbanized area as of the 1990 Census will not later be excluded from the urbanized area as of the 2000 Census.

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However, it is important to note that even if this situation were to occur (for example, due to a possible change in the Census Bureau's urbanized area definition), a small MS4 that is automatically designated into the VPDES program for storm water under an urbanized area calculation for any given Census year will remain regulated regardless of the results of subsequent urbanized area calculations.

III. Proposed Permit Special Conditions

A. Total Maximum Daily Load (TMDL) Allocations. If a TMDL is approved for any waterbody into which the small MS4 discharges, the Board will review the TMDL to determine whether the TMDL includes requirements for control of storm water discharges. If discharges from the MS4 are not meeting the TMDL allocations, the Board will notify the permittee of that finding and may require that the Storm Water Management Program required by the permit be modified to implement the TMDL within a timeframe consistent with the TMDL. Any such new requirement will constitute a case decision by the Board.

B. Releases of Hazardous Substances or Oil in Excess of Reportable Quantities. The permit requires that the discharge of hazardous substances or oil in the storm water discharges from the small MS4 shall be prevented or minimized in accordance with the applicable Storm Water Management Program required in the permit. If there is a discharge of a material in excess of a reportable quantity established under 40 CFR Parts 110, 117, or 302 the permittee must make a report to the Department within 24 hours. The Storm Water Management Program required by the permit must be reviewed and revised as necessary to prevent a recurrence of the spill. This does not relieve the permittee from any reporting to federal or state authorities required under 40 CFR Part 110, Part 117, or Part 302 or Section 62.1-44.34:19 of the Code of Virginia.

IV. Conditions Applicable To All VPDES Permits

This general permit is a VPDES permit. As such, it is necessary to include certain conditions required by the VPDES Permit Regulation, 9 VAC 25-31-10 et seq. These conditions are included in all VPDES permits. With a few minor exceptions, the language is not modified to reflect their use in the general permit. Conditions in this section of the permit may not have direct applicability to all covered MS4s.

V. Proposed Requirements For The Development Of A Storm Water Management Program

The permittee is required to develop, implement, and enforce a storm water management program (SWMP). The SWMP is designed to reduce the discharge of pollutants from the MS4 to the maximum extent practicable (MEP), to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act (CWA) and the State Water Control Law. The SWMP must be developed and implemented within 5 years of the date of coverage under the permit.

The SWMP must include the six minimum control measures described below. For purposes of this MS4 permit, narrative effluent limitations requiring implementation of best management practices (BMPs) are the most appropriate form of effluent limitations when designed to satisfy technology requirements (including reductions of pollutants to the maximum extent practicable) and to protect water quality. Implementation of BMPs consistent with the provisions of the SWMP required by this permit will constitute compliance with the standard of reducing pollutants to the "maximum extent practicable."

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The Board presumes, absent evidence to the contrary, that a small MS4 program that implements the six minimum measures in this permit does not require more stringent limitations to meet water quality standards. Proper implementation of the measures will significantly improve water quality. However, small MS4 permittees should modify their programs if and when available information indicates that water quality considerations warrant greater attention or prescriptiveness in specific components of the SWMP.

Regardless of the basis for the development of the effluent limitations (whether designed to implement the six minimum measures or more stringent or prescriptive limitations to protect water quality), the Board considers narrative effluent limitations requiring implementation of BMPs to be the most appropriate form of effluent limitations for MS4s. CWA section 402(p)(3)(b)(iii) expresses a preference for narrative rather than numeric effluent limits, 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)). EPA has determined that pollutants from wet weather discharges are most appropriately controlled through management measures rather than end-of-pipe numeric effluent limitations. As explained in EPA's Interim Permitting Policy for Water Quality-Based Effluent Limitations in Storm Water Permits, issued on August 1, 1996 [61 FR 43761 (November 26, 1996)], the currently available methodology for derivation of numeric water quality-based effluent limitations is significantly complicated when applied to wet weather discharges from MS4s (compared to continuous or periodic batch discharges from most other types of discharge). Wet weather discharges from MS4s introduce a high degree of variability in the inputs to the models currently available for derivation of water quality based effluent limitations, including assumptions about instream and discharge flow rates, as well as effluent characterization. In addition, determining compliance with any such numeric limitations may be confounded by practical limitations in sample collection.

In the first two to three rounds of permit issuance, the Board envisions that a BMP-based storm water management program that implements the six minimum measures will be the extent of the VPDES permit requirements for the large majority of regulated small MS4s. Because the six measures represent a significant level of control if properly implemented, the Board anticipates that a permit for a regulated small MS4 operator implementing BMPs to satisfy the six minimum control measures will be sufficiently stringent to protect water quality, including water quality standards, so that additional, more stringent and/or more prescriptive water quality based effluent limitations will be unnecessary.

If a small MS4 operator implements the six minimum control measures in the permit and it is determined that the discharges cause or contribute to non-attainment of an applicable water quality standard, the operator will need to expand or better tailor the BMPs within the scope of the six minimum control measures. The Board envisions that this process will occur during the first two to three permit terms.

If the Board (rather than the regulated small MS4 operator) needs to impose additional or more specific measures to protect water quality, then that action will most likely be the result of an assessment based on a TMDL that determines sources and allocations of pollutants of concern. The small MS4s additional requirements, if any, will be guided by its equitable share based on a variety of considerations, such as cost effectiveness, proportionate contribution of pollutants, and

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ability to reasonably achieve wasteload reductions. Narrative effluent limitations in the form of BMPs may still be the best means of achieving those reductions.

EPA's interpretation of CWA section 402(p)(3)(B)(iii) was recently reviewed by the Ninth Circuit in *Defenders of Wildlife, et al v. Browner*, No. 98-71080 (September 15, 1999). The Court upheld EPA's action in issuing five MS4 permits that included water quality based effluent limitations. The Court did, however, disagree with EPA's interpretation of the relationship between CWA sections 301 and 402(p). The Court reasoned that MS4s are not compelled by section 301(b)(1)(C) to meet all State water quality standards, but rather that the Administrator or the State may rely on section 402(p)(3)(B)(iii) to require such controls. Accordingly, the *Defenders of Wildlife* decision is consistent with the EPA's 1996 "Interim Permitting Policy for Water Quality-Based Effluent Limitations in Storm Water Permits."

As noted, the 1996 Policy describes how permits would implement an iterative process using BMPs, assessment, and refocused BMPs, leading toward attainment of water quality standards. The ultimate goal of the iteration would be for water bodies to support their designated uses. This iterative approach is consistent with and implements section 301(b)(1)(C), notwithstanding the Ninth Circuit's interpretation. As an alternative to basing these water quality based requirements on section 301(b)(1)(C), however, EPA also believes the iterative approach toward attainment of water quality standards represents a reasonable interpretation of CWA section 402(p)(3)(B)(iii). For this reason, the Phase 2 rule specifies that the "compliance target" for the design and implementation of municipal storm water control programs is "to reduce pollutants to the maximum extent practicable (MEP), to protect water quality, and to satisfy the appropriate water quality requirements of the CWA." The first component, reductions to the MEP, would be realized through implementation of the six minimum measures. The second component, to protect water quality, reflects the overall design objective for municipal programs based on CWA section 402(p)(6). The third component, to implement other applicable water quality requirements of the CWA, recognizes the EPA's specific determination under CWA section 402(p)(3)(B)(iii) of the need to achieve reasonable further progress toward attainment of water quality standards according to the iterative BMP process, as well as the determination that State or EPA officials who establish TMDLs could allocate waste loads to MS4s, as they would to other point sources.

Maximum extent practicable (MEP) is the statutory standard that establishes the level of pollutant reductions that operators of regulated MS4s must achieve. The CWA requires that 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." (CWA Section 402(p)(3)(B)(iii)). This section also calls for "such other provisions as the [EPA] Administrator or the State determines appropriate for the control of such pollutants." EPA interprets this standard to apply to all MS4s, including both Phase 1 large and medium MS4s, as well as the small MS4s regulated under the Phase 2 rule.

This general permit establishes requirements for each of the six minimum management measures. The permit requires small MS4 permittees to identify in their Registration Statement the proposed BMPs for each management measure, and to develop measurable goals by which the BMP implementation can be assessed. Upon receipt of the Registration Statement from a small MS4 operator, the Board will review the Registration Statement to verify that the identified BMPs and measurable goals are consistent with the requirement to reduce pollutants under the MEP standard,

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to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act and State Water Control Law. If necessary, the Board may ask the permittee to revise their mix of BMPs, for example, to better reflect the MEP pollution reduction requirement.

Compliance with the conditions of this general permit and the series of steps associated with identification and implementation of the minimum control measures will satisfy the MEP standard.

Implementation of the MEP standard will require the permittee to develop and implement appropriate BMPs to satisfy each of the required six minimum control measures.

EPA intentionally did not provide a precise definition of MEP to allow maximum flexibility in MS4 permitting. MS4s need the flexibility to optimize reductions in storm water pollutants on a location-by-location basis. This evaluative process will consider such factors as conditions of receiving waters, specific local concerns, and other aspects included in a comprehensive watershed plan. Other factors may include MS4 size, climate, implementation schedules, current ability to finance the program, beneficial uses of receiving water, hydrology, geology, and capacity to perform operation and maintenance.

The pollutant reductions that represent MEP may be different for each small MS4, given the unique local hydrologic and geologic concerns that may exist and the differing possible pollutant control strategies. Therefore, each permittee will determine appropriate BMPs to satisfy each of the six minimum control measures through an evaluative process. The Board will evaluate small MS4 operator's proposed storm water management controls to determine whether reduction of pollutants to the MEP can be achieved with the identified BMPs.

Application of the MEP standard is envisioned as an iterative process. MEP should continually adapt to current conditions and BMP effectiveness and should strive to attain water quality standards. Successive iterations of the mix of BMPs and measurable goals will be driven by the objective of assuring maintenance of water quality standards. If, after implementing the six minimum control measures there is still water quality impairment associated with discharges from the MS4, after successive permit terms the permittee will need to expand or better tailor its BMPs within the scope of the six minimum control measures for each subsequent permit. This process may take two to three permit terms.

A. Minimum control measures. The following control measures, at a minimum, must be included in the SWMP that the permittee must develop. In addition to the minimum control measures, EPA published "guidance" for each of the control measures in their Phase 2 storm water rule. The Department included the guidance in the VPDES Permit Regulation when the Phase 2 rule was incorporated, but called it "notes" instead. It was decided not to include the "notes" or "guidance" in the proposed general permit, but to publish the "guidance" as a separate document. The "guidance" is included below for each of the control measures.

1. Public education and outreach on storm water impacts. The permittee must implement a public education program to distribute educational materials to the community or conduct equivalent outreach activities about the impacts of storm water discharges on water bodies and the steps that the public can take to reduce pollutants in storm water runoff.

Guidance: The permittee may use storm water educational materials provided by the state, tribe, EPA, environmental, public interest or trade organizations, or other MS4s. The

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public education program should inform individuals and households about the steps they can take to reduce storm water pollution, such as ensuring proper septic system maintenance, ensuring the proper use and disposal of landscape and garden chemicals including fertilizers and pesticides, protecting and restoring riparian vegetation, and properly disposing of used motor oil or household hazardous wastes. The Board recommends that the program inform individuals and groups how to become involved in local stream and beach restoration activities as well as activities that are coordinated by youth service and conservation corps or other citizen groups. The Board recommends that the public education program be tailored, using a mix of locally appropriate strategies, to target specific audiences and communities. Examples of strategies include distributing brochures or fact sheets, sponsoring speaking engagements before community groups, providing public service announcements, implementing educational programs targeted at school age children, and conducting community-based projects such as storm drain stenciling, and watershed and beach cleanups. In addition, the Board recommends that some of the materials or outreach programs be directed toward targeted groups of commercial, industrial, and institutional entities likely to have significant storm water impacts. For example, providing information to restaurants on the impact of grease clogging storm drains and to garages on the impact of oil discharges. The permittee is encouraged to tailor the outreach program to address the viewpoints and concerns of all communities, particularly minority and disadvantaged communities, as well as any special concerns relating to children.

2. Public involvement/participation. The permittee must, at a minimum, comply with state, tribal, and local public notice requirements when implementing a public involvement/participation program.

Guidance: The Board recommends that the public be included in developing, implementing, and reviewing the permittee's storm water management program and that the public participation process should make efforts to reach out and engage all economic and ethnic groups. Opportunities for members of the public to participate in program development and implementation include serving as citizen representatives on a local storm water management panel, attending public hearings, working as citizen volunteers to educate other individuals about the program, assisting in program coordination with other pre-existing programs, or participating in volunteer monitoring efforts. Citizens should obtain approval where necessary for lawful access to monitoring sites.

3. Illicit discharge detection and elimination. The permittee must:

- Develop, implement and enforce a program to detect and eliminate illicit discharges, as defined at 9 VAC 25-750-10, into the small MS4.
- (1) Develop, if not already completed, a storm sewer system map, showing the location of all major outfalls and the names and location of all surface waters that receive discharges from those outfalls;
- (2) To the extent allowable under state, tribal or local law, effectively prohibit, through ordinance, or other regulatory mechanism, non-storm water discharges into the storm sewer system and implement appropriate enforcement procedures and actions;
- (3) Develop and implement a plan to detect and address non-storm water

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discharges, including illegal dumping, to the system; and

(4) Inform public employees, businesses, and the general public of hazards associated with illegal discharges and improper disposal of waste.

c. The following categories of non-storm water discharges or flows (i.e., illicit discharges) must be addressed only if they are identified by the permittee or by the Board as significant contributors of pollutants to the small MS4: water line flushing, landscape irrigation, diverted stream flows, rising ground waters, uncontaminated ground water infiltration, uncontaminated pumped ground water, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, street wash water, and discharges or flows from fire fighting activities.

Guidance: The Board recommends that the plan to detect and address illicit discharges include the following four components: (1) procedures for locating priority areas likely to have illicit discharges; (2) procedures for tracing the source of an illicit discharge; (3) procedures for removing the source of the discharge; and (4) procedures for program evaluation and assessment. The Board recommends visually screening outfalls during dry weather and conducting field tests of selected pollutants as part of the procedures for locating priority areas. Illicit discharge education actions may include storm drain stenciling, a program to promote, publicize, and facilitate public reporting of illicit connections or discharges, and distribution of outreach materials.

4. Construction site storm water runoff control. The permittee must:

a. Develop, implement, and enforce a program to reduce pollutants in any storm water runoff to the small MS4 from construction activities that result in a land disturbance of greater than or equal to one acre. Reduction of storm water discharges from construction activity disturbing less than one acre must be included in the program if that construction activity is part of a larger common plan of development or sale that would disturb one acre or more. If the Board waives requirements for storm water discharges associated with small construction activity in accordance with the definition in 9 VAC 25-31-10, the permittee is not required to develop, implement, and/or enforce a program to reduce pollutant discharges from such sites.

b. The program must include the development and implementation of, at a minimum:

(1) An ordinance or other regulatory mechanism to require erosion and sediment controls, as well as sanctions to ensure compliance, to the extent allowable under state, tribal, or local law;

(2) Requirements for construction site operators to implement appropriate erosion and sediment control best management practices;

(3) Requirements for construction site operators to control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality; or

Procedures to ensure that construction site operators have secured a VPDES construction permit;

(4) Procedures for site plan review which incorporate consideration of potential water quality impacts;

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- (5) Procedures for receipt and consideration of information submitted by the public, and
- (6) Procedures for site inspection and enforcement of control measures.

Guidance: Examples of sanctions to ensure compliance include non-monetary penalties, fines, bonding requirements and/or permit denials for non-compliance. The Board recommends that procedures for site plan review include the review of individual pre-construction site plans to ensure consistency with local sediment and erosion control requirements. Procedures for site inspections and enforcement of control measures could include steps to identify priority sites for inspection and enforcement based on the nature of the construction activity, topography, and the characteristics of soils and receiving water quality. The permittee is encouraged to provide appropriate educational and training measures for construction site operators. The permittee may wish to require a storm water pollution prevention plan for construction sites within the jurisdiction that discharges into the permittee's system. (See 9 VAC 25-31-220 R and 9 VAC 25-31-121 E 2) The Board may recognize that another government entity may be responsible for implementing one or more of the minimum measures on the permittee's behalf.

5. Post-construction storm water management in new development and redevelopment.

The permittee must:

- a. Develop, implement, and enforce a program to address storm water runoff from new development and redevelopment projects that disturb greater than or equal to one acre, including projects less than one acre that are part of a larger common plan of development or sale, that discharge into the small MS4. The program must ensure that controls are in place that would prevent or minimize water quality impacts.
- b. (1) Develop and implement strategies which include a combination of structural and/or non-structural best management practices (BMPs) appropriate for your community;
- (2) Use an ordinance or other regulatory mechanism to address post-construction runoff from new development and redevelopment projects to the extent allowable under state, tribal or local law; and
- (3) Ensure adequate long-term operation and maintenance by the owner of BMPs.

Guidance: If water quality impacts are considered from the beginning stages of a project, new development and potentially redevelopment provide more opportunities for water quality protection. The Board recommends that the BMPs chosen: be appropriate for the local community; minimize water quality impacts; and attempt to maintain pre-development runoff conditions. In choosing appropriate BMPs, the Board encourages the permittee to participate in locally-based watershed planning efforts which attempt to involve a diverse group of stakeholders including interested citizens. When developing a program that is consistent with this measure's intent, the Board recommends that the permittee adopt a planning process that identifies the municipality's program goals (e.g., minimize water quality impacts resulting from post-construction runoff from new development and redevelopment), implementation strategies (e.g., adopt a combination of structural and/or non-structural BMPs), operation and maintenance policies and procedures, and enforcement procedures. In developing the program, the permittee should

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consider assessing existing ordinances, policies, programs and studies that address storm water runoff quality. In addition to assessing these existing documents and programs, the permittee should provide opportunities to the public to participate in the development of the program. Non-structural BMPs are preventative actions that involve management and source controls such as: policies and ordinances that provide requirements and standards to direct growth to identified areas, protect sensitive areas such as wetlands and riparian areas, maintain and/or increase open space, including a dedicated funding source for open space acquisition, provide buffers along sensitive water bodies, minimize impervious surfaces, and minimize disturbance of soils and vegetation; policies or ordinances that encourage infill development in higher density urban areas, and areas with existing infrastructure; education programs for developers and the public about project designs that minimize water quality impacts; and measures such as minimization of percent impervious area after development and minimization of directly connected impervious areas.

Structural BMPs include: storage practices such as wet ponds and extended-detention outlet structures; filtration practices such as grassed swales, sand filters and filter strips; and infiltration practices such as infiltration basins and infiltration trenches. The Board recommends that the permittee ensure the appropriate implementation of the structural BMPs by considering some or all of the following: pre-construction review of BMP designs; inspections during construction to verify BMPs are built as designed; post-construction inspection and maintenance of BMPs; and penalty provisions for the noncompliance with design, construction or operation and maintenance. Storm water technologies are constantly being improved, and the Board recommends that the requirements be responsive to these changes, developments or improvements in control technologies.

6. Pollution prevention/good housekeeping for municipal operations. The permittee must develop and implement an operation and maintenance program that includes a training component and has the ultimate goal of preventing or reducing pollutant runoff from municipal operations. Using training materials that are available from EPA, state, tribe, or other organizations, the program must include employee training to prevent and reduce storm water pollution from activities such as park and open space maintenance, fleet and building maintenance, new construction and land disturbances, and storm water system maintenance.

Guidance: The Board recommends that, at a minimum, the permittee consider the following in developing the program: maintenance activities, maintenance schedules, and long-term inspection procedures for structural and non-structural storm water controls to reduce floatables and other pollutants discharged from the separate storm sewers; controls for reducing or eliminating the discharge of pollutants from streets, roads, highways, municipal parking lots, maintenance and storage yards, fleet or maintenance shops with outdoor storage areas, salt/sand storage locations and snow disposal areas operated by the permittee, and waste transfer stations; procedures for properly disposing of waste removed from the separate storm sewers and areas listed above, such as dredge spoil, accumulated sediments, floatables, and other debris; and ways to ensure that new flood management projects assess the impacts on water quality and examine existing projects for incorporating additional water quality protection devices or practices. Operation and maintenance should be an integral component of all storm water management programs. This measure is intended to improve the efficiency of these programs and require new

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programs where necessary. Properly developed and implemented operation and maintenance programs reduce the risk of water quality problems.

B. Qualifying State, Tribal or Local Programs. If an existing qualifying local program requires the implementation of one or more of the SWMP minimum control measures, the permittee may follow that qualifying program's requirements rather than the SWMP requirements. A qualifying local program is a local, State or tribal municipal storm water management program that imposes, at a minimum, the relevant requirements of the permit SWMP.

The permittee's SWMP must identify and fully describe any qualifying local program that will be used to satisfy one or more of the minimum control measures.

If the qualifying local program the permittee is using requires the approval of a third party, the program must be fully approved by the third party, or the permittee must be working towards getting full approval. Documentation of the qualifying local program's approval status, or the progress towards achieving full approval, must be included in the annual report required by the permit.

C. Sharing Responsibility. The permit allows the permittee to rely on another entity to satisfy the VPDES permit obligations to implement a minimum control measure if: (1) the other entity, in fact, implements the control measure; (2) the particular control measure, or component thereof, is at least as stringent as the corresponding VPDES permit requirement; and (3) the other entity agrees to implement the control measure on behalf of the permittee. The agreement between the parties must be documented in writing and retained by the permittee with the SWMP for the duration of the permit.

In the annual reports that must be submitted, the permittee must specify that another entity is being relied on to satisfy some of the permit obligations.

If the permittee is relying on another governmental entity regulated as an MS4 under the VPDES Permit Regulation to satisfy all of the permit obligations, including the obligation to file periodic reports required by the permit, the permittee must note that fact in the Registration Statement, but is not required to file the periodic reports.

The permittee remains responsible for compliance with the permit obligations if the other entity fails to implement the control measure (or component thereof).

D. Evaluation and Assessment. The permit requires that the permittee evaluate program compliance, the appropriateness of the identified BMPs, and progress towards achieving the identified measurable goals. The permit also requires the permittee to submit annual reports to the Department by the first, second and forth anniversaries of the date of coverage under the permit. The annual reports must include:

1. The status of compliance with permit conditions, an assessment of the appropriateness of the identified best management practices and progress towards achieving the identified measurable goals for each of the minimum control measures;
2. Results of information collected and analyzed, including monitoring data, if any, during the reporting period;
3. A summary of the storm water activities the permittee plans to undertake during the next reporting cycle;

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4. A change in any identified best management practices or measurable goals for any of the minimum control measures;
5. Notice that the permittee is relying on another government entity to satisfy some of the permit obligations (if applicable), and
6. The approval status of any qualifying local programs (if appropriate), or the progress towards achieving full approval of these programs.