

**FACT SHEET**  
**REISSUANCE OF A GENERAL VPDES PERMIT FOR DISCHARGES OF STORMWAER FROM**  
**SMALL MUNICIPAL SEPARATE STORM SEWER SYSTEMS**  
**Effective November 1, 2023**

The Virginia State Water Control Board has under consideration the reissuance of a Virginia Pollutant Discharge Elimination System (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 VPDES General 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 Municipal Separate Stormwater Sewer System (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.

The permit requires the permittee to maintain and implement 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 the Virginia Department of Environmental Quality (DEQ or "the department") as the implementation of the MS4 program requirements in Part I, the Chesapeake Bay and the TMDL special conditions in Part II, and Best Management Practice (BMP) Warehouse Reporting in Part III of the permit. 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 for this permit term.

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 department considers narrative effluent limitations requiring implementation of Best Management Practices (BMPs), rather than numeric limits, 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 presently technically feasible to establish numeric effluent limits for MS4 stormwater discharges due to the highly variable stormwater flow and sources of pollutants from each of these 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.

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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 strategies. Continued implementation of MS4 programs through an adaptive, iterative process allow 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. Selection of strategies to demonstrate compliance with the permit conditions is left to the permittee under the guidance of the regulation. 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 comprehensive permitting approach of the US Environmental Protection Agency's (EPA) 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 BMPs under 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, and contract language.

The department has determined that the most economically and environmentally feasible method for MS4s to meet the requirements established by this permit is through the implementation of BMPs using an iterative process over a series of permit cycles. MS4 BMPs may consist of structural stormwater controls as well as ordinances, policies, procedures, planning and other programmatic efforts aimed at reducing pollutant loads that are designed with the ultimate compliance goal of meeting the requirements established by this permit.

Section 9VAC25-870-460 provides for the use of BMPs to control or abate the discharge of pollutants when numeric effluent limitations are infeasible. The Department finds that at this time numeric effluent limits are infeasible given current technologies and legal authority limitations. The determination of the appropriateness for establishing BMPs as permit conditions in lieu of numeric effluent limits is consistent with the Clean Water Act. § 40 CFR 122.44 (k) of the Code of Federal Regulations provides for the use of BMPs to control or abate the discharge of pollutants when numeric effluent limitations are infeasible or when authorized under section 402(p) of the Clean Water Act for the control of stormwater discharges.

In selecting the BMP approach, the Department utilized the recommendations found in EPA's guidance document *Interim Permitting Approach for Water Quality-Based Effluent Limitations in Stormwater Permits* (EPA833-D-96-001 September 1996) to develop a permit that requires the iterative implementation of BMPs. The iterative process allows the permittee the flexibility to select, implement, evaluate and modify its scheme of BMPs to ensure implementation of the most effective BMPs in reducing the discharge of pollutants.

This permit establishes conditions that refine the implementation of the permittee's long-term MS4 program in an iterative manner that represents reasonable further progress consistent with the water quality requirements established under the CWA. Conditions in this permit are generally in the form of comprehensive programs implemented on a system-wide basis to control sources of pollution rather than targeted treatment methods. At a local level, these types of programs consist of various components, including pollution prevention measures, management or removal techniques, stormwater monitoring, use of legal authority, and other appropriate means necessary to control the quality and quantity of stormwater discharged from the MS4.

In some instances, it may be appropriate for the permittee to consider and implement engineered permanent structural stormwater management facilities. However, the large number of MS4 outfall locations, the

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unavailability of land in highly developed areas and intermittent and varied discharge conditions, do not allow for the efficient use of large scale design or for the use of ‘end of pipe treatment’. Therefore, conditions in this permit stress the use of a source reduction and pollution prevention approaches for the reduction of pollutants in stormwater discharges. These approaches are supported on the basis that the quality of stormwater discharge from the MS4 is dependent on the sources of pollutants that contribute to the system through runoff. Minimizing pollutant sources reduces the pollutant loading in MS4 discharges.

Under this permit, the permittee is required to submit an updated Chesapeake Bay TMDL action plan no later than 12 months after the permit effective date for the reduction required in the permit. For Local TMDLs approved by the EPA prior to July 1, 2018 and for which an individual or aggregate wasteload has been allocated to the permittee, the permittee is required to update the previously approved local TMDL action plans to meet the conditions of Part I.E.2.c); E.2.d); E.2.e); and E.2.f) as applicable no later than 18 months after the permit effective date and continue implementation of the action plan. For TMDLs approved by the EPA on or after July 1, 2018 and prior to the permit effective date, in which an individual or aggregate wasteload has been allocated to the permittee, the permittee is required to develop and initiate implementation of action plans to meet the conditions of Parts I.E.2.c); E.2.d); E.2.e) and E.2.f) as applicable for each pollutant for which wasteloads have been allocated to the permittee’s MS4 no later than 30 months after the permit effective date. TMDL action plans shall be developed consistent with the assumptions and requirements of applicable TMDLs and incorporate an iterative, BMP-based approach consistent with the discussion above.

#### Public involvement in permit reissuance:

A public hearing was held at the following location: Department of Environmental Quality, Piedmont Regional office, 4949-A Cox Road, Glen Allen VA 23060. The notice of the public comment period/public hearing were published in the Richmond Times Dispatch, and the Virginia Register. During the public comment period, 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 23, 2023. The regulation is effective for all covered facilities on November 1, 2023. Every authorization to discharge under this general permit will expire October 31, 2028.

#### The staff contact at Central Office DEQ is:

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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 2010 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

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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 regulations that prohibit such discharges;
3. The permittee fails to implement BMPs to reduce pollutants to the maximum extent practicable (MEP) standard 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

#### **Interim Guidance on Census Elimination of “Urbanized Area” Definition**

The US Census Bureau has adopted new “urban area” criteria for the 2020, which significantly deviates from previous decennial census “urbanized area” criteria and effectively eliminates the distinction between “urbanized area” and “urban clusters” established by previous decennial censuses. This change in terminology from “urbanized area” to “urban area” has implications impacting applicability of the 2020 census for Phase II MS4 automatic designation since 40 CFR specifically references “urbanized area,” not “urban area.” DEQ has adopted the Environmental Protection Agency’s proposed Rules change documented in the Federal Register Vol. 87, No. 231, published on December 2, 2002. This rule change eliminates the term “urbanized area” and replaces it with “Urban areas with a population of 50,000 or more people as determined by the latest Decennial Census by the Bureau of the Census.” This change is reflected in permit language found in the flowing sections of the permit; 9VAC25-890-1. Definitions, Part I.E.3.a(1), Part I.E.6.g-h and q-r, and Part II.A.

#### **Commonwealth of Virginia Chapter 356 of the 2022 Acts of Assembly (Senate Bill 657)**

SB 657 was passed during the 2022 Session of the General Assembly. This bill limits the authority of the State Water Control Board under Chapters 3.1 (State Water Control Law), 24 to the issuance of regulations and transfers the Board’s existing authority to issue permits and orders to DEQ. The Governor signed this bill into law on April 11, 2022 (SB657 – Chapter 356 of the 2022 Acts of Assembly) and these changes became effective July 1, 2022. The State Water Control Board adopted regulatory amendments to 9VAC25-890 on August 25, 2022, and affirmed changes to be incorporated into 9VAC25-890 resulting from Chapter 356 of the 2022 Acts of Assembly (Senate Bill 657). Revisions to the regulations include those necessary to address changes to the authority of the State Water Control Board to issue and enforce permits. Changes to the regulations included changing designations from “board” to “department” where appropriate; adding definitions of “Board” and “Department”; and the repeal of the delegation of authority provisions.

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### **Commonwealth of Virginia Chesapeake Bay TMDL Phase III Watershed Implementation Plan (WIP)**

On August 12, 2019, the Chesapeake Bay Program Principals' Staff Committee (PSC) approved the process, timeline, and proposed Phase III WIP language for developing the Phase III WIP sediment targets. Virginia included the PSC-approved language in its final Phase III WIP on Page 29, Section 5.2 (Sediment Targets). This language states in part, "*Sediment loads are managed in the Bay TMDL to specifically address the water clarity/submerged aquatic vegetation (SAV) water quality standards. Intuitively, it makes sense that the more sediment suspended in the water, the less makes it down to the SAV. Interestingly, research in the Chesapeake Bay has shown that the water clarity/SAV water quality standard is generally more responsive to nutrient load reductions than it is to reduction in sediment loads. This is because the algae that are fueled by the nutrients can block as much, or more, light from reaching the SAV as suspended sediments. The sediment targets will not affect the BMPs called for in the WIP, and are not intended to be the driver for implementation moving forward...*"

On November 22, 2022 the DEQ department Director submitted a letter to the EPA Region 3 Regional Administrator stating: "*Based upon the Department of Environmental Quality's (DEQ) understanding of the PSC-approved language, DEQ intends to reissue its MS4 individual permits without the previously required sediment load reductions. The reissued individual permits will continue to include the required nutrient (i.e., total nitrogen and total phosphorus) load reductions at a much accelerated rate to focus on achieving the needed nitrogen and phosphorous reduction. In addition, DEQ intends to revise MS4 general permit regulation to remove the previously required sediment load reductions. The amended general permit regulation will continue to include the required nutrient load reductions.*"

Based upon the above referenced Virginia Phase III WIP and November 22, 2022 letter, the proposed general permit Chesapeake Bay TMDL special condition (Part II A) has been revised, removing previously required sediment reductions under the 2018 general permit DEQ brought these revisions to the attention of the SWCB on November 29, 2022, at which time the Board authorized DEQ to hold a public hearing and a 60-day public comment period specifically soliciting comment on the proposed removal of the sediment reduction requirements under the Chesapeake Bay TMDL special condition.

This proposed general permit maintains sediment reduction BMP Warehouse reporting requirements under Part III since sediment reduction tracking for permittee BMP implementation is still necessary for Chesapeake Bay Program reporting purposes and Chesapeake Bay TMDL modeling efforts.

### **Summary of Substantive Changes:**

1. Adding definitions for common MS4 terminology and modifying the high-priority facility definition.
2. Requiring electronic submission of registration statements and annual reports after at least three months' notice provided by the Department in accordance with 9VAC25-31-1020.
3. Adding permit conditions specific to traditional and nontraditional MS4 permittees to address existing permit conditions that are inherently not applicable to nontraditional permittees or not practicable for nontraditional permittee implementation.
4. Requiring third phase Chesapeake Bay TMDL action plan submittal and completion of 100% of required nitrogen, phosphorus, and sediment reductions no later than 10/31/2028.
5. Requiring Chesapeake Bay TMDL implementation annual status reports be maintained as separate documents from annual reports and posted to the permittee's publicly accessible stormwater webpage.
6. Requiring permittees to provide MS4 maps in a GIS shapefile format and no longer allowing pdf format to satisfy this requirement and establishing data standards for GIS shapefile submission.
7. Adding provisions allowing permittees to adopt a risk-based approach to dry weather screening identifying observation points based upon illicit discharge risks upstream of an outfall. Each observation point screened may be counted as one outfall screening activity equivalent; however, 50% of the

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- minimum annual screening events must include outfalls. These provisions are voluntary, and permittees may choose to adopt this approach at their discretion.
8. Removing electronic BMP database requirements as these requirements are duplicative of BMP Warehouse reporting requirements.
  9. Moving BMP warehouse reporting conditions to new permit section (Part III) and adding reporting requirements for ecosystem restoration projects.
  10. Reformatting and integrating good housekeeping requirements:
    - a. For written procedures, differentiating between the objectives each procedure shall meet and activities that require procedures.
    - b. Incorporating existing good housekeeping permit conditions into written procedure requirements and improving linkage to contract language and training requirements.
    - c. Removed subjectivity from SWPPP applicability, clarified SWPPP requirements, and integrated utilization of applicable written good housekeeping procedures.
  11. Requiring good housekeeping written procedures for the following activities:
    - a. Requiring permittees that apply anti-icing and deicing agents to update road, street, sidewalk, and parking lot procedures to include implementation of best management practices for anti-icing and deicing agent application, transport, and storage.
    - b. Requiring permittees to develop written procedures for renovation and significant exterior maintenance activities.
    - c. Clarifying written good housekeeping procedures for temporary storage of landscaping materials, recognizing that long-term bulk storage meets the definition of high-priority facility.
  12. Requiring DCR approval and renewal of nutrient management plans.
  13. Requiring chloride TMDL Action Plans where applicable.
  14. Requiring inspection and maintenance procedures for ecosystem restoration projects.
  15. Removing sediment reduction requirements from the Chesapeake Bay TMDL special condition.
  16. Added the requirement for permittees to submit registration statements electronically 90 days after notification from the department as required by 9VAC25-31-102 Implementation of electronic reporting requirements for VPDES Permittees.
  17. Various permit sections were impacted by the requirement to address the 2020 Census expanded urban areas. Addition requirements were added to the definition, illicit discharge detection and elimination (MCM3), post construction stormwater management for new development and development on prior developed lands (MCM5), pollution prevention and good housekeeping (MCM6), and the Chesapeake Bay special condition sections along with schedules, where appropriate, to implement existing the MS4 program elements in the newly designated areas.

### Summary of Requirements, Rationale and Changes

#### CHAPTER 890

Updated the chapter title to “*VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM (VPDES) GENERAL PERMIT FOR DISCHARGES OF STORMWATER FROM SMALL MUNICIPAL SEPARATE STORM SEWER SYSTEMS (MS4S)*” for consistency with other VPDES general permit chapter title convention.

#### 9VAC 25-890-1 Definitions

Added “*the Virginia Stormwater Management Program (VSMP) Regulation*” to the heading of 9VAC25-890-1. Definitions for clarity.

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Added “*Annual practices*” means a nonstructural best management practice such as street or storm drain cleaning that reduces pollution for one compliance year upon implementation.” This definition was added to provide clarification that pollutant reductions generated by annual practices are creditable towards one compliance year for TMDL action plans and annual practices must be implemented in the specific compliance year in order to receive pollutant reduction credit for that specific year (i.e. pollutant reductions generated must correspond to one compliance year). Reductions generated may vary year-to-year and will be dependent on the extent of annual practice implementation. For example, a permittee must sweep the same number lane miles year-to-year in order to generate the same amount of pollutant reductions. Also, storm sewer cleaning pollutant reductions may be dependent on the amount of sedimentation in the sewer being cleaned and sewer cleaning implemented in years after a sewer was initially cleaned should be expected to yield lower pollutant reduction in most cases (i.e. estimated pollutant reductions achieved by this practice may be difficult to calculate for action plan purposes).

Added “*Ecosystem restoration projects*” means practices implemented to reestablish and maintain natural systems that prevent, reduce, or remediate pollutant loadings. Examples of ecosystem restoration projects include stream restoration, shoreline restoration, land-use conversion, and reforestation.” This permit introduces the term ecological restoration projects in Part II C and Part III of this permit in order to recognize the regulatory distinction between ecosystem restoration projects and stormwater management facilities as defined in 9VAC25-870-1:

Modified the definition of “*High-priority facilities*,” to include the following:

Added the qualifier “*with drainage to any permitted MS4*” to “*facilities owned or operated by the permittee*,” recognizing drainage to an MS4 is important for classifying high-priority facilities (HPFs). A facility should not be considered a HPF if the facility has no drainage to an MS4 since the potential to discharge pollutants to an MS4 is nonexistent.

The following modifications were made to activities defining high-priority facilities HPFs:

(ii) Added “*cleaning*” to equipment storage and maintenance.

(iii) Added “*long-term bulk*” to materials storage as a qualifier to distinguish large permanent storage areas such as facility maintenance yards that continuously store building materials from smaller temporary material storage areas such as temporary on-site storage of construction and maintenance supplies. These activities should either have written good housekeeping procedures or separate SWPPP requirements covered under the stormwater construction general permit (CGP).

(iv) Added “*herbicide and fertilizer*” to pesticide storage recognizing these storage materials carry risks for pollutant discharges.

(v) This provision was removed as it is more generalized and overlaps other activities defining HPFs.

(vii) Replaced “*salt*” with “*anti-icing and deicing agent*” to include all chemicals used for anti-icing and deicing and for consistency with Virginia Salt Management Strategies (SaMS). Added “*handling and transfer*” to “*salt storage*” recognizing these activities carry risks for pollutant discharges.

(ix) Added “*washing*” and “*salvage*” to “*vehicle maintenance*,” recognizing these activities carry risks for pollutant discharges. Removed “*storage*” since every parking lot should not be construed to meet the definition of HPF. “*Salvage*” was also added to distinguish parking lots from damaged vehicle storage which have higher risk for leaking and pollutant discharges.

Modified the definition of MS4 regulated service area to include reference to urban areas with a population of at least 50,000 people.

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Added “*Nontraditional MS4 permittee*” or “*nontraditional permittee*” means a government entity that operates a regulated MS4 that is not under the authority of a county board of supervisors, a city council, or a town council.”

Added “*Traditional MS4 permittee*” or “*traditional permittee*” means a local government that operates a regulated MS4 under the authority of a county board of supervisors, a city council, or a town council.”

Traditional and nontraditional are two categories of Phase II MS4 permittees and these terms have been in common use within the MS4 program for many years. This permit introduces the terms traditional and nontraditional permittee as qualifier for several permit conditions throughout the permit recognizing the differences in jurisdictional authority between traditional local governments and all other government entities considered nontraditional permittees. Traditional permittees are limited to counties, cities, and towns. Nontraditional permittees may include but are not limited to operators of state and federal facilities such as transportation infrastructure, college campuses, hospitals, correctional facilities, military installations, administrative campuses, and research facilities. Nontraditional permittees may also include local authority operators for facilities such as public schools and other regional authorities that may operate an MS4. Traditional and nontraditional permittee differences necessitated the need for distinct permit conditions for traditional and nontraditional permittees for ordinance development, public education and outreach and public participation target audiences, Erosion and Sediment Control and VSMP program administration, and TMDL special conditions.

#### **9VAC 25-890-10 Purpose; Effective Date of the State Permit**

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

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

Updated the Title 40 CFR publication date to July 1, 2022.

#### **9VAC 25-890-20 Authorization to Discharge**

A. removed “*small municipal separate storm sewer system;*” for clarity.

B. Added routine external building washdown to maintain consistency with other VPDES permits.

#### **D.3 Updates:**

g - Added “*managed in manner to avoid instream impact,*” for clarification.

q – Added “*freshwater and managed in manner to avoid instream impact;*” for clarification and consistency with DEQ Guidelines for the Release of Swimming Pool Water (October 12, 2012).

r – Modified “*street wash waters,*” to “*Street and pavement wash waters that do not contain cleaning additives or are otherwise managed in a manner to avoid instream impact;*” for clarification.

s – Added “*emergency;*” qualifier to firefighting activities.

t – Added “*discharges or flows of water for fire prevention or firefighting training activities managed in a manner to avoid instream impact in accordance with § 9.1-207.1 of the Code of Virginia;*” for clarification.

u – Added “*in accordance with § 15.2-2114.1 of the Code of Virginia to Discharges from noncommercial fundraising car washes if the washing uses only biodegradable, phosphate-free, water-based cleaners;*” for clarification.

K. updated dates for consistent timeframes with new permit cycle.



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#### **9VAC 25-890-30 – Registration Statement**

A.2 – Revised registration due date to October 1, 2023.

Added B.5 - *“If the MS4 is operated under the authority of a city council or a county board of supervisors, indicate if public school facilities are included in the application;”* in order to confirm county and city MS4 programs cover public schools that do not separate general permit coverage.

B.10 – Updated to require third phase Chesapeake Bay TMDL action plan.

#### **9VAC 25-890-40 – General Permit**

As part of the 2023 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 for *“Part I – Discharge Authorization and Special Conditions, Part II TMDL Special Conditions, Part III DEQ BMP Warehouse Reporting, and Part IV Conditions Applicable to All State and VPDES Permits:”*

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 recognizes 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 department 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 strategies. Continued implementation of MS4 programs through an adaptive, iterative process allows MS4

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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 comprehensive 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 2018 MS4 general permit, are required to update their program plans in accordance with the requirements of the 2023 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 2023 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.

C.2 – Changed the “*expiration date of this permit;*” to “*October 31, 2028, unless the department grants a later date;*” for permit consistency and recognizing new permittees may have less than five years to fully implement an a comprehensive MS4 program plan.

### **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 1<sup>st</sup> of each year that describes the implementation of the MS4 program for the immediate preceding reporting period of July 1<sup>st</sup> through June 30<sup>th</sup>. 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 changes are needed to the program. The annual report will also include a status update for local TMDL action plan implementation, as applicable. For newly permitted programs, permittees are required to submit an annual status update as the program is developed.

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The annual report will no longer include a status update for Chesapeake Bay TMDL implementation. Chesapeake Bay TMDL implementation annual status reports are now required to be maintained as separate document in accordance with Part I D.6. and shall be posted to the permittee's stormwater webpage in accordance with Part I E.2.b.(5) to promote transparency and allow both DEQ and other interested parties to easily track Chesapeake Bay TMDL progress towards achieving 100% reductions by October 31, 2028. The required contents of each Chesapeake Bay TMDL implementation annual status report are located in Part II.A.13.

1. Added annual reporting clarification on “*method, (i.e. how the permittee must submit) and format (i.e. how the report shall be laid out)*” and specified “*the required content of the annual report is specified in Part I E and Part II B.*” The method annual report submittal “Nform” is being developed by the department and guidance for will provided to permittees on Nform annual report submittals once the MS4 Nform module is fully developed for roll-out and permittee use. Nform permittee reporting is part of the department's strategy to fulfill EPA's e-reporting rule published on November 2, 2020. The rule requires electronic reporting of MS4 annual reports and NOIs by December 21, 2025.

2. Added, “*Following notification from the department of the start date for the required electronic submission of annual reports, as provided for in 9VAC25-31-1020, such forms and reports submitted after that date shall be electronically submitted to the department in compliance with this section and 9VAC25-31-1020. There shall be at least three months' notice provided between the notification from the department and the date after which such forms and reports must be submitted electronically;*” for further clarification on Nform submittal roll-out.

Removed 4. - “*For those permittees with requirements established under Part II A, the annual report shall include a status report on the implementation of the Chesapeake Bay TMDL action plan in accordance with Part II A of this permit including any revisions to the plan.*” Annual reporting requirements for the Chesapeake Bay TMDL have been moved to Part II A of this permit. This permit introduces a new requirement that Chesapeake Bay TMDL implementation annual status updates be maintained as separate documents on permittee webpages.

6. Added additional clarification that “*the MS4 program plan, annual reports, the Chesapeake Bay TMDL action plan, and Chesapeake Bay TMDL implementation annual status reports, shall be maintained as separate documents;*” primarily to promote public transparency. Removed submitted to the department as required by this permit as separate documents as Part I D 1 and Part II A 14 already cover reporting method and format.

## **E. Minimum control measures (MCM)**

### **1. Public education and outreach**

Following 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 2023 permit requires the message to focus on water quality and stormwater pollution issues. 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.

b. Added “*litter control, BMP maintenance, anti-icing and de-icing agent application, planned green infrastructure redevelopment, planned ecosystem restoration;*” to expand examples of high priority issues.

d. Added “*target audience;*” to clarify that a high priority issue might be targeted towards a specific audience which may include the general public.

Table 1:

- Added “*or GIS story maps;*” to Media Materials strategies.
- Added “*Public Education Activities;*” to the strategies with “*Booth at community fair, demonstration of stormwater control projects, presentation of stormwater materials to schools to meet applicable education standards of learning or curriculum requirements, or watershed walks;*” listed as examples.
- Added “*Public Meetings*” to the strategies with “*Public meetings on proposed community stormwater management retrofits, green infrastructure redevelopment, ecological restoration, TMDL development, voluntary residential low impact development, and other stormwater issues;*” listed as examples.

**f. MS4 program plan shall include:**

Updated (3) – identification of “*target audience*” rather than “*public audience.*”

Added (4) – “*Nontraditional permittees may identify staff, students, and other facility users operated by the permittee as the target audience for education and outreach strategies.*” This added clarification will help nontraditional permittees to better define targeted audiences.

Added (5) – “*Traditional permittees may identify staff and students as part of the target audience for education and outreach strategies; however, staff shall not be the majority of the target audience.*” This added clarification will help permittees better define target audiences while differentiating target audiences for traditional and nontraditional permittees.

Added (6) – “*Staff training required in accordance with Part I E 6 d does not qualify as a strategy for public education and outreach.*” This added clarification reinforces the intent of the public education requirements and that education and outreach programs with all staff as the targeted audience are to be included in the good housekeeping training program.

**g. The annual report shall include the following information:**

Added (2) - “*A summary of the public education and outreach activities conducted for the report year, including the strategies used to communicate the identified high-priority issues.*” This summary is meant to specify the strategies implemented during to communicate high-priority issues during the report year.

(3) Revised language to “*A description of any changes in high priority stormwater issues, strategies used to communicate high-priority stormwater issues, or target audiences for the public education and outreach plan. The permittee shall provide a rationale for any of the above changes.*” The revised language clarifies the expectations for documenting an iterative education and outreach program.

**2. Public participation and involvement**

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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. Language has been added for those facilities under security provisions restricting public facing websites to allow compliance with the webpage provisions.

Consistent with EPA's Electronic Reporting Rule, published October 22, 2015 and November 2, 2020, the Department is in the process of developing and finalizing tools to assist permittees in submitting their reports via electronic portals. This will allow for information to flow from the permittee to the EPA as efficiently as possible. As such, the permit has provisions for electronic reporting as tools and options are made available.

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.

Note: public meetings can satisfy requirements for MCM1 and MCM2 activities provided that the permittee has documentation that clearly describes both the MCM1 education and the MCM2 public participation elements.

a. The permittee shall develop and implement procedures for the following:

(2) Changed "*input*" to "*comments*;" for consistency with public comment requirements.

Removed (3) – "*Receiving public input or complaints*." This provision was redundant with Part I E 2 a (1) and (2) requirements and may inadvertently require permittees to capture input or complaints beyond the scope of this permit for issues such as flooding which this permit does not address.

(4) Removed "*or complaints*;" as this is duplicative of preceding language and permittees do not need differentiate between public comments and complaints on program plans. Changed "*comments received*;" from "*input received*"

b. Webpage dedicated to the MS4 program and stormwater pollution prevention: updated the requirement to include "*update and maintain*" from "*develop and maintain*;" recognizing existing permittees have already developed this webpage.

Added (4) - "For permittees whose regulated MS4 is located partially or entirely in the Chesapeake Bay watershed, the most current Chesapeake Bay TMDL action plan or location where the Chesapeake Bay TMDL action plan can be obtained."

Added (5) - "*For permittees whose regulated MS4 is located partially or entirely in the Chesapeake Bay watershed, the Chesapeake Bay TMDL implementation annual status reports for each year of the term covered by this permit no later than 30 days after submittal to the department*;" to add Bay action plan

and annual status reports to publically accessible website to allow for public transparency, involvement and input.

(7) Added “*and if applicable, the Chesapeake Bay TMDL action plan in accordance with Part II A 13*” for clarification.

Added (8) “*Federal and state permittees with security policies preventing a MS4 program and stormwater pollution prevention webpage from being publically available may utilize an internal staff accessible webpage such as an intranet webpage to meet the requirements of Part I E 2 b;*” to provide a mechanism for government entities with restrictive security policies such as DOD and correctional facilities to demonstrate compliance with MS4 program webpage requirements.

Updated c. To address “traditional permittees.”

Added d. - “*Nontraditional permittees shall implement, promote, participate in, or coordinate on no less than four activities per year from two or more of the categories listed in Table 2 below to provide an opportunity for public involvement to improve water quality and support local restoration and clean-up projects;*” to clarify the distinction between traditional and non-traditional permittee expectations for this requirement recognizing nontraditional permittees often have narrowly defined target audiences, more limited resources, and may benefit from partnering with traditional permittees and other organizations for providing target audiences with participation events.

Table 2:

- Added language under Restoration examples “*Stream, watershed, shoreline, beach, or park clean-up day, adopt-a-water way program, tree plantings, and riparian buffer plantings*” to expand strategy examples.
- Revised “*Public Education Events*” with removal of “*participation on environmental advisory committees*” since this strategy was expanded on with the addition of “*Public Meetings*” strategy category.
- Added “*Public Meetings*” and examples, “*Public meetings on proposed community stormwater management retrofits, green infrastructure redevelopment, ecological restoration, TMDL development, voluntary residential low impact development, and other stormwater issues;*” to expand upon potential stormwater related public meetings.

Added f. - “*The Permittee may include staff and students in public participation events; however, the activity cannot solely include or be limited to staff participants with stormwater, grounds keeping, and maintenance duties in order for an event to qualify as a public participation event.*” This added clarification will help permittees better define target audiences public participation events, which may include but not solely be comprised of staff.

Added g. - “*Staff training required in accordance with Part I E 6 d does not qualify as a public participation event unless the training activity solicits participation from target audiences beyond staff or contractors with stormwater, grounds keeping, and maintenance duties*” This added clarification distinguishes between public participation events and training which should be included as part of the good housekeeping training program.

**i. The annual report shall include the following information:**

(1) Clarified language to be specific to public comments on MS4 program plan.

Added (2) *“A summary of stormwater pollution complaints received under the procedures established in Part I E 2 a (1) (excluding flooding complaints) and how the permittee responded;”* for clarification.

(4) Added *“Federal and state permittees with security policies preventing the MS4 program and stormwater pollution prevention webpage from being publically available utilizing an internal staff accessible website such as intranet shall provide evidence of the current internal MS4 program and stormwater pollution prevention webpage;”* to provide a mechanism for government entities with restrictive security policies to demonstrate compliance with MS4 program webpage requirements and consistency in the annual reporting requirements.

### **3. Illicit discharge detection and elimination**

Following 9VAC 25-870-400 D.2.c and 40 CFR 122.34(b)(3)., the 2023 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 submit an updated map within 24 months of the effective date of this permit. Thereafter, permittees are to maintain an updated map of the MS4, and provide an annual certification that any required updates to the map and information tables were made by October 1 of the appropriate reporting year. The permit requires an MS4 system map to include outfalls, the regulated service area, receiving waters, stormwater management facilities, and associated information. Most of the information table requirements remain unchanged from the 2018 permit, however, GIS-compatible formats have been specified for programmatic consistency across all permittees.

The department will use the map and outfall table information 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.

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 2023 general permit adds an option for up to 50% of the dry weather screenings be allocated to a risk-based approach in which permittees identify observation points, which may include outfalls or points of interconnection and specified points upstream of an outfall that have historically relevant or significant cause for potential increased discharge concerns. Based on the size and nature of the service area, permittees are still required to screen up to 50 outfalls (or all, if less than 50 outfalls within the MS4), with up to 50% of the screening points identified as part of the risk-based approach. This general permit also clarifies specific items to be observed and documented during the screening event, in line with EPA guidance and identification of potential illicit discharges not present at the time of the dry weather screening event.

#### **a. MS4 map and information table:**

(1) Revised language to *“An updated map of the MS4 owned or operated by the permittee within the 2020 census urban areas with a population of at least 50,000 and any previous decennial census urbanized area no later than 24 months after the permit effective date;”* for clarification.

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(1) The above revised language requires permittee MS4 maps “*be updated no later than 12 months after the permit effective date;*” in recognizing no significant changes to the MS4 map are required by this permit reissuance and also recognizes the need for the department to obtain up to date MS4 mapping data for Chesapeake Bay TMDL and DEQ Electronic Data Mapper (EDM) initiatives.

(2) Revised language to “*The permittee shall maintain an outfall information table associated with the MS4 map that includes the following information for each outfall or point of discharge for those cases in which the permittee elects to map the known point of discharge in accordance with Part I E 3 a (1) (a). The outfall information table may be maintained as a shapefile attribute table. The outfall information table shall contain the following:*” to clarify the use of GIS-compatible data tables and what information is required for the outfall information table.

(f). Revised language from “2016” to “2020” to reflect updated 305(b)/303(d) Water Quality Assessment Integrated Report, referencing the most current report available.

Removed (g) since a predominant land use generalization is not a helpful data element for the permittee or the department.

(3) Revised language to “*No later than 12 months after permit issuance, the permittee shall submit to DEQ, a format file geodatabase or two shapefiles that contain at a minimum...*” to specify required GIS-compatible formats for GIS data submittals to ensure the department receives updated GIS data from permittees.

(3) Removed “*If the permittee does not have an MS4 map in a GIS compatible format, the permittee shall provide the map as a PDF document*” since open-source geospatial data software is available for use to permittees.(3) Added (a) and (b):

“(a) *A point feature class or shapefile for outfalls with an attribute table containing outfall data elements required in accordance with Part I E 3 a (1) (a), (b), and (c) and Part I E 3 a (2); and*

(b) *A polygon feature class or shapefile for MS4 service area as required in accordance with Part I E 3 a (1) (d) with an attribute table containing the following information:*

(i) *MS4 operator name;*

(ii) *MS4 permit number (VAR04); and*

(iii) *MS4 service area total acreage rounded to the nearest hundredth.” to detail GIS-compatible formats for map submittals, to ensure consistency and adequate detail of the MS4 service area and data.”*

(3) (a) and (b) were added to specify data fields required for GIS data submittals.

(4) Modified to specify the following data standards:

“(4) *All file geodatabase feature classes or shapefiles shall meet the following data format standards:*

(a) *Point data collected in NAD83 or WGS84 decimal degrees global positional system coordinates;*



*(b) Data projected in Virginia Lambert Conformal Conic projection;*

*(c) Outfall location accuracy shall be represented in decimal degrees rounded to at least the fifth decimal place for latitude and longitude to ensure point location accuracy (e.g. 37.61741, -78.15279); and*

*(d) Metadata shall provide a description of each feature class or shapefile dataset, units of measure as applicable, coordinate system, and projection.”*

(4) Modifications are to ensure all GIS data submitted to the department meets specified minimum standards and as well as to ensure data consistency across permittee GIS data submittals.

(5) Revised to specify *“No later than October 1 of each year, the permittee shall update the MS4 map and outfall information table to include any new outfalls constructed or TMDLs approved or both during the immediate preceding reporting period.”*

c. IDDE written procedures: (2) dry weather screening protocols:

Added (d) - *“The permittee may adopt a risk-based approach to dry weather screening identifying observation points based upon illicit discharge risks upstream of an outfall. Observation points may include points of interconnection, manholes, points of discharge, conveyances, or inlets suspected to have a high likelihood of receiving illicit discharges;”* to expand the dry weather screening program to incorporate an option for a risk based approach that goes beyond the outfall, based upon historical knowledge and land use, allows for a more targeted approach. This risk-based option may allow for better resource allocation and a potentially more productive and directed screening efforts.

Added (e) - *“Each observation point screened may be counted as one outfall screening activity equivalent and counted towards the requirements of Part I E.3.c.(2)(b) or (c); however, at least 50% of the minimum annual screening events must include outfall screening;”* to further support the potential implementation of a partial risk based screening approach while maintaining a fundamental reference point for comparison and programmatic stability.

Added (f) - *“Illicit discharges reported by the public and subsequent investigations may not be counted as screening events; however once the resolution of the investigation and the date the investigation was closed has been documented, an observation point may be established for future screening events;”* to clarify that publically reported illicit discharges are not counted toward the dry weather screening program; however, they can be utilized to determine a future risk based observation points.

(g) Tracking:

(i) - Revised language *“The unique identifier for the outfall or observation point;”* to allow for tracking and usage of observation points, as described in Part I E.3.c.(2)(d), in a risk based approach to the dry weather screening program.

Updated (v) – *“Observed indicators of possible illicit discharge events such as, floatables, deposits, stains, and vegetative conditions (e.g., dying or dead vegetation, excessive vegetative growth, etc.).”* These illicit discharge indicators were moved from Part I E.3.c.(2)(g)(vi) to clarify indicators of illicit discharges should be noted and tracked for all dry-weather screening events.

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Updated (vii) – “*If a discharge was observed, the estimated discharge rate and visual characteristics of the discharge (e.g., odor, color, clarity) and the physical condition of the outfall;*” for clarification.

Added (viii) – “*For observation points, the location, downstream outfall unique identifier, and risk factors or rationale for establishing the observation point;*” applicable to the use observation points for clarification.

Permittees should reference the EPA and Center for Watershed Protection 2004 [IDDE Guidance Manual for Program Development and Technical Assessments](#) for more detail on what specific items should be reviewed and the rationale behind those items. If an illicit discharge is observed, the estimated discharge rate, visual characteristics of the discharge and the physical condition of the outfall shall be documented and tracked by the permittee.

d. The MS4 program plan shall include:

d. – Changed “*information table*” to “*outfall information table;*” for consistency and clarification.

e. The annual report shall include:

(1) Added “*outfall*” to “*information table.*”

(2) Added “*observation points;*” for annual reporting if the permittee elects to identify observation points

(3) A list of illicit discharges to the MS4 including spills reaching the MS4 with information as follows:

(a) Added “*location*” for geographic reference of the “*source of the illicit discharge.*”

4. Construction stormwater runoff control - Added “*erosion and sediment;*” to title of Part I E.4. for consistency with Erosion and Sediment Control Law used to satisfy many elements of MCM4.

Following 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.

Stormwater discharges from construction sites generally include sediment and other pollutants such as phosphorus, 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 2023 general permit requires traditional 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.

This general permit requires nontraditional permittees to continue implementation of the most recently department approved annual standards and specifications for erosion sediment control. Projects not covered under annual standards and specifications must comply with an erosion and sediment control authority approved erosion and sediment control plan and the permittee must inspect all land disturbing activities as defined in § 62.1-44.15:51 of the Code of Virginia that result in the disturbance activities of

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10,000 square feet or greater, or 2,500 square feet or greater in accordance with areas designated under the Chesapeake Bay Preservation Area.

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 2023 general permit further draws a distinction between traditional and non-traditional permittees, as MS4 permittees may have varying legal and program authorities. Local governments are responsible for implementing the Virginia Erosion and Sediment Control Program (VЕСP) for private and local public projects within their jurisdictions. The Department is the VЕСP 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 VЕСP for their projects. Under the ESC Annual Standards and Specification program, DEQ remains the VЕСP 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 VЕСP regulations.

All MS4 permittees are still required to implement an ESC program for runoff associated with construction activities; however, in keeping with the 2018 permit, this permit includes requirements based on the VЕСP authority for each potential type of MS4 permittee as follows:

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

The 2023 general permit, continues to have programmatic requirements 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 VЕСP

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regulations and the VSMP regulations to make the requirements more consistent, among other things. These regulatory changes are in the process of development and implementation; however, it is likely that the next iteration of the general permit and 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.

#### a. (1), (2), (3), (4), and (5):

Each section of Part I E.4.a. incorporates the terms “*traditional*” and “*nontraditional*” where applicable for clarification.

(5) Removed “*subdivision of a local government such as a*” in reference to school boards or other local government bodies since school boards are separate local government entities from city councils and county boards of supervisors.

c. – Moved from Part I E.6. “*Employees and contractors serving as plan reviewers, inspectors, program administrators, and construction site operators shall obtain the appropriate certifications as required under the Virginia Erosion and Sediment Control Law and its attendant regulations.*” This language was moved from minimum control measure 6 training requirements as this certification pertains more to minimum control measure 4: construction stormwater runoff inspection requirements than to minimum control measure 6: pollution prevention and good house-keeping training requirements.

#### **d. The permittee's MS4 program plan shall include:**

(1) - Updated to “*If the permittee implements a an erosion and sediment control program for construction site stormwater runoff in accordance with Part I E 4 a (1), the local ordinance citations for the VESCP program*” for clarification.

(2) - Updated to “*If the permittee is a town that does not implement an erosion and sediment control program for construction site stormwater runoff in accordance with Part I E 4 a (2), the county ordinance citations for the VESCP program the town is subject to*” for clarification.

(3) – Updated to “*If the permittee implements annual standards and specifications for erosion and sediment control and construction site stormwater runoff in accordance with Part I E 4 a (3)*” for clarification.

(5) - Modified to apply to traditional permittee inspection written procedures requirements consistent with VESCP programmatic requirements established by 9VAC25-840-90.A and inspection requirements established by 9VAC25-840-60.B.

Added (6) – “*For nontraditional permittees, erosion and sediment control plans or annual standards and specifications shall be approved by the Department in accordance with § 62.1-44.15:55. Compliance with approved erosion and sediment control plans or annual standards and specifications shall be ensured by the permittee with written inspection procedures that at minimum include the following;*

*(a) An inspection checklist for documenting onsite erosion and sediment control structures and systems are properly maintained and repaired as needed to insure continued performance of their intended function; and*

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*(b) A list of all associated documents utilized for inspections including inspection schedules, checklists, department approved erosion and sediment control plans, the most recently department approved annual standards and specifications, and any other documents utilized.”*

(6) (a) and (b) were added in an effort to differentiate written procedures requirements for traditional and nontraditional permittees. TAC DEQ technical liaisons indicated that corrective actions for minimum control measure 4 are common for nontraditional permittees. (6) (a) and (b) were added to better define minimum requirements for the content needed in written procedures for nontraditional MS4s. The 2018 general permit provides little detail on what content is required in written procedures in order to resolve systemic compliance issues that may stem from vague permit conditions.

(7) - Modified to apply to traditional permittee corrective action and enforcement action written procedures requirements consistent with VESCP programmatic requirements established by § 62.1-44.15:58.

(8) - Added *“Nontraditional permittees shall maintain written procedures for requiring compliance with department approved erosion and sediment control plans and annual standards and specifications through corrective action or enforcement action”* to clarify corrective action and enforcement action written procedures expectations for nontraditional permittees.

(9) – Language clarified.

#### **e. The annual report shall include the following information:**

(1) Clarified this provision applies to nontraditional permittees with (a) applying to projects covered under current department approved annual standards and specifications for erosion and sediment control and (b) applying to projects covered under department approved erosion and sediment control plans.

(2) Language clarified.

(3) Language clarified and redundancy eliminated.

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

Following 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. The 2023 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.

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The 2018 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 2023 permit has been revised to reflect the type of stormwater management authority that the permittee may have recognizing the differences between traditional and nontraditional permittees. This permit allows for progressive compliances and enforcement strategies which refer to a series of escalating activities permittees may use to achieve compliance (compliance assistance, warning letters, NOVs, enforcement actions). 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
- Local governments that operate as separate entities from the traditional 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 2018 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.

The 2018 permit included requirements for the use of 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, the 2018 permit included reporting requirements for permittees to report all other stormwater management facilities

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and BMPs to the DEQ BMP Warehouse. These requirements did not define the term of “BMP” in the context of MCM 5 and the 2023 permit BMP Warehouse Reporting requirements have been moved to Part III and “BMP” has been defined in the context of this new section to include stormwater management facilities, ecological restoration projects, and annual practices. Part III also replaces the conditions in the 2018 permit that required permittees to annually certify that the electronic spreadsheets were maintained. Reporting for stormwater management facilities using a spreadsheet or database is no longer required for the purposes of this permit although DEQ recognizes some permittees may want to retain this spreadsheet or database for asset management purposes.

a. (1), (2), (3), (4), (5), and (6):

Each section of Part I E.5.a. incorporates the terms “traditional” and “nontraditional” where applicable for clarification.

Added (3) – *“If the traditional permittee is a city, county, or town receiving initial permit coverage during the permit term and must obtain VSMP approval from the State Water Control Board, the permittee shall implement the VSMP consistent with the Virginia Stormwater Management Act (§ 62.1-44.15:24 et seq. of the Code of Virginia) and VSMP Regulations (9VAC25-870) as well as develop an inspection and maintenance program in accordance with Parts I E 5 b and c no later than 60 months after receiving permit coverage;”* in the event that a new Phase II MS4 traditional permittee is designated and issued permit coverage and does not already have an established VSMP. § 62.1-44.15:27. of the Code of Virginia requires all localities that operate a regulated MS4 adopt a VSMP.

b.- Revised language from *“that discharges to the MS4 as follows”* to *“as follows”* for conciseness and clarity, as stormwater management facilities within the MS4 service area owned or operated by the permittee are more often inherently part of the permittee’s MS4 and shall be included in an inspection and maintenance program and reported to the BMP Warehouse in Part III.

(1) – Added *“The permittee may use inspection and maintenance specifications available from the Virginia Stormwater BMP Clearinghouse or inspection and maintenance plans developed in accordance with the department’s Stormwater Local Assistance Fund (SLAF) guidelines”* for clarification that permittees may rely on established BMP specifications and monitoring plans to satisfy this requirement. (2) - Inspections shall be conducted by a person who is licensed as a professional engineer, architect, landscape architect, or land surveyor pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1; a person who works under the direction and oversight of the licensed professional engineer, architect, landscape architect, or land surveyor; or a person who holds an appropriate certificate of competence from the department in accordance with 9VAC25-850.

Moved (2) from Part I E.6 – *“Employees and contractors implementing the stormwater program shall obtain the appropriate certifications as required under the Virginia Stormwater Management Act and its attendant regulations.”* These stormwater certification requirements are related to MCM 5 inspection procedures more so than MCM 6 training procedures. This move was done similarly to certification requirements for erosion and sediment control being moved from MCM 6 to MCM 4. These certification requirements were moved to MCM 4 and MCM 5 recognizing consolidation efforts taking place for 9VAC25-840, 9VAC25-850, and 9VAC25-870.

c. For traditional permittees described in Part I E 5 a (1), (2), or (3), the permittee shall:

Added (4) - *“The permittee may utilize the inspection reports provided by the owner of a stormwater management facility as part of an inspection and enforcement program in accordance with 9VAC25-870-*

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114” to clarify that a permittee may incorporate inspection reports provided by the owner of a stormwater management facility, in their inspection and compliance program for consistency with VSMP requirements.

**Removed provision formerly under d.** - *“The permittee shall maintain an electronic database or spreadsheet of all known permittee-owned or permittee-operated and privately owned stormwater management facilities that discharge into the MS4. The database shall also include all BMPs implemented by the permittee to meet the Chesapeake Bay TMDL load reduction as required in Part II A. A database shall include the following information as applicable.”* Stormwater management facilities are reported, tracked, and updated by the permittee in the DEQ BMP Warehouse. Reporting requirements for the BMP Warehouse are now located in Part III. Data elements specified in d. (1), (2), (3), (4), (5), (6), (7), (8), and (9) have been moved to Part III. In (3), pervious acreage was not moved to Part III since the BMP Warehouse does not track pervious acreage; however, this information is ascertained by the department using total and impervious acreages for Chesapeake Bay TMDL modeling purposes.

**Removed provision formerly under e.** – Updates to the BMP Warehouse are required annually in Part III.

**Moved f. and g. provisions to Part III.**

**d. The MS4 program plan shall include:**

d. Language clarified and removed *“(6) The stormwater management facility spreadsheet or database incorporated by reference and the location or webpage address where the spreadsheet or database can be reviewed”* as maintaining this spreadsheet or database id no longer required.

**e. The annual report shall include the following information:**

e. Language clarified and added *“(6) A confirmation statement that the permittee electronically reported stormwater management facilities inspected using the DEQ BMP Warehouse in accordance with Part III B 5”* in order to capture BMP inspection data in the BMP Warehouse.

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

Following 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 2018 permit required permittees maintain written good housekeeping procedures for a variety of objectives and activities listed in Part I E.6.a; however, this permit condition was unclear on what activities needed to be included in generalized procedures based on MCM 6 objectives (e.g. prevent illicit discharges, improper disposal, etc.). Through permittee audits and inspections DEQ has found that following MCM 6 good housekeeping procedures is a common compliance issue. This can be for a variety reasons such as written procedures may meet permit requirements but are too vague to be useful to applicable permittee staff or contractors. Another common issue is that elements applicable to the permittee’s MS4 can be scattered through-out a comprehensive



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environmental manual making it difficult and sometimes very unlikely that permittee staff and contractors will piece together the common threads of procedures applicable to the MS4.

The written procedures for MCM 6 good housekeeping were overhauled and split into two sections (a. and b.). a. lays-out the objectives each procedure shall meet and b. lays out each activity requiring written good housekeeping procedures. This restructuring was done in order to give permittees clearer permit conditions and set expectations for clear and concise written procedures that are easily followed by permittee staff and contractors.

In order to promote contractor implementation of permittee good housekeeping procedures requirements for contract language have been moved to directly follow written procedure requirements (Part I E.6.c.). MCM 6 staff training requirements have also been moved to Part I E.6.d. for cohesion of written procedures with contract language and training plans to promote further integration of Part I E.6.a., b., c., and d.

This permit was also reformatted to include MCM 6 provisions that lacked integration with good housekeeping procedures such as incorporation of the provision prohibiting the use of anti-icing and deicing agents containing urea or other forms of nitrogen and phosphorus and following nutrient management plans. This permit also reduces redundancies of SWPPP requirements and good housekeeping procedures and distinguishes between long-term bulk material storage; an activity that defines high-priority facilities that may need a SWPPP and temporary landscaping storage which should be covered under good house-keeping procedures. This permit also encourages incorporating applicable good housekeeping procedures into SWPPPs to avoid redundant effort to achieve permit conditions. Effective implementation of good housekeeping procedures and training may in some cases eliminate the need for some facility SWPPPs. This permit also removes the term “*high potential to discharge pollutants*” from several provisions on SWPPP applicability and requirements as this qualifier has been misconstrued and has led to compliance actions stemming from differences in opinion on what may be a “high potential to discharge pollutants.” This revision should promote compliance certainty for permittees.

Lastly, this permit clarifies that DCR is the nutrient management plan approval and renewal authority and provisions have been included for requiring approval from DCR for new plans and renewal of plans prior to expiration.

a. - Reformatted to “*The permittee shall maintain and implement written good housekeeping procedures for those activities listed in Part I E 6 b at facilities owned or operated by the permittee*” to specify the objectives of each good housekeeping procedure required under Part I E 6 b.

a. - Moved elements of the following language: “*such as road, street, and parking lot maintenance; equipment maintenance; and the application, storage, transport, and disposal of pesticides, herbicides, and fertilizers.*” Road, street, and parking lot maintenance required written procedures are established in Part I E 6 b (1). Equipment maintenance required written procedures are established Part I E 6 b (5) and equipment maintenance is an activity meeting definition of a high priority facility. Written procedures for the application of pesticides, herbicides, and fertilizer are established in Part I E 6 b (6) and (7) and pesticides, herbicides, and fertilizer storage is an activity meeting the definition of a high priority facility.

(4) - “*Minimize the pollutants in stormwater runoff*” was removed from several listed activities and added to Part I E.6.a. procedure objectives to reduce redundancy.

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b. - Reformatted to *“The permittee shall develop and implement written good housekeeping procedures that meet the objectives established in Part I E 6 a for the following activities”* to specify the activities requiring written procedures that meet the objectives of Part I E 6 a.

(1) – Added *“sidewalk”* to road, street, and parking lot procedures for clarification.

(a) - Added *“Within 24 months of permit issuance, the permittee shall update and implement procedures in accordance with this subsection to include implementation of best management practices for anti-icing and deicing agent application, transport, and storage”* to ensure best management practices for anti-icing and deicing agents are incorporated into road, street, sidewalk, and parking lot procedures.

(b) - Incorporated *“Procedures developed in accordance with this subsection shall prohibit the application of any anti-icing or deicing agent containing urea or other forms of nitrogen or phosphorus”* into road, street, sidewalk, and parking lot procedures (prohibition formerly in Part I E 6 k).

(2) - Added *“Renovation and significant exterior maintenance activities (e.g., painting, building power-washing, roof resealing, and HVAC coil cleaning) not covered under a separate VSMP construction general permit. The permittee shall develop and implement procedures no later than 36 months of permit issuance.”* These activities have been found by DEQ to be common compliance issues.

(3) - Removed *“utility”* to include pumped water from all construction and maintenance activities. DEQ has developed *Guidelines for Management of Street Wastes Collected During Stormwater Conveyance System Cleaning* to be posted on the DEQ MS4 webpage.

(4) – Added *“Temporary storage of landscaping materials”* to recognize illicit discharge potential from landscaping materials and distinguish from long-term bulk material storage which is an activity that defines high priority facilities. Removed *“salt storage”* since anti-icing storage is covered under Part I E 6 b (1).

(5) - Replaced *“municipal automobiles”* with *“permittee owned or operated vehicles”* recognizing nontraditional permittees are not municipal.

(6) – Revised to *“Application of materials, including pesticides, and herbicides shall not exceed manufacturer’s recommendations”* for clarification recognizing that permittees may apply less than manufacturer’s recommendation.

(7) – Revised to *“Application of fertilizer shall not exceed maximum application rates established by applicable nutrient management plans. For areas not covered under nutrient management plans where fertilizer is applied, application rates shall not exceed manufacturer’s recommendations”* in order to integrate nutrient management plans with good housekeeping procedures.

c. - Moved from Part I E 6 l to emphasize link between established procedures and contract language.

d., e., and f. - Moved from Part I E 6 m, n, and o to emphasize link between established procedures and training plan.

Added new g. for clarification related to the 2020 census expanded areas.

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Added new h. for clarification related to the 2020 census expanded areas. Relettered existing g to i: Revised for clarification and removed “*high potential for discharging pollutants*” language to reduce subjective misinterpretation of the objective criteria established in Part I E.6.g (1), (2), (3), (4), (5), (6), (7), (8), and (9).

Relettered existing h to j. Each SWPPP as required in Part I E 6 c Part I E 6 g shall include the following:

Added q. for clarification related to the 2020 census expanded areas.

Added r. for clarification related to the 2020 census expanded areas.

Added (4) and (5):

*“(4) A description of all structural control measures such as stormwater management facilities and other pollutant source controls applicable to SWPPP implementation (e.g., permeable pavement or oil-water separators that discharge to sanitary sewer are not applicable to the SWPPP) such as oil-water separators, and inlet protection designed to address potential pollutants and pollutant sources at risk of being discharged to the MS4”*

*“(5) A maintenance schedule of all stormwater management facilities and other pollutant source controls applicable to SWPPP implementation described in Part I E 6 h (4).”*

(4) and (5) were added to capture pertinent information for SWPPP implementation.

Formerly (6): Removed “*Procedures to conduct an annual comprehensive site compliance evaluation*” since annual inspections are already required in Part I E.6.h (8).

Added (10) and (11):

*“(10) A log of modifications to the SWPPP made as the result of any unauthorized discharge, release, or spill in accordance Part I E 6 j or changes in facility activities and operation requiring SWPPP modification; and*

*(11) The point of contact for SWPPP implementation.”*

(10) and (11) were added to capture pertinent information for SWPPP implementation and in order for permittee staff and DEQ to be informed on staff responsible for SWPPP implementation.

i. – Added “*The permittee shall maintain a list of all high-priority facilities owned or operated by the permittee not required to maintain a SWPPP in accordance with Part I E 6 g and this list shall be available upon request*” for tracking high priority facilities that shall be reviewed to determine if SWPPP coverage is needed.

l. - Replaced “*criteria*” with “*definition*” of a high-priority facility since it is a defined term and the criteria in Part I E 6 g determine if a high priority facility needs SWPPP coverage.

m. Added “*If activities change at a facility such that the facility no longer meets the criteria requiring SWPPP coverage as described in Part I E 6 g, the permittee may remove the facility from the list of high-priority facilities that require SWPPP coverage,*” to distinguish changes in activities that no longer meet the definition of a high priority facility described in Part I E.6.l from activity changes that no longer meet the criteria for SWPPP coverage described in this section.

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o. - Added “*For newly established turf where nutrients are applied to a contiguous area greater than one acre, the permittee shall implement a nutrient management plan no later than six months after the site achieves final stabilization,*” to establish timeframe to implement nutrient management plans on newly established turf greater than one acre.

p. - Added “*Nutrient management plans developed in accordance with Part I E 6 n shall be submitted to the Department of Conservation and Recreation (DCR) for approval,*” to establish DCR as the nutrient management plan approval authority.

q. - Added “*Nutrient management plans that are expired as of the effective date of this permit shall be submitted to DCR for renewal no later than six months after the effective date of this permit. Thereafter, all nutrient management plans shall be submitted to DCR at least 30 days prior to nutrient management plan expiration. Within 36 months of permit coverage, no nutrient management plans maintained by the permittee in accordance with Part I E 6 n shall be expired due to DCR documented noncompliance with 4VAC50-85-130 provided to the permittee,*” to clarify nutrient management plans must be renewed by DCR and establish a timeframe renewing expired nutrient management plans.

#### **Former sections k. through o. integrated into various sections of MCM 6, MCM 5, and MCM 4.**

r. - Added “*Nutrient management plans may be maintained as a hard copy or electronically as long as the documents are available to employees at the applicable site,*” to clarify nutrient management plan record keeping requirements.

#### **t. The MS4 program plan shall include:**

(1) - Changed to require “*list of written good housekeeping procedures*” so the program plan doesn’t have to be updated with every procedure update.

(2) - Added the following data elements to the list of high priority facilities with SWPPP coverage, “*facility name, facility location, and the location of the SWPPP hardcopy or electronic document being maintained*” for tracking purposes.

(3) – Changed “*lands*” to “*locations*” for clarification.

(a) – Changed “*on which nutrients are applied*” to “*covered by each nutrient management plan*” for clarification.

(b) – Changed “*The date of the most recently approved nutrient management plan for the property*” to “*The DCR approval date and expiration date for each nutrient management plan*” for clarification.

(c) – Changed “*The location in which the individual turf and landscape nutrient management plan is located*” to “*The location of the nutrient management plan hardcopy or electronic document being maintained*” for clarification.

#### **u. The annual report shall include the following:**

(1) – Changed “*operational*” to “*written*” for consistency.

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(2) – Changed “*A summary of any new SWPPPs developed in accordance Part I E 6 c during the reporting period*” to “*A confirmation statement that all high-priority facilities were reviewed to determine if SWPPP coverage is needed during the reporting period*” in order to improve value of annual reporting element and reduce reporting burden.

(3) – Changed “summary” to “list” to promote itemization annual reporting elements for e-reporting purposes and limit narratives to providing rationale modification of SWPPPs and delisting of any high-priority facilities.

Formerly (4) - Removed “*location, total acreage, and date approved for nutrient management plans*” as these data elements are captured in the program plan.

(4) and (5):

“(4) *A summary of any SWPPPs modified in accordance with Part I E 6 j, l, or m.*

(5) *The rationale of any high-priority facilities delisted in accordance with Part I E 6 l or m during the reporting period.*”

(4) and (5) were split to distinguish modified SWPPPs to from SWPPPs no longer needed.

(6) – Changed “*summary of new nutrient management plans*” to “*The status of each nutrient management plan as of June 30 of the reporting year (e.g., approved, submitted and pending approval, and expired)*” to promote annual reporting itemization and streamlining reporting elements as well as to ensure nutrient management plans are renewed in a timely manner.

(7) - Changed “*training event*” to “*training activity*” recognizing permittee utilization of online training modules and recorded webinars for training requirements.

## **Part II TMDL Special Conditions**

### **A. Chesapeake Bay TMDL Special Condition**

MS4 permittees are required to reduce the loadings of nutrients 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 and 16% of phosphorus loads from impervious regulated acres and 6% of nitrogen loads and 7.25% of phosphorus 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

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- 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 MS4 permittees the time necessary to fully implement nutrient reductions necessary to meet the Chesapeake Bay TMDL wasteload allocations.

The "first permit term" in which the 5% reduction is required became effective on July 1, 2013 and expired 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. The "second permit term" in which the 35% reductions and the cumulative 40% reductions (addition of the first term 5% and the second term 35% requirements) became effective November 1, 2018 and expires October 31, 2023. The "third permit term" in which the final 60% reductions and the cumulative 100% (addition of the first term 5%, second term 35% and third term 60% requirements) is covered by this permit. Tables 3a-3d have been updated to show the required cumulative 100% reductions.

Nutrient 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 lbs. 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.

Additionally, by the expiration of this permit, permittees must also provide for reductions from any adjustments as a result of changes to the MS4 service area within 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.

### **Removal of Sediment Reduction Requirements**

As explained in the above Considerations section on the Virginia Chesapeake Bay TMDL Phase III WIP (Page 5), sediment reduction requirements have been removed from Part II A of this general permit and permittees will not be required to achieve 60% of L2 sediment reductions. This revision is consistent with Virginia’s Phase III WIP as well as the Principals’ Staff Committee’s August 12, 2019 final decision. BMP implementation in order to achieve 100% of L2 nutrient reductions will achieve additional sediment reductions, however sediment reduction requirements will no longer drive BMP implementation. Sediment reductions achieved by permittee BMP implementation will continue to be tracked in accordance with BMP Warehouse reporting requirements under Part III.

1. - Updated to include Phase III WIP and 100% of L2 reductions to be achieved by October 31, 2028.
2. - Removed total suspended solids from the definition of “Pollutants of concern”
3. – Updated to include “*the third phase reduction of least 60% of the L2 Scoping Run based on lands within the 2000 and 2010 expanded Census urbanized areas required by October 31, 2028*” to achieve a cumulative 100% of L2 reductions and removed total suspended solids.

Tables 3a, b, c, and d - Updated to calculate 100% of L2 reductions and removed total suspended solids.

4. and 5. – Updated to require offset for 100% from projects resulting in total phosphorous loads greater than 0.45 lb/acre/year for new sources and grandfathered projects no later than October 31, 2028.
6. – Added “*November 1, 2018*” permit term for cumulative total reduction requirements.

Added 7. “*Forty percent (40%) of L2 reductions for total nitrogen and total phosphorous shall at a minimum be maintained by the permittee during the permit term.*” The addition of this language will ensure that, at a minimum the required reductions achieved by the first and second permit terms are maintained and do not fall below the minimum required cumulative reductions.

### **12. Chesapeake Bay TMDL action plan requirements.**

#### **Added a.**

*a. Permittees applying for initial coverage under this general permit shall submit a draft first phase Chesapeake Bay TMDL action plan to the department no later than October 31, 2028, unless the department grants a later date. The required reduction shall be calculated using Tables 3a, 3b, 3c, and 3d as applicable. The first phase action plan shall achieve a minimum reduction of least 40% of the L2 Scoping Run based on lands within the 2000 and 2010 expanded Census urbanized areas no later than October 31, 2033. The action plan shall include the following information:*

*(1) The load and cumulative reduction calculations for each river basin calculated in accordance with Part II A 3, A 4, and A 5.*

*(2) The BMPs to be implemented by the permittee to achieve 40% of the reductions calculated in Part II A 13 a:*

*(a) Type of BMP;*

*(b) Project name;*

*(c) Location;*

*(d) Percent removal efficiency for each pollutant of concern; and*

*(e) Calculation of the reduction expected to be achieved by the BMP calculated and reported in accordance with the methodologies established in Part II A 9 for each pollutant of concern.”*

a. was added to provide expectations for new permittees to submit a draft first phase Chesapeake Bay TMDL action plan by October 31, 2028 to achieve 40% of L2 reductions by the end of the next permit term or October 31, 2033.

**Added 14. Chesapeake Bay TMDL implementation annual status report.**

*“a. Permittees previously covered under the General VPDES Permit for the Discharge of Stormwater from MS4 effective November 1, 2018 shall submit a Chesapeake Bay TMDL implementation annual status report in a method, (i.e. how the permittee must submit) and format (i.e. how the report shall be laid out) as specified by the department no later than October 1 of each year. The report shall cover the previous year from July 1 to June 30.*

*b. Following notification from the department of the start date for the required electronic submission of Chesapeake Bay TMDL implementation annual status reports, as provided for in 9VAC25-31-1020, such forms and reports submitted after that date shall be electronically submitted to the department in compliance with this section and 9VAC25-31-1020. There shall be at least three months' notice provided between the notification from the department and the date after which such forms and reports must be submitted electronically.*

*c. The year two Chesapeake Bay TMDL implementation annual status report shall contain a summary of any public comments on the Chesapeake Bay TMDL Action Plan received and how the permittee responded.*

*d. Each Chesapeake Bay TMDL implementation annual status report shall include the following information:*

*(1) A list of Chesapeake Bay TMDL action plan BMPs (not including annual practices) implemented prior to the reporting period that includes the following information for reported BMP;*

*(a) The number of BMPs for each BMP type;*

*(b) The estimated reduction of pollutants of concern achieved by each BMP type and reported in pounds of pollutant reduction per year; and*

*(c) A confirmation statement that the permittee electronically reported Chesapeake Bay TMDL action plan BMPs inspected using BMP Warehouse in accordance with Part III B 5.*

*(2) A list of newly implemented BMPs including annual practices implemented during the reporting period that includes the following information for each reported BMP or a statement that no BMPs were implemented during the reporting period*

*(a) The BMP type and a description of the location for each BMP;*



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*(b) The estimated reduction of pollutants of concern achieved by each BMP and reported in pounds of pollutant reduction per year; and*

*(c) A confirmation statement that the permittee electronically reported BMPs using the DEQ BMP Warehouse in accordance with Part III B 3.*

*e. If the permittee acquired credits during the reporting period to meet all or a portion of the required reductions in Part II A 3, A 4, or A 5, a statement that credits were acquired;*

*f. Pollutant load reductions generated by annual practices such as street and storm drain cleaning shall only be applied to the compliance year in which the annual practice was implemented.*

*g. The progress, using the final design efficiency of the BMPs, toward meeting the required cumulative reductions for total nitrogen, total phosphorus, and total suspended solids.; and*

*h. Any revisions made to the Chesapeake Bay TMDL action plan.*

*i. A list of BMPs that are planned to be implemented during the next reporting period.”*

### **Added 15 Offsets for Development in 2020 Census Expanded Area.**

Development within this expanded area that does not meet the 0.45 lbs/acre phosphorus criteria, needs to be evaluated for offset pollutant reductions. These projects may exceed the assumed loadings of the Chesapeake Bay TMDL. This permit requires that those excess loads be characterized with the expectation that offsets will be provided in the next permit cycle.

### **Added 16 Offsets for Grandfathered Projects.**

This requirement clarifies when additional reductions in the 2020 expanded urban areas from ‘Grandfathered’ projects are required. Projects that may be ‘Grandfathered’ as per the VSMP regulation may require additional nutrient reductions based on the criteria given in the provision. Development within this expanded area that does not meet the 0.45 lbs/acre phosphorus criteria, needs to be evaluated for offset pollutant reductions. These projects may exceed the assumed loadings of the Chesapeake Bay TMDL. This permit requires that those excess loads be characterized with the expectation that offsets will be provided in the next permit cycle.

The annual report will no longer include a status update for Chesapeake Bay TMDL implementation. Chesapeake Bay TMDL implementation annual status reports are now required to be maintained as separate document in accordance with Part I D.6. and shall be posted to the permittee’s stormwater webpage in accordance with Part I E.2.b.(5) to promote transparency and allow both DEQ and other interested parties to easily track Chesapeake Bay TMDL progress towards achieving 100% reductions by October 31, 2028. The required contents of each Chesapeake Bay TMDL implementation annual status report are located in Part II.A.14. Status report should include all BMPs implemented to date 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, 2018 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, 2018 and June 30, 2023. Permittees are not required to develop action plans during this permit term for TMDLs approved by EPA after July 1, 2023 as requiring such would be a self-modifying permit condition.

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Permittees may obtain a list of EPA approved TMDLs and the associated approvals dates from the Department's website:

(<https://www.deq.virginia.gov/our-programs/water/water-quality/tmdl-development/approved-tmdls>) or by contacting Department staff.

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.

The 2018 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 2023 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, PCBs, and Chloride. Each pollutant specific section identifies the acceptable BMPs that permittees may implement as part of the TMDL action plan.

The permit does not require specific actions in impaired streams without a TMDL. Many of the Commonwealth's urban impairments are benthic and until a stressor analysis has been completed as part of the TMDL, appropriate actions cannot be adequately determined.

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 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, usually constitute a relatively small footprint compared to the traditional (local government) MS4 permittees, and do not have access to all of the options available to traditional permittees listed in the table.

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, or other applicable sediment reduction efficiency protocols. Many local nutrient and/or sediment TMDL's can be met with a single project (e.g. stream restoration). If the TMDL cannot be met with a single project, additional projects are required.

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 of PCBs

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

To address WLAs for Chloride, traditional permittees are required to develop an anti-icing and de-icing agent education and outreach strategy. This strategy must contain a schedule that implements two or more of the strategies listed in Part I.E.1.d Table 1. Permittees shall also review standard operating procedures for anti-icing and de-icing agent application, handling, storage and transport activities and identify enhanced BMPs to make efficient management decisions regarding the use and storage of anti-icing and de-icing agents while promoting public safety.

1. - Added *“Permittees applying for initial coverage under this general permit shall develop a draft local TMDL action plan designed to reduce loadings for pollutants of concern if the permittee discharges the pollutants of concern to an impaired water for which a TMDL has been approved by the U.S. Environmental Protection Agency (EPA) prior to October 31, 2023, and in which an individual or aggregate wasteload has been allocated to the permittee. The permittee shall develop action plans to meet the conditions of Part II B 4, B 5, B 6, B 7, and B 8 as applicable. Each local TMDL action plan shall be provided to the department no later than October 31, 2028, unless the department grants a later date”* to distinguish new permittee conditions from existing permittee conditions.

2. – Modified to *“Permittees previously covered under the General VPDES Permit for Discharges of Stormwater from MS4 effective November 1, 2018 shall develop and maintain a local TMDL action plan designed to reduce loadings for pollutants of concern if the permittee discharges the pollutants of concern to an impaired water for which a TMDL has been approved by the U.S. Environmental Protection Agency (EPA) as described in Part II B 2 a and 2 b”* to distinguish new permittee conditions from existing permittee conditions.

a. – Added *“Updated action plans shall include:*

*(1) An evaluation of the results achieved by the previous action plan; and*

*(2) Any adaptive management strategies incorporated into updated action plans based on action plan evaluation.”*

(1) and (2) added to demonstrate progress for updated local TMDL action plans.

#### **5. Bacterial TMDLs.**

a. – Changed *“If the permittee is an approved VSMP authority, the permittee”* to *“Traditional permittees”* for clarification.

b. – Changed *“If the permittee is not an approved VSMP authority, the permittee”* to *“nontraditional permittees”* for clarification.

#### **6. Local sediment, phosphorus, and nitrogen TMDLs.**

a.(2) – Added *“Pollutant load reductions generated by annual practices such as street and storm drain cleaning shall only be applied to the compliance year in which the annual practice was implemented”* for clarification.

b. – Revised to *“The permittee may meet the local TMDL requirements for sediment, phosphorus, or nitrogen through BMPs implemented or sediment, phosphorus, or nitrogen credits acquired. BMPs implemented and nutrient and sediment credits acquired to meet the requirements of the Chesapeake Bay TMDL in Part II A may*

*also be utilized to meet local TMDL requirements as long as the BMPs are implemented or the credits are generated in the watershed for which local water quality is impaired.” For clarification.*

#### **7. Polychlorinated biphenyl (PCB) TMDLs.**

Added c. - *“Results of any action plan PCB monitoring or product testing conducted and any adaptive management strategies that have been incorporated into the updated action plan based upon monitoring or product testing results.” This language ensures a reporting element if such testing or monitoring is undertaken.*

#### **Added 8. Chloride TMDLs.**

*“a. Traditional permittees shall develop an anti-icing and deicing agent education and outreach strategy that identifies target audiences for increasing awareness of anti-icing and deicing agent application impacts on receiving waters and encourages implementation of enhanced BMPs for application, handling, and storage of anti-icing and de-icing agents used for snow and ice management.*

*b. Traditional permittee anti-icing and deicing agent education and outreach strategies shall contain a schedule to implement two or more of the strategies listed in Part I E 1 d Table 1 per year to communicate to target audiences the importance of responsible anti-icing and deicing agent application, transport, and storage.*

*c. No later than 36 months after permit issuance, the permittee shall review good housekeeping procedures for anti-icing and deicing agent application, handling, storage, and transport activities required under Part I E 6 b (1) (a) and identify a minimum of two strategies for implementing enhanced BMPs that promote efficient management and application of anti-icing and deicing agents while maintaining public safety.”*

On May 23, 2018, EPA approved Virginia’s first Chloride TMDL for Accotink Creek in Fairfax County. This TMDL assigned a wasteload allocation to MS4s in the Accotink Creek watershed which requires MS4s permittees to develop a TMDL action plan in accordance with Part II B. This permit establishes chloride TMDL action plan requirements. In addition to requirements under Part I E 6 b (1) (a) permittees that must develop a chloride TMDL action plan for implementation of additional BMPs for anti-icing and deicing agent application, storage, and transport. The Virginia Salt Management Strategies (SaMS) guidance document may be utilized by permittees to determine which strategies best suit their system. Traditional permittees must also develop an anti-icing and deicing agent education and outreach strategy and implement this strategy recognizing potential for residential and commercial anti-icing and deicing agent over-application. Nontraditional permittees were not considered for action plan public education requirements due to the lack of residential and commercial properties that drain to nontraditional MS4s.

#### **Added C. Inspection and maintenance of ecosystem restoration projects used for TMDL compliance.**

*“1. Within 36 months of permit issuance the permittee shall develop and maintain written inspection and maintenance procedures in order to ensure adequate long-term operation and maintenance of ecosystem restoration projects as defined in 9VAC25-890-1 and implemented as part of a TMDL action plan developed in accordance with Part II A, B, or both. The permittee may utilize inspection and maintenance protocols developed by the Chesapeake Bay Program or inspection and maintenance plans developed in accordance with the department’s Stormwater Local Assistance Fund (SLAF) guidelines.*

*2. The permittee shall inspect ecosystem restoration projects owned or operated by the permittee and implemented as part of a current TMDL action plan developed in accordance with Part II A or B no less than once every 60 months.”*

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Added C. to establish ecosystem restoration project inspection and maintenance requirements for projects implemented for TMDL action plans. The 2018 permit only required inspection and maintenance procedures for stormwater management facilities as defined in 9VAC25-870-10. Inspection and maintenance of ecosystem restoration projects implemented as part of a TMDL action plan is crucial for permittees to maintain reductions achieved by these projects in order to maintain compliance with Part II TMDL Special Conditions and Part III BMP Warehouse reporting requirements.

#### **Added Part III DEQ BMP Warehouse Reporting.**

*“A. For the purpose of Part III of this permit, best management practice or BMP means a practice that achieves quantifiable nitrogen, phosphorus, or total suspended solids reductions including stormwater management facilities, ecosystem restoration projects, annual practices, and other practices approved by the department for reducing nitrogen, phosphorus, and total suspended solids pollutants.*

*B. No later than October 1 of each year the permittee shall electronically report BMPs implemented and inspected as applicable between July 1 and June 30 of each year using the DEQ BMP Warehouse.*

*1. Traditional permittees specified in Part I E 5 a (1) shall use the DEQ Construction Stormwater Database or other application as specified by the department to report each stormwater management facility installed after July 1, 2014, to address the control of 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.*

*2. The permittee shall use the associated reporting template for stormwater management facilities not reported in accordance with Part III B 1 including stormwater management facilities installed to control post-development stormwater runoff from land disturbing activities less than one acre in accordance with the Chesapeake Bay Preservation Act regulations (9VAC25-830) if applicable and for which a General VPDES Permit for Discharges of Stormwater from Construction Activities was not required.*

*3. The permittee shall use the DEQ BMP Warehouse to report BMPs that were not reported in accordance with Part III B 1 or 2 and were implemented as part of a TMDL action plan to achieve nitrogen, phosphorus, and total suspended solids reductions in accordance with Part II A or B.*

*4. The permittee shall use the DEQ BMP Warehouse to report any BMPs that were not reported in accordance with Part III B 1, 2, or 3.*

*5. The permittee shall use the DEQ BMP Warehouse to report the most recent inspection date for BMPs in accordance with Part I E 5 b or c, or in accordance with Part II C and the most recent associated TMDL action plan.*

*C. The following information for each BMP reported in accordance with Part III B 1, 2, 3, or 4 shall be reported to the DEQ BMP Warehouse as applicable:*

*1. The BMP type;*

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2. *The BMP location as decimal degree latitude and longitude;*
3. *The acres treated by the BMP, including total acres and impervious acres;*
4. *The date the BMP was brought online (MM/YYYY). If the date brought online is not known, the permittee shall use 06/2005;*
5. *The 6th Order Hydrologic Unit Code in which the BMP is located;*
6. *Whether the BMP is owned or operated by the permittee or privately owned;*
7. *Whether or not the BMP is part of the permittee's Chesapeake Bay TMDL action plan required in Part II A or local TMDL action plan required in Part II B, or both;*
8. *If the BMP is privately owned, whether a maintenance agreement exists;*
9. *The date of the permittee's most recent inspection of the BMP; and*
10. *Any other information specific to the BMP type required by the DEQ BMP Warehouse (e.g., linear feet of stream restoration).*

*D. No later than October 1 of each year the DEQ BMP Warehouse shall be updated if an existing BMP is discovered between July 1 and June 30 that was not previously reported to the DEQ BMP Warehouse.”*

The 2018 permit required all permittee “BMPs” to be reported to the BMP Warehouse; however, the definition of “BMP” in 9VAC25-870-10 does not provide needed context for this condition and since this requirement was in Part I E 5 d (post-construction stormwater management) it is unclear whether the term “BMP” is limited to stormwater management facilities or if “BMP” applies to a broader scope of pollutant reduction practices. BMP is defined within the context of Part III to include stormwater management facilities, ecosystem restoration projects, and annual practices such as street cleaning. The requirements of the 2018 permit were moved to Part III since both practices implemented for new development in accordance with Part I E 5 as well as practices implemented for TMDL purposes in accordance with Part II should be tracked in the BMP Warehouse and reported to the Chesapeake Bay Program for modeling purposes.

### **Part IV Applicable to all State and VPDES Permits.**

C.2. – Added “*Following notification from the department of the start date for the required electronic submission of monitoring reports, as provided for in 9VAC25-31-1020, such forms and reports submitted after that date shall be electronically submitted to the department in compliance with this section and 9VAC25-31-1020. There shall be at least three months' notice provided between the notification from the department and the date after which such forms and reports must be submitted electronically*” to satisfy e-reporting requirements.

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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.

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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.