



PLANNING AND COMMUNITY DEVELOPMENT



Consultants, Builders and Developers Notice #2019-06-20

June 20, 2019

Update and Additional Guidance to Notice #2019-03-15

Topic: 2019 VSMP Guidance on Grandfathering and Continued Use of 'Old' Stormwater Part II C Technical Criteria; General Permit Procedures

2019 Construction General Permit:

On April 15, 2019 the Virginia State Water Control Board approved amendments and reissuance of the 2019 General Virginia Pollutant Discharge Elimination System (VPDES), referred to as the Construction General Permit. Construction General Permits (CGP) follow 5-year cycles; coverage begins July 1st and ends on June 30th. All 2014 CGPs will expire on June 30, 2019, therefore all active permits must be reissued under the 2019 CGP cycle or terminated. The 2019 CGP will be valid from July 1, 2019 through June 30, 2024.

The DSC has received many inquiries related to how the 2019 CGP amendments and reissuance may affect projects. This notice will provide guidance for active projects, grandfathered projects, projects that received permit coverage prior to July 1, 2014, and will outline the 2019 CGP procedures.

Grandfathering and Continued Use of Stormwater Part II C Technical Criteria

In 2014, State regulations, and the Stormwater Management Ordinance, established two scenarios whereby using the 'old' stormwater management design standards (Part IIC Technical Criteria) is allowed:

1. Grandfathering - to qualify as grandfathered, the project must meet the following three criteria:

- The project received City approval prior to July 1, 2012 (examples: Conditional Rezoning or Conditional Use Permit approved by City Council, CBPA Board approval, etc.), and;
- did not obtain 2009 CGP coverage, and;
- did not commence land disturbance prior to July 1, 2014.

Grandfathered land disturbing activities remain subject to Part II C Technical Criteria until June 30, 2019. Those portions of any grandfathered project not under construction July 1, 2019 must conform to the new Part II B Criteria that became effective on July 1, 2014. Note that this applies to projects with a site plan that was approved by the DSC prior to July 1, 2012. As per Virginia Code 15.2.2209.1 "Extension of

approvals to address housing crisis”, many approved plans are valid until July 1, 2020. This approval extension applies to all governmental approvals (i.e. zoning, land use) which will remain valid; however, the stormwater management plan will become invalid on July 1, 2019. If the project is not under construction before July 1, 2019, a site plan revision will be required to be submitted for review and approval to bring the stormwater management plan into compliance with the new Part II B Criteria prior to commencement of construction.

2. Projects with Construction General Permit Coverage prior to July 1, 2014 - to qualify under this scenario, the project must meet the following criteria:

- The project obtained initial CGP coverage prior to July 1, 2014 (meaning 2009 CGP coverage was obtained).

These projects fall under ‘Time Limits on Applicability’ and are authorized to use Part II C Technical Criteria until June 30, 2024 (two permit cycles). Those portions of the project not under construction as of July 1, 2024 must conform to the new Part IIB Criteria that became effective on July 1, 2014.

Prior to July 1, 2014 many operators rushed to obtain 2009 CGP coverage to preserve the ability to utilize Part II C Technical Criteria for their project. The State issued guidance that outlined the expectation that projects would have obtained Erosion and Sediment Control (E&S) plan approval prior to submitting for 2009 CGP coverage and reissuance of the 2014 CGP. Given the amount of permit applications received, the State and City issued further guidance that permitted projects to submit E&S plans within 60 days of 2014 CGP reissuance. In late July 2014, the City sent an additional notification that allowed operators to apply for a variance to the 60-day extension to allow sufficient time to properly prepare plans. It was the expectation of the State in 2014 that projects would obtain E&S plan approval and E&S plan approval is a requirement to reissue the 2019 CGP.

The guidance and notices sent during the 2014 reissuance cycle were not explicitly clear that plan approval was required and did not establish a deadline for obtaining approval. During the 2019 CGP reissuance process, it has come to light that some projects did not reach E&S plan approval during the 2014 permit cycle and are therefore unable to adequately complete the required information on the 2019 Registration Statement. The City wants to ensure operators have every opportunity to maintain the capability to utilize Part II C Technical Criteria; therefore, operators may follow the process below to maintain CGP permit coverage:

1. Operators must submit a 2019 Registration Statement to DSC for CGP reissuance by June 30, 2019. The E&S approval date will be blank under Section V (B).
2. DSC will notify operators in writing that the Registration Statement is incomplete, and that E&S plan approval must be obtained prior to submitting the Registration Statement to DEQ for reissuance. (Note that DSC staff will enter the Registration Statement information into the DEQ permit database to initiate a permit reissuance record, however reissuance can not be fully submitted until plan approval is obtained.)
3. Operators must resubmit their E&S plan to DSC for review by Friday, August 30, 2019 (60 days of July 1, 2019), and;
4. Operators must obtain E&S plan approval by Tuesday, December 31, 2019.

If plans are approved by December 31, 2019, the Registration Statement can be completed and submitted to DEQ for reissuance and the project will continue to be eligible to utilize Part IIC Technical Criteria. If plans are not approved by December 31, 2019, the DSC will return the incomplete Registration Statement to the operator notifying them the project is not eligible for permit reissuance. These projects would no longer be eligible to utilize Part II C Technical Criteria for design and must use the new Part II B Criteria that became effective on July 1, 2014 for any future submittals. DSC staff has coordinated this process closely with DEQ staff to ensure projects obtaining E&S approval by the December 31, 2019 deadline will receive state permit coverage. Developers, consultants, and or

operators are strongly encouraged to contact the DSC prior to E&S plan resubmittal to coordinate resubmittal requirements.

2019 Construction General Permit Procedures

Consultants, Builders and Developers [Notice #2019-03-15](#), published March 15, 2019, outlined the background and reissuance procedures for active 2014 CGP holders to apply for 2019 CGP coverage. The details below expand the 2019 CGP procedures. Be aware that all active 2014 CGPs are required to submit a Registration Statement or, if the project is eligible, a Notice of Termination. If a 2019 Registration Statement or Notice of Termination is not received before expiration of the current CGP and permit coverage is allowed to lapse or expire, operators could be held in violation of the City's Stormwater Management Ordinance and subject to enforcement procedures including civil penalty.

Registration Statement and Reissuance:

The following items associated with 2019 CGP re-issuance are important to note:

- Operators with an expiring 2014 CGP must submit a complete and signed [2019 Registration Statement](#) to the DSC. Registration Statements were requested to be submitted to DSC no later than May 1, 2019 to ensure permit coverage continuance and adequate time for processing; however, Registration Statements will be accepted until June 30, 2019. If an operator has not completed and submitted a Registration Statement for reissuance prior to July 1, 2019, their permit will expire.
- There is no fee for reissuance of permit coverage; however, DSC will not process 2019 Registration Statements to reissue permit coverage to any operator with outstanding annual permit maintenance fees until the maintenance fee balance is paid in full.
- Information listed on the 2019 CGP Registration Statement must match what is on file for the 2014 CGP. If there is any outdated information (i.e. operator, site information), a modification or transfer must be completed for the 2014 CGP prior to reissuance of permit coverage under the 2019 CGP.
- DSC will accept submittals via email to VABeachCGP@vbgov.com.
- The 2019 CGP Registration Statement has been updated and requires additional information including:
 - Site map showing location of land disturbing activities, limits of land disturbance, construction entrances and all water bodies receiving stormwater discharge. Projects with an approved Stormwater Management Plan (SWM) or E&S Plan do not need to include a separate site map.
 - Construction Activity Entrance Location (Physical address or latitude and longitude of construction entrance)
 - Date of Erosion and Sediment Control plan approval
 - See additional information on page 2 related to continued use of IIC Technical Criteria

Permit Modification

- If there are changes to be made to the information on the Registration Statement such as a new operator, change in land disturbance area, or other items, a Permit Modification must be submitted. [The Permit Modification Form](#) must be submitted to the DSC along with a Permit Modification Fee as established in the [Stormwater Management Ordinance](#).
- If modifications to an active 2014 CGP are needed, a [2014 Registration Statement](#) for modification must be submitted and processed prior to the processing of the Registration

Statement for reissuance of the 2019 CGP. Applications may be submitted at the same time, and the DSC will process them in order.

- A Permit Modification is not required to change the contact person if the operator remains the same.

Permit Termination:

The operator must submit a [Notice of Termination](#) to DSC when projects are complete. The following items must be complete prior to permit termination:

- Site passes all applicable inspections
- All stormwater management measures are in place and functioning effectively
- Final stabilization has been achieved
- Maintenance agreement(s) have been recorded
- Stormwater As-Built drawings have been reviewed and approved

Once a Notice of Termination is received, DSC will initiate a final inspection. If all inspections and required documents have been recorded and/or approved, the DSC will process the Termination in the DEQ permitting database. If there are discrepancies found, or if any of the required documents have not been completed, the operator will be notified in writing, and the permit will not be terminated until all outstanding items are satisfied. Sureties held for Land Disturbing, Stormwater or Right of Way Improvements will not be released prior to Termination of the CGP.

Permit Maintenance:

An annual Permit Maintenance Fee will be assessed by the City for continued administration of the CGP and inspection of active sites as established in the Stormwater Management Ordinance. A notice and Invoice will be sent to the operator approximately 60 days prior to the permit anniversary date until the permit is terminated. The state will not assess a separate fee for maintenance.

Links to resources and addition information:

[2019 Construction General Permit](#)

[2019 CGP Fact Sheet](#) (published by DEQ)

[2019 CGP Registration Statement](#)

[2019 CGP Notice of Termination](#)

[2019 CGP Permit Fee Form](#)

For More Information, Please Contact:

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For Information specifically related to forms (Registration Statements, Permit Modifications, Notice of Terminations), or Requests for Inspections, Please Contact:

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