

## CHAPTER 18

### OPERATOR RESPONSIBILITIES

#### 18.1 INTRODUCTION

Operators of projects regulated by the Erosion and Sediment Control Law, the Chesapeake Bay Preservation Act, the Virginia Stormwater Management Act and/or the Virginia Pollutant Discharge Elimination System program are responsible for ensuring compliance with the requirements of these programs. As discussed in earlier chapters of this Manual, these requirements vary depending on the type of land-disturbing activity being conducted and include items such as plan development and submission, implementation of the approved plans and any necessary control measures, and conducting site inspections.

Generally, the operator is the owner of any activity subject to programs mentioned above. In the context of activities required to obtain coverage under the General Construction Permit (GCP), the operator means any person associated with a construction project that:

1. has direct operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications; or
2. has day-to-day operational control of those activities at a project that are necessary to ensure compliance with a stormwater pollution prevention plan for the site or other state permit or VSMP Authority permit conditions (i.e., they are authorized to direct workers at a site to carry out activities required by the stormwater pollution prevention plan or comply with other permit conditions).

Operators may delegate responsibility for some requirements to other individuals.

#### 18.2 APPLICABILITY

In accordance with Sec. 10-49 of the Henrico County Code, the requirements of this chapter apply to operators of all regulated land-disturbing activities as described in the following sections. For help determining whether or not the proposed project is a land-disturbing activity, please refer to Chapter 3 of this Manual.

### **18.3 OPERATOR RESPONSIBILITIES ASSOCIATED WITH ALL REGULATED LAND-DISTURBING ACTIVITIES**

Operators of VESCP land-disturbing activities, VSMP land-disturbing activities, or CBPA land-disturbing activities are responsible for ensuring compliance with the requirements described in the following sections.

Before beginning a regulated land-disturbing activity, operators of the regulated land-disturbing activity or their designee(s) must:

1. Submit an Environmental Compliance Plan (ECP) satisfying the requirements of Chapter 5 of this manual;
2. Prepare and submit maintenance agreements for permanent SWM facilities for review, approval and recordation in accordance with Chapter 9 of this manual;
3. Submit an Environmental Compliance Bond satisfying the requirements of Chapter 16 to the Administrator;
4. Identify a Responsible Land Disturber for a VESCP land-disturbing activity;
5. Arrange a preconstruction meeting conducted in accordance with Chapter 17. Upon completion of the preconstruction meeting, copies of the ECP signed by the Environmental Inspector will be distributed and the land-disturbing activity will be authorized.

Once the land-disturbing activity has begun, the operators or their designees are responsible for ensuring:

1. Implementation and installation of the practices and control measures included on the ECP;
2. Maintenance of the practices and control measures included on the ECP;
3. Implementation of additional practices and/or control measures deemed necessary as a result of inspections conducted by the operator or the Administrator; and
4. Modifications to the ECP deemed necessary as a result of inspections conducted by the operator or the Administrator.

### **18.4 ADDITIONAL OPERATOR RESPONSIBILITIES ASSOCIATED WITH VSMP LAND-DISTURBING ACTIVITIES**

In addition to the responsibilities described in the previous section, operators of VSMP land-disturbing activities are also responsible for ensuring compliance with the requirements described in the following sections.

Prior to beginning the VSMP land-disturbing activity, the operator must:

1. Submit a Registration Statement for coverage under the General Construction Permit (GCP) in accordance with Chapter 12 of this Manual;
2. Identify the name, phone number, and qualifications of the personnel who will be responsible for conducting inspections. These personnel must possess knowledge in the principles and practices of erosion and sediment and stormwater management controls and the skills to assess conditions at the construction site for the operator that could impact stormwater quality and quantity. They must also have the ability to assess the effectiveness of any sediment and erosion control measures or stormwater management facilities selected to control the quality and quantity of stormwater discharges from the construction activity;
3. Identify the individuals or positions that will have delegated authority to sign inspection reports or modify the SWPPP in accordance with the signatory requirements of Section 18.10 of this chapter; and
4. Sign and date the SWPPP in accordance with the signatory requirements of Section 18.10 of this chapter.

The operator or his designee must also:

1. Pay all applicable GCP issuance fees in accordance with Chapter 12 of this Manual; and
2. Post a copy of the Notice of Coverage letter near the main entrance of the construction activity prior to the conclusion of the preconstruction meeting in accordance with Chapter 17 of this Manual.

Once the VSMP land-disturbing activity has begun, the operator or their designee must:

1. Make the SWPPP available in accordance with the requirements of Section 18.5 of this chapter;
2. Implement the SWPPP and subsequent amendments, modifications, and updates in accordance with Section 18.6 of this chapter until GCP coverage has been terminated;
3. Ensure on-site and off-site inspections required by this general permit are conducted by the qualified personnel identified by the operator in the SWPPP in accordance with Section 18.7 of this chapter;
4. Amend, modify, and/or update the SWPPP as required in accordance with Section 18.8 of this chapter; and
5. Implement corrective actions as required in accordance with Section 18.9 of this chapter.

## **18.5 AVAILABILITY OF THE SWPPP**

The SWPPP must be made available by the operator in accordance with the following:

1. A copy of the SWPPP must be available at a central location on-site for use by those identified as having responsibilities under the SWPPP whenever they are on the construction site.
2. The SWPPP and all amendments, modifications, and updates must be made available upon request to the DEQ, the EPA, and the Administrator. If an on-site location is unavailable to store the SWPPP when no personnel are present, notice of the SWPPP's location must be posted near the main entrance of the construction site.
3. The SWPPP must be available for public review in an electronic format or in hard copy. Information for public access to the SWPPP must be posted and maintained at the site. If not provided electronically, public access to the SWPPP may be arranged upon request at a time and at a publicly accessible location convenient to the operator or his designee but shall be no less than once per month and shall be during normal business hours. Information not required to be contained within the SWPPP by this general permit is not required to be released.

## **18.6 IMPLEMENTATION OF THE SWPPP**

The operator shall implement the SWPPP and subsequent amendments, modifications, and updates from commencement of land disturbance until GCP coverage has been terminated.

1. All control measures must be properly maintained in effective operating condition in accordance with good engineering practices and, where applicable, manufacturer specifications. If a site inspection identifies a control measure that is not present or is not operating effectively, corrective action(s) shall be completed as soon as practicable, but no later than seven days after discovery or a longer period as established by the VSMP authority, to maintain the continued effectiveness of the control measures.
2. If site inspections identify an existing control measure that needs to be modified or if an additional control measure is necessary for any reason, implementation shall be completed prior to the next anticipated measurable storm event. If implementation prior to the next anticipated measurable storm event is not practical, then alternative control measures shall be implemented as soon as

possible, but no later than seven days after discovery or a longer period as established by the VSMP Authority.

## **18.7 SWPPP INSPECTIONS**

On-site and off-site inspections required by the GCP shall be conducted by the qualified personnel (see Section 13.3.6 of this manual) identified by the operator in the SWPPP. The operator is responsible for insuring that the qualified personnel conduct the inspection.

### **18.7.1 INSPECTION SCHEDULE**

Inspections shall be conducted at a frequency of:

1. At least once every four business days; or
2. At least once every five business days and no later than 48 hours following a measurable storm event. In the event that a measurable storm event (see Chapter 13 of this manual for rain gauge requirements) occurs when there are more than 48 hours between business days, the inspection shall be conducted on the next business day.

Representative inspections of utility line installation, pipeline construction, or other similar linear construction activities must include evaluations of all outfalls discharging to surface waters.

### **18.7.2 INSPECTION REQUIREMENTS**

As part of the inspection, the qualified personnel shall:

1. Record the date and time of the inspection and, when applicable, the date and rainfall amount of the last measurable storm event;
2. Record the information and a description of any discharges occurring at the time of the inspection;
3. Record any land disturbing activities that have occurred outside the limits of disturbance shown on the approved erosion and sediment control plan;
4. Inspect the following for installation in accordance with the approved erosion and sediment control plan, identification of any maintenance needs and evaluation of effectiveness in minimizing sediment discharge, including whether the control has been inappropriately or incorrectly used:

- a. All perimeter erosion and sediment controls, such as silt fence;
  - b. Soil stockpiles, when applicable, and borrow areas for stabilization or sediment trapping measures;
  - c. Completed earthen structures, such as dams, dikes, ditches, and diversions for stabilization;
  - d. Cut and fill slopes;
  - e. Sediment basins and traps, sediment barriers, and other measures installed to control sediment discharge from stormwater;
  - f. Temporary or permanent channel, flume, or other slope drain structures installed to convey concentrated runoff down cut and fill slopes;
  - g. Storm inlets that have been made operational to ensure that sediment laden stormwater does not enter without first being filtered or similarly treated; and
  - h. Construction vehicle access routes that intersect or access paved roads for minimizing sediment tracking.
5. Inspect areas that have reached final grade or that will remain dormant for more than 14 days for initiation of stabilization activities;
  6. Inspect areas that have reached final grade or that will remain dormant for more than 14 days for completion of stabilization activities within seven days of reaching grade or stopping work;
  7. Inspect for evidence that the approved erosion and sediment control plan, "agreement in lieu of a plan", or erosion and sediment control plan prepared in accordance with department-approved annual standards and specifications has not been properly implemented. This includes but is not limited to:
    - a. Concentrated flows of stormwater in conveyances such as rills, rivulets or channels that have not been filtered, settled or similarly treated prior to discharge or evidence thereof;
    - b. Sediment laden or turbid flows of stormwater that have not been filtered or settled to remove sediments prior to discharge;
    - c. Sediment deposition in areas that drain to unprotected stormwater inlets or catch basins that discharge to surface waters. Inlets and catch basins with failing sediments controls due to improper installation, lack of maintenance, or inadequate design are considered unprotected;
    - d. Sediment deposition on any property (including public and private streets) outside of the construction activity covered by this general permit;
    - e. Required stabilization has not been initiated or completed on portions of the site;
    - f. Sediment basins without adequate wet or dry storage volume or sediment basins that allow the discharge of stormwater from below the surface of the wet storage portion of the basin;

- g. Sediment traps without adequate wet or dry storage or sediment traps that allow the discharge of stormwater from below the surface of the wet storage portion of the trap; and
- h. Land disturbance outside of the approved area to be disturbed;
8. Inspect pollutant generating activities identified in the pollution prevention plan for the proper implementation, maintenance and effectiveness of the procedures and practices;
9. Identify any pollutant generating activities not identified in the pollution prevention plan; and
10. Identify and document the presence of any evidence of the discharge of pollutants prohibited by this general permit.

### **18.7.3 INSPECTION REPORT**

Each inspection report shall include the following items:

1. The date and time of the inspection and when applicable, the date and rainfall amount of the last measurable storm event;
2. Summarized findings of the inspection;
3. The location(s) of prohibited discharges;
4. The location(s) of control measures that require maintenance or that have not been installed;
5. The location(s) of control measures that failed to operate as designed or proved inadequate or inappropriate for a particular location;
6. The location(s) where any evidence exists that the approved erosion and sediment control plan, "agreement in lieu of a plan", or erosion and sediment control plan prepared in accordance with department-approved annual standards and specifications has not been properly implemented;
7. The location(s) where any additional control measure is needed that did not exist at the time of inspection;
8. A list of corrective actions required (including any changes to the SWPPP that are necessary) as a result of the inspection or to maintain permit compliance;
9. Documentation of any corrective actions required from a previous inspection that have not been implemented; and
10. The date and signature of the qualified personnel and the operator or their duly authorized representative.

The inspection report and any actions taken in accordance with the SWPPP must be retained by the operator as part of the SWPPP for at least three years from the date that

general permit coverage expires or is terminated. The inspection report shall identify any incidents of noncompliance. Where an inspection report does not identify any incidents of noncompliance, the report shall contain a certification that the construction activity is in compliance with the SWPPP and the GCP. The report shall be signed in accordance with Section 18.10 of this chapter. A blank inspection form has been provided in the SWPPP template/binder and can also be found in Appendix G of this Manual.

### **18.8 AMENDING, MODIFYING AND UPDATING THE SWPPP**

1. The operator or their designee shall amend the SWPPP whenever there is a change in the design, construction, operation, or maintenance that has a significant effect on the discharge of pollutants to surface waters and that has not been previously addressed in the SWPPP.
2. The SWPPP must be amended if, during inspections or investigations by the operator's qualified personnel, or by local, state, or federal officials, it is determined that the existing control measures are ineffective in minimizing pollutants in discharges from the construction activity. Revisions to the SWPPP shall include additional or modified control measures designed and implemented to correct problems identified. If approval by the VESCP authority, VSMP authority, or department is necessary for the control measure, revisions to the SWPPP shall be completed no later than seven calendar days following approval. Implementation of these additional or modified control measures must be accomplished as described in Section 18.6 of this chapter.
3. The SWPPP must clearly identify the contractor(s) that will implement and maintain each control measure identified in the SWPPP. The SWPPP shall be amended to identify any new contractor that will implement and maintain a control measure.
4. The operator or their designee shall update the SWPPP no later than seven days following any modification to its implementation. All modifications or updates to the SWPPP shall be noted and shall include the following items;
  - a. A record of dates when:
    - (1) Major grading activities occur;
    - (2) Construction activities temporarily or permanently cease on a portion of the site; and
    - (3) Stabilization measures are initiated.
  - b. Documentation of replaced or modified controls where periodic inspections or other information have indicated that the controls have been used inappropriately or incorrectly and where modified as soon as possible;
  - c. Areas that have reached final stabilization and where no further SWPPP inspection requirements apply;



- d. All properties that are no longer under the legal control of the operator and the dates on which the operator no longer had legal control over each property;
  - e. The date of any unauthorized discharges identified in the GCP, the discharge volume released, and what actions were taken to minimize the impact of the release;
  - f. Measures taken to prevent the reoccurrence of any prohibited discharge; and
  - g. Measures taken to address any evidence identified as a result of an inspection.
5. Amendments, modifications, or updates to the SWPPP shall be signed in accordance with Section 18.10 of this chapter.

## **18.9 CORRECTIVE ACTIONS**

1. The operator or their designee shall implement the corrective action(s) identified as a result of an inspection as soon as practicable, but no later than seven days after discovery, or a longer period as approved by the VSMP authority. If approval of a correction action by a regulatory authority (e.g., Administrator and/or DEQ) is necessary, additional control measures shall be implemented to minimize pollutants in stormwater discharges until such approvals can be obtained.
2. The operator or their designee may be required to remove accumulated sediment deposits located outside of the construction activity covered by this general permit as soon as practicable in order to minimize environmental impacts. The operator must notify the VSMP authority and DEQ and must obtain all applicable federal, state, and local authorizations, approvals, and permits prior to the removal of sediments accumulated in surface waters, including wetlands.

## **18.10 SWPPP SIGNATORY REQUIREMENTS**

1. All registration statements shall be signed as follows:
  - a. For a corporation: by a responsible corporate officer. For the purpose of this chapter, a responsible corporate officer means: (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy-making or decision-making functions for the corporation; or (ii) the manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions that govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long-term compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for

- state permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;
- b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or
  - c. For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this chapter, a principal executive officer of a public agency includes: (i) the chief executive officer of the agency or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.
2. All reports required by the GCP, including SWPPPs, and other information requested by the board or the department shall be signed by a person described in Section 18.10, Item 1 or by a duly authorized representative of that person. A person is a duly authorized representative only if:
    - a. The authorization is made in writing by a person described in Section 18.10, Item 1;
    - b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the operator. (A duly authorized representative may thus be either a named individual or any individual occupying a named position); and
    - c. The signed and dated written authorization is included in the SWPPP. A copy must be provided to the department and VSMP authority, if requested.
  3. If an authorization under Section 18.10, Item 2 is no longer accurate because a different individual or position has responsibility for the overall operation of the construction activity, a new authorization satisfying the requirements of Section 18.10, Item 2 shall be submitted to the VSMP authority as the administering entity for the board prior to or together with any reports or information to be signed by an authorized representative.
  4. Any person signing a document under Section 18.10, Items 1 or 2 shall make the following certification:

*"I certify under penalty of law that I have read and understand this document and that this document and all attachments were prepared in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are*

*significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."*

#### **18.11 GCP MAINTENANCE, MODIFICATION, TRANSFER, AND TERMINATION**

The operator's responsibilities for maintaining, modifying, transferring, and terminating the GCP are contained in Chapter 12 of this Manual.