

**Letter of Agreement
Between
The Virginia Department of Conservation and Recreation
And
The U.S. Environmental Protection Agency Region III**

The U.S. Environmental Protection Agency (EPA), Region III and the Commonwealth of Virginia Department of Conservation and Recreation (DCR) recognize the shared responsibility to ensure the protection of our air, water, and land. Through this Letter of Agreement, EPA Region III and DCR commit to work together to strengthen the Virginia Stormwater Program so that it can achieve its environmental and regulatory objectives. The elements of the Management Plan described below are intended to address the findings of the Stormwater Assessment Report finalized in September 28, 2012. In implementing this Management Plan, EPA and DCR agree to resolve differences between the two agencies related to legal, regulatory, and policy matters in a timely and equitable manner. In the event that EPA and DCR are unable to reach a mutually satisfactory resolution of a specific matter, the agencies agree to elevate the relevant issues to an appropriate management level for further negotiation.

Management Plan

MS4 Permitting Strategy: DCR will develop a permitting strategy which will identify the resources for implementation and establish a schedule to accomplish the items identified below. The schedule will include adequate time for: EPA review of all permits; locality negotiation; procedures required by the Virginia Administrative Process Act; adequate public notice; Code of Federal Regulations process; and DCR review. DCR will implement the approved Strategy.

Phase I MS4 Permit Issuance

DCR began the process by developing a draft template for one Phase I municipality, Arlington County in January 2012. DCR submitted the draft template Arlington County Permit for informal EPA review on March 13, 2012. On April 4, 2012, EPA supplied informal comments on the draft template Arlington County Permit. On April 17, 2012, DCR provided a draft template permit to Arlington County requesting comment by Friday May 18, 2012. On July 31, 2012 DCR submitted a draft permit for EPA review and comment. EPA requested an extension to provide comment to DCR by October 31, 2012. Upon receipt of EPA comment, DCR will make relevant changes and follow the process allowing for public comment. It is understood by EPA and DCR that in order to facilitate issuance, the Arlington County draft permit shall serve as a template for other Phase I jurisdictions in the Commonwealth. DCR and EPA will commit to forwarding the proposed permit through the process in a reasonable timeframe following the Virginia Administrative Process Act and the public notice requirements found in the VSMP regulations. It is understood by EPA and DCR

that any specific objection to a permit may delay issuance of that permit until outstanding issues are resolved or EPA issues the permit as provided in 40 CFR 123.44. It is further understood that in the event of any delay, EPA will work with DCR to renegotiate the timeline set forth herein. In the event that EPA or DCR anticipate a delay in the below schedule, they will notify the other party as soon as possible and will renegotiate an expeditious schedule. Following the EPA comment period, DCR will work on the remaining permits, following the Arlington County permit as a template, and will complete negotiations with the remaining ten Phase I MS4s expeditiously.

Permits will be consistent with the Chesapeake Bay TMDL and the Virginia Phase I/II Watershed Implementation Plan to meet the Level 2 scoping run for existing developed lands, on a schedule of three permit cycles (5 year cycles), as well as appropriate accountability measures for plan review and approval, inspections, enforcement, operation and maintenance. EPA will conduct its permit adequacy reviews to ensure consistency with the Clean Water Act and attendant regulations.

Timeline for Phase I Permit Reissuance

Cognizant of staff resources, DCR will utilize elements of the Arlington County permit that have been through EPA comment and public comment in the remaining ten permits. The schedule for permit issuance is set forth below:

- September 28, 2012, EPA shall submit comments to DCR on Arlington County draft permit
- 21 Days from Receipt of EPA Comments, DCR shall satisfactorily address EPA comments and begin public comment period. Public comment must be at least 30 days.
- In the event that modifications to the permit are necessary as a result of the comment period, within 30 days from the close of the public comment period, DCR shall modify permit as necessary per public and EPA comment and submit proposed permit to EPA for review.
- 21 Days from receipt of EPA comment, DCR shall address EPA comments and submit the revised permit for EPA review and approval.
- 14 Days following EPA approval, DCR shall issue the Arlington County Permit.
- Commencing December 31, 2012, DCR shall submit bimonthly a new Phase I permit for EPA review and comment. The timeframes identified above shall be followed.

Reissuance of the Phase II MS4 General Permit in 2013

Reissue the Phase II MS4 General Permit in 2013 consistent with the Chesapeake Bay TMDL and the Virginia Watershed Implementation Plan I & II. EPA will conduct its permit adequacy reviews consistent with the Clean Water Act and attendant regulations. DCR began the regulatory process for development of a Small MS4 General Permit in May 2011. A timeline to have a revised permit in place by July 2013 is below:

- September 28, 2012, DCR shall propose regulations to the Board.
- November 5, 2012, DCR shall publish proposed regulations in the Virginia Regulatory Town Hall.
- November 5 2012, DCR shall commence the 60-day public comment period and submit the regulations for EPA comment and review.
- 30 days following receipt of EPA comments, DCR shall address EPA comments and resubmit for EPA review, if necessary.
- March 2013, letter to be issued by Counsel in the Attorney General's Office.
- March 15 2013, EPA to provide verbal concurrence with the final regulations.
- March 30, 2013, take final regulation to Board.
- July 1, 2013, effective date of new permit.

Compliance Monitoring Strategy for the MS4 and Construction Program

DCR will develop a Compliance Monitoring Strategy that considers the guidance set forth in the 2007 Memorandum on "Clean Water Act National Pollutant Discharge Elimination System Compliance Monitoring Strategy for the Core Program and Wet Weather Sources". The final Strategy will be submitted for EPA review and approval by June 30, 2013. The Strategy should:

- Ensure all MS4s are inspected and audited on a regular basis and noncompliance is addressed in an effective and timely manner. Ensure construction sites are inspected on a regular basis and noncompliance is addressed in an effective and

timely manner following EPA guidance of 10% annually for large construction activities and 5% for small construction activities.

- Conduct an appropriate combination of audits, on-site inspections and annual report reviews to determine compliance with permits and applicable regulatory requirements.
- Identify and prioritize MS4 Phase I, MS4 Phase II and construction universes for inspection and audits.
- Provide for oversight of jurisdictions implementing aspects of the Virginia Stormwater Management Regulations.
- Take into account available Agency resources.

DCR will submit an interim Compliance Monitoring Strategy by December 31, 2012 for EPA review and comment. The interim strategy will identify the Phase I and Phase II facilities to be inspected from January to July of 2013 and describe the annual report review procedures that will be followed during that time period.

Data Management System

EPA requires that certain data elements are entered into the national data system. These data elements are identified in the 2007 Memorandum "ICIS Addendum to the Appendix of the 1985 Permit Compliance System Statement". Additionally, efficient program implementation requires a comprehensive data system. For both the MS4 and construction programs DCR will track the necessary compliance information, e.g., inspections/audits, return to compliance, annual report submittal and reviews (for MS4s), as well as the necessary documentation to estimate pollutant load reductions for the Chesapeake Bay, and other TMDLs, as appropriate. DCR will also commence entering all required data into the ICIS data system within a reasonable timeframe upon receipt of access to the data system. EPA will provide support to this effort by providing access and training for the system.

Workload Analysis

DCR will conduct a work load analysis for implementation of its construction and MS4 permit programs and submit for EPA review and approval by June 30, 2013. This work analysis will examine the required resources to implement the programs at the central office and regional office level. The work load analysis will specifically address the resource needs for program implementation, permitting, inspection, enforcement and data management at the central office and regional office level. In the event that there are identified short falls to implement these programs, DCR will identify what measures it will take to provide the necessary resources to implement the program.

Nature of Agreement

This Letter of Agreement is not a contract; it is a statement of goals and procedures by which the parties intend to meet their obligations under state and federal law. Nothing herein shall be construed as an admission by EPA or Virginia. The parties do not intend

that this Letter of Agreement waive any party's sovereign immunity, or that it create or waive any cause of action or third party right of action or any claim to a right or benefit in any judicial or administrative forum. This Letter of Agreement shall not be construed to create any right to judicial review involving compliance or noncompliance with this Letter of Agreement. The execution and implementation of this Letter of Agreement does not constitute an explicit or implicit agreement by the parties to subject themselves to the jurisdiction of any state or federal court, and does not purport to authorize or excuse the violation of any applicable law or regulation or the lawful order of any court; nor shall anything in this Letter of Agreement be construed to require actions by EPA or Virginia that are inconsistent with local, state or federal laws or any regulation or court order. This Letter of Agreement is effective as of the date of signature of the last party to sign below.



Jon M. Capacasa, Director
Water Protection Division, USEPA Region III

10/01/2012
Date



David A. Johnson, Director
Department of Conservation and Recreation

9/27/12
Date

