



Department of Public Works and Environmental Services

Technical Bulletin

**Subject: Stormwater Management Ordinance
Requirements for Grandfathered Projects and Projects
with State General Permit Coverage**

Date: February 19, 2014 No.: 14-04

Summary: The Stormwater Management Ordinance (Ordinance), Chapter 124 of The Code of the County of Fairfax, Virginia, becomes effective July 1, 2014. Land-disturbing activities that are not exempt from the Ordinance and that either do not have coverage under the state General Permit for Discharges of Stormwater from Construction Activities prior to the effective date, or do not meet the criteria for grandfathering, must comply with the new technical requirements contained in Article 4 of the Ordinance.

This document provides initial guidance, policy, and procedures for implementing the Ordinance provisions for grandfathering and for land-disturbing activities with state general permit coverage. This document is intended only as guidance and not as a substitute for the actual text of the code. The County anticipates issuing further guidance in the near future, which will expand upon some of the policies and procedures found in this bulletin. The Ordinance does not prevent an applicant from designing to a more stringent standard if they choose to do so.

Effective Date: Immediately.

Background: On January 28, 2014, the Fairfax County Board of Supervisors adopted the new Ordinance and related amendments to the Public Facilities Manual (PFM). The new Ordinance and PFM amendments implement the Virginia Stormwater Management Act (Va. Code Ann. § 62.1-44.15:24, et seq.) and Virginia Stormwater Management Program (VSMP) Regulation (9VAC25-870 et seq.). The Ordinance becomes effective July 1, 2014, except that the Board approval allows for deferring implementation if the State delays the effective date. The provisions in §124-1-11 (Time Limits on Applicability of Approved Design Criteria) that address projects with general permit coverage, and the provisions in §124-1-12 (Grandfathering) are mandated by the state regulations.

Guidelines: A detailed guidance document, *Guidelines for Applying the Grandfathering or Time Limits on Applicability of Approved Design Criteria Provisions of the Stormwater Management Ordinance of Fairfax County*, is attached.

Please note that the information contained in this technical bulletin is based on staff's current understanding of the regulatory intent of the grandfathering and time limits provisions of the state regulations. Subsequent regulatory changes and/or additional regulatory guidance from the Virginia Department of Environmental Quality could affect the content of the guidance document. The County anticipates issuing additional technical bulletins before the Ordinance becomes effective and will update these policies and procedures if necessary.



If you have any questions, please contact the Site Code Research and Development Branch, at **703-324-1780, TTY 711.**

Approved by: Audrey Clark, Acting Director
Land Development Services, DPWES
120585 Government Center Parkway, Suite 444
Fairfax, Virginia 22035
703-324-1780 TTY 711

Attachment: Guidelines for Applying the Grandfathering and Time Limits on Applicability of Approved Design Criteria Provisions of the Stormwater Management Ordinance of Fairfax County

**Guidelines for Applying the Grandfathering and
Time Limits on Applicability of Approved Design Criteria
Provisions of the Stormwater Management Ordinance of Fairfax County**

Introduction:

On January 28, 2014, the Fairfax County Board of Supervisors adopted the new Stormwater Management Ordinance of Fairfax County (ordinance) and related amendments to the Public Facilities Manual (PFM). The new ordinance and PFM amendments implement the Virginia Stormwater Management Act (Va. Code Ann. § 62.1-44.15:24, et seq.) and Virginia Stormwater Management Program (VSMP) Regulation (9VAC25-870 et seq.). The ordinance becomes effective July 1, 2014, except that the Board approval allows for deferring implementation if the State should decide to delay the effective date.

The provisions in §124-1-11 (Time Limits on Applicability of Approved Design Criteria) that address land-disturbing activities with existing coverage under the General Permit for Discharges of Stormwater from Construction Activities (general permit), and the provisions in §124-1-12 (Grandfathering) are mandated by the state regulations. Land-disturbing activities that are not exempt from the ordinance and that either do not have coverage under the general permit prior to the effective date or do not meet the criteria for grandfathering, must comply with the new technical requirements contained in Article 4 of the ordinance.

A land-disturbing activity is not required to meet the new technical criteria of Article 4 if one of the following conditions applies:

1. The land-disturbing activity is exempt from the ordinance because it meets the Exemptions criteria of §124-1-7.
2. The land-disturbing activity has existing coverage under the 2009 general permit and the operator obtains, from the Virginia Department of Environmental Quality (DEQ), continuation of coverage under the 2014 general permit¹;
3. The operator obtains, from DEQ, initial general permit coverage under the 2009 general permit and continuation of coverage under the 2014 general permit prior to July 1, 2014;
or
4. The project is considered grandfathered under the provisions of §124-1-12.

¹ Single family residences separately built, disturbing less than one acre, and not part of a common plan of development, including additions or modifications to existing single-family detached residential structures, are not required to obtain general permit coverage after July 1, 2014 and are therefore not required to apply for continuation of coverage.

Construction activities with existing general permit coverage (Time Limits on Applicability of Approved Design Criteria):

Land-disturbing activities with existing general permit coverage that will not complete construction before July 1, 2014, must obtain continuation of general permit coverage from DEQ. Owners/operators must submit a complete and accurate [registration statement](#), DEQ [fee form](#) and any applicable fee(s) shown in the fee schedule published at [9VAC25-870-820](#), on or before June 1, 2014. Projects that obtain continuation of general permit coverage remain subject to the County's current technical criteria contained in Article 5 and the water quality and quantity technical provisions of the PFM in effect on June 30, 2014, for two additional general permit cycles. Portions of the project not under construction at the end of the second permit cycle on June 30, 2024, must meet any new technical criteria adopted by the State Water Control Board and the PFM in effect at that time.

Single-family residences (including additions or modifications to existing single-family detached residential structures) separately built, disturbing less than one acre, that are not part of a "common plan of development or sale" are not required to have general permit coverage after July 1, 2014, and therefore need not apply for continuation of coverage. Existing general permit coverage will expire June 30, 2014, but the construction activity will remain subject to the existing technical requirements.

Single-family residential construction that is part of a common plan of development or sale may need to continue general permit coverage in order to remain subject to the existing technical requirements. A common plan of development or sale is defined by the ordinance in §124-1-5 as a contiguous area where separate and distinct construction activities may be taking place at different times on different schedules. For example, a residential lot may be considered part of a common plan of development or sale if it lies within a residential subdivision with on-going construction activity or is part of a larger mixed-use development being built in phases. If you believe you may be part of a common plan of development or sale you can contact the Warrenton Satellite office of DEQ at 540-347-6420 to confirm the status of your construction activity.

Under 9VAC25-880-50.A.2.b, any operator who currently has general permit coverage associated with the construction of a single-family residence separately built, disturbing less than one acre and part of a larger common plan of development or sale, and who intends to continue coverage under the 2014 general permit, is not required to submit a registration statement or the state portion of the permit fee, provided that: (1) the stormwater management plan for the larger common plan of development or sale provides permanent control measures (i.e., stormwater management facilities) encompassing the single-family residence; and (2) the operator updates their stormwater pollution prevention plan (SWPPP) to comply with the requirements of the new 2014 general permit no later than 60 days after the date of coverage. Additional information about coverage under the state general permit is available from DEQ at the following link: <http://www.deq.state.va.us/Programs/Water/StormwaterManagement/VSMPPPermits/ConstructionGeneralPermit.aspx>. Specific questions related to continuation of general permit coverage should be directed to the Warrenton Satellite office of DEQ at 540-347-6420.

Projects that obtain initial general permit coverage before July 1, 2014 (County Code §124-1-11, Time Limits on Applicability of Approved Design Criteria):

Owners/operators may apply to DEQ for initial coverage under the 2009 general permit by submitting a complete and accurate [registration statement](#), DEQ [fee form](#) and applicable fee(s) shown in the fee schedule published at [9VAC25-870-820](#), on or before June 1, 2014.

Owners/operators must also obtain from DEQ continuation of coverage under the 2014 general permit. Land-disturbing activities that obtain initial general permit coverage before July 1, 2014, will remain subject to the technical criteria of Article 5 and the water quality and quantity technical provisions of the PFM in effect on June 30, 2014, for two additional general permit cycles. Portions of the project not under construction at the end of the second permit cycle on June 30, 2024, must meet any new technical criteria adopted by the State Water Control Board and the PFM in effect at that time. Additional information about coverage under the state general permit is available from DEQ at the following link:

<http://www.deq.state.va.us/Programs/Water/StormwaterManagement/VSMPPermits/ConstructionGeneralPermit.aspx>.

Projects that meet the Grandfathering criteria of County Code §124-1-12:

Plans that meet the grandfathering criteria of §124-1-12 are subject to the technical criteria of Article 5 and the water quality and quantity technical requirements of the PFM in effect on June 30, 2014, for one additional general permit cycle. Portions of the project not under construction at the end of the permit cycle on June 30, 2019, must meet any new technical criteria adopted by the State Water Control Board and the PFM in effect at that time.

Grandfathering is relevant to those who intend to obtain general permit coverage after July 1, 2014. If an operator obtains general permit coverage or construction commences prior to July 1, 2014, then the Time Limits on Applicability of Approved Design Criteria of §124-1-11 apply.

The [Guidance Document on the Implementation of the Virginia Stormwater Management Regulations Grandfathering Provision](#) published by the Virginia Department of Conservation and Recreation (DCR) on May 15, 2012, provides the following guidance on grandfathering:

“In order for land-disturbing activities to be considered as grandfathered until June 30, 2019, other than locality, state, and federal projects for which there has been an obligation of locality, state, or federal funding, in whole or in part, prior to July 1, 2012, or where governmental bonding or public debt financing has been issued for a project prior to July 1, 2012, the following conditions must be met:

- 1. The land-disturbing activity for which a currently valid proffered or conditional zoning plan, preliminary or final subdivision plat, preliminary or final site plan or zoning with a plan of development, or any document determined by the locality as being equivalent thereto, must be approved by a locality prior to July 1, 2012;*
- 2. No coverage under the VSMP General Permit for Discharges of Stormwater from Construction Activities has been issued prior to July 1, 2014;*

3. *The document approved by the locality must include a layout; and*
4. *The document approved by the locality must include sufficient information for the locality to find that the resulting land-disturbing activity will be compliant with the requirements of the post development design criteria found in Part II C².*

Revisions to the state regulation at 9VAC25-870-48.A.3, adopted by the State Water Control Board on December 17, 2013, added the requirement that “*Land disturbance did not commence prior to July 1, 2014.*”

DCR offered the following additional guidance about what constitutes a “layout” in item 3 above:

In considering whether a land-disturbing activity can be considered grandfathered, a locality should require that the approved document includes a conceptual drawing that identifies the location of the proposed stormwater facilities and includes the pre and post development calculations that detail the required pollutant reduction necessary to comply with the water quality design criteria, as well as, the calculations necessary to determine compliance with the water quantity design criteria. Land-disturbing activities that do not include these necessary items should not be considered grandfathered.

Ordinance §124-1-12 lists the criteria for grandfathering. Locality, state and federal projects are considered grandfathered if there has been an obligation of local, state or federal funding, in whole or in part, prior to July 1, 2012, or the Department of Conservation and Recreation approved a stormwater management plan prior to July 1, 2012; and general permit coverage was not issued nor did land disturbance occur prior to July 1, 2014. A privately-funded project is considered grandfathered if:

1. A currently valid proffered rezoning or P district rezoning or other rezoning with a plan of development, special exception, special permit, variance, preliminary or final subdivision plat, subdivision construction plan, preliminary or final site plan, or grading plan, was approved by the County prior to July 1, 2012; and
2. The proffered rezoning or P district rezoning or other rezoning with a plan of development, special exception, special permit, variance, preliminary or final subdivision plat, subdivision construction plan, preliminary or final site plan, or grading plan provides sufficient information to demonstrate that the resulting land-disturbing activity will comply with the technical requirements of Article 5 and include, as a minimum, the following: (i) a conceptual drawing that identifies the location of the proposed stormwater facilities; (ii) pre- and post-development calculations that detail the required pollutant reduction necessary to comply with the water quality design criteria; and (iii) calculations necessary to determine compliance with the water quantity design criteria; and

² 9VAC25-870-93 et seq. Technical Criteria for Regulated Land-Disturbing Activities: Grandfathered Projects and Projects Subject to the Provisions of [9VAC25-870-47 B](#).

3. The proffered rezoning or P district rezoning or other rezoning with a plan of development, special exception, special permit, variance, preliminary or final subdivision plat, subdivision construction plan, preliminary or final site plan, or grading plan has not been subsequently modified or amended in a manner resulting in an increase over the previously approved plat or plan in the amount of phosphorus leaving each point of discharge or the volume or rate of runoff; and
4. A state (VSMP) permit [e.g. general permit coverage] has not been issued prior to July 1, 2014; and
5. Land disturbance did not commence prior to July 1, 2014.

Grandfathered plans remain subject to the stormwater management technical criteria for water quality and water quantity in Article 5 of the ordinance and as set forth in the PFM in effect on June 30, 2014, for one five-year general permit cycle. Portions of the project not under construction on June 30, 2019, must meet any new technical criteria adopted by the State Water Control Board and the PFM in effect at that time. Where governmental bonding or public debt financing has been issued for locality, state or federal projects prior to July 1, 2012, there is no sunset date for grandfathering.

County process for grandfathering interpretations:

The County anticipates creating a list of approved plans and related plans including whether or not they appear to meet the conditions for grandfathering. The County intends to have the list available in March. Applicants interested in their plan's status can review the list. If a plan is not listed, or the designation on the list appears to not consider other qualifying factors, then applicants can request an interpretation from the County. Determination requests for specific sites with one detailed development layout may be submitted for review. Among the factors that will determine whether or not grandfathering applies are the following:

1. Was a plan approved by the County before July 1, 2012?
2. Was sufficient information and calculations provided on the approved plan to demonstrate that the plan complied with the water quality and water quantity requirements in effect at the time of approval?
3. Was general permit coverage issued prior to July 1, 2014?
4. Did land disturbance occur prior to July 1, 2014?

Copies of all relevant plans must be submitted with the request. Some requests may require the County to coordinate the review with DEQ in order to make the determination. Additional guidance will be issued once the County process has been fully developed.

Policy on mixing old and new technical criteria:

Grandfathered plans or land-disturbing activities that obtain general permit coverage prior to July 1, 2014, may use the existing technical criteria as outlined in Article 5 of the ordinance or, at the applicant's discretion, may design to the new technical criteria of Article 4. Plans must consistently apply either the old or new technical criteria in their entirety. Applicants may not "mix and match" computational methods or pollutant removal efficiencies. Applicants will be required to indicate with their submittal which design criteria is being applied.

Additional resources to be available:

The County is developing additional resources to help clarify the ordinance requirements for plans subject to grandfathering or time limits on applicability of approved design criteria. Among the subjects to be covered by future technical bulletins are the following:

- A County Web page for access to the PFM technical criteria and any associated Letters to Industry or other documentation that is relevant to plans grandfathered under §124-1-12 or plans subject to Time Limits on Applicability of Approved Design Criteria under §124-1-11. This archive will remain accessible until grandfathering or time limits expire.
- A County Web page with Frequently Asked Questions (FAQ) of policies, procedures, and guidance for implementing the grandfathering and time limits provisions. The Web page will include information on how to request a grandfathering interpretation and examples of development scenarios that may or may not meet the criteria for grandfathering.
- Additional guidance on when and how applicants can submit plans to DPWES under the new ordinance but prior to the ordinance effective date. This policy and procedure will allow applicants to apply the new technical criteria of Article 4 and submit plans for review beginning May 1, 2014.

If you have any questions, please contact the Site Code Research and Development Branch, at **703-324-1780, TTY 711.**