

**Chesapeake Bay Local Assistance Board
Policy Committee
Tuesday, November 3, 2009
900 East Main Street
Richmond, Virginia**

Chesapeake Bay Local Assistance Board Policy Committee Members Present

William E. Duncanson, Committee Chair
Donald W. Davis, Board Chair
Beverly D. Harper

Chesapeake Bay Local Assistance Board Policy Committee Members Not Present

Gregory C. Evans
John J. Zeugner

DCR Staff Present

Joan Salvati, Director, Division of Chesapeake Bay Local Assistance
David Sacks, Assistant Director, Division of Chesapeake Bay Local Assistance
Christine Watlington, Policy, Planning and Budget Analyst
Shawn Smith, Principal Environmental Planner
Michael R. Fletcher, Board and Constituent Services Liaison
Daniel Moore, Principal Environmental Planner
Nancy Miller, Senior Environmental Planner
Adrienne Kotula, Principal Environmental Planner
Nathan Hughes, Watershed Specialist
Melissa Doss, Senior Environmental Planner
Elizabeth Andrews, Office of the Attorney General

Others Present

Diana Parker, Falls of the James Sierra Club

Call to Order

Mr. Duncanson called the meeting to order and asked for the roll call. A quorum was declared present.

Discussion of Policy Items

Mr. Duncanson turned to Ms. Salvati for the discussion of policy items.

Ms. Salvati said that staff had been working hard to revise the review components of the Compliance Evaluation process. Staff is close to concluding the first round of compliance evaluations.

She said that as staff begins the second round they would be reviewing the components from the first round to determine what should be amended or added.

She said that Mr. Sacks would walk through a presentation and then review the compliance evaluation matrix provided in member packets.

Ms. Salvati noted that Mr. Evans and Mr. Zeugner were not able to attend the meeting of the Policy Committee. However, Mr. Zeugner provided written comments regarding the compliance evaluation process.

Mr. Sacks began a review of the Compliance Evaluation process, referencing PowerPoint slides in his presentation. A copy of the presentation slides is available from DCR. He also referenced the staff report that had been including in the packet for the meeting. That report provided background information on the compliance evaluations requirements and summarized any changes staff would be recommending.

Local Program Compliance Evaluations

- An evaluation of the implementation of the locality's Bay Act program
- Occur approximately every five years
- Review is based on requirements in the Regulations
- Formal Review by the Chesapeake Bay Local Assistance Board
- Initial Reviews evaluated implementation of the Phase I program

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“Upon a satisfactory finding resulting from the compliance review, the Board will certify that the local program is being implemented and enforced ... consistent with the Act and [Regulations] ... and is therefore in compliance.”

As of September 2009, 83 of 84 localities have completed a review; 71 localities have been found fully compliant.

Mr. Sacks said that staff would not be recommending any substantive changes to the review process.

- Compliance Evaluation Procedures originally adopted by the Board on Sept. 16, 2002; most recently revised June 2008
- Staff have reviewed the elements of the compliance review and are recommending additional areas of focus
- No substantive changes expected to review process; minor modifications proposed for review elements

Overview of Recommended Changes

Mr. Sacks said that staff had previously been reviewing Phase I and was now recommending an expansion of all three phases.

- Review of Implementation of all three Program Phases
 - Phase I: Review of all Performance Criteria
 - Phase II: Comprehensive Plan Components
 - Phase III: Review of Development Ordinances and Processes for inclusion of required provisions
- Formal review for plan and plat requirements in ordinances
- Some changes to existing standards for being found compliant

Potential Review Elements

- 33 Regulatory Requirements
- Each based on a specific requirement in the Regulations
- 8 new review items
- 6 requirements with a modification of the existing review strategy
- 19 review strategies remain the same
- Details itemized in document:

Proposed Compliance Evaluation Review Elements

Mr. Sacks reviewed a document provided to Board members entitled *Review of Proposed Compliance Evaluation Review Elements*. The document was dated 10/16/09 and is available from DCR.

Each of the 33 requirements were addressed in these areas:

- Requirement
- Regulatory Citation
- Description
- Review Strategy
- Notes
- Proposed Compliance Standard

1. Current CBPA Map

Mr. Sacks said that staff would review the map to make sure that it is consistent with the ordinance. He said there are a variety of ways to address this. The intent is to ensure that the locality adequately implements the program and identifies the properties within the CPBA.

2. Current CBPA Ordinance

The locality should be able to provide a current clean copy upon request.

3. Current CBPA Comprehensive Plan

This is a review of the Comprehensive Plan to ensure that information provided to the Board and approved under Phase II is still current. If for some reason a requirement has been omitted as a result of a subsequent revision, the locality would be directed to revise the plan to include that element.

Mr. Sacks noted that there may be cases where a data element became outdated because the primary data source was updated. He cited the example of where frequently localities will include flood plain information. In that case if FEMA has modified the flood plain, staff would recommend that necessary revisions be included with the next update of the plan.

Mr. Davis asked if this matrix had been provided to the localities.

Mr. Sacks said that at this point staff had held general discussions with localities regarding what types of information would be included in the compliance evaluations. He said staff's intent was to present the specifics first to the policy committee and then make the information available to the localities. Mr. Sacks said staff had invited localities to meetings hosted by Planning District Commissions. Attendance by local government staff had been very good, with only one county and one city not being represented. Representatives from most of the larger towns and some of the smaller towns attended as well.

4. Site Specific Refinement of CBPA Boundaries

Mr. Sacks said that typically a locality will have documentation in individual plan files that this has been required. He said that if there are no such approved plans in the locality, they should be able to offer an explanation as to how they would require site specific delineations.

5. Performance Criteria Implementation – Minimization of Land Disturbance

Mr. Sacks said that this was the first of the criteria linked directly to Phase 3. He said that Phase 3 focuses in-part on ensuring that the locality has specific development standards in ordinances. He noted that what the Board had approved at the June 2009 meeting was to strengthen that component of the compliance evaluation.

Mr. Sacks said that ultimately the locality will have to demonstrate that they are accomplishing this.

Mr. Sacks said that the review strategy and compliance standard for items 5, 6, and 9 were essentially the same.

6. Preserving Indigenous Vegetation

9. Minimize Impervious Cover

Ms. Salvati noted that one of the challenges will be to ensure that there are specific provisions covering these criteria incorporated into local land use ordinances.

Mr. Davis asked if staff was considering these elements together for minimizing land disturbance.

In response to questions, Mr. Sacks provided a general description of how the compliance review process would approach the review of these three general performance criteria (numbers 5, 6, and 9) . He explained that DCR staff would start with a conversation asking localities to explain their process and the mechanisms they use to ensure these three performance criteria are addressed..

Mr. Davis asked if the Policy Committee would be reviewing the approaches at this meeting.

Mr. Sacks said that DCR intended to prepare internal guidance for staff on how to conduct the reviews.

Ms. Salvati said that the full spectrum of mechanisms to ensure that the performance criteria are met is not yet known. She said, for example, that Fairfax County has a public facilities manual that details the requirements. She said that there may be a check list of requirements that are not established in the local code.

Ms. Salvati said that DCR did not intend to rely solely on local ordinance provisions to determine how localities are requiring development to minimize impervious cover .

Mr. Sacks said that ordinances and policy and procedure manuals have varying status. Some are adopted by the governing body. Some are developed by a Director of Public Works or Planning. Some are just internal policies that are developed.

7. Requirement for BMP Maintenance Agreements

Mr. Sacks said that he did not anticipate any problems with requirement #7.

Ms. Salvati noted that one of the more consistent areas of the Phase I compliance issues was BMP maintenance.

Mr. Davis asked if localities were reviewing older sites from the mid 1990s that did not record a BMP maintenance agreement.

Mr. Sacks said that some localities were doing that but that typically this requirement has not been imposed upon them.

8. Plan of Development Review Process.

Mr. Sacks said that the review strategy and compliance standard remains unchanged. Where problems had been identified in the past with a locality's implementation of this component, this was typically due to human error

9. Minimize Impervious Cover

Mr. Sacks noted that this was previously discussed.

10. Control Erosion and Sediment for 2,500 sq. ft.

Mr. Sacks said that this requirement had not changed. He said CBLA staff would check with the Division of Soil and Water to determine the status of the localities' Erosion and Sediment Control program. If the program was found by the Soil and Water Conservation Board to be non-compliant, they would not be compliant with the Bay Act.

11. Septic Pump-out

Mr. Sacks said that staff would propose a slightly different compliance standard. For previous compliance evaluations, localities had been required at a minimum to have a schedule for program implementation and to have taken the first step for implementation. For the second round of evaluations, staff is recommending that more be required.

Mr. Sacks said what was not included was for the locality to document that 100% of the tanks had been pumped. Staff did not see that as a realistic standard. Instead the requirement would be for 100% of septic tank owners to have received notification and for the locality to have a follow-up process in place.

Mr. Duncanson noted that one of the most successful programs for septic tank pump-out was the grants for low and moderate income households.

Ms. Salvati said that in the last round of Chesapeake Bay Implementation Grants funds were provided to localities and PDCs. She said that it is likely that those funds could be made available again in the next round of this grant.

12. Stormwater Management

Mr. Sacks said that this is the same review strategy. Where necessary, CBLA staff seeks assistance from Division of Soil and Water staff for technical components of this review..

13. Agricultural Activities

Mr. Sacks said that the question here would be to determine what standard is appropriate. The compliance standard, therefore, is still under review.

Mr. Sacks explained that the documentation of conservation assessments for all agricultural lands was typically not information that a locality would have. Most would rely on the local Soil and Water Conservation District. Ms. Salvati said that the Department does have databases concerning farms but some of the data in them are not available to share with localities due to proprietary requirements of the Farm Bill. Mr. Sacks pointed out that there is also the problem of meshing data concerning nutrient management plans with specific land parcels, and that it is a burden for localities. Ms. Salvati said the staff is considering treating nutrient management plans as sufficient to comply with the conservation assessment requirement in the regulations, particularly since the Bay TMDL will have a significant focus on addressing agricultural pollution through nutrient management plans.

Mr. Davis asked if the Attorney General's office has been a party to these discussions

Ms. Andrews said that there had been ongoing discussion regarding this complicated issue. She said that it looked as if this document was saying the locality could either use the traditional conservation assessment approach or the nutrient management plan approach with the hope that it would not pose confidentiality concerns

Mr. Davis said that he was more concerned whether the Office of the Attorney General thought this would meet the requirement for compliance, but that perhaps the approach has to be finalized before the question can be answered.

Ms. Andrews agreed and said that it would be wise, if the Board decides to deem something as compliant with the regulations, to develop a guidance document in order to have a consistent approach across the board. She said that the document appeared to be saying that the Board would deem the approach to be in compliance because it has determined that it has the same result.

Ms. Salvati said that it would be helpful to explain to the localities what the assessment is. She said that the conservation assessment as described in the regulations is an assessment of agricultural practices that are on the ground that in the opinion of the local Soil and Water Conservation District are effective in addressing water quality issues. She said that what CBLA staff was saying was that the assessment would not be required if the nutrient management practice is there.

Mr. Davis asked if this issue had been discussed with the Soil and Water Conservation Board.

Ms. Salvati said that it had not. She said that the hope would be to bring this forward and to bring it back to the Policy Committee in February for ultimate adoption by the Board.

14. Silvicultural Activities

Mr. Sacks said that this was addressed in the regulations. When there are violations of the streamside management zone the Department of Forestry is supposed to notify DCR and the locality. The locality is required to follow up.

Mr. Sacks said that staff was working on a revised memorandum of agreement with the Department of Forestry. He said that staff would have to ensure that localities have a clear understanding of their responsibility.

Items 15 – 20

15. Wetlands Permits

16. Permitted Uses and Activities

17. Exempt Activities

18. Land Use Conversion (from Agriculture and Silviculture)

19. Permitted Encroachments

20. Permitted Modifications (Vegetation Removal)

Mr. Sacks said that for each of these items the same review strategy and compliance standards are described.

Mr. Duncanson asked whether localities had difficulty with the buffer establishment addressed in item #18.

Mr. Sacks said that it was his understanding that the localities understood the requirement.

Ms. Smith said that this item was not as actively enforced as other standards. She said that while it was not a new strategy that it would be looked at more closely since more conversions have occurred. She said that some localities have more of a firm process than others.

Mr. Davis suggested that on item #16 the phrase “plan and WQIA” should be inserted.

Mr. Sacks said that items 21, 22, 23 and 24 were all related to agriculture.

21. RPA Development Criteria - Permitted Modifications (Encroachments for Agriculture)

22. RPA Development Criteria – Permitted Modifications (Agricultural Drainage Ditches)

23. RPA Development Criteria – Permitted Modifications (Active Agricultural Pollution)

24. RPA Development Criteria – Permitted Modifications (Landowner Refusal of Assistance)

Mr. Sacks explained that these four items are primarily enforcement issues for which the localities are responsible even though most of the approvals and assistance are provided by the Soil and Water Conservation District. Localities must be treating a violation within an agricultural buffer just as they treat any other RPA buffer violation. There was no additional discussion relative to item #21.

Ms. Salvati said that at this time, staff was not recommending that item #22 be included as an evaluation component. There was no discussion relative to item #22.

Mr. Sacks explained that the requirement outlined under item #23 requires the locality to address situations where a landowner causes pollution. He said that in these situations, a locality, upon receiving a complaint, must address it accordingly. There was no discussion relative to item #23.

Mr. Sacks said that staff was not aware of any locality receiving reports when a landowner refuses assistance for agricultural assessments as outlined under item #24. There was no discussion relative to item #24.

25. Water Quality Impact Assessment

Mr. Sacks said that the review strategy and compliance standard for this item would remain unchanged.

26. IDA Buffers

Mr. Sacks said that localities have discretion in the requiring of buffers in the IDA.

27. Nonconforming Uses and Noncomplying Structures

Mr. Sacks said that localities must make sure that the administrative approvals meet the conditions.

28. Public Utilities, Railroads, Public Roads and Facilities Exemptions

Mr. Sacks said that staff will typically review files to make sure the localities are abiding by the requirements in allowing exemptions, but this is not something that many localities track.

Mr. Davis asked if staff was trying to encourage localities to track this more effectively.

Mr. Sacks said that typically a land disturbing permit is required, in which case the Erosion and Sediment Control requirements must be met.

29. Exceptions

Mr. Sacks said that the intent was to make sure that localities are properly documenting that approved exceptions met the required findings.

30. Plat and Site Plan Requirements

Mr. Sacks said the intent is to try to define very clearly which recorded plats these requirements apply to.

Mr. Davis suggested staff review the use of the term “plat.”

31. Delineation of Buildable Areas

Mr. Sacks explained the requirement for delineating buildable area applies to site plans and that the requirement can be embodied in either a local ordinance or elsewhere.

32. Ordinance and Comprehensive Plan Consistency

33. Comprehensive Plan Implementation

Mr. Sacks said that the Bay Act regulations require implementation of a local program. Part of this program is the comprehensive plan. Therefore, evaluation of the implementation of the portion of the comprehensive plan adopted due to the Bay Act is proposed to occur as part of the compliance evaluation. He said the intent is to have discussion with localities regarding how they are implementing this portion of their program.

Mr. Sacks said that the intent of item #32 was to ensure that ordinances are consistent with the comprehensive plan. However, staff is not recommending pursuing this item separately from the rest of the comprehensive plan review, as any necessary components would be evaluated as part of review of implementation of the performance criteria.

Mr. Sacks said that staff expects to implement the first reviews in accordance with the following schedule:

Locality Name	5 year date	Review Quarter
Town of Cape Charles	12/13/2009	1st 2010
City of Portsmouth	6/20/2010	3rd 2010
Town of Belle Haven	9/19/2010	4th 2010
Gloucester County	9/19/2010	4th 2010
Town of Hallwood	9/19/2010	4th 2010
James City County	9/19/2010	4th 2010

Town of Onancock	9/19/2010	4th 2010
City of Williamsburg	9/19/2010	4th 2010

Mr. Sacks said that staff is requesting the Policy Committee to instruct the staff to move ahead with making this information available to localities for their review and comment.

Mr. Davis noted that for clarification, the items to be eliminated would be 22 and 32.

Mr. Duncanson asked liaisons to comment on how this would be received by localities.

Ms. Miller said that she had heard concerns regarding the agriculture requirements. She said that localities were receptive to the local ordinance advisory review component of the Phase III program.

Ms. Doss said that localities had received this well and were open to comments and suggestions.

Mr. Moore expressed similar comments.

Ms. Salvati noted that a number of localities were concerned about multiple requirements from DCR, and in particular the DCR stormwater regulations

Mr. Duncanson said the feedback that he received as a result of conversations he had with other localities he shared the table with was that they liked the document as it had everything in one place and made it clear what the strategies were and what was to be expected.

Mr. Davis noted that the 84 Bay Act localities would be in a better situation to implement the new stormwater regulations.

MOTION:

Mr. Davis moved that the Policy Committee recommend the Board authorize and direct staff to proceed with the development of a revised Compliance Evaluation process based on the 31 review elements, as presented with the elimination of items 23 and 32 and corresponding review strategies described in the attached chart and that the Policy Committee recommend the Board authorize and direct staff to bring to the Policy Committee in February and to the Board for adoption in March 2010 the revised compliance evaluation program.

SECOND: Ms. Harper

DISCUSSION: None

VOTE: Motion carried unanimously

Ms. Salvati expressed appreciation to Mr. Sacks and Ms. Kotula for developing the recommendations.

Mr. Sacks noted that the matrix development included participation by many Division staff and expressed his appreciation for the group effort.

Ms. Salvati updated the Board with regard to the proposed revisions to the Virginia Stormwater Management Regulations.

Ms. Salvati said that staff presented the Soil and Water Conservation Board with draft changes to the Stormwater Management Regulations based on five public hearings and more than 3,000 comments received. The Board adopted the recommend changes. At the same meeting the Board suspended the regulations in order to allow for an additional 30 day comment period due to the substantive changes in the proposed draft. The final day to submit public comments is November 25, 2009 and the Soil and Water Board is scheduled to meet on December 9, 2009 for final action.

Ms. Watlington said that following the December 9 meeting the regulations would be published in the Virginia Register of Regulations for a 30 day adoption period.

Ms. Andrews noted that the effective date of the regulations would be July 1, 2010.

Public Comment

Ms. Diana Parker, representing the Falls of the James Sierra Club said that she had attended the Soil and Water Conservation Board meetings and that her organization was not pleased with the changes that have been made to the stormwater management regulations.

Ms. Parker expressed concern over the effects on streams and creeks in Chesterfield County. She also expressed concerns about the manner in which Chesterfield County was amending its comprehensive plan and the impact of doing that on water quality.

Advisory Reviews

Ms. Smith noted that seven localities were in the process of their advisory review and that five more were being initiated. The process is going well and localities are providing valuable information.

Next Meeting

REVISED: 12/8/2009

The next meeting of the Policy Committee is tentatively scheduled for February 9, 2010 between the NARC and SARC meetings.

Adjourn

There was no further business and the meeting was adjourned.

Respectfully submitted,

William E. Duncanson
Policy Committee Chair

Joseph H. Maroon
Director