

Virginia Stormwater BMP Clearinghouse Committee Meeting
Training Room
Virginia Department of Forestry Building
900 Natural Resources Dr.
Charlottesville, VA 22803
October 28, 2013

Meeting minutes by Jane Walker

Committee Members Present

Joe Battiata, Center for Watershed Protection (CWP)
Danielle Bishop, City of Roanoke
Scott Crafton, Virginia Department of Environmental Quality (DEQ), Committee Chair
Joanna Curran, Department of Civil and Environmental Engineering, University of Virginia
Jacob Dorman, City of Lynchburg
Normand Goulet, Northern Virginia Regional Commission
Charlene Harper, Geosyntec Consultants
Ryan Janoch, Stormwater Equipment Manufacturers Association (SWEMA) / Terraphase
Greg Johnson, City of Virginia Beach
Mary Johnson, Virginia Association of Soil and Water Conservation Districts (VASWCD)
Chris Kuhn, Williamsburg Environmental Group (WEG)
Roy Mills, Virginia Department of Transportation (VDOT)
Scott Perry, Imbrium Systems
David Powers, WEG
Jim Rakestraw, Stafford County
Colleen Rizzi, Loudon Water
Rick Stanford, ATR Associates, Inc.
Jenny Tribo, Hampton Roads Planning District Commission (HRPDC)
Joe Wilder, Frederick County

Agency Staff Present

Fred Cunningham, DEQ
Melanie Davenport, DEQ
Ginny Snead, DEQ

Contracted Administrative Personnel Present

Jane Walker, Virginia Water Resources Research Center (VWRRC)

Others Present

Nick Burns, Hydro International
Derek Berg, Contech Engineered Solutions
Campbell Bolton, Draper Aden Associates
Aimee Connerton, Rinker Materials
Tim Edwards, Advanced Drainage Systems (ADS)
Mark Fendig, Luminaire Technologies / Wet Pond / Dam Owner
Chris French, Filterra Bioretention Systems

Randy Hardman, Hanover County
Richard Jacobs, Culpeper Soil and Water Conservation District and VASWCD
Steve Kingsland, Oldcastle Precast
Lisa Lemont, Hydro International
Marc Lelong, Kristar
Steve Matezak, Oldcastle Precast
Bill Nell, Thrifty Duck
Steve Rossi, C.S.I.
David Sample, Biological Systems Engineering and Virginia Cooperative Extension, Virginia Tech
Liz Scheessele, Timmons Group
Cory Simonpietri, ACF Environmental
Sean Simonpietri, Exact Stormwater Management
Terry Siviter, Rotondo Environmental Solutions

Call to Order and Introductions

Scott Crafton of DEQ called the meeting to order. Each person introduced herself or himself. Melanie Davenport introduced Fred Cunningham and explained that Mr. Cunningham has been appointed as the director of DEQ's new Office of Permits. This office will cover all programs associated with the Virginia Pollutant Discharge Elimination System (VPDES) permit, which includes the Virginia Storm Water Management Program (VSMP) permits. Mr. Cunningham can be reached at Frederick.Cunningham@DEQ.Virginia.gov.

Minutes from July 15, 2013 Meeting

Jane Walker called attention to two small edits that are needed to the minutes of the July 15, 2013 Stormwater BMP Clearinghouse Committee meeting minutes and offered to make these changes. No other comments were received regarding the minutes so they were finalized as corrected with the suggested updates by Ms. Walker.

Agency Transfer Update: DEQ Stormwater Program

The responsibilities for the stormwater management program moved from the Virginia Department of Conservation and Recreation (DCR) to DEQ on July 1, 2013. Ms. Davenport explained that the physical merger of the VSMP from DCR to DEQ went well this summer. DEQ's upper management is still working to understand and organize the program within the agency.

Update of the Stormwater Public Domain Specifications

Mr. Crafton offered that he is about half way through updating the specifications for the public domain stormwater BMPs. He added that DEQ staff has not yet discussed if the updated specifications will be brought up for public comment and/or review by the Clearinghouse Committee.

A committee member asked for examples of the changes to the specifications. It was offered that the changes are primarily clarifications. One change in the bioretention specifications came from the professor at Virginia Tech who developed the P-index and commented that the P-index is used inappropriately within the specifications; this error has been corrected. As another

example, changes have been proposed to the media mixture for bioretention BMPs. The committee member asked if the changes were based on testing results and offered that they should be, just as manufactured treatment devices (MTDs) must undergo testing. Several individuals commented that there have been lots of studies of these public domain BMPs and much data generated. Committee member Joe Battiata with the Center for Watershed Protection, which has been contracted by the agency to assist with development of the specifications, offered to pull together data that shows the effectiveness of public domain BMPs. The other committee member expressed concerns about the rigor of some of the testing. He explained that the State of Washington found evidence of leaching with the use of compost in bioretention BMPs so they have pulled their specifications. Mr. Crafton added that he talked to individuals with Washington's Technology Assessment Protocol - Ecology (TAPE) program and learned that little was known about the compost used in the study. In Virginia, the new version of the bioretention specification calls for the use of *aged* compost (not simply compost).

The same committee member who asked for examples of the changes to the specifications and expressed concerns about the rigor of the public domain testing added that the public domain BMP specifications do not provide guidance on sizing. He expressed his opinion that any changes to the specifications should be vetted through the committee. A different committee member expressed concern that most of the committee members are volunteering their time to this process, whereas it is the job of the MTD vendors to work on these issues. The vendors could paralyze the system and not allow any new specifications or BMPs to be added to the Clearinghouse website. Mr. Crafton offered his personal opinion that the vendors would gain nothing by inhibiting the publication of updated specifications because the BMPs on the Clearinghouse website are already approved for use in Virginia. The new version of the specifications would not change the removal credit from what is currently being used. Use of the updated version of the specifications would simply improve the functioning of the BMP.

Another committee member offered that there needs to be a new version number assigned to any updated specifications. Mr. Crafton explained that DEQ staff has already discussed this issue and concluded that all versions will need to be posted on the BMP Clearinghouse website. Mr. Crafton clarified that the regulations state that any BMPs listed on the Clearinghouse website can be used. Thus, any of the posted versions could be utilized. A different committee member requested that the new versions be added to the BMP Clearinghouse website as quickly as possible.

Role of BMP Clearinghouse Committee

Several members asked what role the committee plays in approving new specifications for BMPs currently listed on the Clearinghouse website and other BMPs being considered for inclusion on the Clearinghouse website. Mr. Crafton offered that the committee serves in a stakeholder advisory role to DEQ. Ms. Davenport added that the committee should follow the roles outlined in the Committee Charter. If there are concerns about what is in the Charter, these could be discussed at the next meeting. She added that DEQ plans to modify the Committee Charter once the Virginia Technology Assessment Protocol (VTAP) or other BMP testing regulations are finalized, but changes could be made sooner if needed.

Mr. Crafton announced that he will be leaving DEQ in mid-November. Before leaving DEQ, Mr. Crafton intends to finish updating the Stormwater Handbook as his first priority and then will finalize the updates to the BMP specifications as his second priority. A representative of a MTD manufacturer asked who would be filling Mr. Crafton's role once he left. Ms. Davenport explained that DEQ is operating under a hiring freeze but will make the case to the Governor's Chief of Staff to fill his vacant position. Mr. Crafton added that 50% of the positions for full-time employees in the stormwater management program were vacant when the program transferred to DEQ.

Status of the VTAP Regulation

Mr. Crafton explained that DEQ requested that the SWCB withdraw the proposed fast-track amendment associated with the VTAP. DEQ made this request because the administration wanted to pursue a more normal regulatory approval process. The SWCB withdrew these regulations at their meeting on September 30, 2013. DEQ will ask the SWCB to issue a Notice of Intended Regulatory Action (NOIRA) to begin a full regulatory process aimed at adoption of the VTAP. The full regulatory process typically takes 18-24 months. Mr. Crafton added that development of a national testing program is being pursued by the Water Environment Federation (WEF), and if that process is advanced, DEQ could defer to it. In the meantime DEQ will publish guidance describing the process to approve and provide interim pollution removal credits for MTDs allowed to be used in Virginia while the regulations are being developed. He expects that the guidance will be published for 30 days of public comment.

Status of Guidance on the Use of Manufactured Treatment Devices (MTDs)

Mr. Crafton explained that he has updated the VTAP guidance document and when possible has changed requirements to suggestions (e.g., "shall" becomes "should"). The requirement to use laboratories certified through the Virginia Environmental Laboratory Accreditation Program (VELAP), however, has remained in order to meet current state regulations. The document, once finalized, is expected to be six or seven pages in length and will be posted for public comment. Mr. Crafton stated that DEQ is proposing three pathways to MTD approval prior to the establishment of the VTAP regulations. He summarized these options in the following way:

1. **Default Alternative** – For hydrodynamic separators and filters, DEQ will consider assigning the removal credit included in the 1999 Stormwater Management Handbook (Chapter 3, Minimum Standard [MS] 3.15):
 - a. To qualify as a hydrodynamic separator or filter, the MTD will need to meet the criteria set out on the MTD Registry page of BMP Clearinghouse website (The criteria will be the same as those proposed by the Clearinghouse Committee when drafting the MTD Registry questionnaire).
 - b. Hydrodynamic Devices = 20% maximum total phosphors (TP) removal
 - c. Filters/other similar kinds of treatment devices = 50% maximum TP removal
 - d. DEQ will check the lists of MTDs tested and approved under the Technology Acceptance Reciprocity Partnership (TARP) and TAPE programs. If the approved pollutant removal credit is less than that listed above, the approved credit will be assigned.

2. Reciprocal Approval – If the MTD has been tested and approved under the TARP or TAPE programs and a pollutant removal (PR) credit higher than those awarded under option one above and/or PR credits for additional pollutants resulted, DEQ will provide a reciprocal approval and award the same PR credit(s) assigned by the TARP or TAPE program.
 - a. To receive the higher credit, manufacturers must submit testing and approval documentation.
 - b. DEQ will reserve the right to adjust PR credits and possibly sizing requirements of MTDs tested under rainfall or geophysical conditions different from those in Virginia. The process for doing this will need to be developed.

3. VTAP Field Testing – If a manufacturer wants to qualify for more than the default PR values and has not yet tested via TARP or TAPE, it may choose to conduct field testing pursuant to the VTAP guidance protocol; DEQ will review all testing documentation and consider approving the MTD with a PR credit based on the field testing results.
 - a. The manufacturer will be responsible for all costs and risks associated with the field test.
 - b. DEQ will not require any fees to evaluate the assessment.

Mr. Crafton further explained that once the VTAP regulation is final and effective, DEQ would expect any MTD that has *not* been tested in Virginia via the VTAP protocol to go through the VTAP process.

Following Mr. Crafton’s presentation, discussion ensued.

- A representative of a MTD manufacturer voiced concern that DEQ is giving a “free pass” with option one.
- He commented that on July 1, 2014, it was planned to level set the legacy sizing and wondered if this would come into play. He added that Virginia does not currently have a level playing field. Mr. Crafton noted that such a comment is valid and offered that it would be good to submit it during the public comment period.
- This same individual added that no one will go with option three because the costs for conducting VTAP testing are higher than they are for TARP and TAPE; manufacturers will just test with the less expensive programs. Mr. Crafton responded that those that follow option three will be ahead once the VTAP regulation is final and effective.
- Another committee member asked if MTDs approved through option three would be grandfathered once the VTAP regulations are approved so that they do not need to repeat the evaluation process; Mr. Crafton responded that the vision she presented is DEQ’s intent.
- A representative of a manufacturer wanted to know if there would be limits to the number of installations in Virginia for approved MTDs; Mr. Crafton replied that, as currently proposed, approved MTDs would not have installation limits.
- A committee member asked who would review the VTAP data. Mr. Crafton replied that DEQ could contract with someone like David Sample for such reviews.
- A committee member who represents a local government entity requested that any “hold harmless” language from DEQ be in writing.
- Another Clearinghouse Committee member who also represents a local government voiced concerns that claiming such credits may not work for meeting TMDLs (total

maximum daily loads). Whereas hold harmless language will prevent law suits, the local governments will still be “on the hook” for meeting TMDL limits.

- This individual also voiced concerns that the Committee spent years creating the VTAP document, and now DEQ staff would be developing a short document in a couple weeks. She offered to reserve judgment on the quality of the document until after reviewing it, but she emphasized the seriousness of the process, citing that MTDs would be installed under the plan for many years of use.
- A committee member recommended that DEQ error on the side of caution. He thought a 50% PR credit quite generous.
- This same committee member commented that TARP does not take into account sizing and suggested that language be included to close this gap. A representative of a MTD manufacturer suggested tying the sizing requirement to the maximum hydraulic rate.
- A committee member asked for clarification on which MTDs could be used before and after July 1, 2014. Mr. Crafton replied that prior to that date, local governments have the authority to approve the use of MTDs. After July 1, 2014, only BMPs listed on the BMP Clearinghouse website would be able to be used. Thus, any MTD approved through this proposed process would be listed on the Clearinghouse website for use during this interim period (until the effective date when the VTAP regulation takes place).
- A representative of a BMP manufacturer voiced concern that Virginia is not clear if/when different model configurations will need to be tested. He noted that other states have clear language on this topic.
- This same representative of a MTD manufacturer requested that Mr. Crafton’s presentation be posted on the Stormwater BMP Clearinghouse website; Mr. Crafton offered that it would be posted.

Updates to Stormwater BMP Clearinghouse Website

Jane Walker summarized the changes to the Stormwater BMP Clearinghouse website since the July Clearinghouse Committee meeting. She stated that the PowerPoint slides from the presentation by Drs. Sample and Zhang at the previous meeting were posted on the “What’s New” page (<http://vwrrc.vt.edu/swc/WhatsNew.html>). References to DCR were changed to DEQ. The links to DCR’s webpages about the VTAP were removed once the SWCB rescinded the fast-track regulations. The currently posted regulatory page is out of date; a new version has been drafted and will be posted as soon as approved by DEQ. The “References and Tools” page has also been updated and posted. Some links on this page, however, are not working. Jane Walker offered to continue to delete or replace broken links.

Next Meeting Date

The next meeting is set for January 27, 2014 at the Henrico County Training Center on Parham Road.

General Comments

A committee member asked if the 1999 Stormwater Management Handbook is still available to the public. Mr. Crafton replied that it is posted under publications on DEQ’s stormwater management webpage:

<http://www.deq.virginia.gov/Programs/Water/StormwaterManagement/Publications.aspx>.

Mr. Crafton announced that people who have signed up on the Virginia Regulatory Town Hall website to receive notices about changes to stormwater regulations must register to receive notices about topics for DEQ in order to continue to receive the current announcements.

The committee members and others in attendance thanked Mr. Crafton for his leadership, hard work, and dedication to the Clearinghouse BMP project and his work with stormwater management at DCR and DEQ. Mr. Crafton expressed his gratitude to the group and thanked the committee for their work. He offered that he will continue to be working in the stormwater field with The Louis Berger Group, Inc. so will likely encounter many of them at meetings and such.

With no further business, the meeting was adjourned.