

Virginia Stormwater Best Management Practice (BMP) Clearinghouse Stakeholder Meeting

Henrico Training Center
7701 East Parham Road, Henrico, VA
November 16, 2016

Meeting minutes by Jane Walker -- Additional information pertinent to the meeting discussion but not provided during the meeting is included within brackets, [].

Virginia Department of Environmental Quality (DEQ) Staff Present

Fred Cunningham, DEQ-Central Office
Melanie Davenport, DEQ-Central Office
Ben Leach, DEQ-Central Office

Contracted Administrative Personnel Present

Jane Walker, Virginia Water Resources Research Center (VWRRC)

Stakeholders Present

Aimee Connerton, Rinker
Scott Crafton, Virginia Department of Transportation (VDOT)
Steve Curtis, Muller Erosion and Site Services
Jacob Dorman, Contech Engineered Solutions
Travis Dorman, BaySaver/ADS
KC Filippino, Hampton Roads Planning District Commission
Chris Gorman, Oldcastle Precast Stormwater Solutions
Normand Goulet, Northern Virginia Regional Commission
Richard Jacobs, Culpeper Soil and Water Conservation District (SWCD)
Greg Johnson, City of Virginia Beach
Chuck Lacey, Advanced Drainage Systems (ADS)
Mark Miller, AquaShield, Inc.
Rebecca Napier, Wetland Studies and Solutions, Inc. (WSSI)
Brian Rustia, ADS/BaySaver
David Scott, HydroInternational
Kateri Shreve, Luck Ecosystems
Corey Simonpietri, ACF Environmental
Terry Siviter, Rotondo Environmental Solutions LLC
Hannah Somers, GKY and Associates
Mark Whitfield, Luck Ecosystems
Joe Wood, Chesapeake Bay Foundation (CBF)
John Woodburn, Goochland County

Call to Order & Introductions

Fred Cunningham of DEQ called the meeting to order. Everyone introduced herself or himself.

Minutes from September 21, 2016 Meeting

No additions or corrections were proposed for the minutes of the previous meeting.

Update: DEQ Stormwater Program

Melanie Davenport reported on work initiated by Delegate Hodges, which is being conducted by the Virginia Coastal Policy Center at William and Mary, regarding the “doughnut hole.” This work pertains to the 2016 erosion and stormwater consolidation legislation. The Virginia Coastal Policy Center conducted interviews and analyzed legislation and statutes; they issued a report of their work at the recent Virginia Association of Counties (VACo) Annual Conference. The report does not draft legislative language; however, such language may be developed based on the findings of the report.

An enactment clause of the consolidation legislation directs DEQ to propose an appropriate fee structure for the Virginia Erosion and Stormwater Management Program (VESMP). DEQ has established a stakeholder advisory group (SAG), which has met twice so far and will meet again on November 18, 2016 to provide input into this process. DEQ sought information from localities regarding their revenues and costs for program implementation. The agency has also analyzed its own costs and has learned that the current 28% of the fee that goes to DEQ does not cover the agency’s operating costs. This information is being presented to the SAG, which is expected to provide recommendations. DEQ will present the findings to the General Assembly in 2017.

Mr. Cunningham reported that DEQ has begun the process to reissue the Phase II Municipal Separate Storm Sewer System (MS4) General Permit and has thus far met once with the Technical Advisory Committee (TAC). He explained that EPA is changing its Remand Rule, which is to be announced by the end of the week [The final rule is available at the following website: <https://www.epa.gov/npdes/npdes-stormwater-final-ms4-general-permit-remand-rule>]. The changes are expected to require (1) clear and measurable goals for minimum standards, and (2) greater public engagement through clear requirements on the opportunities for public participation in the permitting process. DEQ believes the current permit is close to meeting the first expected requirement but is unsure, at this time, on how to meet the second requirement. EPA is coming out with Phase 6 of the Chesapeake Bay model, but because of timing, DEQ will not be able to incorporate it into the General Permit. The next TAC meeting is December 2, 2016. DEQ’s Jaime Bauer is heading up this process.

DEQ has been working on the environmental impact statement (EIS) for the Mountain Valley Pipeline (MVP) project. Comments are due by the end of December.

DEQ is also working with VDOT on their MS4 Permit. A draft is expected to be in place around the end of the year or in January.

Mr. Cunningham updated the group on the agency’s response to Cultec, which sought approval from DEQ for listing on the Stormwater BMP Clearinghouse website based off testing performed for a product that was not their own. In general, DEQ agrees with the consensus expressed by stakeholders at the last meeting (e.g., DEQ should only base approvals on testing specific to the device seeking approval). A representative of a MTD asked if DEQ had specified

the level of testing required. Mr. Cunningham offered that he had not gotten into that level of detail in his discussions with Cultec but expects the same level of testing from Cultec as it does for all manufacturers. DEQ accepts lab and field data, and phosphorus and TSS testing data.

Update: MTD Sizing

Ben Leach explained that DEQ has not yet developed an Excel spreadsheet with the hydraulic loading rates for approved manufactured treatment devices (MTDs). He presented a table and disclaimer that could be added to the BMP Clearinghouse website that links to the section in the submitted application pertaining to sizing. The table contained all approved MTDs, their total phosphorus (TP) removal credits, and links to the respective device's sizing information as submitted to DEQ. Users can also easily scroll through the rest of the application to learn more about the device of interest. Links are available for all but one device that has altered its sizing criteria since the time of the application submission; for that device, users are told to contact the manufacturer. Mr. Leach requested input on the proposed table, and some offered that it is a step in the right direction.

A stakeholder stated that some applications did not provide good sizing information. Mr. Leach explained that DEQ must go by the sizing information submitted by the manufacturers in the approved application. A stakeholder commented that the TP credit is assigned to a specific size, and if everyone is sizing their products differently, there will be lots of inconsistencies. A stakeholder commented that some devices in the table were field tested under the Washington protocol, which sizes devices on a per storm event basis, whereas other devices were field tested under New Jersey protocol, which sizes according to an annual basis. A smaller device could be used simply by following the New Jersey protocol, which is less conservative.

Ms. Davenport offered that in an ideal world, all MTDs would be tested according to one protocol. DEQ, however, is operating under guidance, not regulation, and Virginia must recognize reciprocity with other states. Ms. Davenport stated that given the efforts in development of a national testing protocol, she is not interested in investing resources to develop a testing protocol for use only in Virginia.

A representative of a MTD suggested that DEQ remove its cap on the TP credits for devices tested under TARP or TAPE protocol, noting that such action would reward MTDs tested under established protocols. A different stakeholder asked if others were aware of submittals without New Jersey or Washington approval. Others answered in the affirmative, citing that Virginia accepts third-party testing such as by universities.

A stakeholder requested the posting of the hydraulic loading rate that is tied to the TP credit assigned by DEQ for each device. He proposed simply adding an additional column to the chart. He complained that Virginia seems to be stuck and is no longer moving the ball forward.

It was proposed that the manufacturers get together to develop a white paper to give to DEQ. Mr. Cunningham advised that they make the group inclusive to give it more weight with the agency. Ms. Davenport suggested the group be comprised of developers and others too. A stakeholder proposed that if one manufacturer does not participate or have buy-in, it will call foul. Others expressed interest in serving on the committee. Ms. Davenport stated that the group

would be completely separate from DEQ. The agency must follow the Administrative Process Act so it must be clear that the group writing the white paper is not a sub-group of this group.

Mr. Cunningham added that the table presented by Ben Leach would be added to the BMP Clearinghouse website.

Update: House Joint Resolution 587, 2015

Mr. Cunningham offered that he received an initial draft of the second-year report on the seasonal high groundwater table (SHGT) study from Robert Cooper but has not read it yet. DEQ hosted a public meeting at the end of the summer (August 29, 2016) to receive input from stakeholders about the study. It is DEQ's intention to have a second public meeting in early December and provide a draft of the report prior to the meeting.

A stakeholder asked if DEQ plans to recommend legislation within the report. Mr. Cunningham offered that the report will simply provide different options and include recommendations for areas of further development in providing more flexibility for some BMPs in areas with a SHGT. DEQ will not recommend legislative change, but the General Assembly may develop legislation after reading the report.

Next Meeting Dates

The group discussed the proposed 2017 meeting dates and decided to schedule meetings, if needed, on March 22, 2017 and May 17, 2017. The proposed dates for August (16 or 23) and November (8 or 15) will be discussed at a later date.

General Comments

Once the SHGT report is complete, Robert Cooper is to begin review and update of the design specifications for the non-proprietary BMPs.

A stakeholder asked a couple questions about nutrient credit trading, which DEQ personnel answered.

A stakeholder asked if Cultec submitted non-patented information to DEQ that would be made public. Mr. Cunningham explained that DEQ only requests non-proprietary information that is made public if the MTD is approved. DEQ does not notice applications. It only posts the application on the BMP Clearinghouse if the MTD is approved. Information can be supplied through Freedom of Information Act (FOIA) requests.

Adjournment

With no further business, Mr. Cunningham thanked everyone for participating and adjourned the meeting.