House Bill 1774 Stormwater August 1, 2017 Subcommittee 2 Meeting

Minutes

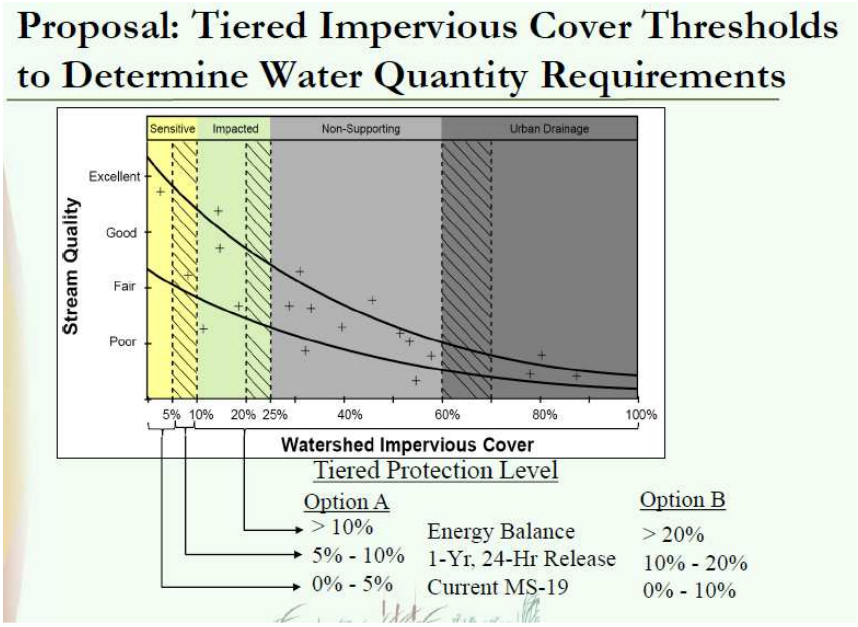
The House Bill 1774 Stormwater Subcommittee 2 met at 1:00pm on August 1st, 2017 at the DEQ Piedmont Regional Office to review and consider alternative methods of managing stormwater in rural localities pursuant to HB 1774. Present at the meeting were Workgroup members Melanie Davenport (DEQ), Jonathan Harding (VA Agribusiness Council) (by phone), Ann Jennings (Chesapeake Bay Commission), Daniel Proctor in the place of Doug Beisch (Stantec), T.J. Mascia (Resource Environmental Solutions, LLC), Allyson Monsour (Clark Nexsen), David Nunnally (Caroline County), Peggy Sanner (CBF), Thomas Swartzwelder (King & Queen County), Andrew Clark (HBAV), Scott Crafton (VDOT, on behalf of Marcie Parker), Shannon Varner (Troutman Sanders), and Sandra Williams (ATCS).

Also in attendance were Carl Hershner (VIMS), Doug Fritz (GKY), Mike Rolband (WSSI), Brandon Bull (DEQ), Richard Jacobs (Culpeper SWCD), Mujde Erten-Unal (ODU), Jaime Bauer (DEQ). The meeting was facilitated by Elizabeth Andrews (VCPC).

The group began by discussing Mike Rolband's proposal for "tiered" approaches to stormwater management. Mike recapped that streams are not in distress in low density situations and that his proposed approach hinges on the level of impervious cover (IC) existing in the watershed, including the IC to be added by a proposed development. In option A, the 0-5% IC range, MS19 would be used for a proposed development; as imperviousness increases, the prior DCR stormwater management requirement would be used, and then the current Energy Balance method would remain in place for instances with 10% IC or more. The group noted that impervious cover is in the lower range in most of the focus areas of the bill. Option B would be to have the IC % ranges higher.

- The percent impervious cover is measured at the discharge point of the project. This option can be done by looking at the entire watershed or on a more comprehensive basis.
- A major concern was the tier which ranged from 10%-20% IC (Option B). Since at 20% streams start to degrade significantly, it was suggested that an option be added to split the range (such as 15%).
  - Scott Crafton expressed concern about the uncertainty of the consequences of adopting Option B ranges and suggested that if we want to consider using ranges higher than Option A, perhaps it would be prudent to adopt an Option C, which would split the difference between the Option A percent IC ranges and those of Option B. That is, Option C would be:
    - 0-7.5% to use current MS-19
    - 7.5-15% to use 1-Yr. 24-Hr. Release
    - >15% to use Energy Balance
- The project could be based off of localities' comprehensive plans, with overlay districts delineated where MS19 or the stormwater regulations would be used for all development projects – this simplifies the idea, as site by site analysis would not be necessary as long as projects stay within the intended uses set forth in the comprehensive plan.
  - The group cautioned against simplifying too much, emphasizing the importance of considering cumulative impacts

§ The group reiterated the focus of the committee, emphasizing the concern for the "donut hole" for smaller projects. Particularly, the group is concerned with easing the difficulty of implementing the regulations.



The group then discussed two questions:

- (1) Is the option feasible?
  - From the local government perspective, since there is already watershed mapping and comprehensive plans have to be updated every five years by code, the group decided that this was doable.
  - The group decided this was doable for the regulated community.
  - For DEQ, the main concerns are that streams are protected and that the requirements are straightforward enough to be understandable. If compliance is slightly easier on smaller projects, compliance will be greater.
    - § There was concern with the flexibility of the proposal, especially with regards to whether the use of unenforceable comprehensive plans would create a variable regulatory framework that would result in water quality degradation. The group suggested that comprehensive plans be overlaid with predetermined watershed boundaries and followed up with ordinances, thus limiting the negative effects of changes in the comprehensive plan and making change more difficult.
- (2) What further information does the group need in order to decide whether to recommend this proposed approach?
  - The group requested VIMS to prepare a map of existing impervious cover and projected impervious cover under comprehensive plans.
  - There was concern about very localized channel degradation, which is a very site-specific question. The group questioned whether it should be put in the regulations that the site must be visited by a professional preparing the stormwater plan. Generally, if there is any runoff calculation, it is done by a professional.

    - The group also wanted to address whether sensitive soils or habitats that should be taken into consideration can be assessed. These could be designated on a map by the locality.
    - The group also wondered if it should look beyond the coastal plain, since any solution developed by the Workgroup will interest localities outside of Tidewater, but prefaced that with a desire to not exceed the authority of the group. The group considered the possibility of creating in its report a list of concerns to be aware of should the legislature desire to expand a recommendation beyond application in the Tidewater region.
    - The group expressed the need for watershed delineation maps and questioned who would be responsible for updating the maps and database. The group suggested that the engineers doing the plans submit the percent impervious cover added by each site, but questioned who would be responsible for the upkeep of such a database. The group expressed that a large database would be challenging for localities to create and maintain, making tracking a difficulty.
- The follow-up assignments were decided as follows:
    - A write up of his proposal from Mike Rolband; VIMS Impervious Cover Map and ODU SWM calculations; Scott Crafton's information from prior DCR workgroup regarding % IC used as a basis for the water quality regulatory requirements; Mike's "options" slide and any additional studies he may wish to provide.

The group then discussed David Nunnally's proposal for "tiered" approaches, relating to BMPs in place to catch stormwater for small projects. The two example BMPs were mulch berms and retention ponds. This approach was designed to be solution oriented and eliminate the need for calculations. To that end, David noted that the BMPs used as examples were not exhaustive (rain gardens, etc. could also be used). For these smaller projects, if one of the designated BMPs is chosen, the site would be found in compliance – the goal is to eliminate the calculations. For larger projects, the calculations would still have to be done under this approach. The group noted that this option was low impact and easy to maintain.

- Some of the group cautioned against the use of mulch berms, as they historically present issues with quality and have a constant inspection requirement because they tend to degrade over time. Another issue with mulch berms is that it is difficult to quantify the quantity running through. Additionally, this approach sidesteps the calculations but still utilizes very large BMPs.
- Mike Rolband noted that, in DC's approach, 1.7 inch of retained stormwater is deemed to protect the environment, as it imitates a forested condition.
- This allows for a simpler calculation on smaller sites to determine the types of BMP required and how much stormwater needs to be treated.

The group then discussed two questions:

- (1) Is the option feasible?
    - From a local government perspective, the feasibility depends on the retention number decided upon. Hardly any sites retain 1.7 inches. 0.5inches was suggested, but the group cited literature that states that 1 inch is more appropriate.
- (2) What further information does the group need in order to decide whether to recommend this proposed approach?

    - The group discussed what the allowable discharge rate would be. If there is an allowable discharge, the rate has to be determined. If there is not, then that means automatic compliance. David explained that he wants an easier calculation but does not want to propose no release rate.
    - The group also discussed the storm size, questioning if it wanted to pursue simpler methods based on the 90th or the 95th percentile storm. The group decided to pursue this as an option, but determined that it needed to be fleshed out more.
    - At this juncture, it was suggested that VIMS and ODU create a "menu" of BMPs to determine what quantity reduction they provide.
- The group decided to postpone discussion of David's and Sarah Carter's chart on the potential options document, concluding that it was more appropriate for discussion by subcommittee 1.
- The follow-up projects were decided as follows:
    - David's write up of his "easier calculation" method

The group then discussed Scott Crafton's suggestion about management of discharges directly to tidal waters, based off of Maryland's program. Maryland stormwater regulations provide the option for localities to qualify themselves for waivers of requirements in certain instances. Maryland has a comprehensive study requirement due to concern about unintended consequences.

    - The group noted that if discharging directly into tidal waters, energy is so low that an exemption can probably be given with much fewer requirements.
- This approach would mean a process through which one could get the right to become subject to a waiver. The group noted that the Maryland regulations allow watershed studies and questioned how easy that would be for Virginia's rural localities.
    - The group expressed concern that this option does not accomplish easier administration, as much of southern Virginia is "tidal" and those bodies of water vary significantly in size
    - The group noted that this would be post-quality measures, so water quality requirements would still be addressed.

The group then discussed two questions:

- (1) Is the option feasible?
    - The group was interested in tying this concept with Mike's proposed tiered approach.
- (2) What further information does the group need in order to decide whether to recommend this proposed approach?
    - A definition for tidal waters. The group also inquired as to data that would enable knowledge of how many streams would be affected if a waiver were adopted.
    - How many jurisdictions have done watershed studies? How old are those studies? The group theorized that how common these studies are might be indicative of whether or not this is an option.
    - The group discussed concern for unintended consequences.
- The follow-up projects were decided as follows:
    - Scott was asked to engage Mike Rolband and Daniel Proctor or Doug Beisch from Stantec to discuss this further and see if there might be a simpler version of the approach, especially with regard to the requirements of a watershed plan

justifying potential waivers, that could be advocated and reported out at the next subcommittee meeting.

The group then discussed the in lieu fee concept and information provided by T.J. Mascia. A fee does not need to be an in lieu fee for water quality only, but could be an approach for quantity. The in lieu fee could play the role of replacing a credit purchased from a bank if no bank is available; this could be akin to how nutrient trading works now. There is a nutrient offset fund for point sources already, so this program does not have to be started from scratch. He cautioned that in lieu fees can remain unused – this would be an issue if this approach is used.

- T.J. cautioned that sometimes, in lieu fees can push out private investment, so the group should consider if that is to be encouraged.
- There needs to be a critical mass of demand for the concept to work, so the group discussed tabling further action until Subcommittee 1 discussed volume credit.

The group then discussed

- the current Agreement in Lieu of a Plan (ALP) program in order to facilitate discussion of the possible expansion of that program. Melanie Davenport noted that the program gives requirements that can be met in place of a stormwater management plan. Originally, the plan was supposed to parallel an E&S agreement in lieu of a plan and it applies to single family detached residential development.
    - The project is designed to address single family detached residential construction, but has the potential to be expanded to meet other small projects. It requires no calculations, only agreement with a series of stated requirements. There is usually a site visit involved, but staff should be familiar with ALP because the framework exists already.
    - The group discussed the possibility of expanding the program to included non-residential construction of a similar size. They considered that in the lower categories of Mike's tiered approach, this becomes more appropriate.
- Follow-up projects were decided as follows:
    - David Nunnally to send a write-up of his concerns about the ALP program (and any other subcommittee members with concerns to do the same).
- Elizabeth asked if there was any public comment. Hearing none, the group ended its meeting at 3:40 p.m.