Stormwater Stakeholder Advisory Group
Implementation Work Group
Tuesday, July 28, 2015
Draft Notes

Location: DEQ Central Office
2nd Floor Conference Room A
629 E. Main Street
Richmond, VA

Start: 12:39 p.m.
End: 2:59 p.m.

SAG Implementation Work Group Members Present:
Melanie Davenport, DEQ
Michael Toalson, HBAV
Larry J. Land, VACO
Austin R. Mitchell, Amherst County
Peggy L. Sanner, Chesapeake Bay Foundation

Work Group Members Absent:
Douglas Beisch, Stantec
Jimmy Edmonds, Loudoun County
Elizabeth Andrews, DEQ
James Golden, DEQ
Adrienne Kotula, James River Association
Joe Lerch, VML

Facilitator: Mark Rubin, VCU
Recorder: Debra Harris, DEQ

Guests and Public Attendees:
Will Flory, Chesapeake Bay Foundation
Nick Bitner, Chesapeake Bay Foundation
Debbie Byrd, Goochland County
Fred Cunningham, DEQ
Drew Hammond, DEQ
Chris Moore, DEQ
Joan Salvati, DEQ

I. Agenda Item: Welcome, Introductions and Minutes
Discussion: Mark Rubin welcomed all to the meeting and asked each attendee to provide a short introduction to the group. The IWG was asked if there were any comments on the draft minutes for their meeting on June 26, 2015 (Attachment B). No comments were noted and the minutes will be finalized.

II. Agenda Item: Fees
Discussion: The IWG discussed the issues of fees as assigned by the SAG at their meeting on July 13, 2015. The SAG has asked the IWG to review the current fee language of the SWMA and the ESCL and provide consolidated fee language for their consideration at the next full SAG meeting. Ms. Davenport provided the IWG with an introduction to the fee issue and noted, later in the meeting, that DEQ's main consideration regarding fees is to ensure that there is enough of the fee funding provided to the DEQ in order for the Department's staff to do the work that the consolidated program will require including the coordinated VESMP program where DEQ will be providing the technical review of the plans for localities.

In order to facilitate the discussion on developing the necessary language for fees in the VESMA, Chris Moore, Director of Financial Management in DEQ's Office of Financial Management, provided an overview of Department's revenue and expenditures from implementing the stormwater program. This financial information was detailed in Handouts #1 through #4 (Attachment C):

- Handout #1 (Attachment C) provided an expenditure summary of DEQ's expenses for FY2015 (July 1, 2014 to June 30, 2015) for the Stormwater Program. It was noted that approximately $4.5 million dollars was the cost for the program in FY2015 (excluding the training and certification program).
- Handout #2 (Attachment C) provided a summary of revenues and the category for the revenues received during FY2015 and estimated revenues for FY2016 with no statutory changes. Assumptions used for the estimate were provided on the handout. It was noted that FY2015 was not a typical year for revenues and these numbers are in no way are an indicator of future year revenues (due to legislative changes over 2000 new permit applications). It was noted that reissuance fees were excluded as there is no longer a reissuance fee for the GP. There is now a one-time permit issuance fee and an annual permit maintenance fee. The annual fee is significantly lower than the reissuance fee).

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- Handout #3 (Attachment C) provided an estimate of revenues for FY2016 with an opt-in lite fee rate of 67% to the Department which would be necessary to cover the costs of the coordinated VESMP. The percentage was determined based on the a review of the fees to the VSMP authorities for each category. The percentage was averaged across the five categories.
- Handout #4 (Attachment C) provided the stormwater maintenance fee estimates.

The IWG discussed the information provided in the handouts. The following comments were noted:

- In Handout #2, the original projection was for $3.2 million in revenue for FY2015 based on 1512 permits which was based on the DCR data. However, DEQ only had 730 permits. That is less than half the projection.
- There is not enough data at this time to provide solid projections for the fee revenues or possible impacts of the consolidated VESMP on fees or expenditures.
- It was noted that the developers are hoping that CY2015 will be a start towards a more normalized construction market for the single family residential and commercial sectors. This could lead to an influx of activity from developers that have a permit but have yet to start construction as they are waiting for the market to turn.
- A better estimate may be to use 50% of a normal year such as FY2003 for the number of permit applications.
- There was a lot of concern over the proposed 67% of the fee (see Handout #3) that DEQ would need in order to provide the technical review of the plans for those localities that choose a coordinated VESMP (also called the opt-in lite program).
- It was noted that there needs to be a more detailed analysis of the DEQ staff time needed in order to assist the opt-in lite localities. This data is not currently available and the 2008 fee study is all the DEQ has to use.
- More detail and justification of the proposed change from the current 72% to a proposed 33% for the opt-in lite program is necessary. Localities will need this information in order to choose the VESMP option that is right for them.
- The numbers provided are based on the SWM fees. ESC fees should be incorporated as well since the program will be a consolidated program for ESC and SWM.
- The localities do get the annual maintenance fees when they are the VSMP authority.

The IWG was asked if a fee study was needed. The DEQ noted that currently there is just not enough good data. The IWG noted that:

- As we currently do not have numbers from the localities, we need more information from the VESCP as it is one of the most significant components of the program for localities.
- There needs to be some consideration of the savings that should be created from a consolidated program.

The IWG was then asked that if there was to be a fee study, how we would do a transition.

- For the study, the DEQ will need to create detailed time codes in order to determine the staff time necessary for the plan review as the times provided now are considerably underestimate the actual time needed for this work.
- It was noted that many times these plan reviews require three to four reviews prior to receiving a plan that can be approved.

The IWG was then asked again if there should be a fee study. The IWG provided the following comments:

- What kind of efficiencies would there be from a consolidate program? The study should provide that data as well.
- The study needs to compare the SWM and ESC fees as the programs are being consolidated.
- Other representatives need to be at the table for that decision to be made.
- There needs to be a way to get through the interim time between now and the fee study's recommendations.

Considering the above comments, overall, the IWG seems to think that the fee study would be a good idea and that there is a need for some sort of transition for the DEQ and the localities. A summary of these options could be provided to the SAG. The IWG noted some additional concerns, such as:

- There are concerns over the fee structure that will be in the consolidated VESMA. If we do change the fee structure, then it has to make sense with real justification and have good data to back up the changes needed. At this time, it is a difficult task to find the interim between now and the fee study.
- As noted previously, some recommended that others be brought into this discussion.
- For localities, the biggest concern is the split of the fee between the locality and the DEQ and the proposed changes to that split for the opt-in lite VESMP localities.
- Which framework would be used? The SWMA or the ESCL which are very different models. There is likely to be a lot of different views on this issue and we need to carefully communicate what we need to do and have solid data for justifying the changes.
- When we do a fee study, is there any benefit at looking at the actual numbers instead of a percentage?

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Regarding the issue of which model to use for the fees, the IWG was split with localities preferring the ESCL model and developers preferring the SWMA model. The IWG discussed the pros and cons of each model and the following comments were noted:

- The advantages of the ESCL are that the locality sets the fee for itself and the ESCL model provides for more flexibility as the locality retains control.
- For multi-year projects, the SWMA has annual maintenance fees. There is no provision for these annual fees in the ESCL.
- The SWMA provides certainty for developers regarding the costs associated with a project.
- There was some concern that under the ESCL model, localities could use the fee as an anti-growth tool by setting exorbitant fees.
- There are counties that are still in depression and they need to be able to set the fees they need to run the consolidated program. Under the ESCL model, there is that control and that flexibility. They need flexibility to set a fee that works for their situation.
- It was noted that under the SWMA, there are provisions for the locality to reduce or increase the fees established through the fee schedule. Is that not sufficient flexibility?
- The ability to increase or decrease under the SWMA is not sufficient as it still requires the locality to go through a Board approval process. That does not give the locality control over setting their fees.
- It was noted that for many localities, the fees that they get for the VSMP do not cover the costs of administering the program. However, as there is an economic component to development, some localities will use their VESCP fees or utility fees to cover the VSMP costs.
- If there was a way to insure that there was no differentiation between the sectors for land disturbance (i.e., commercial vs. residential) and the fees were to only cover costs of the consolidated program then developers could possibly live with a ESCL model where the localities set the fee provided those factors are met.
- A fee schedule is applicable to all uses. Is there any way that we could have provisions for some locality-based fee schedules?
- The main concerns seem to be: (i) the fee should be consistent for all types of land-disturbing activities; (ii) the fee should be mandated to only to cover the costs associated with the administration of the VESMP; (iii) the fee study needs to figure out what the efficiency savings are for a consolidated program; and (iv) there is still input needed from others not at the table.
- It was noted that the fee schedule still does need to cover the DEQ's costs when the department is either the VESMP authority or is providing technical review for the opt-in lite localities. We need to be careful when setting these fee provisions in the statute as the costs will be different depending on DEQ's role.
- Is there any way or should we base the VESMP fee on the size of the project? Larger project pay a larger fee.
- Opt-in lites should have the same option to use third party engineers; however, it was noted that if they hired third party engineers then they would not be a coordinated opt-in lite VESMP.

The IWG was asked to think about what a fee model would look like and the options.

The meeting was then adjourned.

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Attachment A

List of Acronyms

CBPA – Chesapeake Bay Preservation Act
DEQ – Department of Environmental Quality
ESC – erosion and sedimentation control
ESCL – Erosion and Sedimentation Control Law
EWG – Enforcement Work Group (a subgroup of the SAG)
GP – Construction General Permit
IWG – Implementation Work Group (a subgroup of the SAG)
MS4 – Municipal Separate Storm Sewer System
NWG – Nutrient Trading Work Group (a subgroup of the SAG)
RLD – Responsible Land Disturber
SAG – Stormwater Stakeholder Advisory Group
SWCDs – Soil and Water Conservation Districts
SWCL – State Water Control Law (in this context the term normally refers to the general provisions)
SWM – stormwater management
SWMA – Stormwater Management Act
VSMP – Virginia Stormwater Management Program
WWG – Wordsmithing Work Group (a subgroup of the SAG)

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ATTACHMENT B

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IWG 6/26 Draft Minutes

SWMA Fee Provisions.docx

Fee Provisions

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Attachment C
Fee Information

FinInfoHandout#1.pdf

FinInfoHandout#2.pdf

FinInfoHandout#3.pdf

FinInfoHandout#4.pdf

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