

**Chesapeake Bay Local Assistance Board
Southern Area Review Committee
Tuesday, October 25, 2005 – 2:00 p.m.
101 N. 14th Street – James Monroe Building
Richmond, Virginia**

Southern Area Review Committee Members Present

David C. Froggatt
Beverly D. Harper
Gale A. Roberts

Southern Area Review Committee Members Not Present

Sue H. Fitz-Hugh
Michael A. Rodriguez

Staff Present

Joan Salvati, Director, Division of Chesapeake Bay Local Assistance
Shawn Smith, Principal Environmental Planner
Heather Mackey, Senior Environmental Planner
Beth Baldwin, Senior Environmental Planner
Jakob Helmboldt, Senior Environmental Planner
Christine Watlington, Policy, Planning and Budget Analyst
Lee Hill, Assistant Director, Stormwater Management Programs
Michael R. Fletcher, Director of Development

Local Government Representatives Present

City of Chesapeake

Amy Ring

Chesterfield County

Scott Flannagan
Dick McElfish

Hanover County

Becky Draper
Mike Flagg

City of Petersburg

Leonard Muse

Call to Order and Opening Remarks

Mr. Froggatt called the meeting to order and declared a quorum present.

Ms. Salvati recognized Lee Hill, director of DCR's stormwater management program.

Ms. Salvati noted that the meeting of the Policy Committee had been postponed. She said that staff continued to work on the issues of concern and hoped to prepare a full agenda and provide as much information as possible at the next meeting.

Ms. Salvati said that DCR is forming a small working group to discuss the issue of perennial flow determinations. She said that one of the allowable protocols is the use of photo documentation. There is an issue with Fairfax County where the County is allowing the use of photo documentation to declassify a stream that has been classified using a more rigorous determination method.

Ms. Salvati said that staff did not believe this interpretation was consistent with the discussion of the ad hoc committee. The ad hoc committee allowed the photo documentation and considered it equal, but not preferable to other determination methods.

Ms. Salvati said that staff had been receiving questions concerning wetlands adjacent or contiguous with RPAs. She said that in the case of wetlands, the RPA would begin at the boundary of the wetland. She noted that there is some dispute in the field between locality staff and the consultants.

The ad hoc committee previously discussed this, but the guidance did not move forward. The ad hoc committee will discuss this again and draft guidance will be developed. The discussions will include wetlands consultants and VIMS.

Also the ad hoc committee will discuss the determination of perennial flow. During years of normal precipitation there will be times of drought when streams that are legitimately perennial will be dry. The committee will discuss options for dealing with these determinations.

Ms. Salvati said that the workshop for localities is scheduled for November 3. Members should have received an invitation.

Ms. Salvati said that DCR has held the first of two green infrastructure sessions. The second one is scheduled for November 9 at Rappahannock Community College.

Local Program Reviews: Phase I

Chesterfield County – Review of Phase I conditions

Mr. Helmbolt presented the report for Chesterfield County. Recognized Scott Flannagan, Water Quality Administrator and Dick McElfish, also with Chesterfield County.

On March 21, 2005 the Board found Chesterfield County's revised Phase I ordinance consistent with five conditions with a deadline of September 30, 2005. On August 24, 2005 the Chesterfield County Board of Supervisors adopted amendments to their local program ordinance to be consistent with the Regulations.

One recommendation required the addition or updating of definitions in the County's ordinance. The remaining four recommendations were required to clarify the language and intent of the provisions of the County's ordinance to which they each applied. At this time the County also adopted a fee schedule for exception requests.

Mr. Helmboldt said that staff opinion was that the County has adequately addressed the all five recommendations for consistency and further, recommends to the Committee a finding of consistency.

Mr. Flannagan had no additional comments.

MOTION: Ms. Roberts moved that the Southern Area Review Committee recommend that the Chesapeake Bay Local Assistance Board find that the Chesapeake Bay Preservation Area Ordinance amended by Chesterfield County on August 24, 2005 be found consistent with § 10.1-2109 of the Act and §§ 9 VAC 10-20-60 1 and 2 of the Regulations.

SECOND: Ms. Harper

DISCUSSION: None

VOTE: Motion carried unanimously

City of Hopewell – Review of Phase I conditions

Mr. Helmboldt presented the report for the City of Hopewell. No one from the City was present.

On June 21, 2004 the Board found the City of Hopewell's revised Phase I ordinance consistent with one condition with a deadline of September 30, 2005. On September 27, 2005 the Hopewell City Council adopted amendments to their local program ordinance to be consistent with the Regulations.

The one recommendation required that the City amend their ordinance to require that a stormwater management program, if adopted by the City, be approved by the Board as a Phase I modification to the local program.

Mr. Helmboldt said staff opinion was that the City has adequately addressed the one recommendation for consistency and further, recommends to the Committee a finding of consistency.

MOTION: Ms. Harper moved that the Southern Area Review Committee recommend that the Chesapeake Bay Local Assistance Board find that the Chesapeake Bay Preservation Area Ordinance amended by the City of Hopewell on September 27, 2005 consistent with § 10.1-2109 of the Act and §§ 9 VAC 10-20-60 1 and 2 of the Regulations.

SECOND: Ms. Roberts

DISCUSSION: None

VOTE: Motion carried unanimously

City of Petersburg – Review of Phase I conditions

Mr. Helmboldt presented the report for the City of Petersburg. He recognized Leonard Muse, City Planning Director.

On December 13, 2004 the Board found the City of Petersburg's revised Phase I ordinance inconsistent with the Regulations, and further, required that the City address the eight recommendations by the deadline of June 30, 2005.

On June 14, 2005 Mr. Muse met with Division staff to discuss their current progress and informed staff that they were attempting to move forward towards adoption of the revised ordinance, but stated that it would not be accomplished by the deadline.

On September 6, 2005 the Petersburg City Council adopted amendments to their local program ordinance to be consistent with the Regulations.

The Petersburg Clerk of the Council has not yet provided staff with a certified copy of the adopted ordinance; however, Mr. Muse has assured staff that the amended ordinance that he provided reflects that changes as adopted by the City Council.

The eight recommendations can be summarized as follows:

- Two (2) conditions relating to stormwater management
- Two (2) conditions relating to exempted activities
- Two (2) conditions relating to administrative waivers for nonconforming uses
- One (1) condition relating to the General Performance Criteria
- One (1) condition relating to permitted development in the RPA

Staff is of the opinion that the City has adequately addressed the eight recommendations for consistency and further, recommends to the Committee a finding of consistency.

Mr. Muse thanked the staff for their guidance and support.

MOTION: Ms. Roberts moved that the Southern Area Review Committee recommend that the Chesapeake Bay Local Assistance Board find that the Chesapeake Bay Preservation Area Ordinance amended by the City of Petersburg on September 6, 2005 be found consistent with § 10.1-2109 of the Act and §§ 9 VAC 10-20-60 1 and 2 of the Regulations.

SECOND: Ms. Harper

DISCUSSION: None

VOTE: Motion carried unanimously

Town of Onley – Phase I revisions

Ms. Smith gave the report for the Town of Onley. There was no one present from the Town of Onley.

The town was the last to adopt the required revisions, adopting on April 4, 2005. Staff had a hard time getting a copy of the adopted ordinance, but finally received a copy in September. The town made all the required changes and staff has no recommendations for consistency.

MOTION: Ms. Harper moved that the Southern Area Review Committee recommend to that the Chesapeake Bay Local Assistance Board find the local program amendments adopted by the Town of Only

on April 4, 2005 consistent with § 10.1-2109 of the Act and § 9 VAC 10-20-60 1 and 2 of the Regulations.

SECOND: Ms. Roberts
DISCUSSION: None
VOTE: Motion carried unanimously.

Mr. Froggatt said that the items concerning the City of Chesapeake would be taken up at the end of the meeting.

Local Program Reviews: Compliance Evaluation

Town of Painter

Ms. Smith gave the report for the Town of Painter.

Staff reviewed the town's implementation along with the three towns (Hallwood, Onancock, Belle Haven) that were reviewed by the Board last quarter. As with those towns, Accomack County issues building permits, reviews for RPA issues, and implements the septic pump-out, erosion and sediment control and stormwater requirements, when applicable.

The town has a very small RPA, adjacent to a stream that has houses along it already, and no new development has occurred in the RPA. Based on these factors, Ms. Smith said that staff recommended that the Town's implementation be found compliant. Staff will continue to monitor development in and around the town.

MOTION: Ms. Roberts moved that the Southern Area Review Committee recommend that the Chesapeake Bay Local Assistance Board find that the implementation of the Town of Painter's Phase I program complies with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations.

SECOND: Ms. Harper
DISCUSSION: None
VOTE: Motion carried unanimously

Hanover County – Initial Compliance Evaluation

Mr. Helmbolt gave the report for Hanover County. He recognized Rebecca Draper, Director of Public Works and Mike Flagg, Deputy Director of Public Works for the County.

The DCR staff initial compliance evaluation meeting with Hanover County took place on May 26, 2005, with subsequent meetings for site plan review and selection took place on June 30, 2005 and July 13, 2005.

Mr. Helmboldt said that as a result of the compliance evaluation process, staff offered recommendations:

The County, at the time of the evaluation, had a couple of remaining, yet relatively minor requirements still to be completed under their Corrective Action Agreement.

Recommendation:

For consistency with § 9 VAC 10-20-120 6 of the Regulations, the County must ensure that the erosion and sediment control program deficiencies noted by DCR-DSWC staff are addressed through successful implementation of the County's Corrective Action Agreement.

The County does maintain a database of properties with onsite sewage disposal systems. Additionally, the County has prepared a brochure that is distributed to some property owners with septic systems, informing them of the pump-out requirement, its purpose, and basic septic system maintenance guidelines. The County Health Department distributes copies to owners applying for septic system permits and the brochure is used at some public meetings when septic issues are central to the purpose of the meeting, such as when discussing TMDLs.

However, the County does not actively enforce the septic pump-out provisions of the Regulations by requiring proof of pump-out, or tracking whether property owners have complied with the pump-out requirements.

Recommendation:

For consistency with § 9 VAC 10-20-120 7 a of the Regulations and as required by Section 10-38(6) a of the County's Bay Act ordinance, the County must develop and implement a septic maintenance program, including the five-year pump-out notification, installation of the plastic filter, and/or annual inspection, including any necessary tracking information.

Mr. Helmboldt said that staff also had a couple of suggestions that are not required for compliance, but which may contribute to the County's successful implementation and enforcement of their local program.

Suggestion:

Because many BMP failures are the result of improper design and construction, staff suggests that the County require for all BMPs, a stamped certification that the facility was installed as designed or the submission of an as-built survey to ensure that they were constructed as designed or in such a manner that is consistent with the BMP's intended function and provides for equivalent pollutant removal as originally designed. Additionally, the County should continue to develop policies and procedures that will ensure more consistent inspection of all BMPs.

Due to the amount of development that the County is facing, staff suggests that Hanover County follow the lead of Chesterfield and develop a "Qualified Professionals" list of consultants in order to assist in their review of site plans involving perennial stream determinations.

Suggestion:

The County should consider developing a "Qualified Professionals" list of consultants that have received adequate training in the North Carolina or Fairfax methodologies and who have demonstrated proficiency in the accurate application of perennial stream determination methodologies and who otherwise meet the County's definition of "Qualified Professionals."

Mr. Helmboldt said that Department has only minimal concerns regarding the County's administration of their Bay Act program and these are reflected in the recommendations and suggestions in the evaluation.

Hanover County exercises significant oversight in administering their Bay Act requirements and they have been diligent in requiring appropriate mitigation for RPA encroachments or violations.

The County's use of their rural clustering in Rural Conservation subdivisions often results in development that retains significant open space and which is well below the impervious threshold that triggers water quality requirements. Additionally, consolidation of disturbed areas often results in development that is well outside of any RPA that is present onsite.

Throughout the evaluation process, County staff has been helpful and accommodating and consistently provided the Department with the information and materials needed to conduct the evaluation.

The organized and detailed information provided, along with County staff's knowledge of development activity, both past and present, within the County helped to expedite the review process.

Mr. Helmboldt said that as a result of the two recommendations, staff recommended that the Board find that certain aspects of the County's implementation of its Phase I program

do not fully comply §§10.1-2109 and 2111 of the Act and §§9 VAC 10-20-231 and 250 of the Regulations.

Mr. Helmboldt said that staff further recommended that Hanover County undertake and complete the two (2) recommendations contained in the staff report no later than December 31, 2006.

Mr. Flagg said that he appreciated the opportunity to speak with the Board about the County program. He said that the County appreciated Mr. Helmboldt's work and staff perspective on the evaluation.

Mr. Flagg said that with regard to the consistency rating for ENS control that to put it in perspective meant that the locality was rated inconsistent with the state program. He said that Hanover County takes this program very seriously.

Mr. Flagg offered a series of photos to document his concern. These photos are on file with the Department of Conservation and Recreation. Mr. Flagg said the County wished to promote consistency with the joining jurisdictions. He noted that many of the County issues are predicated by utility companies that are outside their jurisdiction.

Mr. Flagg said that the enforcement tools available to the County are limited by law. He said that the County feels the need to continue the dialogue. He said that the County intent is to be compliant with the Act and Regulations.

Mr. Flagg said that the County requested that the reference to the DCR audit of the County MS4 permits be stricken from the Resolution. He said that the County believes the information is inaccurate and that the County was not afforded the opportunity to comment on the EPA report or the DCR report.

Ms. Salvati said that the reference was to inform the Board that there has been an audit. Staff felt this was necessary for full disclosure.

Mr. Flagg said the last issue of concern was regarding the septic pump out requirements. He said that this would be a significant process for the County to track and log and that it would be labor intensive and a laborious process. He said that some of the systems in the County are beyond their lifespan and the issue is no longer one of pump out.

Mr. Froggatt noted that the other localities were managing to satisfy the requirements for septic tank pump outs.

Mr. Flagg said that adjoining counties struggle with the same issue. He said that not all counties have the ability to physically follow through.

Ms. Salvati said that staff is working with localities regarding this issue. DCR is trying to forward as much funding as is possible to the localities.

Ms. Draper asked what penalty the County could use to threaten homeowners who did not comply with the septic pump out requirement. She said that out of the ten thousand people the County will notify that half will not respond.

Ms. Smith said there is no systematic way of verifying that the work is done. She said the intent is for the County to set up the process and begin the work. Each locality will need to decide on action based on their own situation.

Ms. Harper asked if staff had tracking software that could be made available.

Ms. Smith said the software was badly outdated.

Ms. Harper noted that the inspection had found the County consistent for the Erosion and Sediment control program.

Mr. Hill said the Erosion and Sediment control program looks at the minimum requirements of administration plan review, inspection and enforcement. While the requirement used to be that a program meet one hundred percent of the requirements, that has changed. Rankings are now on a numerical and comparison basis. Programs must receive a rating of 70 in all four areas to be found consistent.

Ms. Salvati asked how many programs were fully consistent.

Mr. Hill said about 15 are fully consistent and about 50 are provisionally consistent.

MOTION: Ms. Roberts moved that the Southern Area Review Committee find that certain aspects of Hanover County's implementation of its Phase I program do not fully comply with §§ 10.1-2109 and 2111 of the Act and §§ VAC 10-20-231 and 250 of the Regulations and further that the County undertake and complete the two (2) recommendations contained in the staff report no later than December 31, 2006.

SECOND: Ms. Harper

DICUSSION: None

VOTE: Motion carried unanimously

City of Poquoson – Review of previous conditions

Ms. Miller gave the report for the City of Poquoson.

On June 21, 2004, the Board adopted a resolution which listed seven conditions required for the implementation of the City of Poquoson's Phase I program to be compliant with the Act and Regulations. The Board set a deadline of June 30, 2005 for the City to address these conditions, and as of September 1, 2005, the City had addressed six of the seven conditions through changes to local program implementation policies.

The original conditions included requirements for the City to:

- *document submission of WQIAs for proposed activities within RPAs*
- *indicate RPA buffer vegetation replacement, restoration, and establishment standards in CBPA files for all approved encroachments in the RPA and all RPA buffer violations*
- *require site plans and subdivision plats to denote the limits of the RPA and prohibit land uses other than water dependent uses and redevelopment*
- *amend local Bay Act program ordinances to ensure consistency with recent revisions to the Regulations and the local Bay Act ordinance*
- *require the maintenance of best management practices (BMPs)*
- *maintain more complete files on all local Bay Act program complaints and violations*
- *ensure the limits of RPAs are determined and clearly marked on both site plans and on site prior to any clearing or grading*

The City is still developing a database to track the required BMP maintenance agreements and enable staff to monitor and inspect the BMPs. The City has requested additional time to complete this work; therefore in order to ensure that the City is implementing a consistent Phase I program, the original condition is repeated in the staff report.

Recommendation

To fully comply with 9 VAC 10-20-120 3 of the Regulations, the City will develop a program to ensure the regular or periodic maintenance of best management practices in order to ensure their continued proper functioning over the long-term. This program will include all engineered stormwater BMPs.

Ms. Miller said it was the Department's recommendation that the City of Poquoson's Chesapeake Bay Preservation Act program be found to not fully comply with the Act and Regulations, with the remaining recommendation to be addressed by June 30, 2006.

Ms. Miller noted a minor revision was needed in the Summary section located at the end of the staff report. She said that Department staff would revise this section to reflect the language ("does not fully comply") included in the Resolution and the Staff Recommendation section of the staff report.

MOTION: Ms. Harper moved that the Southern Area Review Committee recommend to the Chesapeake Bay Local Assistance Board find that certain aspects of the City of Poquoson's implementation of its Phase I program do not fully comply with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations and further that the City undertake and complete the one recommendation contained in the staff report no later than June 30, 2006.

SECOND: Ms. Roberts

DISCUSSION: None

VOTE: Motion carried unanimously

Northampton County – update on progress

Ms. Smith directed members to an update on progress provided in member Board books. A copy of this memo is available from DCR. It outlines the progress made by the County to date on action taken by the Board at the March 21, 2005 meeting. The County is to undertake and complete 6 recommendations as outlined by staff by March 31, 2006.

Mr. Froggatt returned to the items concerning the City of Chesapeake.

City of Chesapeake – Review of Phase I conditions

Ms. Baldwin gave the report for the City of Chesapeake. She recognized Amy Ring from the City.

On December 9, 2003, the City of Chesapeake adopted its revised Chesapeake Bay Preservation Area Overlay District Ordinance along with a revised IDA map. The Department reviewed the City's revised Phase I program and identified ten items of concern that required changes in order to be found consistent with the Act and Regulations. With Department assistance the City of Chesapeake adopted a revised Phase I ordinance on July 26, 2005.

The revised ordinance adequately addresses all of the required changes to the Regulations and all of the items of concern previously identified by the Department.

The City's IDA expansion is, in large part, based on the *Proposed Intensely Developed Areas Report for the City of Chesapeake* completed in October 2003. This study included an identification of existing and potential redevelopment areas in the City and examined existing conditions within these areas. Ultimately the City identified 5 distinct areas to be designated as IDAs. These areas range from 57-85% average impervious cover and are comprised mostly of industrial, waterfront industrial, and commercially

zones areas. The City also developed several IDA management guidelines that are designed to maintain a vegetated RPA buffer area where possible and maintain or improve water quality through innovative storm water management techniques, like bio-retention areas and pervious pavement, and the use of better site design techniques where appropriate.

The City is to be commended for adopting an IDA designation process that is fully consistent with the Regulation and incorporating a variety of pollutant removal strategies for ensuring that IDA development is compatible with the overall goals of the Bay Act.

Therefore, the staff recommends that the Southern Area Review Committee find the City of Chesapeake's Phase I program, including both its amended Chesapeake Bay Preservation Area Overlay District ordinance and the areas newly designated as IDA, consistent with the Act and Regulations.

MOTION: Ms. Roberts moved that the Southern Area Review Committee find the City of Chesapeake's local revised ordinance and revised Intensely Developed Area (IDA) adopted on December 9, 2003 and subsequent amendments adopted on July 26, 2005 be found consistent with § 10.1-2109 of the Act and § 9 VAC 10-20-60.1 and 2 of the Regulations.

SECOND: Ms. Roberts

DISCUSSION: None

VOTE: Motion carried unanimously

City of Chesapeake – Review of Phase II conditions

Ms. Baldwin gave the report for the City of Chesapeake.

On December 11, 2000, the Board found the City of Chesapeake's comprehensive plan consistent with seven conditions. The City was given a deadline of March 31, 2003 to address the seven conditions. On June 16, 2003, the Board extended the City's deadline to December 31, 2004. On March 8, 2005, the City adopted an amended comprehensive plan that the Department believes adequately addresses the Board's seven recommendations from December 2000.

The seven recommendations, which have all been fully addressed in the most recent comprehensive plan update, included:

- requiring an assessment of opportunities for water quality improvement in the South Norfolk Area;

- coordinating with the HRPDC in the development of a water supply watershed management program;
- strengthening the language guiding the installation of septic systems;
- adding information about required water quality protection measures for agriculture in the City;
- developing and including information to help minimize shoreline hardening and to make necessary shoreline hardening as friendly to tidal wetlands as possible;
- conducting a Public and Private Waterfront Access Study; and,
- updating the RPA map where necessary, especially in agricultural areas.

Based on its review of the City's amended comprehensive plan, Ms. Baldwin said the Department recommended that the City of Chesapeake's Phase II program be found consistent with the Act and Regulations.

MOTION: Ms. Roberts moved that the Southern Area Review Committee recommend that the Chesapeake Bay Local Assistance Board find the City of Chesapeake's comprehensive plan amended and adopted by the City of Chesapeake on March 8, 2005 be found consistent with § 10.1-2109 of the Act and § 9 VAC 10-20-60 3 of the Regulations.

SECOND: Ms. Harper

DISCUSSION: None

VOTE: Motion carried unanimously

Other Business

There was no other business.

Public Comment

There was no additional public comment.

Adjourn

There being no further business the meeting was adjourned.

Respectfully submitted,

Donald W. Davis
Chairman

Joseph H. Maroon
Director