

## Virginia Stormwater Best Management Practice (BMP) Clearinghouse Stakeholder Meeting

Via GoToWebinar  
December 10, 2020

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) Personnel Present**

Erin Belt, DEQ-Central Office  
Robert Cooper, DEQ-Central Office  
Melanie Davenport, DEQ-Central Office  
Drew Hammond, DEQ-Central Office  
Austen Stevens, DEQ-Central Office

### **Virginia Water Resources Research Center Personnel Present**

Jane Walker, Virginia Water Resources Research Center (VWRRC)

### **Stakeholders Present**

Kathie Angle  
Kayode Aransiola  
Kyra Arnold  
David Barthol  
Derek Berg  
C.J. Bodnar  
Patrick Bradley  
Jeff Bragdon  
Kelsey Brandt  
Seth Brown  
Graham Bryant  
Ranee Buck  
Maura Christian  
James Clark  
Scott Crafton  
Nicole Dane  
Amity Dewey  
Piotr Domaszczynski  
Jacob Dorman  
Travis Dorman  
Seth Edwards  
Adham El-sherbeini  
Lacey England  
Dan Fajman  
K.C. Filippino  
Jim Filson

Chris French  
Hannah Gill  
Brad Glatfelter  
Kelli Glenn  
Scott Gorneau  
Hank Gottschalk  
Normand Goulet  
Joseph Grant  
Amy Green  
Brett Hammonds  
Jeff Hancock  
Christy Hill  
Jay Holtz  
Gabriel Irigaray  
George Ives  
Richard Jacobs  
Juan Carlos Jofre  
Arianna Johns  
Robert Jordan  
Bob Kramer  
Brent Lawrence  
Trae Livick  
David Lockledge  
Ryan Mahon  
Kyle Marshall  
Annita McCormick  
Mark Miller

Chad Minnick  
Rachel Morales  
Molly Morrison  
Barrett Nicks  
Beatriz Patino  
Gavin Pellitteri  
Frank Pohl  
Sheila Reeve  
Lisa Reynolds  
Samantha Ritz  
John Rotondo  
Brian Rustia  
Kelsey Ryan  
William Salomone  
David Sample  
Tyler Schmaling  
P.J. Scully  
Bill Shelton  
Kateri Simon  
Corey Simonpietri  
Toni Small  
Curt Smith  
David Smith  
Philip Smith  
Ginny Snead  
Greg Spires  
Diana St. John

Jill Sunderland  
Phillip Taylor  
Whitney Thomas

Darryl Walker  
Greg Williams  
Mark Williams

Sandra Williams  
Patrick Wood  
Lisa Yates

### **Call to Order & Introductions**

Erin Belt of DEQ called the meeting to order and reviewed the meeting agenda. She explained that the primary purpose of the meeting is to discuss regulatory amendments from the 2020 General Assembly (G.A.) that impact manufactured treatment devices (MTDs).

This is the first virtual meeting for stakeholders of the Virginia Stormwater BMP Clearinghouse (BMP Clearinghouse). Participants were asked to respond via the chat box or use the raise-hand function. Some individuals were able to unmute themselves to speak, and others were not. Most comments and questions from stakeholders came through the chat box. Ms. Belt introduced those in attendance and announced that this is her first meeting with the BMP Clearinghouse stakeholders.

### **Minutes from August 15, 2019 Meeting**

A stakeholder commented in the chat box that he did not receive a copy of the previous minutes. Personnel with DEQ promised to provide them to him. There were no comments on the minutes so they were approved as provided.

### **Update: DEQ Stormwater Program**

#### **Staff Changes**

Ms. Belt stated that there have been several changes within DEQ's Stormwater Program since the last meeting, including staff changes. The August 2019 BMP Clearinghouse stakeholder meeting was Jaime Robb's last meeting as DEQ's Stormwater Program Manager. Ms. Belt introduced herself and explained that she is now the Stormwater Program Manager for DEQ. Prior to this role, Ms. Belt has worked in DEQ's Stormwater Program for the past six years. Other changes include that DEQ has lost its team lead in the Stormwater Program and is in the process of hiring additional stormwater plan reviewers in the central office (mainly for solar projects).

#### **Agency Website**

The agency's website is undergoing significant changes so some information cannot be downloaded currently. Forms and information pertaining to the Stormwater Construction General Permit (CGP) have been distributed via email and are temporarily posted on the BMP Clearinghouse website (<https://swbmp.vwrrc.vt.edu/news/>). Some of the email messages contained an older version of the Annual Standards & Specifications Entity Form; the current version is posted on the BMP Clearinghouse website.

#### **Non-proprietary BMPs**

Robert Cooper reported that an updated design specification for bioretention has been developed and distributed to DEQ personnel for review. As new bioretention projects come in over the next several months, DEQ staff are to compare their review using the current bioretention specification to that with the new version. He clarified that plans would only be officially

reviewed using the current specification. The review using the new version would simply be an exercise to provide feedback on the new version. Following the internal review, DEQ plans to have it reviewed by individuals outside the agency. Mr. Cooper added that he hopes the updates to the other design specifications do not take as long.

### 2020 Legislative Session

Ms. Belt noted that as a result of the 2020 G.A. session, there is a change to the way applicants request CGP coverage. She explained there are currently two CGP registration statement forms. The existing form can be used until December 31, 2020, and the new revised form must be completed by applicants starting January 1, 2021. She noted that the formatting of the form has been updated, in part, to improve data entry. As part of the regulatory change, applicants must report all off-site support activities and excavated material disposal areas. They must report the origination of the fill, where it is going, and the contents of the excavated material. The DEQ is required to tell localities that are impacted by the excavated area and receipt of the excavated material.

Ms. Davenport explained that most legislation that affects DEQ is not initiated by DEQ. Every summer, DEQ's legislative policy personnel request ideas for legislation. A handful of submitted ideas are presented to David Paylor, DEQ's Director. If they make his cut, the agency seeks approval from the Secretary of Natural Resources and the Governor to initiate the legislative action. Thus, the vast majority of legislation, especially related to stormwater, is initiated outside the agency. The DEQ does not have much control over what happens to the agency on the legislative side. For each presented legislative action, DEQ staff is required to develop a legislative analysis statement (LAS). All legislation is drafted by Legislative Services, which is an arm of the G.A. When a bill comes to DEQ, the agency is to review the bill and must recommend to the Secretary of Natural Resources and Governor if the agency supports, opposes, or has no position. The standard for opposing is to request the Governor to veto the bill if it passes the G.A. The DEQ does not take a position on most bills.

With regard to the legislative changes pertaining to the use of proprietary BMPs, DEQ reviewed the bill and offered some technical language to the patron putting the bill forward to improve it, but the agency did not take a position on the bill. It was not DEQ's legislative action. Concerns have been raised about some of the challenging language in the legislation, e.g., verified, certified. Additionally, the legislation allows the use of total suspended solids (TSS) data for setting total phosphorus (TP) removal crediting. Thus, it is not a perfect piece of legislation, but it is what we have. Thus, DEQ is providing guidance on its interpretation of the legislation.

Ms. Davenport also noted that for at least the last five years, the Stormwater Program has had more new bills than any other program at DEQ. Furthermore, DEQ personnel have not put forward any of the stormwater management bills during that time.

Ms. Belt described House Bill (HB) 882 from the 2020 G.A. The legislation as passed:

Directs the State Water Control Board to adopt regulations providing for the use of a proprietary best management practice (BMP) only if another state, regional, or national certification program has verified and certified its nutrient or sediment removal effectiveness. The bill requires any proprietary BMP that is included on the Virginia

Stormwater BMP Clearinghouse website prior to July 1, 2020, to provide documentation to the Department of Environmental Quality showing that its effectiveness has been verified by another state, regional, or national certification program and prohibits any such proprietary BMP that fails to provide such documentation from being used in any stormwater management plan submitted on or after January 1, 2022.

[Language describing the bill as passed and its history can be found at <https://lis.virginia.gov/cgi-bin/legp604.exe?201+sum+HB882>.]

## **MTD Evaluation Protocol**

### Summary of Draft Guidance Memo

Drew Hammond, Erin Belt, Robert Cooper, and Jane Walker worked together to develop a draft guidance memo to explain DEQ's process for implementing the new legislation (Appendix A). The stakeholders on the BMP Clearinghouse listserv are the first outside the agency to see it. A 30-day public comment period is required for guidance but has not yet begun.

Mr. Hammond provided an overview of the draft guidance memo. The guidance provides updated procedures to be used by DEQ to approve proprietary BMPs. It will replace the current approval method as provided in Guidance Memo No. 14-2009. He highlighted the following changes from the current guidance:

- The addition of definitions for nonproprietary BMPs and proprietary BMPs (as a result of HB 882).
- Proprietary BMPs can be approved “when another state, regional, or national certification program has verified and certified the practice’s nutrient or sediment removal effectiveness.” The DEQ will no longer review data and decide to approve or not approve a proprietary BMP. Instead, approvals will be based only on General Use Level Designation (GULD) certifications from Washington State’s Technology Assessment Protocol – Ecology (TAPE) program and certification from the New Jersey Department of Environmental Protection (NJDEP). The DEQ will review the submitted certification letters and other submitted material.
- Currently approved proprietary BMPs must submit the recognized certification documentation on or before December 31, 2021 in order for the proprietary BMP to be used to meet water quality requirements for plans submitted on or after January 1, 2022.
- Proprietary BMPs to be approved on or after July 1, 2020 must meet the requirements of § 62.1-44.15:28 A 9 of the *Code of Virginia* [“Provide for the use of a proprietary best management practice only if another state, regional, or national certification program has verified and certified its nutrient or sediment removal effectiveness.”; see <https://law.lis.virginia.gov/vacode/62.1-44.15:28/>].

Mr. Cooper reviewed Table 1 in the draft guidance document. This table provides the proposed removal efficiencies assigned by DEQ based on certification from TAPE and NJDEP. Mr. Cooper stressed that DEQ would no longer review data. Instead, proprietary BMPs will now need certification through TAPE or NJDEP to be approved by DEQ.

Mr. Hammond acknowledged that some plans will have already been put forth utilizing TP removal efficiencies for currently approved devices established under Guidance Memo 14-2009.

Even if the approval efficiencies change as this document is developed, DEQ will honor plans already prepared and approved.

When either of the approved certification programs recertifies a proprietary BMP, DEQ will need the updated certification letter.

Mr. Cooper explained that the registration statement in the new document is shorter than the previous version because not as much information is needed for approvals. Approvals will now rely heavily on the certification letter. He requested that applicants submit the name of the device as it is to appear on the BMP Clearinghouse. Likewise, the contact information provided for the device should be as it is to appear on the BMP Clearinghouse. Applicants can submit what information they want. It can be more than is requested, however all reviewed materials will be posted on the BMP Clearinghouse. All submitted information is made available to the public. Therefore, applicants should not submit proprietary information. Mr. Cooper stressed, “If it is something you do not want the rest of the world to see, don’t send it to us.”

### Stakeholder Feedback

Mr. Hammond and Mr. Cooper requested feedback. The comments and questions provided by stakeholders at the meeting are organized below by topic. Comments received through the chat box are in blue text. When DEQ staff addressed specific questions and comments, a summary of the response follows.

A stakeholder called in with the following comments:

- The draft guidance document is a good first step and provides some clarity to all of the various stakeholders.
- In the definition for proprietary BMPs, the term “privately owned” could imply something more than just the type of technology. It could refer to a specific BMP and have an unintended consequence of suggesting ownership after the product has been sold. He suggested clarifying the definition to avoid unintentional consequences.
- Incorporate information on sizing and provide distinctions between the types of BMPs, such as hydrodynamic separators, filtering systems, and biofilters.
- Additional written comments will be provided later.

*DEQ response:* Mr. Hammond stated that DEQ personnel are continuing to consider how best to incorporate and present sizing information, etc. on the BMP Clearinghouse.

### *Guidance Implementation Process*

- **What is the earliest that these MTD's (that are currently on the list) can be submitted? Also, can the "draft" form be used for submission? I just want to confirm that we don't have to wait for the comment period to end to resubmit when we currently have the necessary information/certifications.** *DEQ response:* Mr. Hammond stated that the statute is clear on what is needed for approval. He is okay with using the draft form to submit information to the agency. Later, he added that any changes to the form from the current version would require follow-up, which he does not envision would be difficult to obtain.
- **When do you expect the formal public comment period to open?** *DEQ response:* Ms. Belt suggested 30–45 days for the stakeholders to comment first. The official public

comment period through the Virginia Regulatory Town Hall would occur afterwards and is 30 days. A follow-up email will let stakeholders know a deadline once decided internally. Mr. Hammond offered that given the holidays, it might be better to give more time for input from the stakeholders. He suggested it could be three months before the document is considered final.

### *Pollutant Removal Credits*

- **I seem to recall previous indications from DEQ staff that you were considering greater than 50% TP removal credit if TAPE data supported that conclusion. Is that still being considered?** *DEQ response:* Mr. Hammond recalled the discussion at the August 2019 stakeholder meeting. He cited, however, that the draft document reflects what the agency feels is the intent of the G.A. The agency is to approve the use of proprietary BMPs when certified by another state, regional, or national certification program. For example, the TAPE certification letter includes a removal efficiency of 50% for TP. Thus, at this point, Table 1 does not reflect anything higher than 50%.
- **Is the Department concerned about limiting innovation by maintaining the cap and awarding nearly the same amount of credit for system testing only for TSS removal?** *DEQ response:* Mr. Hammond stated that DEQ is focused on implementing what the new statute of July 1, 2020 says. It instructs the agency to implement a program to accept verification and certification from another state, regional, or national certification program. What DEQ proposes in the guidance is what it believes the members of the G.A. intended. Ms. Davenport stated that the new statute appears in conflict with the G.A.'s earlier language on using innovative practices. Mr. Hammond added that the G.A. also clarified that the use of innovative practices pertains only to nonproprietary BMPs, which is why the new language includes definitions that distinguish between nonproprietary and proprietary BMPs.
- **Wouldn't one way to encourage innovation in MTDs to be to provide less than 40% for TSS only practices? Creates distinction between those practices tested for TP and those tested only for TSS.** *DEQ response:* Mr. Cooper offered that he would need to think more about the question. He added that DEQ is only looking at the certification letters and not data. Whether it is TP or TSS is no longer pertinent in a sense.
- **How will NJDEP certification of 80% TSS translate to the 50% TP removal requirement?** *DEQ response:* Mr. Cooper clarified that an 80% TSS removal receives an assigned 40% TP removal and applies to filtering practices. The agency has considered translating TSS data to TP removal credit for quite some time. Some translations refer back to the 1999 Stormwater Handbook. There is literature on the topic as well. At one point, DEQ wanted to do away with providing certifications based on TSS data because the relationship between TSS and TP is somewhat sketchy. However, the new statute includes "sediment removal effectiveness." In the past, when DEQ considered removing or reducing credit obtained from TSS removal studies, stakeholders indicated a need keep things as they are, especially for areas with a high groundwater table. For these reasons, DEQ is not proposing changes to this translation at this time.

### *Lab/Field Testing*

- **I have a question on NJDEP certification. Previously, NJDEP issued certifications based upon field testing; currently it only uses lab testing. Are you considering them**

equivalent? *DEQ response:* Mr. Cooper stated that, in general, we are considering them equivalent because this issue (lab/field testing) has not been considered. We just look at the certification. Ms. Walker added that the document recognizes *current* certifications so if NJDEP is currently certifying devices with lab data then that is what is being recognized. Ms. Belt added that DEQ will need to consider devices approved using either field or lab data since it has not examined this issue at this time.

- How recent do the certifications have to be? NJDEP hasn't certified a field test in several years.
- Jane got it right. NJDEP only considers lab data to issue current certification. They no longer consider lab [should be "field"] data in their current certification process, neither should you (as it pertains to the NJ reciprocity). Field tests are not active for current NJDEP projects.
- NJDEP found for separators that field testing is not easily verified. When trying to field test HDS [hydrodynamic separators] with higher flow rates, there are significantly more errors with field testing. Accordingly, NJDEP field testing was stopped, and all field-testing certifications have been sunset. Jane is right that if current certifications are required, then NJDEP field certifications would not be allowed since they are no longer certified. I don't think any MTDs in NJ are currently certified by NJDEP using field testing. TAPE protocol has not field verified separators. TAPE has field verified filters due to low flow rates.
- Can you clarify the last statement about accepting old NJDEP certifications? Why would the agency accept older certifications?
- *DEQ response to the comments above:* Ms. Belt proposed that if NJDEP is only providing certifications for lab testing at this time, then that is what Virginia DEQ will accept. Mr. Cooper added that the document includes language to address changes in the testing protocol. The bottom line is that DEQ is looking for the most current certification. NJDEP includes a list of products that have been removed from its active certification list but can still be used for some projects up to a particular date. If field testing was used to gain NJDEP certification and the device is still on NJDEP's certification list for use with new projects, DEQ would accept it. If the device has been removed from the NJDEP active certification list and moved to its other list, then DEQ would need a recertification letter based on the most current protocol. Otherwise, the device would be moved to Virginia's prior-approved list until such time as a new NJDEP certification letter is provided.

#### *Acceptable Certifications*

- If a TAPE or NJCAT certification "expires" or has a sunset date, could an MTD become unapproved in Virginia after the expiration or sunset date? *DEQ response:* Mr. Cooper noted that the device would not be removed from the BMP Clearinghouse. Instead, it would be moved to a list of prior-approved devices with the date of the move. Any plans approved up to that date could use the device, but plans submitted after the move date could not. Mr. Hammond added that people ask what will happen after January 1, 2022. He suggested developing a page on the BMP Clearinghouse for the prior-approved devices. It could be called "archived manufactured treatment devices" or something like that. It would list devices on the BMP Clearinghouse that did not provide a certification from a state, regional, or national program on or before December 31, 2021. Thus,

information for such devices will be accessible for stormwater plans approved before the deadline for use by designers, engineers, maintenance workers, etc. The bigger question is what happens if something changes within one of the certification programs. The agency is still working on that issue.

#### *Other Testing Programs*

- Mr. Hammond explained that DEQ personnel have been in contact with those working to establish the national certification program [Stormwater Testing and Evaluation for Products and Practices (STEPP)] and are in support of getting it up and running. He added that when this program opens, DEQ plans to amend Table 1 of the guidance document to include it. A stakeholder commented: [The STEPP program is being moved to the NMSA, and Seth Brown is on the call today if there are questions about that. NMSA is the National Municipal Stormwater Alliance.](#)
- [Will DEQ accept test data from the ETV \[Environmental Technology Verification\] Canada program? DEQ response:](#) Mr. Cooper stated that under the old guidance, ETV Canada data would be considered, but under the new statute and guidance, data are not being evaluated. It is now just down to a certification letter from TAPE or NJDEP. Information from the Canadian program can be submitted to DEQ as part of the submission package for posting on the BMP Clearinghouse, but the data will not be used in considering the approval or not.
- A stakeholder asked what other programs DEQ is considering adding to Table 1. He offered that there are more programs than just New Jersey and Washington. Mr. Cooper responded that DEQ is aware that there are other states with testing programs, but these other programs are newer and not as well established as New Jersey and Washington. The DEQ is relying on the programs it knows. As other state programs become more established, DEQ could add them to Table 1. The agency is hoping the national program will gain traction. The stakeholder asked if DEQ's approach is consistent with what the legislature wrote into law. Mr. Cooper explained that DEQ is presenting how it interprets the regulation. Mr. Hammond added, that upon review, DEQ could expand Table 1 to other programs prior to finalizing the guidance document. The stakeholder suggested that Maryland's testing program has as much longevity as New Jersey's and Washington State's. He offered to provide information on other programs that could potentially be added to Table 1.
- [Opening the door to multiple programs that aren't TAPE or NJDEP will put DEQ right back in the same position the agency finds itself in now.](#)

#### *Approved Flow Rates*

- [Flow associated with the TP removal? Any changes to guidance on approved flow rate for flow-through devices? DEQ response:](#) Mr. Cooper offered that DEQ's preferred method for converting the treatment volume to flow is posted on the BMP Clearinghouse. The flow rate for the device is tested and set by the manufacturer. It is listed in the certification letter from TAPE and NJDEP.

#### *Impacts of Changes to Testing Protocols*

- [Testing for NJDEP is going to change significantly and will impact not only flows but actual physical arrangement. Is there any concern about pipe arrangement being different](#)



from the tested configuration? *DEQ response:* Mr. Cooper stated that Virginia is not really looking into this. It is just considering the certification. The guidance includes language that if the certification agency or manufacturer makes a change that affects the existing certification then DEQ needs the recertification letter to keep it active on the BMP Clearinghouse.

### *Sizing Requirements*

- Would also recommend DEQ clarifying that the sizing used for NJDEP and TAPE will be utilized moving forward. NJDEP and TAPE certify HLRs [hydraulic loading rates] in their response letters. If you post those on the BMP Clearinghouse, that will go a long way to assisting the sizing issues.

Information will be provided from the agency via the BMP Clearinghouse listserv stating when comments are needed from stakeholders. The official public comment period will be announced on the Virginia Regulatory Town Hall website and will be distributed via the listserv as well.

### **Next Meeting Date**

Ms. Belt suggested meeting after the 2021 G.A. session, so the next meeting would be in March, April, or May. A stakeholder commented via the chat box: [Meet in or after May, when the governor has acted on bills](#). Ms. Belt stated that the springtime meeting will likely need to be a virtual meeting. She offered that more information would be forthcoming on the date for the next meeting.

### **General Questions and Comments**

Comments pertaining to subjects other than the draft guidance document were addressed at the end of the meeting.

### *Non-proprietary BMPs*

- [Could you please elaborate on what Robert mentioned at the beginning of today's meeting about updating design specifications for non-proprietary BMPs? Is it limited to only bioretention?](#)
- [Will the department consider batched detention as a non-proprietary BMP, which has been verified under the TX CEQ \[Texas Commission on Environmental Quality\] and Edwards Aquifer programs?](#)
- *DEQ response to the two questions above:* Mr. Hammond responded regarding approving nonproprietary BMPs in general. The 2020 G.A. session called for a stakeholder group to review certain nonproprietary BMPs, e.g., urban tree canopy, for possible inclusion on the BMP Clearinghouse website. He stated that Robert Cooper is in the process of updating the bioretention design specification and other specifications. The proposed batched detention practice could be considered when DEQ revises the detention design specification, and it could have a different TP removal efficiency than the one granted for standard detention. He added that when updating the detention specification, DEQ will also look at using actively managed controls.
- [Is Drew referring to the stakeholder group and study that came out of the 2020 G.A.? Is there a group and study?](#) DEQ responded through the chat box: There is a stakeholder group formed for Trees as a BMP, but the group has not convened at this time.

- **Our understanding was that the bioretention specification was near the finish line; what additional review is needed outside of DEQ to issue an approval letter for use?** *DEQ response:* Mr. Cooper stated that DEQ is not planning to issue approval letters for the updates to the nonproprietary BMP design specifications. The new specification will be an update to the draft 2013 specification. It will go out for internal DEQ review and then outside the agency for technical review. Once finalized, the 2021 version could replace the 2013 draft specification. The 2011 version will remain on the BMP Clearinghouse because it is listed in the regulations. Ms. Belt explained that as the agency works to consolidate the Stormwater and Erosion & Sediment Control programs, it is not allowed to update the technical criteria. She clarified that although the 2011 version will remain on the BMP Clearinghouse, there is not a requirement from the agency to use it. The 2011 version will remain available for use by the public, but the 2021 version could be used instead.
- **If I understood correctly, the 2011 technical criteria for BMPs will continue superseding any modifications done in the future.** *DEQ response:* Ms. Belt stated that the 2011 design specifications are codified in the regulations. There may be localities that require use of the 2011 design specifications. The agency's position is to allow for the use of updated documents. She offered that the technical criteria have not changed and clarified that the technical criteria refer to Part II B, Technical Criteria for Regulated Land-Disturbing Activities [begins at 9VAC25-870-62].
- **Will 2021 design specifications be captured in the regulatory update that will also address the stormwater technical criteria and MS-19 [Minimum Standard 19]?**

#### *Non-structural BMPs*

- **Does DEQ require yearly reporting for MS4s [Municipal Separate Storm Sewer System] to include non-structural BMPs (e.g., forest and open space easements) created the previous year? It seems since these are being used more and more to satisfy nutrient reduction requirements that it would be tracked just like any other structural BMP. Can a MS4 get credit from forest and open space easements for Chesapeake Bay reduction requirements?** *DEQ response:* Ms. Belt offered that DEQ, when acting as the VSMP [Virginia Stormwater Management Program] authority, captures those land cover types with a new BMP agreement called the Forest/Open Space Maintenance Agreement. The agency is working to have it be a GIS [geographic information system] layer so over time DEQ will know where the forest/open space landcover use is located. It would be used also to ensure that future projects do not impact that area that is serving as a quality reduction for a previous project. Mr. Hammond added that DEQ does not require the reporting of non-structural BMPs on the registration statement as a BMP. Because the Chesapeake Bay Program counts it as a landcover condition, DEQ wants to be sure not to double report it. He added that he is unaware of an expert panel report for forest/open space. There is an expert panel report for urban tree canopy, so an MS4 could choose to use it to get credit for Bay reductions. He is unaware at this point of a way for an MS4 to establish a forest/open space easement to meet the requirements of the Chesapeake Bay Program.
- **The term forest is often used, however there is not a definition or specific dimensions of what a forested area would be.**

### *Water Quality Standards*

- [Where is DEQ with the process for evaluating the 0.41 standard?](#) [9VAC25-870-63 A 1. New development. The total phosphorus load of new development projects shall not exceed 0.41 pounds per acre per year, as calculated pursuant to 9VAC25-870-65.] Ms. Belt reported that localities are looking to DEQ to coordinate the update of multiple regulatory actions so that the update of ordinances can occur at one time. No notice of intended regulatory action has occurred, and to her knowledge, DEQ has not begun to undertake a stakeholder group specifically for that evaluation. Ms. Davenport stated that the agency is trying to figure out what the science says. She has been working with Ann Jennings [Deputy Secretary of Natural Resources for the Chesapeake Bay] and folks with the EPA Bay Program to identify technical issues where they can assist. Evaluating gathered data is the first step to reevaluating the 0.41 standard. The agency is expecting a proposal from the Bay Program for moving forward. The DEQ does not have the staff or money to hire anyone to do this so is hoping to work with EPA on it.

### *Comprehensive Stormwater Management Plans*

- [Please consider using this Committee to develop a process and a template for Comprehensive Stormwater Management Plans. Our localities remain very interested in using this tool.](#) *DEQ response:* Earlier this year, Mr. Hammond and Mr. Cooper met with HRPDC [Hampton Roads Planning District Commission] and discussed comprehensive plans at that time. Following the meeting, Mr. Cooper and Ms. Walker drafted a white paper to identify regulatory language that deals with comprehensive stormwater management planning. In creating the paper, they compared comprehensive plan information in the 1999 Handbook and 2013 Draft Handbook. The paper relies heavily on the 2013 Draft Handbook. Work on the paper is continuing internally. The agency expects to use the paper as a starting point for further discussions with the PDCs.

### **Adjournment**

Ms. Belt offered that DEQ would get back with everyone regarding a spring meeting and providing comments on the presented draft guidance memo. Ms. Davenport thanked everyone for joining the meeting and extended her appreciation for the group's interest and commitment. She wished all happy holidays. With no further business, Ms. Belt adjourned the meeting.

# Appendix A -- COMMONWEALTH OF VIRGINIA

## Department of Environmental Quality

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**Subject:** Guidance Memo No. # 2021-XX - Use of Stormwater Proprietary Best Management Practices to Meet Virginia Stormwater Management Program Technical Criteria for Water Quality Compliance

**To:** Regional Directors

**From:** Melanie D. Davenport, Water Permitting Division Director

**Date:** [Date]

**Copies:** James Golden, Drew Hammond, Erin Belt, Robert Cooper, Allan Brockenbrough, Regional Stormwater Compliance Managers

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### Summary:

The Code of Virginia (§ 62.1-44.15:28 A 9) and the Virginia Stormwater Management Program (VSMP) regulation (9VAC25-870-65 and 9VAC25-870-96) allow for the use of proprietary best management practices (BMPs). This guidance provides procedures used by the Virginia Department of Environmental Quality (Department) to approve proprietary BMPs. Approved proprietary BMPs are listed on the Virginia Stormwater BMP Clearinghouse with an assigned total phosphorus (TP) pollutant removal efficiency. The proprietary BMPs listed on the Virginia Stormwater BMP Clearinghouse can be used to meet the VSMP technical water quality criteria provided in 9VAC25-870-65 and 9VAC25-870-96. This document replaces Guidance Memo No. 14-2009.

### Electronic Copy:

Once effective, an electronic copy of this guidance will be available on:

- The Virginia Regulatory Town Hall under the Department of Environmental Quality (<http://www.townhall.virginia.gov/L/gdocs.cfm?agencynumber=440>); and,
- The Virginia Stormwater BMP Clearinghouse at <https://swbmp.vwrrc.vt.edu/mtd-evaluation-process/>.

### Contact Information:

Please contact Robert E. Cooper, Office of Stormwater Management, at (804) 698-4033 or [Robert.Cooper@deq.virginia.gov](mailto:Robert.Cooper@deq.virginia.gov) with any questions regarding the application of this guidance.

### Certification:

As required by Subsection B of § [2.2-4002.1](#) of the APA, the agency certifies that this guidance document conforms to the definition of a guidance document in § [2.2-4101](#) of the Code of Virginia.

### Disclaimer:

**This document is provided as guidance and, as such, sets forth standard operating procedures for the agency. However, it does not mandate or prohibit any particular action not otherwise required or prohibited by law or regulation. If alternative proposals are made, such proposals will be reviewed and accepted or denied based on their technical adequacy and compliance with appropriate laws and regulations. This approval procedure and the assignment of removal efficiencies is not an endorsement of any product by the Department.**

## USE OF STORMWATER PROPRIETARY BEST MANAGEMENT PRACTICES TO MEET VIRGINIA STORMWATER MANAGEMENT PROGRAM TECHNICAL CRITERIA FOR WATER QUALITY COMPLIANCE

### Definitions:

"*Best management practice*" or "*BMP*" means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices, including both structural and nonstructural practices, to prevent or reduce the pollution of surface waters and groundwater systems. This includes:

1. "*Nonproprietary best management practice*" means both structural and nonstructural practices to prevent or reduce the pollution of surface waters and groundwater systems that are in the public domain and are not protected by trademark or patent or copyright.
2. "*Proprietary best management practice*" means both structural and nonstructural practices to prevent or reduce the pollution of surface waters and groundwater systems that are privately owned and controlled and may be protected by trademark or patent or copyright.

### Statutory and Regulatory Requirements for the Use of Proprietary BMPs:

The Code of Virginia (§ 62.1-44.15:28 A 9) permits the use of proprietary BMPs when another state, regional, or national certification program has verified and certified the practice's nutrient or sediment removal effectiveness.

All regulated land-disturbing activities must meet the water quality design requirements of the VSMP Regulation (9VAC25-870). This guidance focuses on the use of proprietary BMPs to meet the water quality technical criteria of the VSMP regulation.

- Part II B: 9VAC25-870-65 D grants approval of proprietary BMPs listed on the Virginia Stormwater BMP Clearinghouse for use in accordance with the Virginia Runoff Reduction Method. According to 9VAC25-870-65 E, a VSMP authority may establish limitations on the use of specific BMPs in accordance with § 62.1-44.15:33 of the Code of Virginia.
- Part II C: 9VAC25-870-96 C allows the VSMP authority the use of proprietary BMPs listed in the 1999 Virginia Stormwater Management Handbook and listed on the Virginia Stormwater BMP Clearinghouse.

### Approval of Proprietary BMPs for Listing on the Virginia Stormwater BMP Clearinghouse:

This document describes the procedures used by the Department to approve proprietary BMPs for listing on the Virginia Stormwater BMP Clearinghouse. Approved proprietary BMPs may be used in meeting the water quality technical criteria in the VSMP regulation. This guidance also establishes the method used by the Department to assign a total phosphorus (TP) pollutant removal efficiency for approved proprietary BMPs.

All manufacturers of proprietary BMPs listed on the Virginia Stormwater BMP Clearinghouse before July 1, 2020 must submit documentation to the Department on or before December 31, 2021 that shows current certification of TP or total suspended solids (TSS) removal effectiveness. The acceptable certifications include a general use level designation (GULD) by Washington State's Technology Assessment Protocol – Ecology (TAPE) program or certification from the New Jersey Department of Environmental Protection (NJDEP).

9VAC25-870-65 D states, in part, “Any proprietary BMP that fails to provide the department with the documentation required by December 31, 2021, shall not be approved for use in any stormwater management plan submitted on or after January 1, 2022, until such proprietary BMP provides the department with such required documentation...” Proprietary BMPs without the required documentation will be moved from the approved list on the Virginia Stormwater BMP Clearinghouse and placed on a prior approved list. Proprietary BMPs on the prior approved list may not be used to meet water quality requirements in any stormwater management plan submitted on or after January 1, 2022.

Proprietary BMPs approved by the Department on or after July 1, 2020 must meet the requirements of § 62.1-44.15:28 A 9 of the Code of Virginia. To determine if a proprietary BMP meets the requirements of the statute, the Department will review the submitted registration statement, awarded certification letter(s), and other submitted material. All information submitted to the Department will be publicly available.

Currently, the Department recognizes two state certification programs, TAPE and NJDEP.

- TAPE: The Department only approves proprietary BMPs with TAPE’s GULD for basic ( $\geq 80\%$  TSS removal) or total phosphorus ( $\geq 50\%$  TP removal).
- NJDEP: The Department only approves proprietary BMPs with NJDEP certification.

For approved proprietary BMPs, the Department will assign a percent TP removal efficiency based on Table 1. The information in Table 1 provides a crossover from the certified removal efficiency awarded by others to the Department’s assigned TP removal efficiency. Approved Stormwater Management Plans prepared utilizing the percent TP removal efficiencies established under this guidance will not be subject to retroactive reductions.

**Table 1 – Removal efficiencies<sup>1</sup> assigned by the Department based on other certifications.**

<b>Certification</b>	<b>Department Assigned TP Removal</b>
TAPE TP Removal: 50%	50%
TAPE TSS Removal: 80%	40%
NJDEP TSS Removal: 80%	40%
NJDEP TSS Removal: 50%	20%

<sup>1</sup> Defined as the change in the average event mean concentration (EMC).

TAPE = Washington State’s Technology Assessment Protocol – Ecology program; TP= total phosphorus; NJDEP = New Jersey Department of Environmental Protection; TSS = total suspended solids

If either the certification agency or the manufacturer makes a change that affects the existing certification of the proprietary BMP, then the manufacturer must resubmit to the Department the superseded certification letter from NJDEP or TAPE. The updated certification letter must be submitted to the Department to prevent being moved to the prior approved list.

To apply for approval in Virginia, complete the attached form entitled “Proprietary BMP Registration Statement” (Attachment 1) and submit it to the Department. Once the registration form and supporting documentation are received, the Department will review the submission and if approved, assign the applicable percent TP removal efficiency based on Table 1. After the percent removal has been assigned, this value will be added to the Virginia Stormwater BMP Clearinghouse and can be used in the Virginia Runoff Reduction Spreadsheets.

# Attachment 1

## Proprietary BMP Registration Statement

**1. Manufactured Treatment Device Name** (as it is to appear on the Virginia Stormwater BMP Clearinghouse):

**2. Company Name:**

Mailing Address:

City:

State:            Zip:

**3. Contact Name** (of person to be listed on the Virginia Stormwater BMP Clearinghouse):

Mailing Address:

City:

State:            Zip:

Phone number:

Fax number:

E-mail address:

Web address:

**4. Treatment Type**

Hydrodynamic Structure

Filtering Structure

Manufactured Bioretention System

Provide Infiltration Rate (in/hr):

Other (describe):

**5. Certification** (check all that apply and submit all certification letters from TAPE and/or NJDEP):

**TAPE**

TP

TSS

**NJDEP (TSS)**

**6. MTD History:**

How long has this specific model/design been on the market?

**7. Maintenance:**

What is the generic inspection and maintenance plan/procedure? (attach necessary documents):

Is the maintenance procedure and/or are materials/components proprietary?

- Yes, proprietary
- No, not proprietary

**8. Comments**

Include any additional explanations or comments:

**9. Certification**

Signed by the company president or responsible officer of the organization:

“I certify that all information submitted is to the best of my knowledge and belief true, accurate, and complete.”

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**NOTE: All information submitted to the department will be made publicly accessible to all interested parties. This MTD registration form will be posted on the Virginia Stormwater BMP Clearinghouse.**