

**Virginia Soil and Water Conservation Board
Stormwater Management Regulatory Advisory Panel
Part III Local Programs Subcommittee
September 30, 2010**

Subcommittee Members Present

Steve Herzog, Subcommittee Chair
Jeff Perry, Henrico County
Keith White, Henrico County
Judy Cronauer, Fairfax County
Asaad Ayoubi, Fairfax County
Bill Johnston, City of Virginia Beach
Barbara Brumbaugh, City of Chesapeake
Cabell Vest, Aqualaw

DCR Staff

Doug Fritz
Lee Hill
Michael Fletcher
Christine Watlington
Elizabeth Andrews, Office of the Attorney General

Steve Herzog called the meeting to order.

Mr. Herzog noted that comments were sent to Ms. Watlington at DCR. Mr. Herzog met with Ms. Watlington and Mr. Fritz to review the comments.

Mr. Herzog said that some of the big picture items have been addressed. He said that localities could not issue a general permit that the state has already issued. He said that he was not certain how the mechanics would work.

Mr. Herzog said that from the discussions he had questions.

Mr. Herzog said that in his view, for localities to enforce regulations, the locality must adopt local ordinances. He asked if localities could enforce state regulations without a local ordinance.

Mr. Assad said that Fairfax County intended to adopt their own local ordinance.

Mr. Herzog said that Hanover would also adopt an ordinance. However he said that it may have been better to have the requirements of a stormwater management plan included in Part II instead of Part III.

A member noted that a locality cannot issue a permit as a state permit. He said that the locality could give local approval. He also noted that nothing in the language directed the locality to review the SWPPP.

A member said that in terms of addressing stormwater management regulations the language seemed clear, but the requirements for issuing a state permit under local regulations were not clearly outlined.

Mr. Herzog said that with regard to separating the post construction permit from the VSMP permit that there needed to be post construction water quality requirements.

Mr. Herzog said that there was no real debate regarding whether those provisions should be addressed, but he noted that there would be discussion regarding the exact form of maintenance.

Mr. Herzog said that it made sense to have post construction water quality and quantity requirements in the stormwater regulations, but not in the construction permit.

Ms. Watlington said that when staff started trying to address how a program is implemented that problems arose. She said that staff needed additional guidance from the localities with regard to how the issuing of a permit would work with existing programs.

Ms. Watlington said that the Office of the Attorney General had indicated that the law calls for localities to adopt an ordinance. She said that DCR was operating under the premise that localities will adopt ordinances that mirror the general permit. She said localities would enforce the ordinance, not the general permit.

Mr. Fritz referred to a chart distributed by staff and noted that was the intent. A copy of this draft chart is available from DCR.

Mr. Fritz said that the regulations were awkward because the law was awkward. He said that the law was not exactly clear in this regard.

Mr. Fritz noted that from the EPA the federal qualifying program provides guidance on what qualifying local programs can be.

Ms. Watlington said there were four components of a local qualifying program. She said that as currently written, Part III deals with one component.

Ms. Watlington said the requirements were to 1) require erosion and sediment control during construction, 2) require the development and implementation pollution prevention during construction, 3) construction operators are required to have a SWPPP and 4) the side plan must address the post construction/water quality impacts.

Ms. Watlington said it was important to have that clearly outlined so that the EPA would not say that a locality is not meeting the requirements.

Ms. Watlington said that neither section of the state regulations outlining the requirements were open at this time. She said that the discussion related just to post construction.

Mr. Herzog said that he believed the adopted and suspended regulation did not meet the necessary goals.

Mr. Fritz said that DCR was trying to develop a state program that met the requirements of the legislation. He said that it was more than a delegation of authority. He said that to use the local program in the Clean Water Act role the program had to qualify. He said that water quality requirements for post development is a more stringent state requirement.

Mr. Fritz said that the concept is the idea that localities can issue a joint stormwater and erosion and sediment control permit.

Mr. Herzog said that a local stormwater program would have post construction requirements and would have erosion and sediment control requirements, but would not necessarily have a VSMP.

Mr. Herzog said that localities could enforce local ordinances, but could not enforce a state permit.

Mr. Fritz provided a copy of the Colorado General Permit. A copy of this is available from DCR.

Mr. Fritz said that the ultimate document would be the general permit which would be brought into the regulations.

Ms. Andrews asked if this was similar to erosion and sediment control and the Chesapeake Bay Act where DCR did periodic review.

Mr. Fritz said that the intent is to make revisions to address what would satisfy the EPA.

Ms. Andrews asked if the ultimate goal was to have localities have the ability to issue a combined permit.

Mr. Hill said that the intent was to issue combined permits for Erosion and Sediment Control and Stormwater programs. He said that with the construction general permit the locality would do plan review and authorize the permit.

Mr. Fritz said that the permit could be a local permit. He said that it is not required to be the VSMP.

Ms. Andrews said that the local program or ordinance could cover post construction.

Mr. Fritz said that a local government could pass a local ordinance to enforce. He said that the question is how does DCR enforce a maintenance agreement if the permit is not in place.

Mr. Herzog asked about the state running a local program where there is no local ordinance.

It was noted that nothing requires the developer to give DCR a maintenance agreement.

Ms. Watlington noted that the components are included in Part II.

Mr. White said that the requirement for a maintenance agreement is not new.

It was noted that this was a new requirement for DCR.

Mr. Fritz said that the committee had been given a lot of information. He said that it should not be assumed that this was the opinion of DCR.

It was noted that local ordinances need to be at least as stringent as the general permit.

Mr. Herzog noted that it may be necessary to open up the Erosion and Sediment Control Regulations.

Ms. Andrews said that ultimately the goal would be to open those regulations and bring them into conformity with the Stormwater Management regulations.

A member asked if DCR could redraft the regulations to give localities the authority to enforce the permit.

Ms. Andrews said that staff would need to review that possibility. However, she said that if it could be avoided that would be preferable. She said that there is a difference between the overarching program and the enforcement section.

Mr. Herzog said that the question that remained was that the RAP had not addressed what the federal government said a qualifying local program should be. He said that localities have to have a way to show the EPA that they are meeting the criteria.

Mr. Fritz said that the General Permit will be an overarching document. He said that preferable to removing the criteria from the general permit, the general permit should be removed from the criteria.

Mr. Herzog asked if when the general permit is opened sections should be removed.

Mr. White said that his concern was that, from a locality perspective, why was there a requirement to adopt a local program.

Mr. Hill said that would need to be addressed when changes were made to the local program sections.

Mr. Herzog said that the goal was to have a successful program statewide.

Mr. Fritz said that the hope would be that all localities would adopt a program.

Ms. Watlington noted that most of the comments seemed to be language recommendations rather than substantive changes.

Mr. Herzog noted that the consensus appeared to be that the state issue the VSMP permit.

There was discussion regarding fees and Part XIII. It was noted that Part XIII was not open for revision. However, the sentiment was expressed that Part XIII does need to be revised.

Following lunch the committee agreed that the next step was for DCR staff to present revised language.

Points noted were:

- Everyone who needs a VSMP permit, must register
- Local governments will do enforcement through local ordinance
- The General Permit is separate from local ordinance
- There are concerns about the specificity of karst, etc.
- There needs to be a review of how post development requirements fit

Mr. Herzog said that the last thing was that the Stormwater Permit issuance should be separate from the General Permit issuance.

Mr. Fritz noted that DCR was required by law to provide draft ordinance language.

Mr. Dowling noted that what the RAP was amending was the suspended version of the regulations approved in 2009.

Ms. Watlington noted that the next round of subcommittee meetings was scheduled for October 20.

The meeting was adjourned.