**Virginia Stormwater Best Management Practice (BMP)
Clearinghouse Committee Meeting**

Virginia Department of Forestry Building, Training Room
Charlottesville, VA
April 23, 2012

Meeting minutes by Jane Walker

Committee Members Present
Joe Battiata, Center for Watershed Protection
Jacob Dorman, City of Lynchburg
Greg Johnson
Mary Johnson, Thomas Jefferson Soil and Water Conservation District (TJSWCD)/Virginia
    Association of Soil and Water Conservation Districts (VASWCD)
John McCutcheon, Virginia Department of Conservation and Recreation (DCR)
Roy Mills, Virginia Department of Transportation (VDOT)
Madan Mohan, Prince William County
Chris Kuhn, Williamsburg Environmental Group (WEG)
David Powers, WEG
David Sample, Biological Systems Engineering and Occoquan Watershed Monitoring
    Laboratory, Virginia Tech
Richard Stanford, ATR Associates, Inc.
Jenny Tribo, Hampton Roads Planning District Commission
Joe Wilder, Frederick County Department of Public Works

DCR Staff Present
Scott Crafton
Ginny Snead

Virginia Water Resources Research Center (VWRRC) Staff Present
Stephen Schoenholtz
Jane Walker

Others Present
Derek Berg, Contech
Campbell Bolton, Draper Aden Associates
Deb Brown, Emco Site Solutions
Steve Curtis, Luck Stone Corp.
Chris French, Filterra
Randy Hardman, Hanover County Department of Public Works
Lee Hill, Joyce Engineering
Edward Kay, Imbrium Systems (alternate for Scott Perry)
Jessica Lassetter, Rivanna River Basin Commission
John Olenik, VDOT (alternate for Roy Mills)
Marc Lelong, Kristar
Steve Rossi, Concrete Specialties, Inc.
Mindy Ruby, Filterra
Dave Scott, Hydro International

Introductions and Welcome

John McCutcheon, Clearinghouse Committee chair, called the meeting to order at 10:15 a.m. Everyone introduced herself or himself. John extended a special welcome to the members serving the 2012-2014 term: Jacob Dorman, Greg Johnson, Mary Johnson, Rick Stanford, and Jenny Tribo. One member asked who was coming off the committee, and Jane Walker of the VWRRC replied that the following members had terms that ended in 2011: Jim Talian with the City of Lynchburg, Greg Johnson, Mary Johnson, Julia Hillegass/Jenny Tribo, and Kevin Young with Virginia Tech. John commented that there are still one or two available positions to be filled so additional new members may attend the July meeting.

Minutes from January 23, 2012 Meeting

Jane Walker distributed draft minutes from the January 23, 2012 meeting and summarized the discussions at the meeting. No changes were proposed. Jane commented that the minutes may be altered following review by the director's office at DCR.

Status of Virginia Manufactured Treatment Device (MTD) Registry

Jane Walker explained that the VWRRC has hired a programmer to develop the online version of the MTD Registry, and he has made significant progress, but the registry is not quite ready for testing. She explained that there are two main components of the registry: submissions of information and search for information.

Those submitting information to be included in the registry would need to register and have a password to submit or edit any information. The password could be changed or reset at a later date. Submitters have the capability to manage all of their submissions from one page, called "My MTDs." From this page, they can view, edit, or remove from public view each of their submissions. Each submission has a listing of its status: whether it is in draft form (unavailable to the public) or published (available to the public).

The questionnaire has nested questions; only when a submitter clicks a particular response will the associated subsections appear. Scott Crafton of DCR commented that some questions need to be altered because they refer to responses that are hidden in the associated subsection. Jane Walker offered to review the questionnaire and update questions where this is a problem. If a submitter does not answer a question, a warning will appear: "This field is required." All required fields must be answered before the program will allow the responses to be published. Many of the questions allow for attachments so that submitters can provide more detailed information. Only PDF document attachments that are no greater than 9MB will be accepted.   If a submitter wants to update the information at a later date, he or she will be able to do so. The submitter must "unpublish" the responses and provide a brief explanation as to what changes are being made before being allowed to edit and re-publish the edited version. Jane Walker clarified that the initial responses are not lost when they are unpublished; they are only hidden from the public. The submitter will not have to reenter all information previously submitted; only the answers that are replaced will be lost.

The search functions of the MTD Registry allow viewers to select only MTDs that meet their needs. They can search by company name, common name for the MTD, location where one or more of the product is installed in Virginia, type of treatment, basis for treatment, water quality treatment mechanism, and/or performance verification awarded. Viewers can also search by typing in a word or phrase that appears in any of the listed columns. They can order the returned results in alphabetical order (a to z) or reverse alphabetical order (z to a) by MTD common name or company name.

Jane Walker explained that there is a warning in the instructions that additional devices may have been installed after the registry information was submitted. This comment prompted concern from some Clearinghouse Committee members that the registry should be kept up to date. Jane Walker explained that from her perspective, it is the manufacturer's responsibility to keep the information up to date and in the company's best interest to do so. A committee member suggested that submitters should receive an email message every six months reminding them to update the information if necessary. Jane Walker offered to look into setting up such a reminder but did not think that would be a problem because an automatic email is being generated and sent when the expiration time is about to end.

Jane Walker explained that the submitted information will automatically be taken down two years after initial publication. Submitters will receive an email message 6 months prior to the submission being removed from the registry. The message will explain that if the company wants to keep the information online for a longer period, it must request an extension from the Clearinghouse Committee and receive approval from the committee. John McCutcheon asked if the submission is edited, will the clock on the two-year period reset to the date of the republication. Jane Walker clarified that the clock for the two-year period will start at initial publication and republications will not impact the clock.

A representative of a MTD asked if the public could search for products that are currently approved in Virginia. Ginny Snead suggested that DCR staff would look into the matter in more detail. She offered that the MTD Registry website could possibly link to the short list of products that are currently approved by DCR and in the handbook. A committee member commented that many companies have been denied the opportunity to be included in the current handbook. He stated that many products have been tested, have data showing strong performance, and despite this, were prevented from seeking approval when DCR closed the process. He thought it might be confusing to the public as to why there is a short list of approved products. Scott Crafton suggested that a work group be developed to look into deciding how to deal with legacy MTDs already listed in the 1999 Stormwater Management Handbook. The following offered to serve on the committee: Joe Battiata, Derek Berg, Deb Brown, Steve Curtis, Jacob Dorman, Chris French, Lee Hill, Edward Kay, Marc Lelong, Roy Mills, David Powers, Steve Rossi, and Dave Scott.

A member voiced concerned that there is no quality control of entered information. For example, someone should check that each response to the sizing question has units. A second member added that if incomplete or inaccurate information is published, the public will have the perception that the MTD Registry is not a useful product. Scott Crafton explained that the reality of the situation is that no one at DCR or the VWRRC knows enough about each and every

possible product to know if the responses are reasonable. Scott further offered that all questions should have descriptors that clearly explain what information is desired and offered to review the questionnaire. Jane Walker offered to see if she could automatically get an email message each time a product is published and then notify others to allow for easy review. A member suggested that all members of the Clearinghouse Committee should be given a two-week window to view and comment on the responses before they are published. If no one voices concerns regarding the content, the information should be posted. If members have concerns with the information, they should tell DCR so that DCR can check with the manufacturer. Ultimately, DCR will decide if the information should be posted or not.

Stormwater Regulations Update

DCR's Regulatory Programs Manager, Ginny Snead, explained that the proposed Integration Bill was passed by the General Assembly. The Act integrates the Erosion and Sediment Control Act, the Stormwater Management Act, and the Chesapeake Bay Preservation Act. Most provisions of the Act will go into effect July 1, 2014, and only a few aspects will go into effect this summer (July 1, 2012). The new Act takes a state program, the Stormwater Management Act, and pushes it to the local level. As a result of this new Act, all localities (even those outside the Chesapeake Bay watershed) will need to have a Virginia Stormwater Management Program (VSMP). However, the provisions of the Bay Act are not expanded beyond the area currently defined in that Act. During the next 18 months, all regulations related to the Integration Bill will need to be opened up for exempt regulatory action to make changes associated with the Integration Bill. Ginny stated that the new Act ends the Chesapeake Bay Local Assistance Board and transfers its duties to the Virginia Soil and Water Conservation Board starting July 1, 2012.

DCR is developing tools to help educate localities about adopting a stormwater management program. For example, DCR is developing a model ordinance that can be used by local governments. DCR is receiving advice from local governments with stormwater management programs, people with legal expertise, etc. DCR has a local government advisory committee comprised of state-wide representatives that meets monthly. All of the meetings of this group are open to the public and can be found on the Virginia Regulatory Town Hall website (http://townhall.virginia.gov/). The group is meeting tomorrow (April 24, 2012) regarding DCR's checklist of required program elements. The checklist will be posted on the Department's website once DCR has finalized it (http://www.dcr.virginia.gov/lrswlgac01.shtml). In May, the meeting will focus on the model ordinance, and DCR hopes to have a working draft version of the model ordinance to bring before the group at that time. This summer, the Attorney General's office will review the model ordinance. DCR hopes to have a public document by this August (2012) or sooner if possible. The agency's plan is to have information for what the ordinances must have and a longer list of suggestions that local governments may want to include. All local programs will fall under the Construction General Permit; the current General Permit expires July 1, 2014 so DCR is starting the regulatory process for the new General Permit in order to have it in place by the expiration date. Language changes associated with the new General Permit could affect the model ordinances.

Ginny Snead stressed that localities will be given leeway to integrate the stormwater management program into their local government structure. Because some localities do not have

staff or budgets in place to establish a program, DCR has requested $5 million in the state budget to help with the startup. Currently the state budget has $1 million for startup of the program. DCR is seeking additional funding from the General Assembly and EPA.

Ginny Snead explained that localities can join together or work through third parties such as a Planning District Commission (PDC) or Soil and Water Conservation District (SWCD) to establish regional programs. In addition, towns that are not MS4s (Municipal Separate Storm Sewer Systems) can join with their surrounding county.

DCR is providing outreach activities. DCR staff has visited with local governments, especially those outside the Chesapeake Bay watershed, and DCR is in the process of setting up regional meetings. Also, some local governments have requested meetings with DCR staff so the agency is responding to those requests. Localities may want to also look to their PDC or local SWCD for assistance.

DCR is developing an electronic permit system to facilitate reporting and tracking of permits between local governments and DCR. It will have email capabilities and a GIS component. It should be ready by July 1, 2014.

Ginny Snead explained that DCR is developing a training program to address the new certification requirements for people conducting plan reviews and inspections for the stormwater management program. John McCutcheon will head up the training program.

Status of "Guidance for Submitting MTD Certification Application"

Scott Crafton explained the purpose of the guidance was to have a shorter and more concise document that describes the VTAP (Virginia Technology Assessment Protocol). At the last Clearinghouse Committee meeting, DCR requested comments on the draft document, and following that meeting, DCR received comments from 10-12 individuals/companies. Questions raised include the following:
- Should the VTAP be considered regulations and go through the process denoted by the APA (Administrative Procedure Act)?
- What are the assessment fees based on?
- Why are the assessment fees higher than those for TARP (Technology Acceptance Reciprocity Partnership) and TAPE (Technology Assessment Protocol - Ecology)?

It was suggested that DCR conduct a survey of the potential reviewers to establish how long they thought the review process would take and what fees they would charge for the review. Several also suggested that DCR hire someone to serve as its evaluator instead of contracting the work to others. Given the state budget and the process for obtaining approval to create a new position, DCR may not be able to hire an employee for this purpose. Scott explained that he is in the process of responding to the questions and comments, but he has not yet vetted his responses through DCR's central management.

Ginny Snead clarified that the Virginia Soil and Water Conservation Board has only approved the concept of the VTAP, not the specific submitted document. She also explained that the

Attorney General's office does not believe that DCR has the authority to collect fees for this purpose. A former DCR employee commented that during development of the VTAP, the Attorney General's office was asked if DCR could collect fees and if it could contract outside the agency for an evaluator; at that time, DCR was assured that these things could be accomplished. He added that there must have been a change in philosophy.

Scott Crafton explained that DCR considers the VTAP document to be a "Tier 3 guidance document," meaning that it impacts the public. Tier 3 guidance documents that must be approved by agency management or the Board often involve stakeholders in the development (the VTAP has) and are noticed on the Virginia Regulatory Town Hall website for public comment (this will be done when the document is considered complete). The approval for Tier 3 guidance documents parallels the APA process but is not as formal. Scott Crafton asked if those representing BMP manufacturers were comfortable that the parallel process for Tier 3 guidance approval would be sufficient, or he added, "Would the VTAP need to go through the APA process?" Scott stated that the fee issue may force the document through the APA process anyway. Scott commented that manufacturers have serious concerns about the high costs and the length of time needed for testing, and that these issues would need to be addressed.

One committee member voiced concern that the clock is ticking for local governments, and he fears that no MTDs will be approved by July 1, 2014 when local governments need to have stormwater management programs. He believes that testing should be started during this lull period in construction development. The member suggested that this committee look at studies submitted to TARP and/or TAPE, etc. to see what the manufacturers would need to do to get the study to meet the VTAP standards. Ginny Snead commented that DCR also wants to get the process started and offered that she will ask the Attorney General's office what DCR can do at this time. She suggested that it could be helpful for a subcommittee to review products already approved in other regions.

A representative of a BMP manufacturer offered that New Jersey is considering allowing more than just NJCAT (New Jersey Corporation for Advanced Technology) to verify reports. If approved, this expansion of possible reviewers would result in greater competition, lower costs, and a quicker evaluation process in New Jersey. He suggested that DCR consider a similar model for Virginia. This approach would help DCR get around the fee authorization issue because the reviewer would be paid directly by the manufacturer.

A committee member stated that if the testing protocol is guidance, it will be flexible. However if the testing protocol becomes a regulation, it will not be flexible. A representative of a BMP manufacturer stated that other programs do not make their protocols regulations because they want to update them every couple years. He does not see that the VTAP would need to be part of the regulations; he would vote in support of keeping it out of the regulations. Scott Crafton explained that DCR may need input from the manufacturers regarding their support for or against keeping the VTAP out of the regulations. He commented that valid concerns are being raised, and added that these decisions will be made by higher DCR management than Scott, John, and Ginny. John McCutcheon stressed that it is a balancing act – the state needs a protocol with flexibility, but it must still meet any applicable requirements.

An individual added that these issues are part of a never-ending battle because someone will always be unhappy with the protocol so will shoot holes in it. As more issues are resolved, others will arise; the process will take longer and end up costing more money in the long run.

John McCutcheon added that another concern raised is a belief that all past data need to be thrown out. John assured the manufacturers that DCR wants to include all good data.

A committee member asked what the outside party would be contracted to do. Scott Crafton explained that the outside party would serve as DCR's evaluator. The member recalled an earlier proposal to have stormwater experts from various universities serve as a group of evaluators. Because these individuals are busy teaching and conducting their own research, they will not have the time to participate in this envisioned way. David Sample was fortunate to be able to pull together a team of academics to help develop part of the VTAP document.

Scott Crafton stated that DCR staff working with the committee would seek direction from the Division Director and Attorney General's office. Once they have a better idea of the path to take and tasks needing to be accomplished, the Clearinghouse Committee members and others who attend the meetings will be notified by e-mail and invited to serve on a working group.

Status of Webpage Development: Operation, Inspection, and Maintenance

Jane Walker announced that the subcommittee on developing the Operation, Inspection, and Maintenance webpage will have its first meeting today, following the Clearinghouse Committee meeting and a break for lunch. Anyone with an interest in participating, including members of the Clearinghouse Committee and individuals not on that committee, are welcomed to join this working group. The proposed meeting time was set for 1:45 p.m.

Next Meeting Dates

John McCutcheon announced that the next Clearinghouse Committee meeting dates are scheduled for July 23, 2012; October 22, 2012; and January 28, 2013. The meeting location will be announced closer to the time of the meeting date.

General Comments

John McCutcheon opened the floor for comments. One member stated that the Clearinghouse website needs to be updated to include the current members of the Clearinghouse Committee. John McCutcheon announced that he will be focusing more on his training and certification duties at DCR. Thus, this will be the last Clearinghouse Committee meeting that he chairs for the time being. Scott Crafton will chair the committee for the next several months. John extended his appreciation to the committee for what he has learned from its members and offered that he will still be involved in the activities of the committee.

A member commented that there is a perception that this committee is doing more than it is. He requested a clarification on what activities the committee is responsible for conducting. John McCutcheon reviewed the purpose of the committee as stated in the charter:

The purpose of this Committee shall be to provide direction for the Virginia Stormwater BMP Clearinghouse, a state-of-the-art, statewide-accessible information clearinghouse for application of stormwater BMPs available through a website managed and maintained by the Virginia Water Resources Research Center (VWRRC).

The Committee shall:
- Provide direction for the clearinghouse website design;
- Provide direction for development and management of the website and support database;
- Evaluate research and monitoring (and associated recommendations) pertaining to manufactured BMPs;
- Establish BMP pollutant removal efficiencies and effectiveness ratings for Virginia; and
- Provide assistance to BMP manufacturers in arranging for third-party research pertaining to their products, and identify other stormwater issues that need research.

A member requested that the Clearinghouse Committee consider establishing standards for credit or partial credit for practices that exist. Scott Crafton replied that EPA's Chesapeake Bay Program is already conducting that kind of work as it pertains to meeting the Bay TMDL goals, but that EPA has concerns about the complexity of many situations (After months/years of use, is the practice still functioning as planned? How are retrofits credited? What accountability is there for localities participating in nutrient credit trading for BMPs functioning outside the locality's control?). Scott stated that any work by the committee on this issue would be limited so as to not be in conflict with EPA's efforts. He thought the committee could take comfort in the fact that EPA is working on these issues. Another committee member added that partial credits for things like street sweeping and constructed wetlands are not currently being provided. Scott Crafton responded that he thought partial credits will be possible in the future.

A member of the committee voiced that more information is needed in connecting the Chesapeake Bay Program's process, Bay TMDL, and stormwater management so suggested that the Clearinghouse website should include links to the work of EPA's expert panels. A second member voiced support for posting such information on the Clearinghouse website, citing that unless people attend meetings such as this one, they would not know of this work. Scott Crafton replied that given the new stormwater regulations, there has been talk of the need to update DCR's stormwater website pages. A member added, as a side note, that she could not find a link from DCR's website to the Clearinghouse website.

One member of the committee stated that the early vision was to have the Clearinghouse website be dynamic and the "go to" site for information for localities, developers, consultants, etc. to find out if the work they were doing complies with the stormwater management ordinances. Because of budget cuts and other constraints, this plan was temporarily placed on hold. She wondered if the agency intended to resurrect the plan for the Clearinghouse website. Scott Crafton explained that all compliance-related features would be posted on DCR's website, not the Clearinghouse website. DCR's e-permitting page will be an interactive site and will be where BMPs are tagged to compliance requirements. The public would come to the Clearinghouse website primarily to learn what practice efficiencies DCR awards and to get BMP design information.

A member added that some value of what the Clearinghouse website was envisioned to provide is hindered by the fact that only the initial version of the standards and specs are recognized in the regulations. He suggested that localities stipulate in their ordinances a requirement that the "latest version" of the standards and specs be used.

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With no further business, John McCutcheon adjourned the meeting.