

**Stormwater Local Government Advisory Committee**  
**Meeting #2**  
**April 24, 2012**

**Introduction and Update**

Ms. Snead welcomed attendees and gave an overview of progress to date. She reviewed the agenda for the meeting:

- Update
- Required Program Elements Checklist
- Tools Development Timeline
- Grandfathering Guidance
- Virginia ePermitting System Update and Survey
- Public Comment

**Required Program Element Checklist**

Mr. Harper presented the required program element checklist. A copy of the checklist is included as Attachment #1.

Mr. Harper said that DCR will work to make sure that the checklist is consistent with the law and regulations.

Mr. Harper said that the list would be distributed to members electronically for review.

**Tool Development Timeline**

Ms. Salvati presented the Tool Development Timeline. A copy of the timeline is available from DCR.

Ms. Salvati said that a timeline would also be developed for guidance and for grandfathering provisions. She said that moving forward there may also be other aspects of the regulations that would require the development of guidance documents.

Ms. Salvati said that the local government program development would begin in June and would proceed through 2014. She asked members to provide feedback with concerns and suggestions. She said that the integration bill talked about having programs submitted within 15-21 months which would be a timeframe of December 2013. She said that would mean local governments would begin submitting programs to the Board beginning in January 2013.

Ms. Salvati said many of the required elements were in the list provided by Mr. Harper. She said that the ordinance submitted as part of the package must be forwarded to the Board. She said that the ordinance did not have to be in final form at the local level for consideration by the Board.

Mr. Johnston of Virginia Beach noted that the City Council would not approve of the ordinance being submitted to the Soil and Water Conservation Board without their review and approval.

Ms. Salvati asked if that would mean there needed to be a change with regard to the timeline. She said that her understanding was that it could take as much as a year to get a local ordinance approved. She asked if it would be appropriate for localities to submit the ordinance for Board review with the understanding that it was not final.

Mr. Johnston said that would be a matter to discuss with the City attorney.

Mr. Lerch of the Virginia Municipal League said that every locality was different and that some could begin the process by submitting the ordinance to the Board with the understanding there was still need for public comment and local approval.

Ms. Salvati said that was the model that the Bay Act had followed.

Mr. Land with the Virginia Association of Counties said that it would be helpful to have a tool to serve as a template in the development of a model ordinance.

Ms. Snead said that a draft model ordinance was being developed and would be presented to the Committee to review at the next meeting.

Mr. Land said that it would need to be reviewed by local attorneys. He said that the process would have to be expedited in most localities.

Mr. White of Henrico County asked if the 21 month milestone would be the deadline for local submission.

Ms. Salvati said that was the date provided in the integration bill and the regulations.

A member said that a problem with the timeline is that many localities currently have no stormwater management programs. She said that training and certification would be a big hurdle for those localities.

Ms. Snead said that a training plan had been discussed. She said that DCR recognizes that there needs to be a significant amount of training. The intent is to have a stormwater certification program in place by early to mid 2013.

It was noted that due to budget concerns, some localities may not be able to hire necessary staff prior to mid 2013.

Mr. Land said that two issues that were of concern were how this would be integrated into a local budgeting process and the time that is needed for local governments to organize regionally.

It was noted that there may be a need for additional legislation to address these concerns.

Ms. Snead said that it was important to bring these issues forward but that DCR was currently working with the timeline as established.

A member asked if the Board would be reviewing the fee structure.

Mr. Dowling said that the fees were set at a level that was anticipated to allow a locality to run an effective program. He said that if a locality chose to decrease fees, DCR would want to make certain that funding was still available to run an effective program.

### **Grandfathering Guidance**

Mr. Fritz reviewed the grandfathering guidance. A copy of the draft guidance is included as Attachment #2.

Mr. Fritz asked that members review the document, talk with their local attorneys and provide feedback to DCR. He said that the document needs to be distributed as soon as possible.

### **Virginia ePermitting Update and Survey**

Mr. Seeley presented an overview of the Virginia ePermitting Update and draft Survey. A copy of the draft survey is available from DCR.

Mr. Seeley reviewed modifications to the website.

Mr. Seeley said that staff was looking for the opportunity to review programs locally. He said that specifically staff would like to arrange meetings in both the valley and the southwest.

### **Public Comment**

There was no additional public comment.

### **Final Comments**

Ms. Snead said that the next meeting would be May 17 at the Old Dominion Electric Cooperative in Glen Allen. She said that the main focus of that meeting would be the model ordinance.

Attachment #1

## VIRGINIA STORMWATER MANAGEMENT ACT

### REQUIRED ELEMENTS OF LOCAL STORMWATER MANAGEMENT PROGRAM APPLICATION PACKAGE

**Locality:** \_\_\_\_\_  
**Reviewer:** \_\_\_\_\_  
**Date:** \_\_\_\_\_

To complete the local stormwater management program application package, the following information is necessary. The checklist is intended to be used to provide a locality with a list of items, documents and procedures that must be submitted to the Virginia Soil and Water Conservation Board (Board) in order for the Board to approve the local Stormwater Management Program. All items listed are requirements found in the Virginia Stormwater Management Regulations and the Virginia Stormwater Management Law.

**The following is to be completed by the applicant.**

<i>Item #</i>	<i>Code/Regulatory citation</i>	<i>Information needed for review</i>	<i>Status</i>
1	Section 4VAC50-60-148 A. 1	Identification of the authority accepting complete registration statements	<i>Local staff should identify the responsible authority for the acceptance of registration statements</i>
2	Section 10.1-603.3.E 4VAC50-60-150.A.1	Copy of the local Stormwater Management Ordinance (s)	<i>Local staff should provide a copy of the most recent Stormwater Management Ordinance(s).</i>
3	Section 4VAC50-60-150.2.	Provide funding and staffing plan.	<i>Local staff should provide a description of staffing needed to operate the SWM Program and how funds will be distributed.</i>
4	Section 10.1-603.3.G 4VAC50-60-150.A.3	Is the locality partnering with adjacent localities or other entities for the administration, plan review, inspection and enforcement components of a stormwater management program?	<i>If yes, local staff should provide a copy of the agreement, Memoranda Of Understanding (MOUs), or contracts used to set up and administer the multi-jurisdictional program.</i>
5	4VAC50-60-55.C and D	Identification of local Certified Plan reviewer	<i>Local staff should identify the Certified Plan reviewer, certification number and</i>

	10.1-561 ?		<i>expiration date.</i>
6	4VAC50-60-148 A. 2	Identification of processes for the review and approval of erosion and sediment control and stormwater management plans	<i>Local staff should provide a description and documentation of the plan review processes for erosion and sediment control and for stormwater management plans.</i>
7	4VAC50-60-148 A. 8 A. 2	Identification of policies/procedures for obtaining and releasing bonds as applicable	<i>Local staff should identify where the procedures for obtaining and releasing bonds are located, either within the local Stormwater Management Ordinance(s) or elsewhere</i>
8	4VAC50-60-114	Identification of inspection program for land disturbing activities and for adequacy of stormwater management facilities	<i>Local staff should provide a description and documentation of local program for the inspection of land disturbing activities and stormwater management facilities</i>
9	4VAC50-60-126	Identification of procedures for reporting and recordkeeping.	<i>Local staff should identify where the recordkeeping and reporting procedures are located, either within the local Stormwater Management Ordinance(s) or elsewhere</i>
10	4VAC50-60-112	Identification of location of BMP maintenance requirements for permanent BMPs.	<i>Local staff should identify where the specific requirements for long term maintenance of BMPs is located within the local Stormwater Management Ordinance(s)</i>
11	4VAC50-60-112	Description of program to track and maintain permanent BMPs.	<i>Local staff should provide description and documentation of local program to track and maintain permanent BMPs.</i>

**Other required supporting documentation**

12	4VAC50-60-150.A.2	Identification of location of fee structure	<i>Local staff should identify where the fee structure is located, either within the local Stormwater Management Ordinance or elsewhere, if applicable.</i>
13	4VAC50-60-116	Explanation of local enforcement for stormwater management program	<i>Local staff should provide description and/or location of enforcement provisions, either within the local Stormwater Management Ordinance or elsewhere (in their code?), if applicable.</i>
14	4VAC50-60-54.E	Identify any waters for which TMDLs are in effect in the locality	<i>Local staff should identify TMDLs that have been developed in the locality.</i>
15	4VAC50-60-65	Copy of BMP design criteria	<i>Local staff should provide description and copy of local BMP design criteria. If</i>

			<i>the locality adopted the local BMP design criteria that differ from State Stormwater Management Handbook/Virginia BMP Clearinghouse, documentation that these BMPs were approved by the Board shall be provided..</i>
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**The following is to be completed by DCR staff.**

16	Is the local Erosion and Sediment Control program consistent?	<i>DCR staff should verify status in advance and note here prior to sending to local contact.</i>
17	Is the locality within Tidewater Virginia and subject to the requirements of the Chesapeake Bay Preservation Act? If so, is the local Bay Act program consistent and compliant?	<i>DCR staff should verify status in advance and note here prior to sending to local contact.</i>
18	Is the locality an MS4 locality?	<i>DCR staff should verify status in advance and note here prior to sending to local contact.</i>

Attachment #2



**DRAFT**  
**GUIDANCE DOCUMENT ON THE IMPLEMENTATION OF THE VIRGINIA  
STORMWATER MANAGEMENT REGULATIONS GRANDFATHERING  
PROVISION**

(Approved XXXX)

**Summary:**

This Virginia Stormwater Management Program document provides guidance on implementation of the grandfathering provision of the Virginia Stormwater Management Regulations found at 4VAC50-60-48.

**Electronic Copy:**

An electronic copy of this guidance document is available in PDF format on the Regulatory Town Hall website at <http://townhall.virginia.gov/> under the “Guidance documents” tab (see Virginia Soil and Water Conservation Board).

**Contact Information:**

Please contact the Department of Conservation and Recreation’s Division of Stormwater Management at [EMAIL] or by calling [NUMBER] with any questions regarding the application of this guidance.

**Disclaimer:**

This document is provided as guidance and, as such, sets forth the process for implementation of the grandfathering provisions found at 4VAC50-60-48. The guidance does not carry the force of law and is not intended, and cannot be relied on, to create any rights, substantive or procedural, on the part of any person or entity. DCR reserves the right to modify the guidance at any time without public notice. In addition, DCR may deviate from the guidance as it deems necessary to carry out the intent of the laws and budget language DCR is charged implementing.

**Implementation of the Virginia Stormwater Management Regulation  
Grandfathering Provision:**

**I. Background:**

This guidance document defines the policies and procedures for implementation of the Virginia Stormwater Management Regulation grandfathering provision found at 4 VAC50-60-48.

**II. Definitions:**

"Land disturbance" or "land-disturbing activity" means a manmade change to the land surface that potentially changes its runoff characteristics including any clearing, grading, or excavation associated with a construction activity regulated pursuant to the CWA, the Act, and this chapter or with a Chesapeake Bay Preservation Act land-disturbing activity regulated pursuant to the Act and this chapter.

"Layout" means a conceptual drawing sufficient to provide for the specified stormwater management facilities required at the time of approval.

"Locality" means a county, city, or town.

"Stormwater management plan" means a document(s) containing material for describing methods for complying with the requirements of the local program or this chapter.

### **III. Authority:**

Pursuant to §§ 10.1-603.2:1 and 10.1-603.4 of the Code of Virginia

### **IV. Discussion and Interpretation:**

On September 11, 2011, modifications to the Virginia Stormwater Management Program regulations (4VAC50-60-10 et seq.) became effective. These modifications included the establishment of new stormwater design criteria for the control of post construction stormwater runoff. The regulations included a grandfathering provision so as not to delay or negatively impact land-disturbing activities previously designed and in the process of review and approval. Parts of land-disturbing activities considered grandfathered are to comply with the post construction technical criteria found in 4 VAC 50-60, Part II. C. The grandfathering provision applies to both privately funded land-disturbing activities and publicly funded land-disturbing activities.

In order for privately funded land-disturbing activities to be considered a grandfathered, the following conditions must be met:

1. The land-disturbing activity for which a currently valid proffered or conditional zoning plan, preliminary or final subdivision plat, preliminary or final site plan or zoning with a plan of development, or any document determined by the locality as being equivalent thereto, must be approved by a locality prior to July 1, 2012;
2. The document approved by the locality must include a layout; and,
3. The document approved by the locality must include sufficient information for the locality to find that the resulting land-disturbing activity will be compliant with the requirements of the post development design criteria found in Part II C.

In considering whether a land-disturbing activity can be considered grandfathered, a locality should require that the approved document includes a conceptual drawing that identifies the location of the proposed stormwater facilities and includes the pre and post development calculations that detail the required pollutant reduction necessary to comply with the water quality design criteria, as well as, the calculations necessary to determine compliance with the water quantity design criteria. Land-disturbing activities that do not include these necessary items should not be considered grandfathered. The Department

of Conservation and Recreation cannot make the determination whether privately funded land-disturbing activities are grandfathered activities.

In order for publicly funded (local, state or federal) land-disturbing activities to be considered a grandfathered, they must meet the following conditions:

1. There has been an obligation of locality, state or federal funding prior to July 1, 2012. Funding can be whole or in part but must be appropriated towards the project. Authorization or approval to begin design of a land disturbing project without appropriation of funds should not meet the necessary requirements in order to be considered grandfathered.

Or

2. The Department of Conservation and Recreation has approved a stormwater management plan prior to July 1, 2012. The stormwater management plan approved by the Department must have ensured compliance with Part II. C. of the regulations.

Land-disturbing activities that qualify under the grandfathering provision must be completed by June 30, 2019. Portions of the grandfathered project that are not under construction at that time become subject to the technical criteria found in Part II.B. The only exception to the June 30, 2019 date is for publicly funded projects financed by governmental bonding or public debt financing issued prior to July 1, 2012. In these cases, there is no completion date requirement.

The grandfathering provision applies specifically to land-disturbing activities and does not apply to regional or watershed stormwater management plans or stormwater master plans. Regional and watershed stormwater management plans and stormwater master plans will need to be reviewed and modified in order to ensure compliance with the new stormwater design criteria.

This guidance does not apply to land-disturbing activities that obtain VSMP permit coverage prior to July 1, 2014. Land-disturbing activities that obtain VSMP permit coverage prior to July 1, 2014 shall comply with the stormwater management requirements found in the VSMP General Permit for Stormwater Discharges from Construction Activities, which is equivalent to Part II.C.

#### **V. Adoption, Amendments, and Repeal:**

The Department has consulted with the Virginia Soil and Water Conservation Board regarding the contents of this document at their [DATE] meeting. This guidance document shall remain in effect until rescinded, amended or superseded.

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David A. Johnson  
Director, Virginia Department of Conservation and Recreation

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Date