

**Virginia Stormwater Management Program (VSMP)
Regulatory Advisory Panel Subcommittee Meetings
August 16, 2010
Patrick Henry Building, Richmond, Virginia**

The minutes include an overview of the discussions and actions that occurred within the four Stormwater Regulatory Panel Subcommittees that met on this date (Water Quantity, Offset, Water Quality and Grandfathering subcommittees).

Water Quantity Subcommittee

Attendees

Mike Rolband-Chairman
Steve Herzog
Daniel Proctor
Ingrid Stenbjorn
Jenny Tribo
Joe Battiatia
Rick Parrish
Barrett Hardiman
John Olenik
Jerry McGranner
Aislinn Creel
Greg Johnson
Keith White
DCR Staff present: Lee Hill and Mike Foreman

Chair Opening Remarks

EPA is taking on a more aggressive stance with regulatory activity
What EPA is proposing in their national guidance and regulatory actions may not be technically feasible
Virginia needs realistic and reasonable technical criteria in the regulation
Virginia needs a system that works and doesn't burden the locality in the review process

Review of Proposed Regulations-What are the issues?

Beginning with 4VAC 50-60-66, Chair Mike Rolband led the group through the proposed regulations and identified issues of concern. Following the issue identification process, the group would address these issues specifically and in detail. These are the sections with identified issues of concern:

- B. Channel Protection
- C. Flood Protection
- E. Sheet Flow
- G. Pre-Development Runoff Characteristics
- H. Point of Discharge/Channel Analysis

4VAC 50-60-72

- B. Use of the word “ultimate”
- C. Don’t specify analytical method
- D. “200” acre drainage area too high

4VAC 50-60-85

- A. In-stream/Wetland Stormwater Ponds
- B. Stormwater in FEMA
- C. 100-Year Design Standard

Definitions to Consider

Adequate channel
Channel
Comprehensive Stormwater management plan
Development
Flood fringe/Floodway/Floodplain
Impervious Cover
Man-made Stormwater Conveyance System*
Natural Channel design concepts
Natural Stormwater Conveyance System*
Natural stream
Outfall
Peak flow rate
Planning area
Point of Discharge
Restored Stormwater Conveyance System*
Runoff characteristics
Stable
Stormwater Conveyance System*
Unstable

Beginning of “Change Recommendations” Discussion

Beginning with 4VAC 50-60-66, Letter B, Channel Protection

Discussion revolved around 4 options:

- Fix channel
- Reduce below 2 year pre-development
- Reduce using energy balance to 2 year pre-development
- Reduce to 1 year pre-development for both

***Chair Rolband asked the group to consider these options while on lunch break**

Following lunch, several questions arose prior to any continuing discussion about 4VAC 50-60-66, Letter B, Channel Protection

What determines stability?

Why did we change to “pasture”?

Stable/unstable approach

How do we define “better”? Can we improve not only “Q” but other important stream characteristics as well?

***Chair Rolband proposed we defer Letter B to the next meeting with group members assigned “homework” tasks to clarify these issues**

4VAC 50-60-66.C., Flood Protection

Discussion of this topic led to the need to change/clarify these definition requirements, either in this section or in the definitions:

For restored/natural channel conveyance grouping, let’s group the definitions together.

Also include in definition a disclaimer that it is a non-FEMA designated flood/conveyance system

Keith White agrees to work on this definition grouping

Add “wetlands” to natural conveyance channel regulation

Keith White agrees to work on this wording

Revise flood definition in C.3 and C.4

Daniel Proctor agrees to revise flood definitions well as “localized flooding”

Letter E. Sheet Flow

Revise Sheet flow definition

Judith Cronauer agrees to work on sheet flow definition

Letter H. Point of Discharge Analysis

Alter language to allow for updates to Technical Bulletin #1 (TB #1) and reference “latest version” in case TB #1 is updated.

Reference “stable” in Letter H

DCR staff will revise language to this end for next meeting if possible.

New Ideas

Send Lee Hill any suggested language for solving open issues, as well as any documents/reports that you think may be of interest to the group. He will vet them and distribute to all to minimize e-mail traffic *and* meet “Sunshine” Law requirements regarding discussions/e-mails involving three or more members.

Offset Subcommittee

Attendees

Doug Beisch – Chairman

Barbara Brumbaugh

Dave Coitner

Mike Flagg

Katie Frazier

Dave Hirschman

Ann Jennings

Larry Land

Kurt Stephenson

Shannon Varner

Cabell Vest

Alyson Sappington

DCR Staff present: Jack Frye and Christine Watlington

The chairman welcomed everyone to the subcommittee meeting. All the members introduced themselves. The chairman summarized the importance that previous regulatory committees had placed on offsets as a cost-effective compliance tool. There was a review of the suspended final regulations as it pertains to the offsite compliance options (4VAC50-60-69). The committee raised general issues that need further discussion.

General Issues for Further Discussion

1. Capitalization of offsets – If offsets need to be "on the ground" prior to the beginning of land disturbance, how does a local government or other entity raise the funds needed for the capital project? Does the pro rata allow for funds to be used for after construction maintenance?
2. Timing – do offsets need to be "on the ground" prior to the beginning of land disturbance?
3. Surety – what is the assurance that a best management practice (BMP) will achieve nutrient reductions and what is the assurance that the BMP will be maintained over time? Is there a difference between local governments and the private sector with regard to surety?
4. Equivalency – are all offsets and offsite compliance tools achieving equal nutrient reductions? If not, how can equal reductions be assured?

5. Perpetuity – does a BMP need to physically present in perpetuity or could perpetuity be expanded to mean a funding stream that provides nutrient reductions in perpetuity (although the BMPs may be different)
6. Scale and proximity – Would a locality be able to dictate where offsets would be located? Local water quality concerns should be a factor in deciding whether to allow offsets and a locality should be allowed to use offsets in a way that benefits local water quality.
7. Alternatives to land conversion – what are the alternatives to land conversion; are urban practices eligible to be used for offset credits; how do agricultural practices with a relatively short life span fit into the offset credits?
8. How do the concepts of maximum extent practicable (MEP) and attaining water quality standards mesh? If a site must attain water quality standards, how can MEP be used to allow offsets and still meet permit requirements? If a minimum “on-site” treatment threshold is defined in the regulations, what happens if a given site is unable to comply on-site? Can they then utilize offsets or is the site rendered undevelopable.
9. Would local governments be allowed to hold offset banks and sell credits outside of their jurisdiction (thus putting them in competition with private banks and other local programs)? Localities are not allowed to compete with other banks under the wetland mitigation banking program (single user banks only).
10. How would the offset credits, the state buy down program, and the pro-rata work within the local government framework? Are there certain roles that only the local governments should have or only roles that the state and or free market should have?
11. Offsets should be market driven, rather than have a price set out. The price per pound that is currently in the regulations should be removed.
12. What is the role of sediment in offsets? Is sediment available for offsets? Are offsets required to be representative of an array of urban pollutant loads which they are “offsetting?”
13. Is there any role for offsets when it comes to meeting water quantity requirements?
14. What about small site options? Can someone go offsite immediately rather than achieving some reductions on site?

15. There were many concepts regarding the state buy down option that were discussed including the level of accountability for the state; is there a way to rewrite the agriculture funding section that would make it more acceptable to farmers and assure nutrient reductions? This option takes many of the decisions regarding development out of the local government's hands. The requirements of the state buy down elements are not as stringent as the other offsite compliance mechanisms.

The committee mentioned several times that the work of the other subcommittees, especially the water quality subcommittee, will have a significant impact on the utilization of offsets. The committee requested that the guidance developed by the Virginia Department of Environmental Quality be sent to each committee member, which has been completed. For future meetings, the subcommittee will work on the principals of what an offset/offsite program should have and then develop an offset program to cost-effectively meet that need. This program may be different in different watersheds. Additionally, there was a significant discussion on the proposed legislation regarding offsets. The subcommittee noted numerous potential issues and were requested to send additional comments to the department within several days. DCR will provide an update at the next subcommittee meeting on where the process of developing draft legislation stands.

Water Quality Subcommittee

Attendees

Norm Goulet – Chairman

Brian Wagner

Andrew Gould

Mike Gerel

Jennifer Johnson

Bill Johnston

Joe Lerch

Steve Kindy

Bill Street

Brent Fults

DCR Staff present: Doug Fritz and Scott Crafton

The meeting opened with the chairman sharing his agenda for the meeting and providing some guidance about how the group should proceed. This included recognition that there are clearly divergent desires about the outcome from different interest groups. Given that, he suggested that the process is one of negotiation, aiming toward a final outcome that will likely represent some compromises. However, the final recommendations should be a set of criteria that everyone around the table can agree to stand up and support as reasonable and defensible. The chairman asked if the group felt a need to review the suspended regulations prior to discussion. The group agreed there was no need. The chairman expressed relief, noting that there was a lot to accomplish and not a lot of time within which to do it.

He stated his agenda, as follows:

1. What is the appropriate minimum criteria that will adequately meet water quality standards and protect water quality in Virginia waters for new development? For redevelopment?
2. Should Virginia move toward some of the more aggressive standards that the USEPA is proposing for national stormwater management regulations (e.g., managing runoff based on the 95th percentile storm event)?
3. Should Virginia move away from using Total Phosphorus (TP) as the basis for water quality criteria in deference to a more generic pollution standard, or should Virginia reflect the pollutants targeted in the Chesapeake Bay TMDL (TP, TN, TSS, etc.) as the basis for water quality criteria?
4. Should Virginia continue to reference an average land cover condition as the trigger for the criteria and, if so, should that number continue to be 16%? Is it appropriate to use a statewide average? While individual jurisdictions are authorized to develop

locally-specific average land cover values, should this be a requirement for all localities?

5. Are there any outstanding issues with the new Virginia Runoff Reduction Method that should be resolved? Would it make more sense for this method to be web-based rather than a stand-alone spreadsheet? Should the 1-inch *rainfall* event be the basis for the required treatment volume, or should it continue to be 1/2-inch of *runoff* from the impervious area of the site, as the current regulations require?
6. Should the regulations be re-written to better reflect the land development process? Would this approach reduce the element of confusion that some complain about? In this sense, should there be separate water quality criteria for the *construction* phase of the project as well as for the *post-construction* BMPs?
7. Identify any other water quality related issues that are outstanding and need to be addressed.

The chairman asked if any subcommittee members wanted to add anything to the agenda. One member reminded the group that the law requires that the regulatory criteria not only achieve water quality standards, but *also* prevent degradation of state waters. Another member suggested the group should approach the task *assuming* the final criteria will address the Bay TMDL.

There was some discussion, and the group agreed it will be important that the Virginia regulatory criteria integrate well with the Bay TMDL or other more local TMDLs or water quality issues, as they develop. In fact, there was agreement that the regulations should clearly refer to meeting applicable TMDLs or other more stringent local water quality criteria. The discussion then turned to what should become the default minimum criteria for local stormwater runoff that will apply both in the Chesapeake Bay watershed as well as the rest of the state.

With respect to the water quality criteria, one member asked whether the group had any agreement on an appropriate percentage of impervious cover that could be used as a threshold for application of the criteria. Another member stated that he believes that percentage should be less than the current 16% “average land cover.” He referred to studies by the Center for Watershed Protection demonstrating that local stream systems begin to suffer negative impacts when their small watershed exceeds 10% to 12% impervious cover. One member asked if these numbers apply to the watersheds of freshwater streams in particular, or all small watersheds in general. DCR staff agreed to get the answer to that question.

Another member said that the group should be careful about setting a very low percentage of imperviousness as a threshold, because that could result in standards that might not be achievable in dense urban areas. Still another member suggested that that

might not be the case, since the dense urban sites would more likely be subject to redevelopment criteria than the criteria for new development.

A member pointed out that under the current average land cover criteria, if your site will result in a percent impervious cover of less than 16%, you do not have to do *any* water quality protection (assuming there will be no net increase of the pollution load associated with that average land cover). However, in reality, as numerous sites in a small watershed develop under the 16% threshold, there is a growing pollutant load in that watershed. So this is not a perfect model.

A member asked what criteria would flow from setting an impervious cover threshold or standard, assuming the group can agree on one. Does the focus then become matching runoff volume rather than aiming at a target level of pollution? Another member suggested that the group endorse continuing to use TP as the “indicator” or “surrogate” pollutant of choice, connecting a target load to whatever percent imperviousness the group may agree upon. He pointed out, and others agreed, that design consultants in Virginia are already comfortable and experienced with using TP for this purpose and in this context in their calculations. Furthermore, he suggested that Virginia should continue to promote the use of the new Runoff Reduction Method spreadsheet as the methodology for calculating pollutant load reduction requirements, because it is simple and sensible.

He said that Runoff Reduction Method should also continue to include addressing all three land covers – impervious cover, forest and open space, and managed turf – even though there have been objections to the inclusion of managed turf because its inclusion results in higher pollution load removal requirements. The group agreed that managed turf is an expanding land cover and, due to heavy lawn fertilization, it is a growing source of nutrient pollution to Virginia waters. In that respect, the group agreed that the nutrient loads from managed turf need to be accounted for in the stormwater management water quality calculations. They asked if DCR staff could provide a short technical support document that would explain the reasoning for including managed turf, including a list of reliable references.

A member said that the group would need to associate a TP load with the target impervious cover. Another member said that the phosphorus load associated with 10% impervious cover was about 0.32 lbs./acre/year (a less stringent target than the 0.28 lbs./acre/year target originally proposed by DCR, but more stringent than the 0.45 lbs./acre/year target in the current regulations). Someone else asked if 10% impervious cover was the appropriate threshold, or whether it might be 12% instead, which would correlate to a slightly higher pollution threshold. Another member asked if DCR staff can produce a table relating several increments of imperviousness percentages to the related TP loads and provide that information prior to the next subcommittee meeting.

Copies of a peer-reviewed article published last year in the *ASCE Journal* describing the CWP’s Impervious Cover Model were distributed (upon which this discussion was

centered). The article discusses the recent independent research confirming or reinforcing the model's premise that the behavior of urban stream health indicators can be predicted on the basis of the percentage of impervious cover in the contributing watershed, and updating the conceptual model based on findings of the recent research. Although a single research report, the paper references over 60 other research studies that support the model's conclusions.

The group agreed that this paper should be made part of the regulatory record to provide sound scientific support for this criterion, should it be supported. There was also general agreement that basing the water quality criteria, at its root, on this concept makes more sense as a standard throughout the state, because it aims at protecting local stream systems and is not so Bay-centric. Citizens and localities in non-Bay parts of the state could not complain that they are subject to an arbitrary set of criteria that have not been specifically set for their own locales, because this concept appears to apply universally. Furthermore, this approach would not allow site designers to opt out of the water quality criteria if their sites were going to be less than some set impervious. They should still be required to run the Runoff Reduction Method calculations to determine if they will have a pollution removal requirement. Finally, using a threshold percentage of impervious that is directly related to the onset of stream degradation suggests that localities should *not* be allowed or required to develop localized average land cover values. However, this might mean there should be other considerations given to dense urban localities regarding their water quality criteria for new development.

A member of the group pointed out that where on-site compliance with such a standard might be an issue for a more urban site or one that proposes to result in a high percentage of imperviousness, it will be important for the regulations to include alternative compliance options, such as nutrient trading, off-site compliance, etc. One member asked how this would affect CBLAD localities like Norfolk that have adopted average land covers based on their own local watershed imperviousness. He asked if, prior to the next meeting, DCR staff could provide a list of CBLAD localities that have been allowed to develop and use their own local average land covers, including what those localized impervious cover thresholds are.

Another member noted that the regulations should be structured so that any TMDLs that might apply to the site or watershed or any more stringent local standards would take precedence over the default standard. Another member reminded the group that if there is a perception that the criteria are *not* achievable in any routine settings (because they are considered too rigid or there are not enough alternative compliance options), then DCR will likely continue to receive a lot of resistance and even legal challenges.

One member stated he thinks the regulations should be clearer regarding the flexibility for local review of outfalls from very large sites that are not being fully developed (sic § 4VAC50-60-65E). He said the language currently in the regulation is too insubstantial,

and he would prefer a policy that requires all localities to exercise their discretion and review such sites in the same way (i.e., one size fits all).

Another member asked if the subcommittee could recommend that vegetated stream buffers be required with some minimum specified width. He said the science shows that buffers are a very effective tool at protecting stream water quality and biological health, especially for smaller headwater streams. There was some discussion of whether there was truly scientific consensus on the merits of buffers and any reasonable consensus on their specific pollutant reduction effectiveness (i.e., specific attributable pollution reduction numbers for nutrients and sediments). Most of the group seemed to agree that there was broad scientific agreement regarding the value of buffers and also general agreement on at least some minimum pollution reduction numbers associated with buffers.

The group briefly discussed the fact that buffers had been introduced earlier in the regulatory process as a requirement, but that proposed requirement had been extracted from the regulation due to public resistance. Scott Crafton, of DCR, explained that buffers are still available as a design tool for site designers. He noted that they are included as a separate practice in the new SWM Handbook chapter on Environmental Site Design. He said that if a designer were to include buffers in a site plan, they would be counted as part of the “forest and open space” land cover in the Runoff Reduction Method calculations and, thus, would be given credit for runoff volume reduction. One member stated that buffers should be credited *not only* with the runoff reduction value, but also with pollutant reduction and stream health values. There seemed to be some support, at least in concept, for the idea of recommending a buffer requirement with a minimal required width.

Another member asked if there might be additional or clearer latitude in the regulations for urban localities in the ways they might achieve the water quality criteria. He said that he was not convinced the *UDA* criteria currently included in the proposed regulation was the best way to address this issue. He felt that criteria had been cobbled together too quickly and that it doesn't adequately address the concern. Another member pointed to the other options that have been added to the regulations (e.g., nutrient trading, various kinds of nutrient offsets such as off-site compliance and fees-in-lieu, and the option for development of local watershed-scale stormwater management plans). He said he is under the impression that much of the resistance to the earlier proposed language was the result of general concerns that there were not enough flexible alternatives for compliance on difficult sites, but he believes this has been largely addressed now.

The chairman noted that this is an issue that does not deal directly with the focus of this subcommittee (i.e., the water quality criteria), and that he will keep a list of such issues so he can be sure the appropriate subcommittee chairpersons and the DCR leadership are aware of our concerns and recommendations. In the context of protecting local water quality, Doug Fritz of DCR asked if everyone in the group supported removing the

language regarding UDAs from the regulation, and no one disagreed. However, several members reiterated that they want to be sure the regulations include local options that ensure the local waters will be protected (including off-site treatment that is still in the watershed).

The chairman brought up the topic of using the 1-inch *rainfall* event as the basis for the water quality treatment volume, rather than continuing to use the 1/2-inch of *runoff* used in the current regulation. He noted that this change has not been clearly explained by DCR, and there is a lot of confusion about it. A group member agreed and said that it would be helpful if DCR staff could develop a short explanation for the regulatory record and for the benefit of the subcommittee members. Scott Crafton noted that the reasons for the change are provided in Chapter 10 of the new SWM Handbook (*Uniform Sizing Criteria*). He explained some of the reasoning for the benefit of the group. He and Doug Fritz of DCR also explained the similarities in the amount of water being addressed in both methods (i.e., 1 inch of rainfall generates just a slight bit more than 0.5 inches of runoff over an impervious surface such as a parking lot). Doug read a passage from the current SWM Handbook, pointing out that some of the current BMP designs require them to be sized for two times the water quality volume (i.e., $2 \times 0.5'' = 1''$), emphasizing that the end results of the new criteria would not be that different from the practical use of the current criteria. Doug also mentioned that stormwater experts and the USEPA have been moving away from trying to manage pollutant concentrations in runoff (the 1/2-inch of runoff that has been called the “first flush”) and moving toward managing total pollution loads.

The group asked if Scott could provide a copy of Chapter 10 of the Handbook so they can read the explanation of the change. They also suggested this documentation should be made part of the regulatory record. The group also asked if DCR could provide a list of other states who are using the 90th percentile (1-inch) storm as their regulatory standard. Scott noted that Chapter 10 has a list of notable states, but DCR can do some research to see if there is a longer list.

A member pointed out that the group should just be mindful that the collective changes in the regulations, including use of the 1-inch rainfall and addressing the entire site in the calculations rather than just the site’s impervious cover, mean that load removal requirements will be greater in the future and thus more costly. Scott Crafton pointed out that there are also changes in the BMP designs that grant greater pollution removal credit for most of the BMPs and that pollution reduction credit is also granted for runoff volume reduction now. Therefore, the management tools now make it easier to meet those higher pollutant reduction requirements. The group agreed it will be important to keep in mind the net effect of the new requirements is that more will have to be done and it will likely cost more than in the past.

At 12:15 pm, the chairman called a break for lunch and asked everyone to be back in 45 minutes.

After lunch, the chairman asked if the group was satisfied with the direction of recommendations for water quality criteria for *new* development, as discussed in the morning session. There was general agreement. He said that he would work with DCR staff to translate the recommendations into specific language that could be circulated prior to the next meeting on September 1st and then discussed at that meeting. He then moved the group on to discussion of criteria for *redevelopment*.

One member stated his concern that the group seemed intent that criteria for new development should be based on sound science, but the criteria that has been proposed for redevelopment seems very arbitrary. Another member pointed out that redevelopment is very different from new development in that the site has already been altered – it is not virgin land. Also, part of the public discussion has revolved around ensuring that the new regulatory criteria do not disincentivize redevelopment and infill development in dense urban communities, rather than continuing to suburbanize our rural green spaces. In that sense, he said that developing criteria that are more policy based makes sense; even though they might be perceived as arbitrary, in fact they should be well thought out and reasonable.

There was a general discussion of the ways in which redevelopment is different from new development and of the range of differences among even redevelopment projects. Some redevelopment projects can achieve compliance rather easily, while compliance is very difficult for others (generally based on how impervious the site will ultimately become). He cited as examples the proposed redevelopment of the old Cloverleaf Mall site in Chesterfield County, as opposed to trying to redevelop a 100% impervious block of downtown Richmond.

Then there was a discussion of what criteria should be used to distinguish between those redevelopment sites that must comply with the higher 20% pollution reduction target and those that need to reduce pollution by only 10% (which is the current criteria for all redevelopment).

One member noted that there are many redevelopment sites where it should not be difficult to achieve a 20% reduction in TP from the pre-redevelopment level. But there will be other sites where even achieving a 10% reduction will be a challenge. He suggested that perhaps it would be appropriate to develop some sort of sliding scale of criteria that would apply to redevelopment projects, based on variables such as area of the site being developed, the percentage of imperviousness on the site, or the percentage of the site encompassed by a building footprint that will remain in place.

There was a back-and-forth discussion about what that sliding scale might look like and what site characteristics might be the best ones to use as variables for the sliding scale. One suggestion was to have two categories, based on the percentage of the site that will

be encompassed by an original building footprint that will remain intact. The suggestion was something like the following:

<u>Original Building Footprint</u>	<u>Pollution Reduction Required</u>
25% - 75%	20%
75% - 100%	10%

The proponent said that using the building footprint as the basis makes more sense than using total impervious area of the original site, because some of the original parking pavement might be restored to vegetation/open space or used as a BMP site, whereas the building portion of the site could not be so converted.

A lively discussion then ensued regarding whether there shouldn't be more ranges listed in the table, associated with a more respective pollution reduction requirements, where if your building footprint was only 10% of the site, you might have to reduce the pre-redevelopment pollution load by 90%. Most of the group seemed to agree that approach would probably not be acceptable.

Others asked if there wasn't some lower threshold of percent building footprint where the developer should fully comply with the *new* development water quality criteria. One member said he did not think that was the best approach. He noted that DCR has already gotten significant resistance to the 20% reduction criterion for redevelopment. He believes the 10% and 20% numbers have been fought over and, by now, the regulated community is somewhat resolved to those numbers. So the real challenge is to establish the most appropriate criteria for differentiating between the sites that must meet the 10% requirement versus the 20% requirement. Several others still felt there should be at least one more category in the table (perhaps the 0% - 25% level), where a more aggressive requirement would apply.

A suggested alternative was one where designer would have to use the Runoff Reduction Method to determine what his pollution removal requirement *would* be if his site was new development. Then based on the ranges of percent building footprint, the pollution reduction requirement would be some percentage of that new development requirement. That table might look something like the following:

<u>Building Footprint</u>	<u>Pollution Reduction Required</u> (new development rqmt = X lbs.)
0% - 25%	50% x X lbs.
25% - 50%	35% x X lbs.
50% - 75%	20% x X lbs.
75% - 100%	10% x X lbs.

One member noted that the currently proposed language divides the applicable redevelopment criteria based on parcel size, with the less stringent criteria applying to

small parcels of less than 1 acre. He said that even if we can agree on some sliding scale for redevelopment criteria, he still thinks that parcels of less than one acre should have to apply with the less stringent (10% reduction) criterion, because in redevelopment situations there is more of a tendency to cover a large portion of the property, leaving much less room for water quality compliance.

There was then a discussion of the idea that if a developer is able to achieve a greater pollution reduction on his site than what is required by the regulations, the regulations should allow him to bank or market that extra load in the trading environment. Some thought this would be an excellent added incentive to encourage more redevelopment projects.

Others pointed out that the decisions to develop on new land or to redevelop an older site are based on extensive and complex variables (underlying zoning, economic development credits, other market issues, community vision and initiative, etc.). Their point was that, in reality, reasonable pollution reduction requirements that DCR ultimately approves for redevelopment are not likely to be the key determinant of whether or not a redevelopment project goes forward or is cost-effective.

It was mid-afternoon, and the chairman asked if the group was generally agreed on the directions we had discussed for water quality criteria for new development and for redevelopment. The group agreed. He asked if there were other outstanding issues that need to be discussed.

One member suggested that if Virginia legislated a phosphorus ban for lawn fertilizers, as some other states have done in order to reduce nutrients in stormwater runoff, then should the stormwater quality criteria be revised to reflect lower background concentrations of TP in runoff. There was a short discussion of this matter. DCR Director David Johnson pointed out that even without a legislated ban, DCR has obtained agreement from the Scott's Fertilizer Company (60% of the market) to remove Phosphorus from their lawn fertilizer products (except for the starter lawn products) by 2012. Doug Fritz mentioned that the removal of fertilizers does not totally address increased runoff and pollutant loads due to compacted soils and presence of leaf litter. Furthermore, there are discussions with some other companies about such voluntary efforts as well. However, there was general agreement that it would be difficult to predict these outcomes or their timing, and it would take some time to generate sufficient monitoring data to provide any statistically significant assurance of how phosphorus concentrations may change in reaction to such product alterations. Therefore, the group felt DCR should proceed as they have discussed today.

There were not other outstanding issues raised. The chairman then went over the list of items DCR staff is to provide prior to the next meeting, as follows:

1. A list of phosphorus loads (e.g., .32 lbs./acre/year) associated with various percentages of watershed imperviousness (related to the *CWP Impervious Cover Model*)
2. Determine whether the *Impervious Cover Model* applies to watersheds of fresh water streams, tidal streams, or both. (***The answer, from Tom Schueler, is that the model applies to all small watersheds – both tidal and fresh water – but not to large watersheds such as the James River basin.***)
3. A list of CBLAD localities that have been allowed to develop and use their own local average land covers, including what those localized impervious cover thresholds are.
4. A list of states/localities where implementing stricter water quality requirements for stormwater runoff has proved achievable, both practically and economically (i.e., such requirements have not slowed or stalled land development)
5. An explanation of the reason for switching to use of the 90th percentile storm event (1-inch of rainfall) as the basis for the water quality treatment volume, including a list of other states using the 90th percentile storm for regulatory purposes (i.e., Chapter 10 of the new SWM Handbook – *Uniform Sizing Criteria*).
6. Tom Schueler's/CWP's technical paper about the *Impervious Cover Model*, explaining and defending the relationship between watershed imperviousness and stream degradation. (***This paper was handed out at the meeting.***)
7. A technical/scientific support documentation that would explain the reasoning for including managed turf, including a list of reliable references.

The chairman instructed the group that they should read over materials sent to them *prior to* the next meeting and be prepared to discuss them at the meeting. He adjourned the meeting shortly before 3:00 pm.

Grandfathering Subcommittee

Attendees

Mike Tolson, Chair

Assad Ayoubi

Peggy Sanner

Bethany B

Philip Abraham

Bob Kerr

DCR Staff present: Ryan Brown and Michael Fletcher

Mr. Tolson welcomed members. He said that he had been provided an agenda by the Department and would follow that for the meeting. He said that the subcommittee had an important task to address.

Mr. Tolson asked member to introduce themselves.

Mr. Tolson said that this issue was important because the business community wants certainty and consistency in the regulations. He said that in today's development world the average time from rezoning to preliminary approval was 3-4 years and could be as much as seven years.

Mr. Tolson noted that the current economic environment was also an important consideration. He said that the development industry was currently in their 5th year of decline. He said that fewer houses were built in Virginia in 2009 than have been built since 1958 when record keeping began. He said that many do not believe the economy will pick up again until 2012.

Mr. Ayoubi said that he was new to the regulatory process but that he had extensive development experience. He said that for Fairfax County and much of Northern Virginia the issue was rezoning. He said that new site plans are now almost the same as zoning applications.

Mr. Tolson said that was applicable to the business community concerns with the previous draft. He said that was one of the primary concern of the Home Builders of Virginia.

Mr. Kerr expressed a concern that the registration statement now requires that an Erosion and Sediment Control plan is approved by the locality. He said that meant that the client had to go through the site plan approval before getting the VSMP permit.

Mr. Tolson said that at the local level, there is detailed rezoning, then a preliminary plan.

Mr. Tolson offered the following draft language for consideration:

4VAC50-60-48. Grandfathering

Any land disturbing activity for which a currently valid preliminary subdivision plat, site plan or plan of development was approved by a locality prior to the effective date of this Part shall not be subject to the requirements of sections 4VAC50-60-63 through 4VAC50-60-66 for those areas that were included in the approval, provided that such preliminary subdivision plat, site plan or plan of development provides for stormwater management and the resulting activity is consistent with the requirements of this chapter that were effective at the time of approval.

Mr. Tolson said that the objective was to simplify the grandfathering section.

Mr. Tolson said that the purpose was to say that if the preliminary plan approved by the local government includes a plan for stormwater, then the builder is grandfathered in.

Mr. Tolson said that this language did not address property that was vested.

Mr. Kerr asked who would not be grandfathered.

Mr. Kerr said that land that has been rezoned, but does not have a stormwater management plan would not be grandfathered.

Mr. Ayoubi noted that “plan of development” has different meanings in different jurisdictions. He also expressed concern about stating the requirement of what the chapter currently is.

Mr. Tolson said that the current stormwater management regulations would apply.

Ms. Sanner asked about the role of the General Permit.

Mr. Brown said that, if the language was adopted, the 2014 general permit would have to include a provision to recognize that language.

Mr. Ayoubi asked about provisions for modifying a plan.

Mr. Tolson said that until new legislation is passed, preliminary plans are only valid for one year. He said the intent was not to have preliminary plans that were 5-10 years old.

Ms. Sanner said that at a minimum there should be definitions of what a plan should include.

Mr. Brown noted that the definitions were in the Code of Virginia.

Ms. Sanner said that some of the definitions needed to be clarified as localities use differing terminology.

Following a break Mr. Fritz joined the discussion to answer specific questions.

Mr. Brown asked Mr. Fritz what needed to be accomplished to obtain general permit coverage.

Mr. Fritz said that the registration statement must be completed and the SWPPP must be prepared.

Mr. Brown asked if an approved Erosion and Sediment control plan was necessary.

Mr. Fritz said that Erosion and Sediment Control plans do not have to be approved prior to submittal, but that the SWPPP will say that upon approval the plans must be submitted. Mr. Fritz said that the SWPPP includes the total area of land and the estimated amount of land to be disturbed.

Mr. Tolson asked about tying the concept of grandfathering to the general permit.

Mr. Fritz said that he would have to review how the Clean Water Act impacted the permits and grandfathering. He said that grandfathering was more of a local issue. He said that the conditions in the general permit must be met for the NPDES program.

Ms. Sanner suggested the following language revisions:

Any land disturbing activity for which a currently valid preliminary subdivision plat, site plan or plan of development was approved by a locality prior to the effective date of this Part shall not be subject to the requirements of sections 4VAC50-60-63 through 4VAC50-60-66 for those areas that were included in the approval provided that such preliminary subdivision plat, site plan or plan of development (i) provides for stormwater management in a manner that gives reasonable assurance that the LDA (land disturbing activity) will meet the requirements of 4VAC50-60-63 that were effective at the time of approval; and (ii) the resulting LDA is consistent with the requirements of this chapter at the time of approval.

Mr. Brown expressed a concern about the term “reasonable assurance.”

Mr. Tolson said that this language needed to be revised to extend this through the next general permit.

Mr. Brown said that there should be a statement that says this shall extend through the lifecycle of the next General Permit, June 30, 2019.

Mr. Brown said that the subcommittee had the option to meet again if necessary.

Mr. Tolson asked about the procedure for moving forward.

Mr. Brown said that if the subcommittee was in agreement on the work that this would go directly to the full RAP. The RAP could accept or refer it back for further refinement.

Mr. Kerr suggested that Mr. Brown email the language to members for review and that at that time a determination could be made regarding the need for another meeting.

Mr. Tolson thanked members for attending. He suggested that Mr. Brown craft language based upon the discussion and circulate that among subcommittee members.

Mr. Brown said that the best format for providing comments was to send them directly to his attention. He said that he would share them with Mr. Tolson. He said that once comments are received a decision could be made regarding the need for another meeting.

The meeting was adjourned.