

**Virginia Soil and Water Conservation Board
Stormwater Management Technical Advisory Committee
Tuesday, August 26, 2008**

Stormwater Management Technical Advisory Committee Members Present

Michelle Brickner, Fairfax County
Joseph Battiata, CONTECH Stormwater Solutions
Doug Beisch, Williamsburg Environmental Group
Barbara Brumbaugh, City of Chesapeake
Jack Frye, Department of Conservation and Recreation
Mike Gerel, Chesapeake Bay Foundation
Norman Gilbert, Northern Virginia Regional Commission
Barrett Hardiman, Home Builders Association of Virginia
Steven P. Herzog, Hanover County
Lee Hill, Department of Conservation and Recreation
William J. Johnston, City of Virginia Beach
Bob Kerr, Kerr Environmental Services Corporation
John Matusik, The Engineering Group, Inc.
Roy Mills, Virginia Department of Transportation
Doug Moseley, GKY & Associates, Inc.
Fernando Pasquel, Bauer
Jeff Perry, Henrico County
Chris Pomeroy, Aqualaw, PLC
David Rundgren, New River Valley PDC
Alyson Sappington, Thomas Jefferson Soil and Water Conservation District
Ingrid Stenbjorn, Town of Ashland
William H. Street, James River Association
John Tippet, Friends of the Rappahannock
George Simpson, Roanoke County
Brian Wagner, Balzer & Associates
Joe C. Wilder, Frederick County

Stormwater Management Technical Advisory Committee Members Not Present

Kevin Haile, Loudoun County
Gerry Seeley, Jr. Virginia Department of Environmental Quality

Facilitator

Barbara Hulburt, The McCammon Group

DCR Staff Present

David C. Dowling
Ryan J. Brown
Christine Watlington
Michael R. Fletcher
Doug Fritz
Scott Crafton
Eric Capps
John McCutcheon
Holly Sepety
Elizabeth Andrews, Office of the Attorney General

Others Present

Brent Fults, ESS
David Hirschman, Center for Watershed Protection
Greg Hoffman, Center for Watershed Protection
Larry Land, VACO
Melissa Pritchard, Timmons Group
Scott Reed, ESI
Shannon Varner, Troutman-Sanders
Keith White, Henrico County

Presentation of Agenda

Ms. Hulburt opened the meeting and welcomed attendees.

Mr. Dowling reviewed the agenda. He noted that members had asked for a presentation regarding the spreadsheet. He said that Dave Hirschman and Greg Hoffman from the Center for Watershed Protection would be presenting the spreadsheet. He said that the spreadsheet would be emailed to members following the meeting.

Mr. Dowling said that in member packets were current regulatory drafts of Parts I, II and III. Part XIII fees was also included as well as supporting documentation for the spreadsheet.

The plan is to go into Part III and look at areas modified since last time we went through it.

Mr. Dowling said that progress was being made on the BMP Clearinghouse. He noted that the James River Association had contracted with the Williamsburg Environmental Group to run scenarios regarding how the potential affects of the regulations using the spreadsheet.

Discussion of Runoff Reduction Method Spreadsheet

Mr. Hirschman made the following presentation.

**Proposed Virginia Stormwater Management Regulations:
Spreadsheet: Beta Version**

Technical Advisory Committee
August 26, 2008
Center for Watershed Protection

Spreadsheet – Beta Version

- TN comps included
- Accommodates BMPs in series
- Compliance by site – BMP design by drainage area
- Water quantity compliance
- Accounting for forest treatment volume
- More bells, whistles – not as simple

Mr. Hoffman noted that the previous TAC had seen the spreadsheet. He said this version used a phosphorus only standard for compliance. This spreadsheet also calculates total nitrogen loads. A copy of the spreadsheet in the form presented is available at the following DCR website address: <http://www.dcr.virginia.gov/documents/stmbetver.xls>.

Mr. Hoffman said that this spreadsheet addressed compliance at the site level. He noted that this spreadsheet includes BMPs in a series. The site is divided into drainage areas. Total compliance is still on the site-wide basis.

A member asked if there would be a white paper regarding the methodology of the spreadsheet.

Mr. Hoffman said that currently there were instructions on using the spreadsheet, but that a white paper is being prepared.

Mr. Crafton said that would probably be included as an additional appendix to the existing technical memo.

Mr. Dowling again said that the spreadsheet would be mailed to members as well as being available on the DCR website. He asked that comments be directed to Ms. Watlington.

Mr. Crafton said that the next charettes were scheduled for September 4 in Richmond and September 16 in Northern Virginia. He noted there would be additional charettes following the Board meeting.

At this time the TAC recessed for a break.

Discussion of Part III

Mr. Brown reviewed the changes to Part III. He said that his review would concentrate on the changes to this section but noted that if members had other concerns this would be the time to address them.

4VAC50-60-102. Authority and Applicability

Mr. Brown noted the term “adoption” on line 1187. He said that this addressed the initial adoption and not ongoing review.

4VAC50-60-104. Technical criteria for qualifying local programs

There were no changes to this section since the last meeting.

4VAC50-60-106. Qualifying local program administrative requirements

Mr. Brown noted that on line 1217 the procedure for partial refund of fees is addressed in Section 840 of Part XIII.

A member asked if that meant localities would receive back half of the money they collected.

A member noted that 30% of the fee goes directly to DCR and 70% to the locality. He asked if 35% would come from the total, meaning that the locality would give back half of the 70 %.

Mr. Hill said that the 35% would be based on the assessed fee.

A member asked how this applied to DCR running the program.

Mr. Hill said that if DCR is running the program, DCR would issue the refund accordingly.

A member expressed a concern about the 30% remaining with DCR

Mr. Frye said that the 30% was not for individual oversight of the project. He said that the 70% amount was based on plan review and inspection. He said the 30% to DCR is for the statewide program training and promotion of the program.

A member said that it appeared that a developer would be penalized for changing their mind.

Mr. Frye said that the developer would already have accessed the state system.

Mr. Dowling reminded the TAC that the 70% number represented what was estimated to be 100% of what a locality needs to run a program. The additional amount was overhead based on what DCR would need to administer the program statewide.

A member suggested that DCR return half of the 30% or 15% of the total fee similar to what localities would be doing.

Ms. Hulburt suggested that the TAC step back from the question of where the money comes from and focus on the perspective of a partial refund for a project that is not completed. She asked if members felt the partial refund was a good idea.

A member said that the development community would appreciate the accommodation. He suggested the alternative was a smaller up front fee.

A member asked if BMP inspection was included in the cost.

It was noted that long-term BMP inspection was not included in the permit.

A member said that if this was to be labeled a permit fee there should be an accommodation if the permit is not actually issued.

Mr. Dowling said that staff had discussed this extensively and said that the mechanics still needed to be worked out. He said that the mechanism to pay the fee would be an online system. He said the funds would be deposited with DCR and assigned a routing number. Once the plan is reviewed and approved the permit would be issued via the Enterprise site.

A member suggested consideration should be given to splitting the fee into a filing fee and a permit fee.

A member asked what the exposure would be for legal challenges. If the fee is labeled a permit fee and no permit is issued how could the money be collected. If it is a processing fee then the application was processed and the fee is owed.

Mr. Dowling said that what the regulations would be doing is establishing a stormwater program permit fee. He said there were more components than just printing a permit.

4VAC50-60-108. Qualifying local program stormwater management plan review

A member asked the difference between the grading plan and the initial stormwater management plan.

The grading plan would allow the site to be prepared, but not developed.

Mr. Dowling said that localities have that option, and also the option to allow partial grading.

Mr. Dowling said that DCR will not allow partial grading in the programs administered by the state.

A member said that would be an incentive for a locality to adopt the program.

A member asked about the fiscal responsibility reference in line 1252.

Mr. Brown said that was indication of who is financially responsible.

On line 1269 a member asked if localities would be required to have the Division of Natural Heritage review each site.

A member asked why this provision was included.

Mr. Capps said that the endangered species provision was included because it is a federal permit.

A member noted that if endangered species must be included then historic and archaeology would be included as well.

Ms. Hulburt said the question was whether this was appropriate or required. She said that if so, this was the correct place. She said there needed to be a legal and a policy review.

Mr. Dowling said that the fundamental question was the legal precedent. He said staff would review that section.

On line 1265 a member asked what geologic formations were intended, other than karst.

Mr. Brown said that karst was the concept noted there. He said staff would review the need for that language.

A member asked if the items in line 1278 were required at plan submittal or approval. He asked if these needed to be completed before a plan was approved.

Mr. Brown said that the intent was the completion of these items would signify a complete plan.

A member noted that in addition to these requirements language in line 1289 indicated that the fee must be paid before the permit is issued.

Mr. Brown said that, as drafted, the fee would have to be paid up front.

Mr. Hill noted that line 1241 said that stormwater management plan review shall begin upon submission of a complete plan.

A member said that if the locality could not begin reviewing a plan before all the items were submitted that could be problematic, specifically if changes were needed.

A member noted that the locality can determine what is required up front. He said that if all of the information is required up front that helps with plan review. However, he said that he would like to have the ability to say that he did not have enough information to start a plan review.

Mr. Brown said that would not raise a conflict as long as it was clear that plan approval would not be issued until all necessary items are submitted.

A member suggested that the language be changed to allow local government to review the stormwater plan prior to developing maintenance agreements.

Mr. Crafton said that a possibility was to list what constituted a complete plan noting what must be submitted for plan approval.

Mr. Hirschman said there was a national trend to allow the submission of a concept plan or a preliminary plan.

A member asked if it would be a consistency issue if a locality routinely accepted plans that did not meet these requirements.

Mr. Brown said that would not be an issue as long as incomplete plans were not approved.

At this time the TAC recessed for lunch.

Following lunch Mr. Brown continued on line 1311.

On line 1334, a member asked who enforcement action could be taken against.

Mr. Brown said that the permittee would be the easiest to pursue.

Mr. Hill said that the owner is ultimately responsible.

A member noted that under Erosion and Sediment control, enforcement went to the permittee.

Ms. Hulburt asked if the language as presented changed the current authority.

A member said that the locality would prefer to pursue the individual committing the violation.

4VAC50-60-112. Qualifying local program authorization of coverage under the VSMP General Permit for Discharges of Stormwater from Construction Activities

A member asked for an explanation of Subsection E.

Mr. Brown said that the intent was that land disturbance not start until there is a plan.

A member expressed concern about the format for submitting data.

Mr. Dowling said that the intent was to have a limited string of information to be entered into the enterprise database system. That would trigger the allowance to issue a permit.

A member asked where DCR was with the development of the enterprise site.

Mr. Hill said that the staff person would begin the following week.

4VAC50-60-114. Inspections

Mr. Brown said that the intent was that stormwater management facilities should be constructed in accordance with the requirements in Part II.

4VAC50-60-116. Qualifying local program enforcement

Mr. Brown said that DCR would review this section to determine if language could be included in the guidance document.

4VAC50-60-118. Hearings

There were no changes to this section from the last meeting.

4VAC50-60-122. Qualifying local program: exceptions

A member asked if there was an ability to waive a fee for a project.

Mr. Brown said that provision was not currently included. He said there was the ability for localities to waive a portion of the fee for their own projects. He said that could be reviewed in the fee section.

4VAC50-60-124. Qualifying local program: Stormwater Management Facility maintenance

Mr. Brown continued to the next section.

4VAC50-60-126. Qualifying local program: reporting and record keeping

A member asked if these details were necessary.

A member suggested that this information could be delivered with the annual report.

A member expressed concern regarding the format provided by the department.

Mr. Brown said that there would be a list of required items.

A member asked if the phrase “not limited to” could be removed. He said that he would prefer a definitive list.

Mr. Hill said that as the delegated authority for issuing the general permit, DCR would be required to maintain records. He noted the volume but said that the files would have to be managed.

At this time the TAC recessed for a break.

Following the break, the discussion moved to Part XIII.

4VAC50-60-700. Purpose

There were no comments regarding this section.

4VAC50-60-720. Authority

There were no comments regarding this section.

4VAC50-60-730. Applicability

There were no comments regarding this section.

4VAC50-60-70. Exemptions

A member said that this should include the discretion of the locality.

Mr. Hill said that if a local program did not charge the fees, or the fees being collected did not cover the costs, then staff cannot be hired.

Ms. Hulburt noted that having that discretion could put the locality in a difficult situation.

A member noted that her locality will waive the fees for some, but will also set aside money in the general fund.

A member asked if the local government waived the fee, if 30% still had to be sent to DCR.

Mr. Frye said that with the website, the applicant would be sending the fees. He said it was not simply a matter of the locality waiving the fee.

4VAC50-60-750. Due dates for Virginia Stormwater Management Program (VSMP) Permits

A member questioned the termination in line 100.

Mr. Brown said that DCR staff would review for consistency.

Mr. Hill noted that the termination has to be accepted.

A member asked how the maintenance fees would be collected.

Mr. Hill said that maintenance fees can be applied through the same system.

4VAC50-60-760. Method of payment

Members noted that this section needed additional clarification and that electronic payment options are important.

4VAC50-60-770. Incomplete payments and late payments

A member asked about the use of the website and the possibility of making an incomplete payment.

Mr. Brown said that he anticipated that the electronic system would not allow an incomplete payment.

Mr. Dowling said that there was no allowance for a permit to be issued unless the fee is paid in full.

4VAC50-60-780 Deposit and use of fees

Mr. Dowling said that this language was technically correct, but could be streamlined for readability.

A member said that some localities believe the 30% to DCR was excessive.

Mr. Dowling reminded members that the fees to DCR do not come from the locality portion. He said the amount was determined based on what DCR would need to staff the program.

Mr. Frye said that this would cover more than staffing.

A member said she thought DCR would be providing documentation regarding what is needed to fund a program.

Ms. Hulburt noted that the sense of the TAC was for transparency in the fees provided to DCR and the funding needs to administer the program.

Mr. Dowling noted that DCR's oversight was not just the local programs. He said that DCR would also be treated as a local program and will be subject to oversight.

Mr. Dowling said that the information regarding DCR's estimated costs for running a program would be shared with the TAC.

4VAC50-60-800. Fee schedules for VSMP Municipal Separate Storm Sewer System new permit issuance

There were no comments regarding this section.

4VAC50-60-810. Fee schedules for major modifications for MS4 individual permits requested by the operator

A member asked why there was a special fee for MS4s.

Mr. Dowling said that was a separate permit.

4VAC50-60-820. Fees for an individual permit or coverage under the General Permit for Discharges of Stormwater from Construction Activities

Mr. Brown noted that this would be effective immediately after the effective date of the regulation.

A member asked how the fees would apply to large land tracks and planned urban developments.

Mr. Brown said that as written, every time there was a new permit, a new fee was due.

A member said that this was part of the concern that too much fee revenue would be generated.

Mr. Dowling said that as the rules applied at this time, if under a general permit and SWPPP there were fifty plans, there would be fifty plan fees.

A member said that the assumption was that for each building permit a plan fee was due.

Ms. Hulburt noted that this issue needed to be resolved and that DCR would review the concerns.

A member expressed concern about the transfer of lots.

Another member said that until the lot is stabilized, someone would have to hold the permit.

Mr. Hill said that if multiple lots were covered under the SWPPP as the lots were sold, the SWPPP would be modified.

Mr. Dowling noted that if there were approved plans for a certain amount and a lesser amount was developed that would be a situation for permit modification. The maintenance fees would relate to the actual lots disturbed.

Ms. Hulburt noted that time was up for this meeting.

Mr. Brown noted that most of the remaining section dealt with fee amounts.

Ms. Hulburt suggested members communicate with DCR via email regarding remaining questions or comments.

Mr. Dowling said that changes in the August 22, 2008 version would be accepted prior to the next meeting with the exception of those sections where questions still remained.

The meeting was adjourned.