

**Virginia Stormwater Management Program (VSMP)
Permit Regulations, Parts I, II and III
Regulatory Advisory Panel
Wednesday, September 15, 2010
Senate Room 3, State Capitol
Richmond, Virginia**

VSMP Regulatory Advisory Members Present

David A. Johnson, Department of Conservation and Recreation, RAP Chair
David Anderson, Advantus Strategies
Assad Ayoubi, Fairfax County
Doug Beisch, Williamsburg Environmental Group
Barbara Brumbaugh, Hampton Roads Planning Commission (alternate for Bill Johnston)
Judy Cronauer, Fairfax County (alternate for Assad Ayoubi)
Katie Frazier, Virginia Agribusiness
Andrew Gould, Timmons Group
Normand Goulet, Northern Virginia Regional Commission
Steven Herzog, Hanover County
David Hirschman, Center for Watershed Protection
Mike Gerel, Chesapeake Bay Foundation
Jennifer Johnson, Joyce Engineering
William J. Johnston, City of Virginia Beach
Bob Kerr, Kerr Environmental Services Corporation
Larry Land, Virginia Association of Counties
Roy Mills, Virginia Department of Transportation
Rick Parrish, Southern Environmental Law Center
Jeff Perry, Henrico County
Chris Pomeroy, AquaLaw PLC
Michael Rolband, Wetland Studies and Solutions, Inc.
Alyson Sappington, Thomas Jefferson Soil and Water Conservation District
Kurt Stephenson, Virginia Tech
William Street, James River Association
Michael Toalson, Home Builders Association of Virginia
Shannon Varner, Troutman Sanders
Keith White, Henrico County (alternate for Jeff Perry)
Ingrid Stenbjorn, Town of Ashland
Brian Wagner, Balzer and Associates, Inc.
Joe Wilder, Frederick County

VSMP Regulatory Advisory Members Not Present

Philip Abraham, The Vectre Corporation
William Bullard, Department of Defense REC
Tyler Craddock, Virginia Chamber of Commerce

Chris Hornung, Silver Companies
Joe Lerch, Virginia Municipal League
George Simpson, Roanoke County
John Tippet, Friends of the Rappahannock
Jenny Tribo, Hampton Roads Planning District Commission (alternate for John Carlock)

DCR Staff Present

Ryan J. Brown
David C. Dowling
Michael R. Fletcher
Doug Fritz
Jack E. Frye
Lee Hill
Christine Watlington
Elizabeth Andrews, Office of the Attorney General

Others Present

Shelly Frie, CH2M Hill
Mark Williams, Luck Stone

David Johnson called meeting to order. He thanked members for their participation.

Mr. Johnson noted that minutes from the previous RAP meeting and from the subcommittees had been distributed.

Mr. Johnson noted that the work of the committee would not be completed with this meeting.

A member commented on the rapid pace of submitting the draft Watershed Improvement Plan to the EPA.

Mr. Johnson said that the WIP pace was frenetic. He said changes were being made on the morning it was submitted. He said that there was not the degree of collaboration and communication that he believes should be the standard.

A member said that he wanted to make sure the RAP process was more like the advisory groups and that the RAP would know what the Agency will recommend.

Mr. Johnson said that the Department will continue to drive towards consensus and keep conversations deliberate. He indicated that the RAP would see the language before it goes to the Board.

Grandfathering

Mr. Johnson called on the report from the committee on grandfathering.

Mr. Toalson said that the committee had met twice and had lengthy discussions. He said that the committee clearly chose not to grandfather people who had not dedicated time or resources to stormwater management. He said that the by right land was not included. He also noted that stale zoning that did not address stormwater management was also not included.

Mr. Toalson said that the committee did attempt to grandfather development projects that had plans approved by local governments that provided or depicted stormwater facilities or a layout for facilities. He noted that the local government process was very complex.

Mr. Toalson said that those in the development business understand that if the facilities are included on the plan and the plan has been approved by the local government that significant resources have been invested.

Mr. Toalson provided the sample grandfathering language to members:

4VAC50-60-48. GRANDFATHERING

Until June 30, 2019, any 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 was approved by a locality prior to the effective date of this Part shall be considered grandfathered and 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 proffered or conditional zoning plan, preliminary or final subdivision plat, preliminary or final site plan or zoning with a plan of development (i) provides for a layout, which depicts stormwater management consistent with the requirements of this Part that were effective at the time of approval. In the event that the proffered or conditional zoning plan, preliminary or final subdivision plat, preliminary or final site plan or zoning with a plan of development is subsequently modified or amended in a manner such that there is no increase over the previously approved plat or plan in the amount of phosphorus leaving the site of the land disturbing activity through stormwater runoff and such that there is no increase over the previously approved plat or plan in the volume or rate of runoff, the grandfathering shall continue as before.

Mr. Toalson said that if a preliminary plan does not provide for a layout of the stormwater facilities, the project is not grandfathered. The same applies with a zoning plan, site plan or commercial site. However, if the plan is approved and it depicts a stormwater management plan the project will be grandfathered. He noted that it will be

2013 or 2014 before the regulatory process is complete and noted that if the process was terminated with the general permit there would be no grandfathering.

Mr. Toalson said that the intent of the committee was to note that if there was a modification in the plan that did not increase the amount of phosphorus leaving the site that the grandfathering would continue.

Mr. Toalson said that generally the committee reached consensus but each took the language to their constituents for further comment.

Mr. Johnston suggested that the language be changed to use the phrase “stormwater management design”.

Mr. Toalson said that it was a deliberate choice to use “layout” instead of “design”. He said that design would be based on a prior approval. But the committee believed that to gain approval there should be a layout of stormwater management facilities. He said that if the plan is approved without that, then it is not grandfathered.

Ms. Sappington noted that smaller localities often do preliminary approval without the design. She also suggested that a modification be considered based on “each point of discharge” rather than “the site” as currently drafted.

Mr. Johnson said that DCR staff would take the comments and incorporate them into the next draft.

Ms. Sanner noted that the Chesapeake Bay Foundation would have preferred that the basic calculations be required in addition to the layout. She also noted that CBF thought that 2014 would be a more appropriate date.

It was noted that the subcommittee should also consider grandfathering provisions for certain transportation and/or state projects.

Mr. Toalson said that this draft was a starting point and that there would be ample time for various constituencies to comment and for the draft to be improved.

A member noted that if you have to comply with a wasteload allocation as part of a TMDL, it is possible that a project may not be able to be grandfathered.

Mr. Johnson said that the reality was that the regulations would be in effect with the next general permit cycle which begins in July, 2014 and that issues such as the TMDL will need to be considered.

Water Quality

Mr. Johnson called for the report from the Water Quality subcommittee. Mr. Goulet gave the report.

Mr. Goulet said that the subcommittee wanted to bring to the table a set of criteria that everyone support, all with the caveat that it be scientifically defensible. He presented a two-page draft of replacement language. A copy of that draft is available from DCR.

Mr. Goulet said that the draft language would base the water quality requirement as a threshold percentage of impervious cover.

Mr. Goulet noted that the subcommittee based their approach on a journal article entitled "Is Impervious Cover Still Important? Review of Recent Research." This article was written by Thomas Schueler, Lisa Fraley-McNeal and Karen Capiella and appeared in the *Journal of Hydrologic Engineering* in April 2009. A copy of this article is available from DCR.

Mr. Goulet said that the article looked at approximately 2,500 subwatersheds in 25 states. The majority of the research was conducted along the east coast.

Mr. Goulet said that 10% was a number the majority of subcommittee members felt they could live with, although they did not necessarily like it.

Mr. Goulet also presented the redevelopment standard. He said that the goal was to offer a solution that did not push development into areas currently not developed. In that regard, the consensus was that the fairest option was not to force redevelopment into meeting standards that can not be met and to look only at the area being disturbed.

Mr. Goulet reiterated that the consensus was that the subcommittee wanted to offer language that was scientifically sound and that the majority could live with.

Mr. Rolband suggested that the calculations should be run through the runoff reduction methodology and consider percent forest and managed turf. Mr. Beisch and Mr. Hirschman had suggestions about the weighting of the various land cover percentages and calculation methodologies. Mr. Rolband also raised a question regarding the nexus of this approach with the Bay model and suggested that this concern should be considered by the subcommittee.

Several members noted that the relationship between imperviousness and water quality is complex and that runoff volume also has a significant impact on stream health.

Mr. Johnson asked if the subcommittee could demonstrate the model so that RAP members could understand the concept. He said that the scientific discussion was good but that the RAP needed to see equations and calculations. He said that it was important to discuss matters in technical terms that were explainable.

At this point the RAP recessed for lunch. Mr. Johnson asked that following lunch the equations for the method be presented.

Following lunch, the discussion regarding water quality continued.

Mr. Hill reviewed a version of the formula.

$$L = \frac{[0.05 + (0.009 \times I)]}{x A \times 2.28}$$

$$L = \frac{[0.05 + (0.009 \times 10)]}{x 1 \text{ acre} \times 2.28}$$

$$L = 0.14 \times 1 \times 2.28$$

$$L = 0.32$$

Mr. Hill said that this was the present formula as embodied in the regulations. He said that impervious cover is the only factor that affects the load.

Mr. Beisch explained the calculations for the new method.

Method 1 (simple method)	$R_v = 0.14$ (no turf) $L = 0.32$
-----------------------------	--------------------------------------

Method 2 (RRM)	$R_v = 0.167$ (20% turf) $L = 0.38$
-------------------	--

Method 2	$R_v = 0.15$ 7.5% IC. 2.5% turf $L = 0.35$
----------	---

Mr. Johnson asked that Mr. Hill and Mr. Beisch expand upon these explanations and put them in writing for the RAP and staff to review.

Water Quantity

Mr. Johnson called for the report from the subcommittee on Water Quantity. Mr. Rolband gave the report for the subcommittee and indicated that the work of this committee was not complete and that they were considering an additional meeting date.

Mr. Rolband said that the subcommittee reviewed the suspended regulations and identified areas that need to be addressed.

Mike Rolband presented a document with the proposed language changes of the stormwater quantity subcommittee and highlighted several of the issues under

consideration such as the forest standard, redevelopment exemptions, 1% rule, and 1-yr 24-hr storm threshold. A copy of this document is available from DCR.

Local Programs

Mr. Johnson called for the report of the Local Programs subcommittee. Mr. Herzog gave the report.

Mr. Herzog said that the subcommittee held one meeting and spent a good portion of time discussing Part XIII (fees) which is not open. He said that a lot of concerns remain regarding the fees and the fee structure. He said that the concerns roll into the local program discussion.

Mr. Herzog said that there were structural problems with the local program section. He said that the process of collecting fees needed to be addressed.

Mr. Johnson noted that was not a regulatory issue.

Mr. Herzog agreed but noted that it was still important to understand how the process would work.

Mr. Herzog said that with regard to the SWPPP that it is not reviewed by the state and will not likely be reviewed by the localities. He said that it might be reviewed during construction, but noted that it was a state, not a local permit. He said the question arose regarding how this would work with the delegation of responsibilities.

Mr. Johnson said that was something that could be worked out at the staff level.

Mr. Fritz said that staff had received many of the local program comments and were working to address them.

Offsets

Mr. Johnson asked for the report from the committee on Offsets. Mr. Beisch gave the report.

Mr. Beisch said that the subcommittee had two meetings. He said that the subcommittee initially struggled with the process. He said that there were other actions that would affect trading and offsets, including the existing statute, legislation, EPA guidance, and the WIP.

Mr. Beisch said that the scale of trading was a significant issue. The other issue is that of equitability. He said that the subcommittee did not come to a consensus on all of the issues.

Mr. Beisch said that DCR has now provided information regarding trading. He said that there were administrative exemptions that may apply.

Mr. Beisch said that there were five offset options included in the section and that the subcommittee felt that all five should remain. He said that the locality should have the discretion to use or not use all five.

Mr. Beisch said that there were concerns regarding the buy down program being managed by the state. He said that the subcommittee felt this needed to be revisited.

Mr. Beisch distributed a one page document entitled "Stormwater Offset Financing and Resale." A copy of this document is available from DCR.

Mr. Stephenson spoke to the creation of a nutrient endowment or trust.

Mr. Johnson indicated that we may need to treat TMDL waters different from others when trading.

There was a discussion by several members whether we can tease out the nutrient reductions associated with onsite water quantity control and consider trading for the balance of any required reductions.

Public Comment

Mr. Johnson called for public comment. There was none.

Mr. Johnson thanked members for their participation. He noted that the next round of subcommittee meetings would be held on October 20, 2010.

The meeting was adjourned.