

**Virginia Soil and Water Conservation Board
Stormwater Management Regulatory Advisory Panel
Part III Local Programs Subcommittee
November 9, 2010**

Subcommittee Members Present

Steve Herzog, Subcommittee Chair
Keith White, Henrico County
Judy Cronauer, Fairfax County
Asaad Ayoubi, Fairfax County
Bill Johnston, City of Virginia Beach
Barbara Brumbaugh, City of Chesapeake
Joe Lerch, Virginia Municipal League
Joe Wilder, Frederick County

DCR Staff

David Dowling
Doug Fritz
Christine Watlington
Elizabeth Andrews, Office of the Attorney General

Steve Herzog called the meeting to order.

Mr. Fritz made opening remarks. He stated that the language provided to the subcommittee was not final. The objective was to try and capture the concepts that the subcommittee members had shared with DCR staff. He suggested that the subcommittee should look at the language provided and see how it would work with their existing programs. It was noted that there were still issues including addressing the idea of "one-stop shopping", when does VSMP permit coverage need to be obtained during the process, dealing with TMDLs and wasteload allocations; the payment of fees, and the wording of the enforcement section.

It was also noted that only part of the effluent limitation guidelines had been included in the draft language. The requirements for riparian buffers and the minimum standards that conflict with the erosion and sediment control requirements were left out. DCR's program requirements were not included in this language as DCR is still discussing how those programs will be implemented.

The subcommittee was asked whether the concepts they were expecting to see included in the language were there. It was noted that concepts were included as the subcommittee requested.

A lengthy discussion was had on how the VSMP permit was issued. Would the state issue the permit or the localities? It was noted that the state issues the permit, as the permit is part of the

state regulations. The question asked should really be who would be issuing coverage under the VSMP permit – the state or localities. It was noted that EPA likely would have an opinion on this issue. Staff mentioned that there were no examples that were known where localities were issuing coverage under the permit; however, EPA had not yet suggested any concerns over the concept in past reviews of prior versions of the regulations. EPA and the state would have to maintain the ability to "overfile" over the localities. It was noted that while the requirements for the stormwater management programs would be the same, the programs themselves would not be quite the same. Localities would operate under ordinances and DCR would operate under the regulations.

There was a discussion concerning the action required to authorize coverage under the VSMP permit. Currently, the operator completes a registration statement. DCR accepts the complete registration permit and issues a letter authorizing the discharge of stormwater from that construction activity. The operator must sign the certification agreeing to comply with the conditions of the general permit. Today, plan approval is not required for receiving permit coverage. It was noted that today an operator will have coverage under the permit if no communications is received from DCR within 15 days. In the future, plan approval from a locality is going to be a requirement for receiving permit coverage. A question regarding how long plans are valid for was asked. It was stated that localities have the ability to require a review of any erosion and sediment control plans after 6 months have passed (if work has not commenced); site plans are valid for 5 years.

The subcommittee was questioned on how to achieve "one-stop shopping". It was mentioned that the interface between DCR and the localities would be critical to achieve this. The subcommittee discussed a preferred matrix to achieve the "one-stop shopping". 1). The locality has approved all the necessary plans. 2). There is some type of interface (whether electronic or phone) that allows localities to provide the minimum necessary information and verify that all plans had been approved. 3). DCR issues a permit number for that project and a letter authorizing coverage is provided to the operator. 4). All fees would be collected and tracked through the interface. If fees were collected by the locality, it was mentioned that the locality could reimburse DCR monthly. It was noted that the state would still be issuing the permit, but the operator would only be dealing with the locality and would be able to get all the necessary permits from one place.

Staff was asked whether the registration would still be needed in this type of matrix. Most of the information required on the registration statement would be included in other required submissions. Staff stated that the certification would need to be included in some way if it was decided that no registration would be needed. It was questioned whether the information provided through the interface would be able to qualify as the registration statement. If the localities were accepting registration statements it would need to be included in the regulations. It was noted that developers are going to want consistency between localities. If a form is used such as a registration statement, it would need to be used by all localities.

A question concerning the post-construction standards was raised. It was stated that the post-construction standards would be removed from the general permit, except for a statement

requiring compliance with all local and state post-construction standards. Localities will adopt ordinances to address the post-construction standards and DCR will address the standards through the regulations.

For localities that do not adopt a stormwater management plan it was noted that the locality would approve the erosion and sediment control plans and DCR would approve the stormwater management plans. No ordinances would need to be passed by the locality allowing DCR to operate the stormwater management program in this type of situation.

A question was raised regarding estimating the cost of running a stormwater management program. Most of the subcommittee was unsure how the cost of running the program was going to be calculated. There was consensus regarding a change of language in section 4VAC50-60-157 B.4. The current language would be stricken and the new language would state a review of the funding and staffing plan developed in accordance with 4VAC50-60-159 (authorization procedures).

There was consensus in the subcommittee that there would not be a local permit for both stormwater and land disturbing. It was stated that there was a functional difference between state and local authorizations. Hanover County has four distinct approvals before a land disturbing permit is issued. Many other local governments have a lot of approvals to issue before a land disturbing permit is issued. It was noted that it would be possible for a "bad actor" to have enforcement actions filed by the locality, DCR and EPA. It was also noted that this is a very unlikely scenario, but this scenario currently exists in other regulatory programs including erosion and sediment control.

At this time, the subcommittee broke for lunch.

After lunch, there was a quick discussion involving TMDLs and wasteload allocations. It was requested by staff that the subcommittee members give thought to how to implement the general permit requirements in light of TMDLs and wasteload allocations. Staff noted that it would be possible for an operator to have received all the necessary plan approvals to obtain permit coverage and still not qualify for coverage because of TMDL requirements.

The subcommittee began a more detailed review of the draft regulatory language. Staff noted that the language was not final. The subcommittee discussed the sections regarding erosion and sediment control plans and pollution prevention plans, stormwater management plans, exceptions, and maintenance agreements. It was agreed that comments would be submitted to staff within a week's time.

The meeting adjourned.