

Stormwater Local Government Advisory Committee (SLGAC) meeting, March 29, 2012

1. *Welcome and Introductions*

Ginny Snead welcomed the group and each participant introduced themselves. She then provided a brief overview of the stormwater regulations development and current deadlines for local adoption. She explained the general purpose of the SLGAC and outlined the future schedule of meetings:

- April 24, 2012 – to discuss the Required Elements Checklist
- May 17, 2012 – to discuss the preliminary model ordinance
- June 14, 2012 – to discuss the other administrative tools
- August 9, 2012 – to discuss the Model Ordinance

2. *Relevant 2012 Legislation and Upcoming Regulatory Actions*

Ms. Snead also briefly outlined some General Assembly actions or pending actions to include:

- The Budget – not yet final, \$4.9 million in grants requested, but not approved. There was a question about the grant money in the budget, and whether it was intended for all localities or just rural ones. The response was that it was for all localities, that there was recognition that additional monies would be necessary, and that the State was looking at EPA and other potential funding sources for additional monies for SWM program startup.
- The integration bill – which integrates Erosion and Sediment Control, Chesapeake Bay Preservation Act, and Stormwater Management and changes the SW to be mandatory for all counties and cities
- Water quality programs study – due to the Secretary in November, to study if there is a more efficient way to organize water quality programs. Report will go the GA next session.
- Nutrient trading – created nutrient trading act to spread compliance around, the next step will be to develop nutrient trading regulations, currently proposed to start in July and expected to take 2 years.

Finally, a brief overview of the pending regulatory actions was provided:

- The first is the Phase II MS4 general permit (Part 15) NOIRA has been issued, under 30 day comment, then a RAP will be convened over the summer, proposed regulations and public comments, with an expected action by the Soil and Water Board on March 13, 2013.
- Second is the VSMP General Permit, NOIRA is scheduled for May 2012, to follow the same process as above, with an expected action by Soil and Water Board on June 13, 2013.
- Nutrient trading regulations
- Integration bill exempt actions
- MS19 issue resolution

3. *DRAFT DCR Tools for Local Government Development*

Joan Salvati provided an overview of the tools for local governments currently under development by DCR to include the SWM Local Program Required Elements Checklist, Model Ordinance, and sample documents/checklists, etc. After the presentation there were questions and discussions on the following topics:

- Request for flow chart, guidance or some other information relating to the grandfathering provisions in the SW regulations. Questions about what qualifies, how it should work, and the lack of clear cut guidance from the state regarding this issue were raised by several local participants. One participant noted that they have been receiving phone calls from engineers who all have a slightly different perspective on what the grandfathering provisions mean.
- Participants requested that DCR provide a transparent and definitive process for submitting local SWM ordinances and programs to include DCR review of draft documents, and some type of DCR or Soil and Water Board review of proposed drafts prior to local adoption and formal review by the Board to ensure that local governments are adopting programs that are consistent. The review process used by the former Chesapeake Bay Local Assistance Board and Department was provided as an example of such a process that provided reviews as ordinances were developed to ensure that localities were adopting consistent programs. More discussion regarding the need for timelines, step-by-step process necessary to get a SW program approved, what a locality will need to submit, how to submit program elements and what a locality can expect in the review ensued. Localities present asked whether a local government can submit a local SWM program before the July 2014 deadline, and if so when may they do so, if not would DCR try to stagger the submissions so that all localities are not submitting programs at once. The consensus seemed to be that each locality will need to submit a SW program for review, and that a clear process for doing so needs to be provided. DCR staff noted that the primary contact for localities would be the Regional Office Managers and that localities should work through their regional field offices as they develop their SW programs.
- A participant requested the development of a spreadsheet on bonding, to include who is responsible for bonding, etc.
- A participant requested that any draft BMP maintenance/recordation program include options for localities to consider to accommodate the diverse localities that will be adopting SW programs.
- A participant noted that training and certification cannot wait. DCR staff noted that a training plan is under development to include DCR regional staff, local governments and private firms and that based on the development of these training programs, a certification program will be developed. The same participant stated that they would like to have input on the training and certification programs.

4. *2011 Revised Post-Construction Stormwater Management Regulations Overview*

Doug Fritz provided an overview of some of the highlights of the revised regulations. These highlights included an overview of the grandfathering provisions, definition of site/disturbed area. After the overview, there was discussion on these two topics:

- Grandfathering provisions was the topic of much discussion. Questions about phased projects, whether the list of grandfathered provisions from the slide were all codified (the answer provided was yes), whether DCR knew that the list of grandfathered projects did not coincide with the vesting language elsewhere in the Code of Virginia (this was acknowledged, but participants on the SW SAG wanted the language included that covered as many projects as possible) were raised and answered. It was made clear that the grandfathering provisions only apply if a project that meets one of the caveats has been designed to meet the criteria in Part 2C. Discussions about the “blue blob” on a plan ensued, with the clarification that the “blue blob” needed to be accompanied by a set of calculations that showed compliance with Part 2C provided.
- The new site criteria was also discussed in some detail. Questions about how much of a larger site could be included in the calculation were raised. There was some discussion about the intent of the provision, with some participants stating that it was their understanding that the site for the purposes of determining SW compliance didn’t have to be limited to the area where the development was to occur, because the balance of the site was factored into the runoff reduction spreadsheet. Discussion as to whether or not the balance of a forested site would need to be considered as a BMP with a maintenance agreement ensued without a conclusive answer.

5. *Virginia e-Permitting overview*

Gerry Seeley provided the group with an overview of the Virginia e-Permitting system, currently under development by DCR to provide VSMP permitting, reporting and tracking for local SW programs. His presentation elicited a great deal of discussion. In general, many participants expressed concern with the scope of the system, noting that the scope was much greater than they had discussed when the idea of the system was broached during the development of the SW regulations. The primary issue that was raised was the concern that localities which already have tracking and inspection/enforcement systems would be forced to use the e-Permitting system, creating duplication of efforts and confusing the timing and approvals of local development plans.

Other questions and issues were raised, including:

- the timing of when an operator would be able to input information into the e-Permitting system
- what is the sequence of an operator or property owner using the system, given that the locality needs to approve the specific project site prior to the issuance of the VSMP permit. Participants noted that it appeared to be possible for an operator to receive a VSMP permit # without formal local approval, which could then result in changes to the project scope for which the VSMP permit was issued. There was a lot of concern with the timing of the VSMP permit number issuance, and how this does or does not match with local approval processes. Participants noted that each local government has its own processes for reviewing and approving development plans, and that it appeared that the e-Permitting system would cause confusion and duplication

of efforts. Many participants expressed this concern, and requested this issue be resolved.

- whether a system of this scope is permitted under the SW regulations.
- if the system would allow multiple inputs for a single property,
- whether a SWCD would be able to see all the localities they assist when they log in,
- when and how information relating to the GIS component was saved
- questions about whether an operator can also be a landowner and what the operator does not have internet capability, which is not uncommon in rural areas
- participants noted that the process was supposed to begin and end with the locality, but the e-Permitting system that was provided seems to continue the 2 tier process which concerns local governments.
- Concern over the amount of work some localities have already done in developing tracking systems and that local staff should not have to enter information in twice.
- There was some discussion of reducing the scope of the e-Permitting system to focus on the VSMP permit issuance, with the other modules being developed later or provided to localities as requested.
- One participant noted that since they have no tracking system, the e-Permitting system looked helpful
- Other participants stated that they thought the progress was commendable, but that the scope that was presented was beyond what they were expecting and they were concerned about that.
- Questions about security of the information on the e-Permitting system were also raised.

#### 6. Issue Identification and General Questions

The committee members were asked to bring up issues that they felt needed to be addressed, and which had not yet been identified. These issues included:

- Fees – several members expressed concern over the SW fees, noting that the fees in the regulations are less than those currently collected for similar activities, and that the locality will be required to amend their existing fee structure to accommodate the SW fees. This is a concern to many localities, especially given that they will need to give back 28% to DCR. Several of the committee members expressed their understanding that DCR's portion of the fees was included so that DCR could have staff to implement those SW programs in those voluntary localities that chose not to adopt, and now that all counties and cities are required to adopt, the need for the 28% should go away. Dave Dowling stated that DCR's portion of the fees were included to provide for SW program oversight and not SW program administration, as outlined in the documentation for the SW regulations. A general concern over the fees, how a locality is to include them into their local ordinances, what additional changes these fees may necessitate for other local fees was raised and members expressed an interest in further discussion of this topic.

- A question was raised regarding whether a 3<sup>rd</sup> party inspector is still allowed under the SW regulations. Local flexibility for SW programs was encouraged.

7. Next meetings

There was a question put to the group whether they could think of a better meeting place than downtown Richmond. Innsbrook area was suggested, since it has free parking. Also, a question was raised as to whether teleconferencing would be provided for those members who have long distances to travel with DCR staff noting that they will work to provide this option. Finally, participants requested meetings to begin in the morning rather than in the afternoon. DCR staff suggested a 10 am meeting time for the next meeting. The place for the next meeting will be determined and provided to the members.