

**Virginia Soil and Water Conservation Board
Stormwater Management Technical Advisory Committee
Monday, August 21, 2006
Science Museum of Virginia**

Stormwater Management Regulations Technical Advisory Committee Members Present

Michelle Brickner, Fairfax County
Jack Frye, Virginia Department of Conservation and Recreation
Shelby T. Hertzler, Rockingham County
Kevin Haile, Loudoun County
Lee Hill, Virginia Department of Conservation and Recreation
William J. Johnston, City of Virginia Beach
Joe Lerch, Chesapeake Bay Foundation
R.T. "Roy" Mills, Virginia Department of Transportation
Reginald Parrish, U.S. Environmental Protection Agency
Jeff Perry, Henrico County
Alyson Sappington, Thomas Jefferson Soil and Water Conservation District
Gerald Seeley, Jr., Department of Environmental Quality
Ingrid Stenbjorn, Town of Ashland
William H. Street, James River Association
Burton R. Tuxford, II, Virginia Department of Environmental Quality

Stormwater Management Regulations Technical Advisory Committee Members Not Present

Michael E. Doczi, Michael E. Doczi & Associates, PLLC
Pat A. O'Hare, Home Builders Association of Virginia
Ved "Wade" Malhotra, City of Newport News
Bob Kerr, Kerr Environmental Services Corporation
David Rundgren, New River Valley, PDC
Phil Schirmer, City of Roanoke
John Tippett, Friends of the Rappahannock

Facilitator

Judy Burtner, J. Burtner & Associates

DCR Staff

Joseph H. Maroon, Director
David C. Dowling, Director of Policy, Planning and Budget
Eric R. Capps, E&S Control and Construction Permitting Manager

Anne Crosier, Enforcement and Compliance Manager
Jim Echols, Regional Manager
Michael R. Fletcher, Director of Development
Kevin Landry, Stormwater Compliance Specialist
Joan Salvati, Director, Division of Chesapeake Bay Local Assistance
Christine Watlington, Policy, Planning and Budget Analyst

Observers

Joe Battiatia, Contech Stormwater Solutions
Barbara Brumbaugh, City of Chesapeake
Larry Land, VACO
Laura Wheeling, Hampton Roads PDC
Charles Williamson, Prince William County

Introductory Remarks

Ms. Burtner opened the meeting. She introduced Joe Maroon, Director of the Department of Conservation and Recreation.

Ms. Burtner introduced Mr. Kevin Haile of Loudoun County. Mr. Haile replaced Mr. Kayser who passed away since the last meeting.

Ms. Burtner asked members to introduce themselves.

Ms. Burtner reviewed materials provided to members.

- minutes of the June 20 meeting
- Working Draft for Parts IIIA, B, C and D of the Stormwater Regulations
- Code of Virginia pertaining to Stormwater
- Current regulations

Members were asked to provide comments to the June 20, 2006 meeting minutes to Ms. Watlington by Thursday, August 24.

Ms. Burtner said that in terms of process, Mr. Hill would provide a review of the document. She explained that after the initial review, the TAC would go through the document section by section.

Mr. Hill reviewed the draft document entitled “Working Draft for Parts III A, B, C, and D of the Stormwater Regulations (Thursday, August 17, 2006 – Part III Subcommittee Draft with staff updates). A copy of this draft is included as Attachment #1.

A member inquired if there was an entity that would review the state.

Ms. Burtner said that would be addressed under the review section.

Following Mr. Hill's review of the draft, Ms. Burtner led the committee through the draft document section by section:

Part IIIA
Local Programs

4VAC50-60-100. Applicability. Repeal

4VAC50-60-110. Technical criteria for local programs. Repeal

4VAC50-60-120. Requirements for local program and ordinance. Repeal

4VAC50-60-130. Administrative procedures: stormwater management plans. Repeal

4VAC50-60-140. Administrative procedures: exceptions. Repeal

4VAC50-60-150. Administrative procedures: maintenance and inspections. Repeal

There were no comments regarding the repeal of these sections.

4VAC50-60-102. Authority and Applicability.

A member asked about "education and outreach components" and whether this should be in the administrative part.

Mr. Hill said that might need to be added back in based on EPA comments.

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

There were no comments regarding this section.

4VAC50-60-106. Local Program Administrative Requirements.

There were no comments regarding this section.

4VAC50-60-108. Local program stormwater management plan review.

A member asked if there would be requirements for development and redevelopment.

Mr. Hill said those requirements are addressed in Part II.

A member suggested in Section B1e to strike “potentially impacted” and put in the word “receiving.”

A member asked if that would be intended to identify the immediate receiving waters or to know if there were issues all the way downstream.

Consensus was to change “potentially impacted” to “receiving.”

A member said that since state water includes groundwater it might be better to state receiving surface state waters.

A member said that would present a problem with sinkholes where surface waters become groundwater.

A member said that groundwater could be impacted and should at least remain in as an option.

A member said that if stormwater would be received by groundwater the term could remain as state waters.

A member asked about waters on private lands and whether state waters can be on private lands.

Mr. Hill agreed to check the state waters definition.

A member expressed concern about the requirement for a plan to be approved in a certain time frame.

A member said that if the locality communicates in writing that would be considered a proper response.

Mr. Hill said if the locality provides the response online as a practice and that developers know the information is online, that would serve as the appropriate notification.

Ms. Burtner asked if the committee was raising the need for the plan reviewer to be certified.

A member said that with the Erosion and Sediment Control program there is a need for a plan reviewer to be a P.E. (professional engineer) or to get the DCR certification. The same should be true for stormwater.

A member asked if the E&S certification would cover this. Consensus was that it would not.

A member asked if this could be rolled into one certification class.

Mr. Hill said the Department would have to review that.

Another member said he would like to see DCR have a stormwater certification program.

A member asked if the current E&S certification could be expanded into two tiers so that there was no duplication.

DCR staff will review this information and make a recommendation.

Members were asked to submit ideas regarding the certification process to DCR staff.

Under Section C, 1 a member suggested the term “perennial streams” be changed to “streams.”

A member asked if the narrative described in Section C 2 was creating more paperwork than necessary.

Several members said they did not believe the narrative would be necessary.

A member disagreed and said that the narrative described the methodology and intent.

A member said a written narrative was very useful for cases that were not developed for a number of years.

A member said he thought the narrative was essential for documenting the intent of the original developer.

DCR staff agreed to review the section.

A member asked what would happen in the event that the land is clear but the developer could not complete a project. Who controls the unfinished site?

Mr. Hill said that should be in the initial stormwater management plan.

At this time the committee took a break.

4VAC50-60-112. Local program issuance of VSMP General Permit for Discharges of Stormwater from Construction Activities.

A member noted that the timeframe was referenced in Section A4 appeared open ended.

It was suggested that a timeframe be added.

A member said that prior to this step there might be a need for a Stormwater Management plan or a final plan.

The member suggested that this be developed as one-stop shopping. As one applies for the initial stormwater permit they would be provided with the paperwork to register for the general permit.

A member asked if there was a need for a deadline.

Another member said that if the locality properly manages the program there would be no need for a deadline.

A member questioned the requirement for monthly reporting.

Mr. Hill said the Department needs to know when permits are being issued. This is also a way to track fees.

A member asked if it was possible to reduce reporting to something less than monthly.

Mr. Hill said that the reporting could be done online.

A member expressed concern that the reporting takes away time from doing the actual work. The member said that monthly reporting to DCR would be a duplication of effort.

Mr. Hill said that locality reporting to DCR is necessary to allow DCR to report to EPA.

4VAC50-60-114. Local program inspections.

A member said that in the subcommittee a concern was expressed about Section B. A concern was noted that localities with BMPs should actually do inspections.

A member suggested that Section 3 D be eliminated.

Mr. Hill said that the local program should give consideration and priority to inspections.

A member asked if this was suggesting that the BMPs would be inspected annually.

A member asked about the life of a BMP and whether the inspections would be annual. He noted that it was unrealistic to expect localities to visit a BMP every year.

Mr. Hill said this would include all BMPs permitted at a locality. MS4s will have to do the same thing.

A member expressed support for requiring the owner to do the inspection and have it certified by a P.E.

Ms. Burtner summarized that the options were for the owner to review or for the locality to review or both.

Staff will review this section based on committee comments.

Concerns were expressed with regard to the final report and what should be included.

Staff will review.

It was suggested that Section F be moved into Section 106.

4VAC50-60-116. Local program enforcement.

A member asked if the state/local split was clarified and whether the penalties stay with the locality or split with the state. Do they have to be spent on water quality programs?

Ms. Crosier said the court imposes the penalties.

10.1-603.14

Any civil penalties assessed by a court as a result of a summons issued by a locality shall be paid into the treasury of the locality wherein the land lies, except where the violator is the locality itself, or its agent. When the penalties are assessed by the court as a result of a summons issued by the Board or Department, or where the violator is the locality itself, or its agent, the court shall direct the penalty to be paid into the state treasury and deposited by the State Treasurer into the Virginia Stormwater Management Fund established pursuant to § [10.1-603.4:1](#). Such civil penalties paid into the treasury of the locality in which the violation occurred are to be used for the purpose of minimizing, preventing, managing, or mitigating pollution of the waters of the locality and abating environmental pollution therein in such manner as the court may, by order, direct.

Section B, Policy and Procedure Manual.

A member expressed concern about the requirement for a locality to develop a policy and procedure manual.

Ms. Crosier said the regulated community would want to know how enforcement would be done.

A member suggested the removal of the word “manual” and the inclusion of “policies and procedures.”

4VAC50-60-118. Hearings.

Mr. Hill noted that this section came directly from the law.

4VAC50-60-122. Local program: exceptions.

There were no comments regarding this section.

4VAC50-60-124. Local program: BMP maintenance.

A member noted that the section said “shall require” easements and access. He noted that easements are not easy to obtain. The member said this should be clarified.

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

A member said this should be clarified with regards to the issuance of permits and how it will be administered.

A member expressed concern with having to provide the information on a monthly basis.

Mr. Dowling said that this was envisioned as an online system that would be filled in monthly. He said DCR needs to provide this information to EPA on a monthly basis.

Mr. Hill said DCR envisions creating an online system like the BMP programs.

A member said that if an online system were created to track the information it would be helpful if the locality could access and use the site. This would avoid duplication.

DCR staff agreed to look at the reporting requirement and consider the quarterly option.

4VAC50-60-128. Authority and Applicability.

This section mirrors what is written about localities. The comments from the previous section carry over.

4VAC50-60-132. Technical criteria

A member asked why Section B was dropped.

4VAC50-60-134. Administrative authorities.

There were no comments on this section.

4VAC50-60-138.

This information is already included in the general permit section.

4VAC50-60-142. Inspections.

A member asked if DCR could contract out the inspections.

It was noted changes needed to be made to address local government.

4VAC50-60-144. Enforcement.

There were no comments regarding this section.

4VAC50-60-146. Hearings.

There were no comments.

4VAC50-60-148. Exceptions.

There were no comments.

4VAC50-60-152. BMP maintenance.

There were no comments.

4VAC50-60-154. Reporting and record keeping.

A member asked if the record keeping was for public information or just for reporting to the EPA.

Mr. Hill said the permit issuance information would be available online.

In Sections 4 & 5 members suggested adding “and individual” permits.

4VAC50-60-156. Authority and Applicability.

There were no comments regarding this section.

4VAC50-60-157. Stormwater Management Program Review.

A member asked if DCR could review the level of staffing associated with running the program. This information would be helpful to take to the local boards.

A member asked if a program would be deemed inconsistent if there was inadequate staff.

Mr. Hill said that DCR would not tell a locality how to staff the program. That is up to the locality. However, if objectives were not being met, the program would be deemed inconsistent with the regulations.

A member noted that with Erosion and Sediment control, DCR has provided a form with an estimate of manpower needed.

Mr. Hill said DCR no longer uses that form. DCR can give guidance, but cannot tell a locality they need more staff.

A member said at the initial meeting there was discussion that the locality should be given guidance for the adoption of a program. The member asked if there was further discussion in the subcommittee.

It was noted that the issue of staffing was a part of the Part XIII section because of the association with fees.

A member said that inadequate staff is an issue in most localities.

It was noted that the General Assembly focuses on the Bay Area, but staffing is an issue across the Commonwealth.

A member asked who will review DCR’s administration of a local program.

4VAC50-60-158. Authorities and Applicability.

There were no comments regarding this section.

4VAC50-60-159. Delegation Procedures for local stormwater management programs.

A member said that Section A sounded as if localities have an option. The member said for clarity it should note that localities are required to accept the delegation in accordance with the statute.

It was noted that delegation is an option for many, but not all, localities.

A member asked what were the other applicable documents mentioned in the section.

It was suggested the reference to the corresponding section of the Code of Virginia be added to this section.

Wrap up

Ms. Burtner asked if there were comments on the document as a whole. She said that comments received would go back to the DCR drafting team.

Ms. Burtner asked Mr. Dowling to comment regarding future meetings.

Mr. Dowling said that the Subcommittee on Part XIII would meet on August 29, 2006. The full TAC will meet on October 3, 2006.

Mr. Dowling said that there would likely be meetings added for September and at least one additional for October.

Mr. Dowling said the Part II Subcommittee met and there is additional work to do there. The hope is to schedule another Subcommittee meeting.

Ms. Burtner thanked members for their time and commitment and adjourned the meeting at 3:30 p.m.

Attachment #1

CHAPTER 60

VIRGINIA STORMWATER MANAGEMENT PROGRAM (VSMP) PERMIT REGULATIONS

Part IIIA

Local Programs

4VAC50-60-100. Applicability. Repeal

4VAC50-60-110. Technical criteria for local programs. Repeal

4VAC50-60-120. Requirements for local program and ordinance. Repeal

4VAC50-60-130. Administrative procedures: stormwater management plans. Repeal

4VAC50-60-140. Administrative procedures: exceptions. Repeal

4VAC50-60-150. Administrative procedures: maintenance and inspections. Repeal

4VAC50-60-102. Authority and Applicability.

In accordance with the Virginia Stormwater Management Law, §10.1-603.2 et seq., the Board is authorized to delegate to an approved locality the administration of a local stormwater management program. Pursuant to §10.1-603.4, the Board is required to establish standards and procedures for such a delegation. Delegation shall follow the adoption of a local stormwater management program by a locality in accordance with §§10.1-603.3 A or B and the Board's deeming of such program as consistent with the Virginia Stormwater Management Law and these regulations in accordance with §10.1-603.3 F.

This part specifies the minimum technical criteria for a locality or a Department-administered stormwater management program and the requirements of a local government ordinance regarding a stormwater management program. Such criteria include but are not limited to administrative, plan review, permit issuance, inspection, and enforcement, and education and outreach components.

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

A. All local stormwater management programs shall comply with the provisions of Part II (4VAC50-60-40 et seq.).

B. **When a A locality that operating a delegated local stormwater management program** has adopted more stringent requirements or implemented a regional (watershed-wide) stormwater management plan **may request, in writing, that** the Department **shall**

consider these requirements in its review of state projects within that locality in accordance with Part IV of these regulations (4VAC50-60-160 et seq.).

C. Nothing in this part shall be construed as authorizing a locality to regulate, or to require prior approval by the locality for, a state project.

D. When reviewing a federal project, the Department shall apply the provisions of this chapter.

4VAC50-60-106. Local Program Administrative Requirements.

A. A local stormwater management program shall provide for the following:

1. Identification of the permit issuing authority, the plan approving authority, the inspection authority, and the enforcement authority;

2. Regulations and technical criteria to be used in the stormwater management program;

3. Procedures for the submission and approval of plans;

4. Procedures for the issuance, denial, revocation, termination, reissuance, transfer, or modifications of stormwater permits;

5. Assessment and collection of fees;

6. Inspection and monitoring of land disturbing activities for compliance;

7. Procedures for long-term BMP monitoring;

8. Enforcement.

B. A locality shall adopt an ordinance that incorporates the components set out in subsection A.

C. A local program shall report to the Department information related to the administration and implementation of the local program, in a method and on a time schedule established by the Department.

D. A local program may require the submission of a reasonable performance bond or such other financial surety and for the release of such sureties in accordance with the criteria set forth in §10.1-603.8.

E. Nothing in this chapter shall be construed as limiting the rights of other federal and state agencies from imposing stricter technical criteria or other requirements as allowed by law.

4VAC50-60-108. Local program stormwater management plan review.

A. A locality shall require new or redevelopment projects to submit stormwater management plans for review and approval prior to commencement of the land disturbing activities.

B. Localities shall approve or disapprove a complete stormwater management plan according to the following:

1. Localities shall begin stormwater management plan review upon submission of a complete plan. A complete plan shall at a minimum include the following elements:

a. Contact Information including the name, address, and telephone number of all persons having a legal interest the property owner and the operator in of the property and the tax reference number and parcel number of the property or properties affected;

b. A narrative description of the site and proposed stormwater management BMPs and the mechanism through which how the BMPs will be operated and maintained during and after construction;

c. The location and the design of the proposed stormwater management BMPs;

d. A report identifying the geotechnical properties for the hydrologic and structural properties of soils utilized with the installation of stormwater management BMPs per the Virginia Stormwater Management Handbook;

e. Overall site plan that identifies the location of potentially impacted state waters and that includes pre-developed and post-developed conditions for drainage areas including final drainage patterns and changes to existing contours;

f. Comprehensive hydrologic and hydraulic computations of the pre-development and post-development runoff conditions for the required design storms;

g. Good engineering practices and calculations verifying compliance with the water quality and quantity requirements of this chapter;

h. Inspection schedules, maintenance agreements and sources for funding the maintenance of all stormwater management BMPs;

i. All stormwater management plans shall be appropriately sealed and signed by a professional in adherence to all minimum standards and requirements pertaining to the practice of that profession in accordance with Chapter 4 of Title 54.1 of the Code of Virginia and attendant regulations; and

j. The person responsible for the development project shall certify that all land clearing, construction, land development and drainage will be done according to the approved plan.

2. Upon receipt of a plan, the locality shall have 15 calendar days to determine the administrative completeness of the plan and notify the applicant of its determination. If a plan is deemed to be administratively incomplete based on the criteria setout in subsection B1 of this section, the locality must identify in writing the reasons the plan is deemed deficient. If a locality does not make a determination within the 15 calendar days, the plan shall be deemed administratively complete as of the date of submission and a maximum of 45 additional calendar days will be allowed for the review of the plan.

3. Upon receipt of a complete the determination that a plan is administratively complete, a maximum of 60 calendar days will be allowed for the review of the plan.

4. During the 60-day review period, the locality shall either approve or disapprove the plan and communicate its decision to the person responsible for the development project in writing. If the plan is not approved, the reasons for not approving the plan shall be provided in writing. Approval or denial shall be based on the plan's compliance with the locality's stormwater management program.

4. A disapproval of a plan shall contain the reasons for disapproval.

5. If no action is taken by the locality within the time specified above, the plan shall be deemed approved.

C. An initial stormwater management concept plan may be submitted to a locality, if allowed by the local program, for review and approval when it is accompanied by an approved erosion and sediment control plan and preliminary stormwater design for the current and future site work. Such conceptual initial plans shall be limited to the initial

clearing and grading of the site. A concept An initial plan does not supercede the need for the submittal and approval of a complete stormwater management plan. The following information in the concept initial plan shall include, but not be limited to:

1. A map(s) indicating the location of the natural resources and structures at the site and surrounding area as it exists prior to the commencement of the project. This map(s) shall also include an identification of the limits of clearing and grading, existing and proposed drainage patterns, perennial streams, soil types, forest cover, topography, wetlands, and other native vegetative areas on the site. Particular attention should be paid to environmentally sensitive features that provide particular opportunities or constraints for development.

The map(s) may also include proposed buildings, roads, parking areas, utilities, and stormwater management measures. The map(s) may also show proposed land use with tabulation of the percentage of surface area to be adapted to various uses, including but not limited to; planned locations of utilities, roads and easements.

2. A narrative shall accompany such map(s) describing the elements setout in subsection 1. Acreages shall be provided for the overall site, limits of clearing and grading, wetlands, and riparian areas. Such narrative shall include a justification of proposed changes in the sites natural conditions.

D. Each plan approved by a locality may be changed in accordance with the following:

1. Changes to an approved plan shall be allowed only after the review and written approval of the plan approving authority.

2. If field inspection shows that a plan is not adequate, the person responsible for the development project may request modifications to the approved plan to address noted deficiencies. The plan approving authority shall respond in writing either approving or disapproving such request.

3. The plan approving authority based on an inspection may require amendments to the approved plan to address the noted deficiencies and notify the person responsible for the development project of the required modifications.

4VAC50-60-112. Local program issuance of VSMP General Permit for Discharges of Stormwater from Construction Activities.

A. A locality shall issue coverage under the VSMP General Permit for Discharges of Stormwater from Construction Activities in a format determined by the Department and in accordance with the following:

1. The applicant must have an approved conceptual initial stormwater management plan or an approved stormwater management plan for the land disturbing activity.

2. The applicant has submitted a complete registration statement for the VSMP General Permit for Discharges of Stormwater from Construction Activities and the registration statement has been reviewed and approved by the local program authority.

3. The applicant has submitted the required fee form and fee for the registration statement seeking coverage under the VSMP general permit.

4. Applicants submitting registration statements deemed to be incomplete must be notified that the registration statement is not complete, informed of what material needs to be submitted to complete the registration statement, and that the land disturbing activity does not have VSMP general permit coverage.

B. The locality shall report VSMP general permit information to the Department in accordance with 4VAC50-60-126.

4VAC50-60-114. Local program inspections.

A. A local program shall conduct inspections of stormwater management BMPs during construction to ensure that the location and design criteria of the BMPs are in accordance with the approved plan.

B. A local program shall require the person responsible for the development project to submit a final report containing an as-built survey certifying that the stormwater management BMPs requiring maintenance have been implemented in accordance with the approved plan. The local program shall inspect the BMPs for compliance with the final report.

C. A local program shall require the operator of stormwater management BMPs to conduct inspections in accordance with a recorded inspection schedule and maintenance agreement or on an annual basis for stormwater management BMPs without a recorded inspection schedule and maintenance agreement and provide a written report to the local program administrator.

D. A local program shall inspect stormwater management BMPs on an annual basis or may establish an alternative inspection program which ensures that stormwater management BMPs are functioning as intended. Any alternative inspection program shall be:

1. Approved by the Board prior to implementation;
2. Established in writing;
3. Based on a system of priorities that, at a minimum, considers the purpose of the facility, the contributing drainage area, and downstream conditions; and

4. Demonstrated to be an enforceable inspection program conducted by the locality that meets the intent of the regulations; and

4 5. Documented by inspection records.

E. Inspection reports shall be generated and kept on file for all stormwater management BMPs inspected by the local program.

F. The local program shall be allowed by the operator to conduct periodic inspections of the project.

4VAC50-60-116. Local program enforcement.

A. A local program shall incorporate the following components:

1. Informal and formal administrative enforcement procedures including:

a. Verbal warning and inspection reports;

b. Notice of corrective action;

c. Consent special orders and civil charges in accordance with §§ 10.1-603.2:1 7 and 10.1-603.14 D 2;

- d. Notice to comply in accordance with § 10.1-603.11;
- e. Special orders in accordance with § 10.1-603.2:1 7;
- f. Emergency special orders in accordance with § 10.1-603.2:1 7; and
- g. Public notice and comment period pursuant to 4 VAC 50-60-660.
- 2. Civil and criminal judicial enforcement procedures including:
 - a. Schedule of civil penalties setout in subsection D;
 - b. Criminal penalties in accordance with § 10.1-603.14 B and C; and
 - c. Injunctions in accordance with §§ 10.1-603.12:4 and 10.1-603.14 D1
- B. A local program shall develop a policy and procedures manual that outlines the steps to be taken regarding enforcement actions under the Stormwater Management Act and attendant regulations, and local ordinance.
- C. A local program may utilize the Department’s Stormwater Management Enforcement Manual as guidance in establishing policy and procedure manuals.
- D. Schedule of Civil Penalties set by the Board in accordance with § 10.1-603.14
- A. The Board intends that these civil penalties generally be applied after other enforcement remedies have been unsuccessful, in egregious situations, or for repeat offenders.

<u>Violations and Frequency of Occurrence *</u>	<u>Maximum \$/occurrence (occur.)/day</u>	<u>Recommended Minimum \$/occurrence/day</u>
<u>No Permit Registration</u>	<u>Up to \$32,500/ occur./ day(s)</u>	<u>\$10,000/ occur./ day(s)</u>
<u>No Stormwater Pollution Prevention Plan (SWPPP) [No SWPPP components including erosion and sediment (E&S Control Plan)]</u>	<u>Up to \$32,500/ occur./ day(s)</u>	<u>\$10,000/ occur./ day(s)</u>
<u>No approved E&S Control Plan</u>	<u>Up to \$32,500/ occur./ day(s)</u>	<u>\$10,000/ occur./ day(s)</u>
<u>Failure to install stormwater Best Management Practices (BMPs) or E&S controls**</u>	<u>Up to \$32,500/ occur./ day(s)</u>	<u>\$5,000/ occur./ day(s)</u>
<u>Failure to conduct required inspections</u>	<u>Up to \$32,500/ occur./ day(s)</u>	<u>\$1,000/ occur./ day(s)</u>
<u>Operational deficiencies (e.g., failure to initiate stabilization measures as soon as practicable; failure to implement control measures for construction debris; incomplete SWPPP; SWPPP not onsite; Stormwater BMPs or erosion and sediment controls improperly installed or maintained; incomplete, improper or missed inspections.)</u>	<u>Up to \$32,500/ occur./ day(s)</u>	<u>\$500/ occur./ day(s)</u>

* The frequency of occurrence is a maximum of per day per violation.

** Each BMP and E&S control not installed constitutes a separate violation

E. Pursuant to § 10.1-603.2:1 2, delegation shall not remove from the Board authority to enforce the provisions of the stormwater management law and attendant regulations.

4VAC50-60-118. Hearings.

A. A local program shall ensure that any permit applicant or permittee shall have a right to a hearing pursuant to § 10.1-603.12:6 and -

B. A local program shall ensure that all hearings held under this Chapter shall be conducted in accordance with § 10.1-603.12:7 or as otherwise provided by law.

4VAC50-60-122. Local program: exceptions.

A. A person may request an exception to the provisions of Part II (4VAC50-60-40 et seq.). A request for an exception shall be submitted, in writing, to the permit issuing authority. An exception may be granted, provided that: (i) the exception is the minimum necessary to afford relief, (ii) reasonable and appropriate conditions shall be imposed as necessary upon any exception granted so that the intent of the Act and this chapter are preserved, (iii) granting the exception will not confer on the permittee any special privileges that are denied to other permittees who present similar circumstances, and (iv) exception requests are not based upon conditions or circumstances that are self-imposed or self-created.

B. Economic hardship is not sufficient reason to grant an exception from the requirements of this chapter.

C. Under no circumstance shall the permit issuing authority grant an exception to the requirement that the land disturbing activity obtain a permit.

4VAC50-60-124. Local program: BMP maintenance.

A. Responsibility for the operation and maintenance of stormwater management BMPs in accordance with this chapter, unless assumed by a governmental agency, shall remain with the property owner and shall pass to any successor or owner. If portions of the land are to be transferred or conveyed, legally binding arrangements shall be made to pass the basic responsibility to successors in title. These arrangements shall designate for each project the property owner, governmental agency, or other legally established entity to be permanently responsible for maintenance.

B. In the case of developments where lots are to be transferred or conveyed, permanent arrangements satisfactory to the local program shall be made to ensure continued performance ~~in accordance with~~ ~~of this chapter~~.

C. Where maintenance or repair is neglected, or the stormwater management BMPs becomes a danger to public health or safety, the local program has the authority to perform the work and to recover the costs from the owner.

D. The local program shall require right-of-entry agreements or easements from the owner for purposes of inspection and maintenance.

E. The local program shall ensure that the flow and drainage patterns associated with a permanent BMP are maintained. Proposed changes to the flow and drainage patterns must be approved by the local program.

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

A. A local program shall report in a format provided by the Department on a monthly basis. The information to be provided shall include but not be limited to the following:

1. Permitted project information for the month to include permit number, operator name, activity name, acres disturbed, date of permit coverage;

2. Permitted projects terminated for the month to include permit number, operator name, activity name, and date of permit termination;

3. Information on each permanent BMP installed in the month to include location, acres treated, and the state waters into which the BMP will discharge into;

4. Number of VSMP general permit projects inspected and the number of inspections for the month;

5. Number and type of VSMP general permit enforcement actions for the month;
and

6. Number of exceptions applied for and whether granted or denied for the month.

B. A local program shall keep records in accordance with the following:

1. Permit files shall be kept by the local program for 5 years after permit termination. After 5 years, the registration statements, notices of coverage and notices of termination shall be archived at the Library of Virginia in accordance with its regulations.

2. BMP maintenance agreements, design standards and specifications, post-construction surveys, inspection reports, and maintenance records shall be maintained by the local program in perpetuity.

3. Other records shall be maintained in accordance with the regulations of the Library of Virginia.

Part IIIB

Department of Conservation and Recreation administered local programs

4VAC50-60-128. Authority and Applicability.

In the absence of delegation to a locality, the Department shall administer the local stormwater management program in accordance with §10.1-603.3 C. This part specifies the minimum technical criteria for a Department-administered stormwater management program in accordance with the Virginia Stormwater Management Law, §10.1-603.2 et seq., and the standards and criteria established in these regulations by the Board pursuant to its authority under that article. Such criteria include but are not limited to administrative, plan review, inspection, enforcement, and education and outreach components.

4VAC50-60-132. Technical criteria for Department administered local programs.

A. The Department administered local stormwater management programs shall comply with the provisions of Part II (4VAC50-60-40 et seq.).

~~B. When the Department administers a local program in a locality that has adopted more stringent requirements or implemented a regional (watershed-wide) stormwater management plan Department may consider these requirements in its review of projects within the locality.~~

B. When reviewing a federal project, Department shall apply the provisions of this chapter.

4VAC50-60-134. Department administered local program Administrative authorities.

A. The Department is the permit issuing authority, plan approving authority, and the enforcement authority.

B. The Department or its designee is the plan reviewing authority and the inspection authority.

C. The Department shall assess and collect fees.

D. The Department may require the submission of a reasonable performance bond or such other financial surety in accordance with the criteria set forth in §10.1-603.8 prior to the issuance of the general permit and in accordance with the following:

1. The amount of the installation performance security shall be the total estimated construction cost of the stormwater management BMPs approved under the stormwater management plan, plus 25%;

2. The performance security shall contain forfeiture provisions for failure, after proper notice, to complete work within the time specified, or to initiate or maintain appropriate actions which may be required of the applicant in accordance with the approved stormwater management plan;

3. If the Department takes such action upon such failure by the applicant, the Department may collect from the applicant for the difference should the amount of the reasonable cost of such action exceed the amount of the security held; and

4. Within sixty days of the completion of the requirements of the VSMP permit conditions and the Department's acceptance of the Notice of Termination, such bond, cash escrow, letter of credit or other legal arrangement shall be refunded to the applicant.

E. Nothing in this chapter shall be construed as limiting the rights of other federal and state agencies from imposing stricter technical criteria or other requirements as allowed by law.

4VAC50-60-136. Department administered local program Stormwater management plan review.

A. The Department shall require new or redevelopment projects to submit stormwater management plans for review and approval prior to commencement of the land disturbing activities.

B. The Department or its designee shall approve or disapprove stormwater management plans according to the following:

1. Stormwater management plan review shall begin upon submission of a complete plan. A An initial stormwater management concept plan or clearing and grading plan shall not be considered a complete plan. A complete plan shall at a minimum include the following elements:

a. Contact Information including the name, address, and telephone number of all persons having a legal interest the property owner and the operator in of the property and the tax reference number and parcel number of the property or properties affected;

b. A narrative description of the site and proposed stormwater management BMPs and the mechanism through which how the BMPs will be operated and maintained during and after construction;

c. The location and the design of the proposed stormwater management BMPs;

d. A report identifying the geotechnical properties for the hydrologic and structural properties of soils utilized with the installation of stormwater management BMPs per the Virginia Stormwater Management Handbook;

e. Overall site plan that identifies the location of potentially impacted state waters and that includes pre-developed and post-developed conditions for drainage areas including final drainage patterns and changes to existing contours. At a minimum, this will include a topographic base map utilizing 5 foot or less contour intervals of the site this will include a topographic a scale map of 1" = 200' topographic base map of the site which includes all contributing drainage areas and downstream receiving areas of the proposed development and indicates existing surface water drainage including streams, ponds, culverts, ditches, and wetlands; current land use including all existing structures; locations of utilities, roads, and easements; and significant natural and manmade features not otherwise shown necessary to meet the requirements of this chapter;

f. Comprehensive hydrologic and hydraulic computations of the pre-development and post-development runoff conditions for the required design storms;

g. Good engineering practices and calculations verifying compliance with the water quality and quantity requirements of this chapter;

h. Inspection schedules, maintenance agreements and sources for funding the maintenance of all stormwater management BMPs;

i. All stormwater management plans shall be appropriately sealed and signed by a professional in adherence to all minimum standards and requirements pertaining to the practice of that profession in accordance with Chapter 4 of Title 54.1 of the Code of Virginia and attendant regulations;

j. The person responsible for the development project shall certify that all land clearing, construction, land development and drainage will be done according to the approved plan; and

k. The person responsible for the development project shall provide proposed right-of-entry agreements or easements, acceptable to the Department, from the owner for purposes of inspection and maintenance.

2. Upon receipt of a plan, the Department or its designee shall have 15 calendar days to determine the administrative completeness of the plan and notify the applicant of

its determination. If a plan is deemed to be administratively incomplete based on the criteria set out in subsection B1 of this section, the Department must identify in writing the reasons the plan is deemed deficient. If the Department does not make a determination within the 15 calendar days, the plan shall be deemed administratively complete as of the date of submission and a maximum of 45 additional calendar days will be allowed for the review of the plan.

3. Upon receipt of a complete the determination that a plan is administratively complete, a maximum of 60 calendar days will be allowed for the review of the plan.

4. During the 60-day review period, the Department shall either approve or disapprove the plan and communicate its decision to the person responsible for the development project in writing. If the plan is not approved, the reasons for not approving the plan shall be provided in writing. Approval or denial shall be based on the plan's compliance with the Department's stormwater management program.

4. A disapproval of a plan shall contain the reasons for disapproval.

5. If no action is taken by the Department within the time specified above, the plan shall be deemed approved.

C. Each plan approved by the Department may be changed in accordance with the following:

1. Changes to an approved plan shall be allowed only after the review and written approval of the Department.

2. If field inspection shows that a plan is not adequate, the person responsible for the development project may request modifications to the approved plan to address noted deficiencies. The Department shall respond in writing either approving or disapproving such request.

3. The Department based on an inspection may require amendments to the approved plan to address the noted deficiencies and notify the person responsible for the development project of the required modifications.

4VAC50-60-138. Department administered local program Issuance of the VSMP General Permit for Discharges of Stormwater from Construction Activities.

The Department shall issue coverage under the VSMP General Permit for Discharges of Stormwater from Construction Activities in accordance with the following:

1. The applicant must have a Department approved stormwater management plan for the land disturbing activity.

2. The applicant has submitted a complete registration statement for the VSMP General Permit for Discharges of Stormwater from Construction Activities in accordance with Part VII (4VAC50-60-360 et seq) and the registration statement has been reviewed and approved by the Department.

3. The applicant has submitted the required fee form and fee for the registration statement seeking coverage under the VSMP general permit.

4. Applicants submitting registration statements deemed to be incomplete must be notified that the registration statement is not complete, informed of what material needs to be submitted to complete the registration statement, and that the land disturbing activity does not have VSMP general permit coverage.

4VAC50-60-142. Department administered local program Inspections.

A. The Department or its designee shall conduct inspections of stormwater management BMPs during construction to ensure that the location and design criteria of the BMPs are in accordance with the approved plan.

B. The Department shall require the person responsible for the development project to submit a final report containing an as-built survey certifying that the stormwater management BMPs requiring maintenance have been implemented in accordance with the approved plan. The Department or its designee shall inspect the BMPs for compliance with the final report.

C. The Department shall require the operator of stormwater management BMPs to conduct inspections in accordance with a recorded inspection schedule and maintenance agreement or on an annual basis for stormwater management BMPs without a recorded inspection schedule and maintenance agreement and provide a written report to the Department.

D. The Department or its designee shall inspect stormwater management BMPs on an annual basis or may establish an alternative inspection program which ensures that stormwater management BMPs are functioning as intended. Any alternative inspection program shall be:

1. Approved by the Board prior to implementation;
2. Established in writing;
3. Based on a system of priorities that, at a minimum, considers the purpose of the facility, the contributing drainage area, and downstream conditions; and
4. Documented by inspection records.

E. Inspection reports shall be generated and kept on file for all stormwater management BMPs inspected by the Department or its designee.

F. The Department or its designee shall be allowed by the operator to conduct periodic inspections of the project.

4VAC50-60-144. Department administered local program Enforcement.

A. A Department administered local program shall contain the following components:

1. Informal and formal administrative enforcement procedures including:
 - a. Verbal warning and inspection reports;
 - b. Notice of corrective action;
 - c. Consent special orders and civil charges in accordance with §§ 10.1-603.2:1 7 and 10.1-603.14 D 2;
 - d. Special orders in accordance with § 10.1-603.2:1 7;
 - e. Emergency special orders in accordance with § 10.1-603.2:1 7; and
 - f. Public notice and comment period pursuant to 4 VAC 50-60-660.
2. Civil and criminal judicial enforcement procedures including:
 - a. Schedule of civil penalties setout in subsection C;
 - b. Criminal penalties in accordance with § 10.1-603.14 B and C; and
 - c. Injunctions in accordance with §§ 10.1-603.12:4 and 10.1-603.14 D1.

B. The Department’s Stormwater Management Enforcement Manual shall serve as guidance to be utilized in enforcement actions under the Stormwater Management Act and attendant regulations.

C. Schedule of Civil Penalties set by the Board in accordance with § 10.1-603.14

A. The Board intends that these civil penalties generally be applied after other enforcement remedies have been unsuccessful, in egregious situations, or for repeat offenders.

<u>Violations and Frequency of Occurrence *</u>	<u>Maximum \$\$/occurrence (occur.)/day</u>	<u>Recommended Minimum \$\$/occurrence/day</u>
<u>No Permit Registration</u>	<u>Up to \$32,500/ occur./ day(s)</u>	<u>\$10,000/ occur./ day(s)</u>
<u>No Stormwater Pollution Prevention Plan (SWPPP) [No SWPPP components including erosion and sediment (E&S Control Plan)]</u>	<u>Up to \$32,500/ occur./ day(s)</u>	<u>\$10,000/ occur./ day(s)</u>
<u>No approved E&S Control Plan</u>	<u>Up to \$32,500/ occur./ day(s)</u>	<u>\$10,000/ occur./ day(s)</u>
<u>Failure to install stormwater Best Management Practices (BMPs) or E&S controls**</u>	<u>Up to \$32,500/ occur./ day(s)</u>	<u>\$5,000/ occur./ day(s)</u>
<u>Failure to conduct required inspections</u>	<u>Up to \$32,500/ occur./ day(s)</u>	<u>\$1,000/ occur./ day(s)</u>
<u>Operational deficiencies (e.g., failure to initiate stabilization measures as soon as practicable; failure to implement control measures for construction debris; incomplete SWPPP; SWPPP not onsite; Stormwater BMPs or erosion and sediment controls improperly installed or maintained; incomplete, improper or missed inspections.)</u>	<u>Up to \$32,500/ occur./ day(s)</u>	<u>\$500/ occur./ day(s)</u>

* The frequency of occurrence is a maximum of per day per violation.

** Each BMP and E&S control not installed constitutes a separate violation

4VAC50-60-146. Hearings.

A. Any permit applicant or permittee shall have a right to a hearing pursuant to § 10.1-603.12:6 and:

~~B. All~~ all hearings held under this chapter shall be conducted in accordance with § 10.1-603.12:7 or as otherwise provided by law.

4VAC50-60-148. Department administered local program: Exceptions.

A. A person may request an exception to the provisions of Part II (4VAC50-60-40 et seq.). A request for an exception shall be submitted, in writing, to the Department. An exception may be granted, provided that: (i) the exception is the minimum necessary to afford relief, (ii) reasonable and appropriate conditions shall be imposed as necessary upon any exception granted so that the intent of the Act and this chapter are preserved, (iii) granting the exception will not confer on the permittee any special privileges that are denied to other permittees who present similar circumstances, and (iv) exception requests are not based upon conditions or circumstances that are self-imposed or self-created.

B. Economic hardship is not sufficient reason to grant an exception from the requirements of this Chapter.

C. Under no circumstance shall the Department grant an exception to the requirement that the land disturbing activity obtain a permit.

4VAC50-60-152. Department administered Local program: BMP maintenance.

A. Responsibility for the operation and maintenance of stormwater management BMPs in accordance with this chapter, unless assumed by a governmental agency, shall remain with the property owner and shall pass to any successor or owner. If portions of the land are to be sold, legally binding arrangements shall be made to pass the basic responsibility to successors in title. These arrangements shall designate for each project the property owner, governmental agency, or other legally established entity to be permanently responsible for maintenance.

B. In the case of developments where lots are to be sold, permanent arrangements satisfactory to the Department shall be made to ensure continued performance **in accordance with of this chapter.**

C. Where maintenance or repair is neglected, or the stormwater management BMPs becomes a danger to public health or safety, the Department has the authority to perform the work and to recover the costs from the owner.

D. The Department shall require right-of-entry agreements or easements, acceptable to the Department, from the owner for purposes of inspection and maintenance.

E. The Department shall ensure that the flow and drainage patterns associated with a permanent BMP is maintained and proposed changes to the flow and drainage patterns must be approved by the Department.

4VAC50-60-154. Department administered local program: Reporting and record keeping.

- A. The Department, on a monthly basis, will compile the following information:
1. Permitted project information **for the month** to include permit number, operator name, activity name, acres disturbed, date of permit coverage;
 2. Permitted projects terminated for the month to include permit number, operator name, activity name, and date of permit termination;
 3. Information on each permanent BMP installed **in the month** to include location, acres treated, and the state waters **into which** the BMP will discharge **into**;

4. Number of **VSMP general permit projects inspected and the number of inspections for the month**;
 5. Number and type of **VSMP general permit enforcement actions for the month**;
and
 6. Number of exceptions applied for and whether granted or denied **for the month**.
- B. The Department shall keep records in accordance with the following:
1. Permit files shall be kept by the Department for 5 years after permit termination. After 5 years, the registration statements, notices of coverage and notices of termination shall be archived at the Library of Virginia in accordance with its regulations.
 2. BMP maintenance agreements, design standards and specifications, post-construction surveys, inspection reports, and maintenance records shall be maintained by the Department in perpetuity or until the program is delegated.
 3. Other records shall be maintained in accordance with the regulations of the Library of Virginia.

Part IIIC

Department of Conservation and Recreation local program review procedures

4VAC50-60-156. Authority and Applicability.

This part specifies the criteria that the Department will utilize in reviewing a locality's administration of a stormwater management program pursuant to §10.1-603.12 following the delegation of a local stormwater management program to that locality by the Board in accordance with the Virginia Stormwater Management Law and these regulations.

4VAC50-60-157. Stormwater Management Program Review.

- A. The Department shall periodically review each Board approved program on a review schedule approved by the Board.
- B. The Board approved review of a local program shall consist of the following:
 1. A personal interview between Department staff and the local program administrator or his designee;
 2. A review of the local ordinance(s) and other applicable documents;
 3. A review of plans approved by the locality and consistency of application;
 4. An inspection of regulated activities; and
 5. A review of enforcement actions.
- C. To the maximum extent practicable the Department will coordinate the reviews with other local government program reviews to avoid redundancy.
- D. The Department shall determine if the program and ordinance are consistent with the state stormwater management regulations and notify the local program of its findings.
- E. **If the Department determines that the deficiencies noted in the review will cause the local program to be inconsistent with the Stormwater Management Act and its**

attendant regulations, the Department shall notify the local program concerning the deficiencies and provide a reasonable period of time for corrective action to be taken. If the local program fails to take the corrective action within the specified time, the Department may formally request the Board to take action pursuant to §10.1-603.12 of the Code of Virginia.

Part IIID

Virginia Soil and Water Conservation Board delegation procedures for local programs

4VAC50-60-158. Authority and Applicability.

Section 10.1-603.4:1 requires that the Board establish standards and procedures for delegating the authority for administering a stormwater management program to localities. In accordance with that requirement, and with the further authority conferred upon the Board by the Virginia Stormwater Management Law, §10.1-603.2 et seq., this part specifies the procedures the Board will utilize in delegating a stormwater management program to a locality.

4VAC50-60-159. Delegation Procedures for local stormwater management programs.

A. A locality seeking delegation must submit to the Board an application package which, at a minimum, contains the following:

1. The local program ordinance(s) and other applicable documents;
2. A funding and staffing plan;
3. The policies and procedures, including but not limited to, agreements with Soil and Water Conservation Districts, adjacent localities, or other entities, for the administration, plan review, permit issuance, inspection and enforcement components of the program; and
4. The process by which the locality will collect permit fees and submit for deposit on a monthly basis to the Virginia Stormwater Management Fund.

B. Upon receipt of an application package, the Board or its designee shall have 15 days to determine the completeness of the application package. If an application package is deemed to be incomplete based on the criteria set out in subsection A of this section, the Board or its designee must identify in writing the reasons the application package is deemed deficient.

C. Upon receipt of a complete application package, the Board or its designee shall have a maximum of 90 calendar days for the review of the application package. During the 90-day review period, the Board or its designee shall either approve or disapprove the application and communicate its decision to the locality in writing. If the application is not approved, the reasons for not approving the application shall be provided to the locality in writing. Approval or denial shall be based on the application's compliance with the Virginia Stormwater Management Law and these regulations.

