

**Virginia Stormwater Management Program Regulations
Regulatory Advisory Panel's Part III Subcommittee
August 17, 2010**

Subcommittee Members Present

Steve Herzog, Subcommittee Chair
Joe Wilder, Frederick County
Keith White (for Jeff Perry), Henrico County
Assad Ayoubi, Fairfax County
Larry Land, VACO
Joe Lerch, Virginia Municipal League
Alyson Sappington, Thomas Jefferson Soil and Water Conservation District
Bill Johnston, City of Virginia Beach
Barbara Brumbaugh, City of Chesapeake

DCR Staff Present

Christine Watlington
Michael Fletcher
Doug Fritz
Lee Hill
David Dowling

Others Present

Judy Cronauer, Fairfax County
Paul Van Lenten, House Appropriations Committee

Mr. Herzog called the meeting to order. He said that the discussion would be very informal and open. He said that the intent was to begin on page 43 of the draft stormwater regulations starting with Section Part IIIA. He said there would be an opportunity to return to look at the definitions after the subcommittee had completed its review of Part III.

The subcommittee began reviewing Part IIIA of the Draft Final Stormwater Regulations. A copy of the DRAFT is available from DCR. Comments were as follows:

4VAC50-60-102. Authority and applicability.

There were no comments regarding this section.

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

Mr. Lerch asked about the possibility of taking post construction criteria out of the VSMP general permit.

Mr. Herzog said that would be a significant discussion. He said that he did not think this group would be addressing that.

Mr. Lerch said that perhaps he was under the wrong impression but that he thought that was the purpose of this group. He said that the delegated general construction permit and the new effluent guidelines from EPA would be significant for localities.

Ms. Brumbaugh said that it does not have to be overly difficult. She said that while she understood the challenges with fee collection and DCR's need to have the revenue to operate the program that the construction permits were separate from the technical criteria.

A member asked how the fees in Part XIII would be justified if not under the general permit.

Mr. Hill said that coverage under the construction general permit could be given without having an approved plan. He said that the SWPPP can indicate that there will be an approved stormwater management plan. However, construction cannot begin until there is a plan in place.

Mr. Herzog said that construction could not begin until a land disturbance permit is obtained.

Mr. Johnston said a tremendous number of plans never go to construction. He said that this regulation did not allow for that. He said that the permit fee had to be paid even when ultimately the builder may not need the permit. He said that should be addressed. Mr. Johnston said that the current fees do not cover the costs.

Mr. Herzog said that was addressed in the fees. He said that local programs have a lot of flexibility.

Mr. Herzog said the fees were set. He said that each locality would have to determine what worked best for the systems they have.

Mr. White asked when DCR would receive their portion of the permit if the locality collected 50% up front.

Mr. Hill said that if the permit is never issued, DCR would not receive part of the permit fee.

Mr. Lerch said that there was a post construction standard in the Bay Act. Localities must show that they are reviewing plans to meet the post construction standard.

A concern was noted regarding the rule for the remaining 40% of the state in the non-Bay areas.

Mr. Herzog said again that the Part XIII section regarding fees was complete.

Ms. Watlington suggested that Chris Pomeroy and Rick Parrish have a discussion with Mr. Lerch regarding post construction. She said that it may be possible at the next RAP meeting to bring this information.

Mr. Ayoubi asked if there were no other way to deal with the fee than to separate out the stormwater fee.

Mr. Herzog said that he didn't agree with that assessment. He said that there had been much discussion with regard to fees.

Ms. Brumbaugh said that the fees were set out in Part XIII. She said that DCR was only authorized to charge a permit fee, not a review fee.

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

Mr. Herzog was concerned by the statement "Procedures for the submission and approval of plans." He said that would mean that every time the locality wanted to change an internal procedure they would have to get Board approval.

Mr. Hill said that the locality would submit a package for Board approval that demonstrates how the locality would operate the program. He said that once the program is approved that does not preclude changes and not all changes would need Board approval.

Mr. Lerch said that it was intended just to see that the plan was in place.

Mr. Brown said that the programs would be looked at on a five year review basis. He said that modifications would not have to be submitted for Board approval.

A member asked if, on page 44 item 6 "procedures or policies for long-term inspection" applied to post construction.

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

Mr. Herzog said that his locality faced illegal land disturbance frequently. He said that the County would turn to enforcement. He asked if the term commencement of land disturbing activities was the correct term.

Mr. Hill said that this concern was addressed in Section C.

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

Mr. Brown noted that this was relocated from a different section.

Under Section 108A, Mr. White said that some of the previous discussions had discussed permits and subsequent permits. He asked if a developer includes all of his lots in the plan that separate plans are not needed if the land is divided.

Mr. Hill said that the developer could get one plan for the entire property. If those lots are sold, guidance from EPA indicates that the change of ownership requires a new permit.

Under 108B.1.b., Mr. Herzog noted that the property owner could in some cases be the project owner. He noted that the regulation uses “applicant” in other places.

Ms. Brumbaugh said that she thought that terminology was included for a specific reason.

Mr. Lerch said that the purpose was to have a point of contact. He noted that the property owner would change.

Mr. White said it was for the owner of the permit.

Ms. Watlington said the intent was for the locality to have contact information for the owner of the property affected by the land disturbance.

The term “owner/operator” was suggested.

Under Section 108B.1.c, Mr. White questioned the need for a narrative. He said that was useless for his locality. He asked if there was a way to include a provision to allow localities to address that in a different manner.

Ms. Brumbaugh suggested adding “at the discretion of the local program.”

Mr. White asked if his plan addresses the components, why it had to be in paragraph form.

Mr. Fritz said that the federal regulations specify the need for a narrative description.

Under 108B.3, Mr. Herzog asked if the communication could be electronic. Staff indicated that should be acceptable.

Under 108C on Page 46, Ms. Brumbaugh said that she thought the initial stormwater plan had been addressed and that the local program could allow the initial clearing and grading of the site.

Mr. Herzog asked if the initial stormwater plan should have to be able to stand on its own.

Mr. Ayoubi said that it appeared the project owner would be paying for two separate plans.

Mr. Johnston said that now that the SWPPP requires post construction the impact on nutrient loadings, etc. would have to be considered. He noted that Virginia Beach requires a preliminary stormwater management plan. He said that if long term stormwater quality requirements were part of the plan, the plan should be able to stand alone.

Mr. Hill said that the SWPPP can address post development.

Ms. Brumbaugh said that the issue was that localities could only collect 50% of the fee.

Mr. Fritz said that, by definition, localities would be approving plans eligible for cover under the construction general permit.

Mr. White said that the section did not seem to be clearly understood. He said that the implementation of a plan does not necessarily result in the use of BMPs.

Mr. Hill said that the SWPPP could be modified as necessary.

Mr. White said that there was an understanding that clearing and grading plans must have a water quality component. He said that was different than the impression given in this section.

Mr. Hill said that was not the way the section should be interpreted. He said it was up to the locality to determine who would be responsible for water quality should the developer halt the construction process.

At this time the subcommittee recessed for a break.

Upon return the subcommittee returned to Page 46, Item C.

Mr. Herzog said that the consensus was that localities should view this carefully but that it does provide flexibility.

It was noted that a permit was still needed before any land disturbance.

It was suggested that the phrase, *and [no more than] 50% of the [base] fee required by 4VAC50-60-820*, be removed. It was noted that this was covered in another section.

Mr. Fritz said that only the amount of acreage covered in the permit can be disturbed without a new permit. The scope of the project cannot be changed.

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

Mr. Herzog asked who approved the statement.

Mr. Fritz said that the terms approve, authorize and accept all mean different things in the federal regulations. He said that staff would check the appropriate language.

Mr. Herzog said that his question was whether the locality was approving them or if DCR was giving the approval.

Mr. Hill said that the locality was approving or accepting the registration statement.

Mr. White asked if a locality became a delegated program if that gave the authority to review the SWPPP before hand.

Mr. Hill said that the SWPPP does not require DCR review.

Mr. Dowling said that conversation in earlier TACs was that the SWPPP should be on site for review, but not housed at DCR. He said that the public would have access through the General Permit language.

Ms. Sappington said that it was in the developer's best interest to have someone review the SWPPP.

Mr. Herzog asked if localities had the authority to require review of the SWPPP prior to authorizing the permit.

Mr. Dowling said that if that was the locality's preference it should be written into the language of the regulations.

Mr. Johnston said that review of the SWPPP came with liability. He said that one of the benefits of the delegation was that DCR does not have the resources to visit every site. He said that the local inspector will want to see the SWPPP.

Under Section 112B, Mr. Herzog said that confusion remained as to whom the payment was made. He asked who enforced the non payment of maintenance fees.

Under Section B, Mr. White suggested that DCR list the information to track and allow the locality to gather the information. He said that his County had invested in an existing database. He expressed concern about exporting data and using the DCR format.

Mr. Dowling said that the basic information as to the size and scope of the project and the fees would be collected through an electronic submittal.

Mr. Hill said that DCR was working with Virginia Interactive to develop the website. He said that in the process DCR would work with localities regarding existing systems.

Mr. Wilder asked about reporting. He said that in his locality he had a very small department doing multiple tasks. He said that this tracking would be difficult for smaller localities. He said that his program would be very concise.

Mr. Herzog said that localities were working with multiple programs. He said it would help to combine reporting.

Ms. Watlington noted that larger localities such as Fairfax and Virginia Beach have had these programs for some time. She asked if this was too much of a burden for smaller localities.

Mr. Wilder said that he was familiar with the program because of the regulatory process. But he said other smaller localities were not as familiar.

Mr. Fritz said that the delegation of the approval for the permit is not going to be at the local level. The locality will review and approve to make sure the conditions are met, but the permit will be issued at the state level.

Ms. Brumbaugh said that in many ways the regulations were too prescriptive.

Mr. White said that the other view was that if the program was not prescriptive and clearly defined the localities would be subject to what DCR developed as guidance.

Mr. Johnston said that was the nature of a new process. He said that regardless of how this was written there would be unintended consequences.

Mr. Fritz said that guidance was easier to change than regulations. Mr. Dowling noted that guidance was not enforceable.

Mr. Herzog said that there was a consensus among the localities that there were problems with the fees.

Mr. Fritz said that in these discussions if there were issues that were not resolved members should send statements to Ms. Watlington or him so that the issues could be addressed.

Mr. Johnston said that he would need to review this language with his development services staff.

Mr. Fritz asked that localities speak with their land development staff and email Ms. Watlington or him with recommendations about how the language could be less prescriptive.

Mr. Johnston said that some reorganization might make this clearer.

It was suggested that the tables on pages 50 and 51 be removed as that related to court guidance.

Ms. Watlington asked that members send comments to her and copy Mr. Herzog and Mr. Fritz. She said that based on those comments a determination would be made regarding a future meeting.

The meeting was adjourned.

Addendum #1

Issues identified by the subcommittee.

- Adoption of federal guidance for MS4
- How to approach TMDL growth for new development
- P standard now; what about N, Sediment
- Other 40% of state: rule for Non-Bay areas
- 2 different standards for state (Bay, Non-Bay)
- H2O quantity – channel protection; method going to protect/overprotective good fro whole state
- Costs for practices related to reviewing effectiveness (cost-benefit analysis and cost-effectiveness analysis)
- On-site requirements; offsite
- Effectiveness of BMPs/% of permit fees to go study/cost-effectiveness
- EPA – Phas3 1 MS4; Phase 2 MS4; TMDL; nationwide new development standard
- Redevelopment Standard – 20%
- Offsets – Setting the price
- Storm H2O Handbook/ role of BMP Clearinghouse
- Grandfathering
- First ½ inch vs. 1 inch
- Part 3- Manage delegation
 - Fee structure changes at local permit fee return
 - Doesn't fit well w/ existing programs/process approval for delegation
- Explore separating post-construction standard & construction permit
- Post-construction standard – only?
- Impaired vs. Non-Impaired H2Os
- Availability of offsets (Bay vs. Non-Bay) TMDL vs. non TMDL?
- Long-term cost of programs:
 - Locality costs
 - State costs
 - Fee for inspection
- Equivalency criteria for offsets
- How to apply to golf courses, etc. other “green” industries, schools, Turf Grass Council, athletic fields, etc.
- Permit-fee for every submittal
- Tables in Regs?
- Post construction requirements
 - Grandfathering needed?
 - Acres disturbed trigger – need new one?
 - NOIRA issue?