

**Minutes**  
**Chesapeake Bay Local Assistance Board**  
**Southern Area Review Committee**  
**Tuesday, February 10, 2009**  
**Richmond, Virginia**

**Southern Area Review Committee Members Present**

Beverly D. Harper, Chair  
John J. Zeugner

Charles B. Whitehurst

**Southern Area Review Committee Members Not Present**

Barry L. Marten

Richard B. Taylor

**DCR Staff Present**

Joseph H. Maroon, Director  
Joan Salvati, Director, Division of Chesapeake Bay Local Assistance  
David Sacks, Assistant Director, Division of Chesapeake Bay Local Assistance  
Shawn Smith, Principal Environmental Planner  
Melissa Doss, Senior Environmental Planner  
Michael R. Fletcher, Board and Constituent Services Liaison

**Others Present**

Brian Ballard, City of Chesapeake  
Brian Swets, City of Chesapeake  
Clay Bernick, City of Virginia Beach  
Charles McKenna, City of Virginia Beach  
Leonard Muse, City of Petersburg  
Tarron J. Richardson, City of Richmond  
Neville Simon, City of Richmond  
Robert Steidel, City of Richmond  
Lee Rosenberg, City of Norfolk

**Call to Order**

Ms. Harper called the meeting to order and declared a quorum present.

Ms. Salvati said that the Division office move to the Pocahontas Building is going forward; likely the in the end of February or early March.

## **Local Program Reviews**

### *City of Virginia Beach – Review of Previous Conditions*

Ms. Smith gave the report for the City of Virginia Beach

The City's original compliance evaluation was undertaken in June 2007 and the Board established June 30, 2008 as the deadline for addressing 9 conditions. On September 15, 2007, the Board found that the City had addressed 8 of the 9 conditions, and granted an extension for this one remaining condition until December 31, 2008. The remaining condition required the City to ensure pools to be included in impervious cover calculations. On December 12, 2008, the City sent a letter requesting an additional extension until April 30, 2009. The City has provided a schedule for how and when they expect to address this condition through ordinance amendments and adoption of procedural documents. However, due to the fact that the City has already received one deadline extension from the Board, staff recommended that the Board find the City non-compliant and with a final deadline of April 30, 2009 to address one remaining condition:

1. *“The City must ensure that all impervious surfaces are calculated for development and redevelopment projects, to include the surface area of all pools“*

Ms. Smith recognized Clay Bernick and Charles McKenna from the City.

Mr. Bernick said that the City had developed a compliance schedule to ensure that they will meet the April deadline. Changes to the ordinance have been drafted to take care of the requirements. He said that the issue was not swimming pools as much as a concern that the City staff was acting arbitrarily regarding buffer mitigation requirements. City staff has worked through that process with the consultant community to develop a draft policy establishing clear criteria.

Mr. Bernick said that the Tidewater Builders Association would review the document and that the change was scheduled to go to the Planning Commission in March.

Ms. Smith said that she had not reviewed the procedural component of the policy but noted that the ordinance amendment was not a complex amendment. She said that she would be happy to review the policy change and did not anticipate any complications.

Mr. Maroon noted that the City originally had legislation entered on their behalf, but working with DCR, the City has agreed to pull the bill.

Mr. Bernick said that staff was able to brief the City Council regarding an alternative to the legislation. He said the Council reached full consensus.

Mr. Zeugner asked if it was still necessary to find the City non-compliant since the deadline was being postponed.

Ms. Salvati said that deeming localities non-compliant after a locality did not meet an extended deadline was in accordance with standard Board practice regarding other localities.

**MOTION:** Mr. Zeugner moved that the Southern Area Review Committee recommend that the Chesapeake Bay Local Assistance Board find the implementation of a certain aspect of the City of Virginia Beach's Phase I program be found non-compliant with Section §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 of the Regulations and that the City be instructed to undertake and complete the one Condition contained in the staff report no later than April 30, 2009.

**SECOND:** Mr. Whitehurst

**DISCUSSION:** None

**VOTE:** Motion carried unanimously

*City of Chesapeake – Review of Previous Conditions*

Ms. Smith gave the report for the City of Chesapeake.

The City of Chesapeake's compliance evaluation was undertaken in December 2007, with the Board establishing a deadline of December 31, 2008 for the City to address 5 compliance conditions. These conditions have all been addressed by the City as follows:

- Develop and implement a septic maintenance program – the City's Health Department sent out notices in October 2008 to all onsite systems in the City's CBPA.
- Require BMP maintenance agreements for water quality BMPs and ensure BMP maintenance and tracking – the City uses the HRPDC regional tracking and reporting database for water quality BMPs, and through their site plan, subdivision, and CBPA review processes, ensures that all water quality BMPs have the required maintenance agreement.
- Amend CBPA ordinance to require all conditions for allowing BMPs in RPAs – on August 12, 2008, the City amended Section 26-519 of its Bay ordinance to include all required conditions.
- Implement the City's ordinance related to the expansion of an existing principal structure – the City amended its CBPA review committee application to clarify the conditions under which an existing principal

structure may be expanded under their program. The City began using this revised application in July 2008.

- Require a WQIA for any proposed land disturbance, development or redevelopment within the RPA – the city now requires a WQIA for all CBPA applications, and provided samples of the required WQIA for several projects.

Based on these actions by the City, staff recommended that the Board find implementation of the City of Chesapeake's Phase I program complies with the Act and Regulations.

Ms. Smith introduced Brian Ballard and Brian Swets from the City.

Mr. Ballard said that he was available to answer questions. He commended DCR staff for their work with the City.

MOTION: Mr. Zeugner moved that the Southern Area Review Committee recommend that the Chesapeake Bay Local Assistance Board find the implementation of the City of Chesapeake's Phase I program to be in compliance with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations.

SECOND: Mr. Whitehurst

DISCUSSION: None

VOTE: Motion carried unanimously

*City of Norfolk – Review of Previous Conditions*

Ms. Smith gave the report for the City of Norfolk.

The City of Norfolk's compliance evaluation was undertaken in December 2007, with the Board establishing a deadline of December 31, 2008 for the City to address 3 compliance conditions. Two of the three conditions have been addressed as follows:

- Revise the *Norfolk Storm Water Design Criteria* to include water quality calculations and BMP design standards and efficiencies consistent with the *Virginia Stormwater Management Handbook* – on January 14, 2009, the City provided documentation that they no longer use the Norfolk Storm Water Design Criteria for calculating stormwater management requirements and BMP design, relying instead on the calculation methods and BMP designs in the Virginia Stormwater Management Handbook.
- Require a WQIA for any land disturbance, development or redevelopment in the RPA, even when such projects occur in the IDA overlay – on January 14, 2009, the City provided documentation noting that from that day forward they

will use the generic WQIA form provided to them by Department staff in mid-November for all development, redevelopment and land disturbing activities in the RPA, even when those occur in the IDA. Department staff note that the City has had no development proposals submitted that would require a WQIA in the intervening weeks, and suggests that the City be required to begin submission of an annual report beginning on July 2009 so that staff can monitor implementation of this requirement.

The City requested an extension until September 2009 for the one remaining condition. The staff is recommending an extension until June 30, 2009, as a six month extension is more consistent with what the Board typically approves. The one remaining condition is as follows:

1. *“Provide documentation that its city-wide Stormwater Management program implements the 10 percent pollution reduction requirement for all development and redevelopment activities in the IDA.”*

Ms. Smith said that staff recommended that the Board find the implementation of one aspect of the City’s Phase I program does not fully comply and to address one remaining condition by June 30, 2009.

Ms. Smith introduced Lee Rosenberg from the City.

Mr. Rosenberg said that he appreciated the opportunity to work with the staff to meet the final condition. He said that the City should be able to comply by June.

MOTION: Mr. Zeugner moved that the Southern Area Review Committee recommend that the Chesapeake Bay Local Assistance Board find that the implementation of the City of Norfolk’s Phase I program does not fully comply with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations, and in order to correct this deficiency the City be directed to undertake and complete the one recommendation contained in the staff report no later than June 30, 2009.

SECOND: Mr. Whitehurst

DISCUSSION: None

VOTE: Motion carried unanimously

*Town of Bloxom, Town of Melfa, Town of Onley, Town of Parksley, Town of Saxis –  
Review of Previous Conditions*

Ms. Smith gave the report for the Town of Bloxom, Town of Melfa, Town of Onley, Town of Parksley, and the Town of Saxis.

Department staff sent a draft MOU to all towns in September 2008 and again in January 2009. As a result of the recent mailing (which went to the Town Attorneys and Mayors), the Town of Melfa contacted Accomack County to begin the process of approving an MOU. The Town of Parksley notified Department staff last week that they signed the MOU on January 27, 2009 and that this MOU is on the County Board of Supervisor's agenda for approval on February 18. As staff has not received a copy of Parksley's MOU, review of their program will occur next quarter. The Town of Saxis signed their MOU on January 2, 2009, and the original was just received by Department staff today. This original will need to be sent to Accomack County for their Board of Supervisors to act on, and since staff does not know when this may occur, the recommendation was that the SARC defer action on Saxis until May 12, 2009.

The Town of Onley has signed the required MOU, staff has received a copy and Accomack County is expected to approve it on February 18. Based on conversations between County and Department staff, even without the County signing the MOU, the County indicated they will go forward with the pump-out program for the Town. The Town recently sent a check to the County to cover the cost of mailing septic notice letters. Based on these actions, staff recommended the implementation of the Town of Onley's Phase I program be found compliant.

**MOTION:** Mr. Zeugner moved that the Southern Area Review Committee recommend that the Chesapeake Bay Local Assistance Board find the implementation of a certain aspect of the Town of Bloxom's and the Town of Melfa's Phase I programs do not comply with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations, and in order to correct this deficiency, the Towns be directed to undertake and complete the one recommendation contained in the staff reports no later than April 15, 2009.

**SECOND:** Mr. Whitehurst

**DISCUSSION:** None

**VOTE:** Motion carried unanimously

**MOTION:** Mr. Zeugner moved that the Southern Area Review Committee recommend that the Chesapeake Bay Local Assistance Board find the implementation of the Town of Onley's Phase I program to be in compliance with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations.

SECOND: Mr. Whitehurst

DISCUSSION: None

VOTE: Motion carried unanimously

MOTION: Mr. Zeugner moved that the Southern Area Review Committee defer action on review of the implementation of the Phase I programs of the Towns of Parksley and Saxis until the May 12, 2009 Committee meeting.

SECOND: Mr. Whitehurst

DISCUSSION: None

VOTE: Motion carried unanimously

*City of Richmond- Review of Previous Conditions*

Ms. Smith gave the report for the City of Richmond

Ms. Smith said that staff was requesting a deferral of action for the City of Richmond, based on the fact that the City has not yet adopted the required ordinance amendments. The required amendments have been reviewed by staff and, once adopted, would address the compliance conditions. The adoption of the amendments is now scheduled to occur no earlier than February 23. Staff will bring the City's program to the SARC in May and then to the Board in June.

Ms. Smith recognized Mr. Steidel, Mr. Richardson, and Mr. Simon from the City of Richmond.

Mr. Simon said that the City had met all of the requirements with the exception of the ordinance amendments. He noted that the City had a new Mayor and that some processes were taking longer but were on track.

Mr. Steidel said that the City was moving forward with the development of a stormwater utility.

MOTION: Mr. Zeugner moved that the Southern Area Review Committee defer action regarding review of the implementation of the City of Richmond's Phase I program until the May 12, 2009 Committee meeting.

SECOND: Whitehurst

DISCUSSION: None

VOTE: Motion carried unanimously

*City of Petersburg – Initial Compliance Evaluation*

Ms. Doss gave the report for the City of Petersburg.

Located 20 miles south of Richmond across the Appomattox River and at the junction of Interstates 95 and 85, Petersburg's estimated population is 33,740. The City's land area includes 23.2 square miles, approximately two-thirds of which is located in the Chesapeake Bay drainage area. Petersburg is a part of the Tri-cities area, which also includes Colonial Heights and Hopewell. Residential and commercial development in the City is limited to primarily redevelopment and infill.

The Compliance Evaluation was conducted throughout 2008, and the process revealed nine program elements that were not fully compliant with the Act and the Regulations. During the course of the compliance evaluation, the City shared its policies and procedures.

After thorough discussion with the City of Petersburg about their Chesapeake Bay Act program, it appeared the program was not being enforced. Staff reviewed a number of permits that were approved, and visited several sites where construction had not yet begun, was underway, or complete, that did not undergo any review for Bay Act program compliance. The following conditions are what the City needs to get them back on track.

The first three conditions are generally related to the process undertaken by the City for reviewing building permit applications. The first condition is that the City must immediately begin screening all applications for whether they are in the CBPA. Of the seven files reviewed, six of them contained no documentation suggesting that any type of review for compliance with the City's Bay Act program occurred. The City is receptive to this condition and has developed a specific form to ensure every application is checked for CBPA features. Staff will be following up in the near future to ensure compliance and will provide an update at the next Board meeting.

Department staff has made a suggestion that the City should consider revising its current CBPA map to more accurately depict the RPA and RMA and avail itself of technical assistance provided by the Department for this task. The City appears very receptive to this suggestion and discussion has already begun on how we might help them revise their map.

The second condition states the City must require that Chesapeake Bay Preservation Areas are properly depicted on all development plans. The third condition states that the



City must require site-specific evaluations to identify water bodies with perennial flow and ensure the boundaries of RPAs are adjusted as necessary. Development within CBPAs must be closely reviewed to determine which requirements of the City's CBPA ordinance apply in each circumstance. A proper review cannot occur without a site plan depicting the RPA and RMA. None of the seven files reviewed contained an adequate site plan depicting the limits of the RPA or RMA. In addition to obtaining a site plan depicting the RPA and RMA, it may be necessary to visit a site to determine the specific boundaries of the RPA or RMA. In three of the projects reviewed (Myrtle Drive, King Avenue and Seventh Street), the location of the RPA/RMA was unclear from the "Environmental Factors" map and from the information submitted and thus, a site specific determination should have been made or required by the City in addition to requiring a detailed plan. The City acknowledges CBPAs are not depicted on all plans and will be updating their mapping data and therefore be better equipped to require labeling for CBPAs on site plans. The City will be monitored over the next year to ensure compliance.

The fourth condition requires the City to document submission of a WQIA for any proposed land disturbance, development, or redevelopment within RPAs. Two of the files reviewed by Staff did not have a WQIA in the file, when they clearly should have been required due to disturbance being proposed in the RPA.

Condition number five states that the City must address issues with their erosion and sediment control program that are identified in the 2008 Corrective Action Agreement. DCR's Division of Soil and Water Conservation recently conducted a review of Petersburg's Erosion and Sediment Control program. The City's program was found by the Soil & Water Conservation Board to be inconsistent, and a Corrective Action Agreement (CAA) was entered into. A review of the CAA was done on October 9, 2008 and the CAA completion date was extended to May 21, 2009. The City will be monitored over the next year to ensure compliance.

Condition six states the City must develop and implement a septic maintenance program, including the 5-year pump-out notification, installation of the plastic filter, and/or annual inspection, and any necessary tracking information.

Condition number seven states the City must ensure that all development and redevelopment within the Chesapeake Bay Preservation Area ordinance properly addresses nonpoint source pollution in accordance with the water quality provisions of the Virginia Stormwater Management Regulations. During the file review process, Department staff was unable to determine if the City meets the requirements for stormwater calculations because the files were not reviewed for Bay Act compliance.

The eighth condition relates to BMP installation, inspection, tracking, and maintenance. Although City staff has confirmed the presence of BMPs in the City CBPAs, they have stated that there is no system in place to ensure inspection and continued maintenance. After discussion with the City, DCBLA staff supplied the City with templates and

guidance on how to implement the program. The City has agreed to require maintenance agreements and to begin to track new BMPs.

Condition number nine requires the City to administer exceptions consistent with City code requirements. During DCBLA staff's field investigation, it was determined at least three of the sites should have required an exception and did not.

Ms. Doss said that given this information, staff recommended that the City of Petersburg be found to not fully comply with the Act and Regulations and be given until March 31, 2010 to address eight of the nine conditions discussed, and address condition number one beginning March 24, 2009.

Ms. Doss recognized Mr. Muse, Director of Planning and Community Development for the City.

Mr. Muse said that working with the DCR staff had been an enlightening experience. He said that he would take some exceptions to the staff report. He said that the City does track BMPs and that the City does have a stormwater agreement with BMPs. He said that is part of a Corrective Action Agreement with the stormwater program. He said that the City had begun the process of assuring that they would be in compliance by the deadline.

Mr. Muse thanked Ms. Doss and Ms. Kotula for their technical guidance.

Mr. Zeugner said that he hoped the City was willing and able to accomplish this.

Mr. Muse said that the staff capacity would not increase, but that staff efforts would increase.

**MOTION:** Mr. Zeugner moved that the Southern Area Review Committee recommend that the Chesapeake Bay Local Assistance Board find that certain aspects of the implementation of the City of Petersburg's Phase I program do not fully comply with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations, and in order to correct these deficiencies, the City be directed to undertake and complete eight of the nine recommendations contained in the staff report no later than March 31, 2010 and address condition number one no later than March 24, 2009.

**SECOND:** Mr. Whitehurst

**DISCUSSION:** None

**VOTE:** Motion carried unanimously

**REVISED:** 3/24/2009 11:02:16 AM

**Other Business**

There was no further business.

**Public Comment**

There was no additional public comment.

**Adjourn**

There was no further business and the meeting was adjourned.

Respectfully submitted,

Beverly D. Harper  
Chair

Joseph H. Maroon  
Director