

**Chesapeake Bay Local Assistance Board
Northern Area Review Committee
May 8, 2007
Richmond, Virginia**

Northern Area Review Committee Members Present

Donald W. Davis, Chairman
Gregory C. Evans

William E. Duncanson
Walter J. Sheffield

DCR Staff Present

Joseph H. Maroon, Director
Russell W. Baxter, Deputy Director
David C. Dowling, Policy, Planning and Budget Director
Joan Salvati, Director, Division of Chesapeake Bay Local Assistance
David Sacks, Assistant Director, Division of Chesapeake Bay Local Assistance
Ryan Brown, Policy and Planning Assistant Director
Daniel Moore, Principal Environmental Planner
Nancy Miller, Senior Environmental Planner
V'lent Lassiter, Senior Environmental Planner
Adrienne Kotula, Principal Environmental Planner
Michael R. Fletcher, Board and Constituent Services Liaison
Carrie Hileman, Policy and Planning Intern
Elizabeth Andrews, Office of the Attorney General

Others Present

Mike Finchum, Caroline County
Leonard Muse, City of Petersburg

Call to Order and Opening Remarks

Mr. Davis called the meeting to order and asked for the calling of the role. A quorum was declared present.

Ms. Salvati introduced Adrienne Kotula who has joined DCR as a Principal Environmental Planner.

Local Program Reviews Phase I

Town of Warsaw

Ms. Lassiter gave the report for the Town of Warsaw. No one was present from the Town.

The Town of Warsaw adopted its original Phase I program on September 5, 1990 and was found consistent by the Chesapeake Bay Local Assistance Board on January 25, 1991. On June 21, 2004, the Chesapeake Bay Local Assistance Board found the Town's revised Phase I program consistent with the Act and Regulations subject to the condition that the Town undertake and complete the two recommendations found in the staff report no later than December 31, 2006.

Both recommendations concerned amendments to the Town's development management ordinance. The first recommendation required the Town to add another condition that stated that the Town has a stormwater management plan that has been approved by the Board as a Phase I modification. The second recommendation involved an amendment to Section 3-5.1 of the Town's ordinance, by revising the date from October 9, 2003 to September 5, 1990 in order to conform to language in the Bay Act Regulations. On January 11, 2007 the Warsaw Town Council voted in favor of both amendments; therefore staff recommends that Warsaw's revised Bay Act Ordinance be found consistent without conditions.

MOTION: Mr. Duncanson moved that the Northern Area Review Committee recommend that the Chesapeake Bay Local Assistance Board find the Town of Warsaw's development management ordinance consistent with § 10.1-2109 of the Act and § 9 VAC 10-20-60, subsections 1 and 2 of the Regulations.

SECOND: Mr. Sheffield

DISCUSSION: None

VOTE: Motion carried unanimously

Local Program Reviews Compliance Evaluation

Ms. Lassiter gave the report for Caroline County. She noted that Mike Finchum, County Planning Director, was present.

Ms. Lassiter distributed a letter from the County. A copy of that letter is available from DCR.

On December 11, 2006, the Chesapeake Bay Local Assistance Board found Caroline County's implementation of its Phase I program compliant with the Act and Regulations. However, the County has recently taken actions that have caused the Department to reevaluate their status as Phase I compliant.

In late 2006, the County initiated its pump-out program by sending notices to all county residents. The notices were confusing, and seemed to indicate that residents only had a few weeks to get their systems pumped or inspected. Furthermore, notices were sent to all county residents, not just those in CBPAs. Many citizens responded negatively to the notices, and in order to assist the County, Department staff met with County staff and the Board of Supervisors to provide technical assistance. Following these meetings, it was expected that a follow-up letter would be sent to residents clarifying the pump-out requirement as well as deadlines. Instead, the County issued a letter informing residents that the implementation of the program would be delayed until early 2009 pending further study.

In late March, Department staff met with the County Planning Director and County Administrator to informally agree on a course of action to more rapidly address the County's issues. Despite the initial controversy, the County has received responses to 3,197 of the approximately 7,000 notices sent in December. County staff indicated that response to the notices raised issues with their pump-out ordinance and program they had not anticipated. As a result, the County would like to more fully evaluate the relationship between the County's CBPAs and existing septic systems. This will entail several months of data gathering and analysis so that the County's mapping system can be modified to more accurately depict the CBPAs as defined by the County ordinance, and to cross reference residential areas with areas known to have septic systems. County staff expect to complete this evaluation by Fall 2007, at which point they will present information to their Board of Supervisors to determine if any modifications should be made to the County ordinance. Once resolved, the County will restart the notification and enforcement process. Completion of this work should be done to enable the County to reestablish the notification process no later than January 31, 2008.

Mr. Finchum said that the letter outlined the County's concerns. He said that based on the initial notices, the County has had a fairly successful response rate and is in the process of evaluating those responses.

Mr. Finchum said that a lot of homeowners did include the necessary verification that their systems had been pumped. The County is using available records to further clarify the responses.

Mr. Finchum said that the County believes they have had a fairly successful response and asked that the Board allow additional time to update the GIS and perform the analysis requested.

Mr. Baxter clarified that notices were sent to all homeowners and not just those in the Chesapeake Bay Preservation Area.

Mr. Finchum said that when the County adopted the program it was with a county-wide pump-out. The issue that has been raised is why do the homeowners outside of the Bay

Act area need to comply? The initial letter had been sent to all landowners with an identified drainfield. This currently remains a county-wide requirement.

Mr. Evans asked why the Board of Supervisors wrote the ordinance this way when first adopted.

Mr. Finchum said that it appears that at the time, the Board of Supervisors believed it to be a condition for approval of the County program.

Ms. Salvati said that staff has encouraged the County to apply for two grants: 1) a WQIF grant which includes a component to establish a septic program and 2) a Division grant using Chesapeake Bay implementation funds to provide resources for the actual pump-outs.

Mr. Evans asked about the GIS tracking program.

Mr. Finchum said the County is working on that with an outside vendor. The expected date to begin the database collection and development is June 1. The County hopes to have the work completed by the end of January 2008.

Mr. Sheffield asked how DCR staff felt about the time frame.

Ms. Lassiter said that it appeared reasonable, but suggested that there be an update prior to the September Board meeting.

Mr. Davis suggested that updates be given to the Board in September and November.

Mr. Sheffield asked if there were Board of Supervisor elections in November and questioned whether this should be taken into consideration.

Mr. Davis said that the County might be able to move the date forward, but that the Board should still require a firm update by the end of November.

MOTION: Mr. Evans moved that the Northern Area Review Committee recommend that the Chesapeake Bay Local Assistance Board find that certain aspects of Caroline County'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 further that the County provide progress updates to the Board prior to September 1, 2007 and again by December 1, 2007.

SECOND: Mr. Sheffield

DISCUSSION: None

VOTE: Motion carried unanimously

Arlington County

Mr. Moore gave the report for Arlington County. He recognized Jeffery Harn, Environmental Planning Coordinator for the County.

Staff initiated the compliance evaluation process for Arlington County by sending a notification letter and locality checklist to the County's Department of Environmental Services on October 4, 2006. Department and County staff met on November 15, 2006, when County staff provided most of the information requested in the locality checklist and answered many of the questions from the Department's Checklist for *Local Program Compliance Evaluation*.

A second meeting was held on December 8, 2006 to discuss the site plan review process and implementation policies with staff members of the County Department of Environmental Services and the Engineering Division of the Department of Public Works. Several site plans approved by County staff were reviewed for completeness and compliance with local Bay Act requirements. Field investigations were performed on March 21, 2007 to determine the status and veracity of development plans reviewed.

Based on the review and analysis referenced above, Department staff has one (1) recommendation, relating to the need for the County to develop and implement a five-year septic pump-out program.

Based on the above conditions, staff recommends that the Northern Area Review Committee find that certain aspects of the County's Phase I program implementation do not fully comply with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations. Staff further recommends that Arlington County undertake and complete the one recommendation contained in the staff report no later than June 30, 2008.

Mr. Harn said that the County does not have many remaining parcels with septic tanks. He estimated the number at 75 or 80. Accordingly, this has been a lower priority for the County. However, the County's Environmental Health Division has recognized the need to move ahead with the septic pump-out requirement.

Mr. Davis asked if there was a program in effect to connect those remaining lots to the public sewer.

Mr. Harn said there is not a specific program and that the County has been relying on the redevelopment process to address this issue.

Mr. Evans said that the County has been working with the Northern Virginia Soil and Water Conservation District. He encouraged Mr. Harn to continue that working relationship in order to successfully address the outstanding septic issues.

MOTION: Mr. Evans moved that the Northern Area Review Committee recommend that the Chesapeake Bay Local Assistance Board find that certain aspects Arlington County's implementation of its 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 further that the County appropriately address the one (1) recommendation contained in the staff report no later than June 30, 2008.

SECOND: Mr. Duncanson

DISCUSSION: None

VOTE: Motion carried unanimously

Program Updates

King William County

Ms. Miller gave an update for King William County.

On March 26, 2007 the Chesapeake Bay Local Assistance Board conducted a consistency review and found the County's Phase I program inconsistent with the Act and Regulations, establishing one recommendation with a deadline of June 15, 2007. In the interim, the County has developed materials to meet the five-year on-site septic system pump-out notification and enforcement requirement, solicited comments on the materials from DCR-CBLA staff (DCR response provided April 16, 2007), and published an article advising all County residents about the requirement.

The County plans to mail the first direct notices on June 1, 2007 to residents in the first of five supervisor districts. The notice will advise residents that they must accomplish and document pump out to the County by June 1, 2008. The County has also developed a database to track responses and monitor compliance with the program as each of the five districts is notified on a rotating basis, once every five years.

On June 18, 2007, the Board will meet and staff will provide another update regarding the County's progress in addressing the recommendation by the June 15, 2007 deadline.

Mr. Evans asked if staff had a recommendation of how to assist localities in maintaining appropriate records, particular when counties experience large turnovers in staff.

Ms. Salvati said that without official oversight the issues are not prioritized. She said that the Policy Committee would be presented with an annual report that will hopefully address issues of compliance between evaluation cycles.

There was no action necessary for King William County.

Middlesex County

Ms. Miller gave the report for Middlesex County

On March 26, 2007 the Board found that the County's Phase I program did not fully comply with the Act and the Regulations and set a deadline of June 15, 2007 for the County to address two recommendations related to its on-site septic system pump-out notification program. The County had limited notification only to those properties with on-site systems installed after the County's Chesapeake Bay Preservation (CBP) District effective date of April 21, 1993, and it must expand the program to provide notice to all properties within CBPAs that have on-site septic systems to fully satisfy the first recommendation. The second recommendation requires that the County revise its CBP District to include the filter and inspection options reflected in the County's notification materials provided to residents that are subject to the pump-out requirement.

Recommendation 1—The County Planning Director, Matt Higgins, advised the Department by letter that the Middlesex County Board of Supervisors agreed to comply with the first recommendation at its meeting on April 17, 2007, although the Planning Director noted that he is unsure that the County can complete the additional notifications by the deadline of June 15, 2007.

Recommendation 2—County staff submitted draft CBP Overlay District revisions for Department comments, which were provided on April 11, 2007. The County's Planning Commission is expected to approve the revisions at its May 10, 2007 meeting and forward them to the County Board for action at its meeting on May 15, 2007. Both the Planning Commission and the Board of Supervisors continued their public hearings on the revisions from their April meetings.

The County's Board has also authorized its staff to seek financial assistance from the Department in addressing the costs of the septic pump-out notification program. The Department and County staff are working together to develop and submit an application for a WQIF grant for this purpose. The deadline is May 15, 2007.

There was no action necessary for Middlesex County.

Town of West Point

Ms. Miller gave an update regarding the clearing violation in the Town of West Point. She said that the developer has paid about \$15,500 in fines. The Town has met with the developer regarding the requirement for a new landscaping plan. They are making progress and intend to include the restoration of the buffer in the new plans. The Town will send a letter to the developer advising that the plan must be finalized and a bond will be required.

Mr. Evans noted that a related concern is that there will likely be disincentives to maintain the CREP buffers. He said that negotiations on the Farm Bill indicate there will be substantially less for this program. He said that agricultural landowners would keep these buffers in place as long as there is a CREP program.

Spotsylvania County

Ms. Lassiter gave an update regarding Spotsylvania County.

On September 26, 2006, the Chesapeake Bay Local Assistance Board found that certain aspects of Spotsylvania County's Phase I program did not comply with the Act and Regulations, and directed the County to complete three conditions. Two of the conditions had a March 31, 2007 deadline and one has a September 30, 2007 deadline.

The first condition, which has the September 30, 2007 deadline, concerned the development and implementation of the County's septic pump-out program. With the assistance of their GIS and Assessment Departments, the Environmental Engineering Division of the Code Compliance Department has designed a spreadsheet of over 15,000 septic tank site parcels. Additionally, they have composed a draft notification letter and have submitted it to the Department for review. A meeting will be scheduled in the near future between Department and County staff in order to assist the County in the timely implementation of their program.

The next condition had a deadline of March 31, 2007 and involved the amendment of the County's Design Standards Manual to conform with the design standards and pollutant removal efficiencies of those outlined in the VA SWM Handbook. The County has added some new low-impact development practices to their Manual, but has not yet amended it to conform to the VA SWM Handbook. In Spotsylvania, the Board of Supervisors must approve revisions to the Design Standards Manual, and County staff believes that they need to proceed slowly with additional changes due to Board resistance, and the likelihood that additional revisions to the Design Standards Manual will be necessary when the new Stormwater Regulations take effect. Department staff agrees additional amendments can wait, as long as the County adopts an internal policy that rescinds any BMP in the Design Standards Manual that is listed as 70% efficient, since this efficiency exceeds the limits of technology.

The last condition also had a deadline of March 31, 2007, and concerned an amendment to the County's Stormwater Ordinance to include all required findings for review and

approval of an administrative waiver of the stormwater requirements. This amendment was passed on April 10, 2007; therefore it is staff's opinion that this condition has been met.

Mr. Davis asked when the Stormwater Management Manual would be updated.

Mr. Dowling said that DCR has been working on changes to the Stormwater Regulations since May 2006. He said that the Technical Advisory Committee took a break in October to allow DCR to contract with the Center for Watershed Protection to assess the feasibility of the proposed changes. That study was presented on May 7, 2007 and will be presented to the Stormwater TAC on May 22.

Mr. Dowling said that the hope is to bring the Stormwater Regulations to the Soil and Water Conservation Board by July or September. Because of the nature of the process, final Regulations would likely be available in mid-2008. The Stormwater Management Handbook is going through a revision process that is intended to track the Regulations from a timing standpoint.

Other Business

At the Chair's request, Ms. Miller gave an update regarding the City of Hampton.

On December 11, 2006 the City presented the Board with a proposal for revisions that the Board found to be generally acceptable. Since then, DCR and City staff have worked together to develop specific program elements to implement the proposed revisions. On April 9, 2007 the City's Planning Commission recommended adoption of ordinance revisions based on the proposal, and Hampton City Council is expected to adopt these revisions on May 23, 2007. If so, staff will recommend that the local program amendments adopted by the City of Hampton on May 23, 2007 be found consistent with the Act and the Regulations.

Mr. Sacks noted that the City needed to formally withdraw their judicial appeal before the Board could take action.

Public Comment

There was no additional public comment.

Adjourn

Being no further business, the meeting was adjourned.

Respectfully submitted,

Donald W. Davis
Chairman

Joseph H. Maroon
Director