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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Virginia Soil and Water Conservation Board
Virginia Administrative Code (VAC) citation	4 VAC 50-60
Regulation title	Virginia Stormwater Management Program (VSMP) Permit Regulations
Action title	Amend, modify or delete provisions of the regulations related to the minimal criteria of a local stormwater management program and Board approval procedures and to: (1) allow for the delegation of the Virginia Stormwater Management Program, or parts thereof, to localities located within Tidewater Virginia as defined by the Chesapeake Bay Preservation Act (§10.1-2100 et seq.); to localities partially or wholly designated as an MS4 under the provisions of the federal Clean Water Act; and to localities requesting delegation from the Board; (2) develop a framework by which the Department of Conservation and Recreation will administer the responsibilities of the Virginia Stormwater Management Program for localities not delegated program authority; (3) allow for changes as needed to improve the administration and implementation of the stormwater management program; and (4) allow for the removal of the out-of-date Best Management Practices (BMP) nutrient removal efficiency information from the regulation.
Document preparation date	November 1, 2005

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

The Virginia Stormwater Management Program was created by Chapter 372 of the 2004 Virginia Acts of Assembly (HB1177) and this action transferred the responsibility of the permitting programs for MS4s and construction activities from the State Water Control Board and DEQ to the Virginia Soil and Water Conservation Board and DCR. The law authorized the Board to

delegate to the Department or to an approved locality any of the powers and duties vested in it except the adoption and promulgation of regulations. The purpose of this proposed action is to consider the development and adoption of revised regulations to establish minimal criteria of a local stormwater management program and Board approval procedures for the delegation of the stormwater management program for construction activities, or parts thereof, to localities per §10.1-603.3 of the Code of Virginia; and to revise the regulation, as needed, to improve the administration and implementation of the Virginia Stormwater Management Act (§10.1-603.2 et seq.) per the requirements set forth in the federal Clean Water Act and its attendant regulations.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

The Virginia Stormwater Management Program was created by Chapter 372 of the 2004 Virginia Acts of Assembly (HB1177) and this action transferred the responsibility of the permitting programs for MS4s and construction activities from the State Water Control Board and DEQ to the Virginia Soil and Water Conservation Board and DCR.

§ 10.1-603.2:1.2 of the Code of Virginia requires the Virginia Soil and Water Conservation Board to delegate to the Department or an approved locality the implementation of the Virginia Stormwater Management Program per the Virginia Stormwater Management Program Permit Regulations promulgated in September 2004.

§ 10.1-603.2:1.2 Delegate to the Department or to an approved locality any of the powers and duties vested in it by this article except the adoption and promulgation of regulation. Delegation shall not remove from the Board authority to enforce the provisions of this article.

§10.1-603.3 of the Code of Virginia requires establishment of stormwater management programs by localities. The Board must amend, modify or delete provisions of the Virginia Stormwater Management Program (VSMP) Permit Regulations to allow localities to implement the VSMP.

§10.1-603.3 Establishment of stormwater management programs by localities.

- A. Any locality located within Tidewater Virginia as defined by the Chesapeake Bay Preservation Act (§10.1-2100 et seq.), or any locality that is partially or wholly required as an MS4 under the provisions of the federal Clean Water Act, shall be required to adopt a local stormwater management program for land disturbing activities consistent with the provisions of this article by July 1, 2006.*
- B. Any locality not specified in subsection A may elect to adopt and administer a local stormwater management program for land disturbing activities pursuant to this article. Such localities shall inform the Board and the Department of their initial intention to seek delegation for the stormwater management program for land disturbing permits no later than July 1, 2005. Thereafter, the Department shall*

provide an annual schedule by which localities can submit applications for delegation.

- C. In the absence of the delegation of a stormwater management program to a locality, the Department will administer the responsibilities of this article within the given jurisdiction.*

Also, requirements set forth in the federal Clean Water Act (33 USC § 1251 et seq.), formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972, Public Law 92-500, as amended by Public Law 95-217, Public Law 95-576, Public Law 96-483, and Public Law 97-117, or any subsequent revisions thereto, and its attendant regulations set forth in 40 CFR Parts 122, 123, 124 and 125 requires states to establish a permitting program for the management of stormwater for municipal separate storm sewer systems (MS4s) and construction activities disturbing greater than or equal to an acre.

Additionally, the Virginia Soil and Water Conservation Board has authority to adopt and amend regulations to advance the Stormwater Management program pursuant to § 10.1-603.2:1. This section stipulated that the powers and duties of the Virginia Soil and Water Conservation Board include the following:

In addition to other powers and duties conferred upon the Board, it shall permit, regulate, and control stormwater runoff in the Commonwealth. In accordance with the VSMP, the Board may issue, deny, revoke, terminate, or amend stormwater permits; adopt regulations; approve and periodically review local stormwater management programs and management programs developed in conjunction with a municipal separate storm sewer permit; enforce the provisions of this article; and otherwise act to ensure the general health, safety and welfare of the citizens of the Commonwealth as well as protect the quality and quantity of state waters from the potential harm of unmanaged stormwater.

Substance

Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed. Include the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. Delineate any potential issues that may need to be addressed as the regulation is developed.

The existing Virginia Stormwater Management Program (VSMP) Permit Regulation will be amended, modified or changed to allow the Board to delegate the permitting responsibility for construction activities, or portions thereof, to localities with MS4s, to localities covered by the Chesapeake Bay Preservation Act, or to localities requesting to operate or “opt in” the program. The delegation of the VSMP to localities will further streamline the program by providing for “one stop permitting” for land disturbing activities regulated under this program. The regulations will outline minimum criteria that a local stormwater management program must contain to receive program delegation by the Board for administration of the VSMP or portions thereof. It will also contain administrative procedures by which the Board makes its delegation determinations.

The regulations may also remove the out-of-date Best Management Practices (BMP) nutrient removal efficiency information from the current regulations and reflect its addition into the Virginia Stormwater Management Handbook guidance document where it shall be more regularly updated for public use.

Currently, the localities are already administering the statewide erosion and sediment control program. The addition of this program at the local level will allow for a more integrated review of project construction plans from both the stormwater and E&S perspectives and thereby improve local water quality and quantity.

The allowance for local delegation should also improve program implementation. Improved implementation provides protection and improvement of water quality that will restore and enhance the living resources of Virginia's waters, provide clean water for recreational uses and conservation in general, and contribute to the protection of Virginia's rivers and the Chesapeake Bay. These actions are essential for the protection of the health, safety, and welfare of the citizens of the Commonwealth.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action.

The passage of legislation by the Virginia General Assembly to streamline the Virginia Stormwater Management Program requires action be taken to update the regulations to develop the criteria under which a stormwater management program may be delegated to a locality for program administration. Therefore, the agency identified no alternative actions consistent with current law. The substance, format, and procedures of these regulations will ultimately depend upon approval from the U.S. Environmental Protection Agency, which has national oversight of all Clean Water Act programs.

Public Participation

Please indicate the agency is seeking comments on the intended regulatory action, to include ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also indicate whether a public meeting is to be held to receive comments on this notice. Indicate that 1) the agency is not holding a public meeting because the agency has authorized proceeding without holding a meeting or 2) the agency is holding a meeting. If a public meeting is to be held, indicate that the date, time and place of the meeting may be found in the calendar of events section of the Virginia Register of Regulations.

The Board is seeking comments on the intended regulatory action, including the revision of the fee schedule and general ideas on how to improve the implementation and operation of the VSMP. The Virginia Stormwater Management Program (VSMP) Permit Regulations (Chapter 60) can be found at <http://leg1.state.va.us/000/reg/TOC04050.HTM>.

The Board is also seeking information regarding impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include: (1) Projected reporting, recordkeeping and other administrative costs, (2) Probable effect of the regulation on affected small businesses, and (3) Description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Persons desiring to submit written comments pertaining to this notice may do so by mail, the Internet, or facsimile. Comments pertaining to this notice should be sent to the Regulatory Coordinator at: Virginia Department of Conservation and Recreation, 203 Governor Street, Suite 302, Richmond, Virginia 23219. Comments may also be e-mailed to the Regulatory Coordinator at: regcord@dcr.state.va.us. Or comments may be faxed to the Regulatory Coordinator at: (804) 786-6141. All written comments must include the name and address of the commenter (e-mail addresses would also be appreciated). In order to be considered, comments must be received by 5:00 p.m. on the date established as the close of the comment period.

The Department as authorized by the Board intends to utilize a public participatory approach to these regulatory amendments and hold a public meeting to provide opportunity for public comment. Notice of the meeting will be posted in the Calendar of Events section of the Virginia Register of Regulations and be posted on the Town Hall. Both oral and written comments may be submitted at that time.

Following publication of the proposed regulation in the Virginia Register, the Department as authorized by the Board will hold at least one public hearing to provide opportunity for public comment. Notice of the hearing(s) will be posted in the Calendar of Events section of the Virginia Register of Regulations and be posted on the Town Hall. Both oral and written comments may be submitted at that time.

Participatory Approach

Please indicate the extent to which an ad hoc advisory group will be used in the development of the proposed regulation. Indicate that 1) the agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach; 2) the agency is using the participatory approach in the development of the proposal; or 3) the agency is inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.

The Board is using the participatory approach to develop the proposal. The Department, as authorized by the Board, will be forming a Technical Advisory Committee to consist of relevant stakeholders to assist in the development of proposed regulations. Persons interested in participating on the advisory committee should provide their name, address, phone number, e-mail address, and the name of the organization that they represent in writing to the agency contact person by no later than 5:00 p.m. on the last day of the comment period.

Family impact

Assess the potential impact of the proposed regulatory action on the institution of the family and family stability.

It is not anticipated that this regulation will have a direct impact on the institution of the family or family stability. However, the improvement of water quality does have public health and safety benefits that have an indirect impact on families.