

Virginia Soil and Water Conservation Board
Stormwater Management Regulations Technical Advisory Committee (TAC)
Tuesday, June 10, 2008, 9:00 a.m. – 4:00 p.m.
Patrick Henry Building
Richmond, Virginia

Stormwater Management Regulations Technical Advisory Committee Members Present

Michelle, Brickner, Fairfax County
Joseph Battiatia, CONTECH Stormwater Solutions
Doug Beisch, Williamsburg Environmental Group
Barbara Brumbaugh, City of Chesapeake
F. Todd Chalmers, Balzer and Associates, Inc.
Jack Frye, Department of Conservation and Recreation
Mike Gerel, Chesapeake Bay Foundation
Normand Goulet, Northern Virginia Regional Commission
Barrett Hardiman, Home Builders Association of Virginia
Steven P. Herzog, Hanover County
William J. Johnston, City of Virginia Beach
Bob Kerr, Kerr Environmental Services Corporation
John Matusik, The Engineering Groupe, Inc.
Steve Kindy, Virginia Department of Transportation
Doug Moseley, GKY & Associates, Inc.
Fernando Pasquel, Michael Baker Corporation
Jeff Perry, Henrico County
Chris Pomeroy, Aqualaw PLC
David Rundgren, New River Valley PDC
Gerry Seeley, Jr. Virginia Department of Environmental Quality
Ingrid Stenbjorn, Town of Ashland
William H. Street, James River Association
John Tippet, Friends of the Rappahannock
Joe C. Wilder, Frederick County

Stormwater Management Regulations Technical Advisory Committee Members Not Present

Kevin Haile, Loudoun County
Lee Hill, Department of Conservation and Recreation
Alyson Sappington, Thomas Jefferson Soil and Water Conservation District
George Simpson, Roanoke County
Mark Smith, U.S. EPA Region III

Facilitator

Barbara Hulburt, The McCammon Group

DCR Staff Present

David C. Dowling
Ryan J. Brown
Christine Watlington
Michael R. Fletcher
Doug Fritz
Scott Crafton
Eric Capps
Kevin Landry
Joseph H. Maroon
Elizabeth Andrews, Office of the Attorney General

Others Present

Secretary of Natural Resources L. Preston Bryant, Jr.
Jeff Corbin, Assistant Secretary of Natural Resources
Ann Jennings, Chesapeake Bay Foundation
Bobby Beamer, Virginia Tech

Opening Remarks

Mr. Dowling called the meeting to order and welcomed attendees. He introduced Secretary of Natural Resources L. Preston Bryant, Jr. for remarks.

Secretary Bryant thanked TAC members for their continued or newly appointed service. He said that the work of Technical Advisory Work was often the heavy work that remains out of the headlines.

Secretary Bryant said that after 10 years serving in the legislature and three years in the Executive Branch he was attending his first TAC meeting because he believed he needed to deliver a message.

He noted that Governor Kaine established four priorities for his years as Governor. Those include: year 1, transportation; year 2, health care and mental health; year 3, education, focusing on pre-k, and; year 4, the year of the environment.

Secretary Bryant said that great success was being achieved and he said much was due to the work of individuals and groups like those represented in the room.

Secretary Bryant asked the members of the TAC to work with DCR to develop a strong set of regulations that: (1) finds solutions to the significant stormwater challenges associated with

development; (2) utilizes better environmental site design practices; and (3) encourages water reuse.

He noted that the development of such regulations would require a different approach to thinking about stormwater management. He said that the Commonwealth's natural resources depended on working together collectively to advance improved ways of implementing stormwater management.

Secretary Bryant thanked members for their service.

A letter from Secretary Bryant to the TAC members was distributed. A copy of that letter is available from DCR.

Mr. Maroon thanked Secretary Bryant for his support.

Mr. Maroon said that the work of the Stormwater TAC was among DCR's top priorities. He said that the TAC had a great facilitator with Barbara Hulburt. He said that he would join the TAC from time to time.

Delegation of charge to TAC

Mr. Dowling reviewed the delegation of charge to the TAC.

Mr. Dowling said that building on the work of the committee that began amending these regulations about two years ago, this TAC is charged with refining and developing where necessary, in coordination and cooperation with the Department of Conservation and Recreation (DCR) and the Environmental Protection Agency, amendments to the Virginia Soil and Water Conservation Board's (Board) Virginia Stormwater Management Program (VSMP) Permit Regulations (§§ 4 VAC 50-60-10 et seq.) to address:

1. Water quality and quantity criteria to be implemented associated with land disturbing activities;
2. Administrative functions that a qualifying local stormwater management program must contain to receive program authorization by the Board for administration of the VSMP or portions thereof;
3. Administrative procedures by which the Board makes its VSMP authorization determinations;
4. DCR program administration and oversight procedures; and
5. Revisions to the statewide stormwater permit fee schedule to a level sufficient to carry out the stormwater management program by localities and the Department.

Presentation of Agenda

Mr. Dowling reviewed the agenda for the day and the materials provided in member packets. Those materials were:

1. Agenda
2. Letter from the Secretary of Natural Resources to the TAC
3. TAC Member List
4. NOIRA – Local Programs
5. NOIRA – Fees
6. Virginia Stormwater Management Act
7. Virginia Stormwater Management Program (VSMP) Permit Regulations
8. Erosion and Sediment Control Regulations
9. Stormwater Part III (local program critical regulations)
10. Stormwater Part XIII (fee regulations)
11. David Dowling's Presentation
12. Scott Crafton's Presentation
13. Fee Calculation Background Materials

Copies of these materials are available from DCR.

Introduction of the Facilitator

Mr. Dowling introduced DCR staff in attendance. He then introduced Barbara Hulburt, Director of Facilitation and Training for The McCammon Group. Mr. Dowling said that Ms. Hulburt would serve as the facilitator for the TAC meetings.

Guidelines for Discussion

Ms. Hulburt welcomed members. She said that the purpose of the first meeting was to make sure that those who previously served on the Stormwater TAC and those members new to this TAC were at the same place in terms of understanding the process and work thus far.

Ms. Hulburt said that the TAC would look at Parts III and XIII too see what items need to be addressed from the work of the previous TAC. She said that the focus of the next three meetings would be Part II.

TAC Member self-introduction and expectations

Ms. Hulburt asked TAC members to introduce themselves and share their expectations of the process. Comments heard were:

- Develop regulations that are achievable and implementable
- Achieve a good balance
- Would like to see the regulations consistent with current and future obligations

- Regulations that are achievable and cost effective
- See that the regulations make sense and the job can be done
- See how the regulations fit together and the impact on other programs
- Encourage good site design
- Technical criteria and the mechanics are very important
- Concern over trying to implement something the mechanics are not available for
- Balance in advancing water quality criteria
- Something that will be lasting
- Flexibility for localities
- Cooperation for rural localities, sharing stormwater
- Delegation to localities
- Reasonable to administer
- Get a program which is going to protect water quality and increase quantity discharge to streams that a local program can implement without going broke
- Accommodate future growth, but protect rivers and streams
- Setting goals more clearly, then provide flexibility
- Embrace the idea of stormwater as a resource
- Implementable regulations
- Something lacking is education and technical assistance
- Need to make sure fees will pay for the program

Ms. Hulburt said that her role as facilitator was to ensure that there was a common memory that reflects what the group is saying. She asked that as information was recorded on the flip charts that members feel free to comment and to make corrections or additions.

A member asked about the possibility of issues being placed in a “parking lot” for future discussion and the option of DCR staff members developing white papers to address those issues.

Mr. Dowling said that staff would certainly discuss issues that are placed in a parking lot and would perhaps put together a straw man proposal. Additionally, technical papers may be developed and sent to members in advance of the meetings.

Ms. Hulburt said that the group would work with the idea of consensus. The group would move forward with ideas if members could accept the idea, while not necessarily endorsing the total concept.

A member said that transparency would be important and asked that subcommittee meetings not occur without the knowledge of members.

Ms. Hulburt said that if there was an establishment of a formal subcommittee, the group would be informed. She encouraged members to talk among themselves between meetings.

Mr. Maroon said that he wanted to encourage the TAC to not consider that they would have more time. He said that the mindset should be that of getting decisions made. The process is the continuation of what has been done over the last two years. He said that if additional meetings were necessary they would be considered, but the charge had been given to complete this work.

Mr. Maroon said that the hope remains to complete this work during Governor Kaine's term.

A member said that while no one was looking for a leisurely schedule there were concerns that three TAC meetings would not be enough.

It was noted that there is an expectation from the Soil and Water Conservation Board to see these regulations in the fall.

A member noted that there will be guidance that addresses the small issues even as the regulations move forward.

Background and NOIRA Review Presentation

Mr. Dowling presented the following background information and review of the NOIRA.

History and Background

- As a result of the Governor's Natural Resources Summit (April 2003 – Warner Administration) [and previous legislative studies], then Secretary of Natural Resources Tayloe Murphy requested the Director of DCR to convene an inter-agency taskforce to develop a plan and recommendations.
 - “The Secretary of Natural Resources will work with the DEQ, DCR, CBLAD, other agencies and the public to streamline the current storm water management process. A plan and recommendations are due to the Governor by October 1, 2003 that provides for improved water quality protection and evaluates storm water programs statewide.”
- Taskforce Goals:
 - Reduce public confusion
 - Clarify requirements and oversight
 - Create more even playing field
 - Coordinate inspections and findings
 - Improve enforcement authority
 - Eliminate overlap in local reporting requirements
 - Eliminate redundant agency program reviews
 - Reduce sediment impacts during construction and concentrated runoff, pollutants, channel erosion and flooding following construction.
 - Support sediment and phosphorus reduction goals under Chesapeake Bay tributary strategies and in Southern Rivers.
 - Support TMDL reductions in streams impaired by excess sediment and nutrients.

- Better protect drinking water supplies.
- Key Taskforce Recommendations:
 1. Consolidate stormwater programs related to construction activities within DCR.
 2. Transfer oversight of municipal stormwater programs to DCR.
 3. Establish a more uniform statewide construction permitting program.
 4. Establish statewide stormwater requirements for projects with land disturbances of 1 acre or greater (with allowance for lower threshold in CBPA).
 5. Empower local governments to implement stormwater management programs.
 6. Develop a statewide permit fee system.
 7. Encourage low-impact approaches and better site designs.
 8. Consolidate SWM and ESC local program reviews.
 9. Increase role for the Virginia Soil and Water Conservation Board.
 10. Industrial stormwater permit program would remain at DEQ.
 11. Eliminate separate CBLAD requirements by incorporating them into a new statewide approach.
- Stormwater legislation was introduced and passed during the 2004 General Assembly Session – HB1177
Chief Patron: Bryant, *House Patrons:* Abbitt, Albo, Amundson, Dillard, Morgan, Plum and Pollard; *Senate Patrons:* Hanger, Howell, Puckett, Quayle and Whipple
- Responsibility for stormwater regulation was consolidated from three separate state agencies (at the time) and four different citizen boards into DCR and the Virginia Soil and Water Conservation Board.
 - Department of Conservation and Recreation
 - Board of Conservation and Recreation
 - Virginia Soil and Water Conservation Board
 - Department of Environmental Quality
 - State Water Control Board
 - Chesapeake Bay Local Assistance Department
 - Chesapeake Bay Local Assistance Board
- Two step plan put in place:
 - 1st Step: Transfer to VSWCB & DCR
 - Transferred regulatory responsibility to Virginia Soil and Water Conservation Board on July 1, 2004.
 - Filled 15 new stormwater management positions
 - Amended current Virginia Stormwater Management regulations to reflect changes made in HB1177.
 - Received EPA authorization for DCR to administer federal portion.
 - Educated and involved stakeholders.

- Program Transfer to the Virginia Soil and Water Conservation Board was effective January 29, 2005.
 - 2nd Step: Transfer Stormwater Permitting Authority to Localities
 - Develop additional regulatory procedures for delegating responsibilities to localities and address water quality and quantity criteria.
 - Develop model ordinance.

NOTE: Localities with MS4 permits and localities within the CBPA Area must adopt a local stormwater management program *according to a schedule set by the Board but no sooner than 12 months and not more than 18 months following the effective date of the regulation that establishes local program criteria and delegation procedures.*

Localities not covered by a MS4 permit or not within the CBPA Area may elect to adopt a local stormwater management program.

They shall inform the Board and the Department of their initial intention to seek delegation for the stormwater management program for land disturbing permits *within six months following the effective date of the regulation that establishes local program criteria and delegation procedures.*

Localities that adopt an approved local stormwater management program will operate the minimum program and issue the General Permit for Discharges of Stormwater from Construction Activities.

DCR will continue to issue the General Permit and operate a minimum program in localities not electing to adopt an approved stormwater management program.

Actions Leading Up to the Development of this TAC

It is this 2nd step that this TAC will continue to address. To do so, this TAC will continue and build upon the work begun several years ago to improve the Commonwealth's Stormwater Management Program.

- Board passed a motion authorizing the development of original NOIRA(s): July 21, 2005
- The NOIRAs were filed on: November 15, 2005
- On December 26, 2005 the two Notices of Intended Regulatory Action or NOIRAs related to Stormwater Management were published in the Virginia Register of Regulations by DCR on behalf of the Board. They were:
 - The Virginia Stormwater Management Program VSMP Permit Regulations NOIRA related to the development of local stormwater program criteria and permit delegation procedures; and

- The Virginia Stormwater Management Program VSMP Permit Regulations NOIRA related to the changes in the statewide stormwater fee schedule.
- The public comment period for each of these NOIRAs opened on December 26, 2005 and closed 60 days later on February 24, 2006 at 5:00 p.m.
- Technical Advisory Committee was assembled.

Committee and Subcommittee Meetings

- The 1st meeting of the TAC: May 4, 2006 at the Science Museum of Virginia.
- The 2nd meeting of the TAC: May 18, 2006 at Department of Forestry.
- The 3rd meeting of the TAC: June 8, 2006 at Department of Forestry.
- The 4th meeting of the TAC: June 20, 2006 at the Science Museum of Virginia.
 - Part III subcommittee meeting: August 8, 2006 at DEQ regional office.
 - Part II subcommittee meeting: August 16, 2006.
- The 5th meeting of the TAC: August 21, 2006 at the Science Museum. (Part III)
 - Part XIII subcommittee meeting: August 29, 2006 at DEQ regional office.
 - Part II subcommittee meeting (2nd meeting): September 21, 2006 at DOF in New Kent.
- The 6th meeting of the TAC: October 3, 2006 at DOF in New Kent. (Tributary Strategies Presentation, Part II, Part III)
 - Part II technical discussion meeting; October 12 at DCR.
- The 7th meeting of the TAC: October 16, 2006.
- The 8th meeting of TAC: May 22, 2007.
- The 9th meeting of the TAC: June 14, 2007.
- The 10th meeting of the TAC: June 26, 2007.
- The 11th meeting of the TAC: June 29, 2007.
- The 12th meeting of the TAC: August 21, 2007.
- We held over 50 internal discussions and team drafting meetings.

Timetable for this Regulatory Action

SW – Local Program and Water Quality and Water Quantity Criteria (Parts I, II, and III)

- Board directed withdrawal of the NOIRA stage at their September 20, 2007 Board Meeting.
 - This recommendation was made to eliminate any question regarding the intent of the original NOIRA related to the Part II water quality and quantity technical criteria. ALSO TO:
 - Assemble a workgroup to develop water quantity language for the TAC's consideration.
 - Continue work on BMP Clearinghouse.
 - Continue work on Handbook Revisions.

- Hold a series of regulation discussion and plan review meetings to address water quality calculations and spreadsheet approach.
 - Charrettes were held (in association with ASCE):
 - #1 Dorey Park, Richmond (Jan. 31st)
 - #2 Lakes and Watersheds Conference (March 11th)
 - #3 Environment VA (April 1st)
 - #4 Hampton Roads (April 29th)
 - #5 Northern VA (May 12th)
 - Work on fiscal analysis of proposed regulation.
- 60-day public comment period associated with the new NOIRA opened on the TownHall on February 18, 2008.
- NOIRA published in Register March 17, 2008 (previous NOIRA stage withdrawn).
- 60-day public comment period closed April 16, 2008.
- 29-member TAC was appointed.
- Hold TAC meetings during June - August 2008 [6/10, 7/16, 8/14, and 8/26].
- Take proposed regulation to the Board at the September 18, 2008 meeting. [BMP clearinghouse up; substantive parts of the handbook ready]
- Target October 15, 2008 for completion of Economic Analysis.
- Target November 1, 2008 to file regulation on TownHall.
- Review by the Administration - November 2008 thru April 2009.
 - Official OAG review – 3 days
 - 45 days DPB fiscal analysis review – Mid Dec. 2008
 - 14 days SNR – Jan. 1, 2009
 - No deadline Governor – April 1, 2009
 - Submit to Registrar – Early April 2009
 - Registrar publication – Late April 2009
- 60 days public comment – May - June 2009; public hearings; concurrent EPA review.
- Make Regulation refinements; EPA review – by September 1, 2009
- Take final regulation to the Board at the September 2009 meeting.
- Final Regulation Review by DPB, SNR, Governor – by November 15, 2009
- File with Registrar and publish for 30 days - Dec. 31, 2009.
- EPA final approval by Dec. 31, 2009.

SW – Permit Fees

September 18, 2008 – Proposed regulation to the Board

September 2009 – Final regulation to the Board

Tracks timeline above – Final regulation effective by December 31, 2009

NOIRA (Notice of Intended Regulatory Action) Overview

NOIRA 1: Amend Parts I, II, and III of the Virginia Stormwater Management Program Permit Regulations to address water quality and quantity and local stormwater management program criteria.

- Generally, the purpose of this action is to amend the Virginia Soil and Water Conservation Board's Virginia Stormwater Management Program (VSMP) Permit Regulations to:
 - establish criteria to protect the quality and manage the quantity of stormwater runoff to state waters,
 - criteria for the administration of a local stormwater management program,
 - processes and procedures for Board approval of a qualifying local program, and
 - local program oversight and implementation criteria for the Board and the Department.

- Specifically, the Virginia Soil and Water Conservation Board's expressed their intent to address changes related to the Board's Virginia Stormwater Management Program (VSMP) Permit Regulations including, but not limited to:
 - 1) Amendments, deletions, or additions to Part I (Definitions, Purpose, and Applicability)

 - 2) Amendments, deletions, or additions to Part II (Stormwater Management Program Technical Criteria) related to:
 - Development of water quality and quantity technical criteria, including but not limited to modifications to performance-based and technology-based standards for water quality and the inclusion of specific provisions addressing water quantity issues;
 - Determination of acceptable BMPs for necessary pollutant removals to address water quality;
 - Establishment of phosphorus and [/or] nitrogen load limits based on Tributary Strategies or other scientifically-based reduction strategies;
 - Use of low impact development [and better site design] strategies;
 - Development of revised flow-weighted mean concentrations for phosphorus and nitrogen related to site imperviousness values;
 - Development of strategies for onsite and offsite controls including comprehensive watershed plans or other practices and controls generally recognized as controlling stormwater quantity and quality;
 - Allowance for off-site controls financed through the use of pro-rata fees by localities; and
 - Development of procedures to address TMDL wasteload allocations.

 - 3) Amendments, deletions, or additions to Part III (Local Programs) related to local program criteria and Board processes and procedures for authorizing a locality or the Department to administer a local program, including but not limited to:
 - Establishment of technical criteria for a local program, administrative requirements, stormwater plan review and approval procedures including:

- i. stormwater management facility right-of-access and maintenance agreement requirements,
 - ii. VSMP General Permit coverage requirements,
 - iii. inspection procedures and requirements,
 - iv. program enforcement authorities including a Schedule of Civil Penalties,
 - v. hearing procedures,
 - vi. exceptions processes,
 - vii. stormwater management facility maintenance requirements, and
 - viii. reporting and record keeping requirements.
 - The modifications to Part III shall also include procedures for the review of local programs as well as procedures and requirements for local program authorization by the Board to administer a stormwater management program.
- 4) Other technical amendments, deletions, or additions. This may also include amendments, deletions, or additions to forms, documents, or other materials necessary to supplement the regulations.
- 5) It is also the intent to revise the regulation, as needed, to improve the administration and implementation of the Virginia Stormwater Management Act (§10.1-603.1 et seq.) per the requirements set forth in the federal Clean Water Act and its attendant regulations.

NOIRA 2: Fee Modifications

- 6) Allow for changes in the statewide permit fee schedule to a level sufficient to cover the state and local costs associated with program implementation; and
- 7) Allow for related changes as needed to improve the administration and implementation of the stormwater management fees.
- Later this meeting and in subsequent meetings we will thoroughly review the specific components of the key parts of the regulations and discuss issues and potential amendments associated with each.

Update on the Site Plan Design Charrettes

Mr. Crafton gave an update on the site plan design charrettes.

Mr. Crafton said that he would give an update on work that had taken place since September 2007 when the Board decided to withdraw the NOIRA.

Mr. Crafton said there had been a good deal of conversation about the fact that the restructuring of the regulations provided a new opportunity. He said there was also concern that not enough attention had been given to water quantity.

Mr. Crafton noted that the Center for Watershed protection had presented a proposed methodology. He said there were technical questions and concerns with the proposal. He noted that work has continued on the computation methodology.

Mr. Crafton said that he would provide a more thorough briefing on this issue at the July 16th meeting.

He said that the draft regulations continue to use the simple method calculation procedure. He noted that the new methodology also reflects runoff changes in the forest cover.

Mr. Crafton said that instead of providing LID credits as earlier proposed, DCR is now proposing system runoff volume reduction values.

Mr. Crafton said that in the past the treatment volume has been based on treating the first flush. Most stormwater scientists are moving away from that. He said that DCR was now proposing capturing runoff from the first 1 inch of rainfall.

A copy of Mr. Crafton's presentation is available from DCR.

Update on Water Quantity Workgroup

Mr. Crafton said that a straw man draft has gone back to the committee. The Center for Watershed protection was using staff recommendations.

A member said that the working group process was what he had been hoping for.

Update on the BMP Handbook and Clearinghouse

Mr. Crafton said there had been progress on the BMP handbook, but not as much as had been hoped. Work has begun to outline the chapters. He said there would likely be another handbook meeting this summer.

Mr. Dowling noted that the handbook meetings are public meetings and that the information is available for TAC members to view.

Mr. Crafton said that the documentation involved in the work group meetings is being placed on the regulatory website.

Mr. Crafton said that the final piece is the BMP Clearinghouse website. A draft of the website has been set up by a designer at Virginia Tech. He said that initially the site will be more static, but in the long term the hope is to have a database as the foundation for the website.

A member said that this was his area of greatest concern. He said that the goals set are either achievable or not achievable. He said that actual BMPs that do not work or are not sustainable will end up with no net improvement.

Mr. Dowling noted that the Northern Virginia Regional Commission has put together some information on BMPs.

At this time the TAC recessed for lunch.

Part III (Local program criteria)

Mr. Brown began a review of Part III. He said that Part III was divided into four parts. Part IIIA is for locality run stormwater management programs. He said this was the largest of four sections.

Mr. Brown said that Part IIIB is for localities not in the Bay Act or MS4s that have the option to run a stormwater management program but who choose for DCR to run the program. This section governs DCR and is virtually identical to Part IIIA.

Part IIIC provides the criteria DCR will use in reviewing qualifying local programs. Part IIID is the criteria used by the Board in determining whether or not to approve local programs.

Mr. Brown walked through each section. Specific comments and member concerns are noted below.

4VAC50-60-102. Authority and Applicability.

A member asked if a locality was found "inconsistent" is the locality still okay to operate the program while coming back into compliance.

DCR staff will check the language. The intent is for the locality to continue with the authority while coming into compliance.

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

All local programs need to require compliance. The Department must consider local requirements.

A member asked for clarification with regard to section 4VAC50-60-460.

Mr. Brown said that within the Code of Federal Regulations there has been the concept of a qualifying local program. He said that Section 460 spells out a few specific additions relative to what is a qualifying local program.

A member asked if this meant that the local program must include those requirements.

Mr. Brown said that is the intent but that DCR would check for consistency and clarify then intent of saying the program must be consistent with federal regulations.

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

A member asked about the procedure and noted a concern about the distinction between ordinance and procedure.

Mr. Brown said that DCR would clarify the language and noted that a procedure may not require an ordinance change.

It was suggested that on line 57 “policy” should be substituted for the word “procedure.”

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

A member clarified that the plan must be approved prior to commencement, not just submitted for review.

It was suggested that the narrative reference in line 83 should include information regarding a maintenance plan.

It was noted that the goal is to look at the intent of the design engineer in addressing what is on the site prior to construction.

A member suggested on line 97 that the term geologic formations in karst areas might be too narrow.

It was suggested that in line 98 the existing easements may not be known and that the word “all” should be stricken. The member said that this should lead to the use of good engineering practices which require reasonable inquiry, but do not hold the locality responsible if something is missed by the engineer.

A member asked if the language on line 100 was necessary.

A member asked, in line 112 who would be fiscally responsible.

Mr. Brown said that the basic thought was to clarify who would be responsible.

A member said that part of the previous discussion had been that the financial implications must be addressed. He said there needs to be some assessment as to how the operator is going to meet the fiscal responsibility.

Ms. Hulburt suggested that a reference be made in the previous section regarding the plan for maintenance and how that would be accomplished.

Mr. Brown said that the intent was that the maintenance agreement would spell that out. There should be some type of verification from the locality.

A member said that the qualifying local program and locality should be the same.

Mr. Capps said that qualifying local program is a term from the federal program. Thus it was used instead of locality.

A member asked about the requirement for a SWPP.

Mr. Capps said that any construction permit issued requires a SWPP.

It was noted that the language should specifically say that a SWPP is required.

A member said that there is an inherent problem in requiring the permit registration statement with the initial stormwater plan and fee. The permit may not be issued. The member suggested the two should be separate. The member said that once the locality reviews and approves the plan, then the permit should be applied for and there should be two separate fees.

It was noted that the SWPP can't be prepared if there is not an approved plan.

A member noted that the City of Chesapeake charges a review fee. Once the plan is reviewed, the project is approved, then the developer applies for a land disturbing permit. The member asked what would happen if the developer applies for the permit, pays the fee, but does not receive the permit or never constructs the project.

Another member noted that around 5% of small site plans are never built.

Mr. Brown said that the Code of Virginia allows DCR to establish a statewide permit fee. He said there is no plan review fee.

A member asked if the permit fee could be charged if the permit is never issued.

Mr. Dowling said that the process of issuing the permit requires the plan review and that they are tied together. However, Mr. Dowling said that there may be a timing issue associated.

A member suggested calling it a review fee or registration fee rather than a permit fee. A permit fee implies that if the permit is not received the money is refunded.

A member said that it was her understanding that a plan must be approved before a permit is applied for.

Mr. Capps said that the developer may apply and reference a plan. The plan may or may not be approved. He said that what cannot happen is that the developer reference a plan and begin site disturbance before the plan is approved.

A permit may be issued without an approved plan. But land disturbance may not commence.

A member said that he didn't see the way to avoid refunding a permit fee.

Mr. Brown continued at line 140.

A member said that it is rare that a plan is approved the first time. Once a review letter is sent, does the review process begin again automatically?

Mr. Brown said that the Code addresses that. He said that the law allows 45 days for approval. He noted that Section 4, beginning on line 182 addressed communication regarding approval or disapproval.

4VAC5-60-112. Qualifying local program authorization of coverage under the VSMP General Permit for Discharges of Stormwater from Construction Activities.

A member said that some localities already have a database and asked if that would be sufficient tracking of the information.

Mr. Dowling said that the original thought process was that there would be a universal database that would track minimal information. That database would issue a registration statement with a unique number assigned. He said that does not eliminate the need or desire for a locality have a more comprehensive database.

A member said that by having to tell operators within 10 days that the registration statement is complete, there is no way to know if a SWPPP meets the requirement.

Mr. Capps said that DCR would take a look at that.

4VAC50-60-114. Qualifying local program inspections.

Mr. Brown said that this states that the inspection shall be conducted by qualified local program inspector.

On Line 197 a member made the suggestion to strike “ensure” and insert “evaluate whether” or “assess whether.”

Mr. Dowling said that this section allows the locality to set up the Alternative Inspection Program.

A member said that the AIP should be the default. He said that under the Erosion and Sediment Control program an AIP can be approved. He suggested the same kind of language.

Mr. Capps said that we could look at just changing the order of that which is something we’ve considered with Erosion and Sediment Control.

A member said that some local governments have these programs.

Mr. Frye said that at some level there needs to be some amount of inspection of anything that the locality is doing.

A member said that localities are going to have to put out service contracts.

Mr. Brown noted that the last two subsections dealt with inspections.

Mr. Brown said that much of the language comes from the Clean Water Act.

4VAC50-60-116. Qualifying local program enforcement.

Mr. Brown said that if the locality doesn’t take action that does not preclude the Board from taking action.

4VAC50-60-118. Hearings.

Mr. Brown noted that hearings would be conducted as provided by law.

4VAC50-60-122. Qualifying local program; exceptions.

There were no comments.

4VAC50-60-124. Qualifying local program; Stormwater Management Facility maintenance.

A member said that he envisioned a situation where the developer signs a maintenance agreement. He asked how the locality would find out that the developer had done this and conveyed the maintenance agreement to different parties.

A member said that one option would be to monitor the transfer of assignments.

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

A member suggested saying coordinates or GIS not GPS coordinates.

Mr. Frye said that it needs to be consistent, but that DCR would look at the coordinates issue.

A member asked what it meant to be “in accordance with the regulations of the Library of Virginia.”

Mr. Brown said that this instructs the entity to develop a plan along with the State Library.

Close and Plan for Next Meetings

Ms. Hulburt said that the process was moving along. She encouraged members to review the information and come prepared to the next meeting. She said that the goal will be to have closure on some of the issues. She noted that technical information with regard to Part II would be coming to members in advance of the next meeting.

Mr. Dowling thanked members for their work. He asked if members had specific questions or comments to forward them to Ms. Watlington.

The next meeting will be on Wednesday, July 16 at the same location. Additional meetings are set for Thursday, August 14th and Tuesday, August 26th.

The meeting was adjourned.