

**Virginia Soil and Water Conservation Board
Stormwater Management Regulations Technical Advisory Committee
Tuesday, June 20, 2006
Science Museum of Virginia**

Stormwater Management Regulations Technical Advisory Committee Members Present

Michelle Brickner, Fairfax County
Michael E. Doczi, Michael E. Doczi & Associates, PLLC
Jack Frye, Virginia Department of Conservation and Recreation
Shelby T. Hertzler, Rockingham County
Lee Hill, Virginia Department of Conservation and Recreation
William J. Johnson, Department of Public Works, City of Virginia Beach
Steve Kayser, Erosion and Sediment Control, Loudoun County
Joe Lerch, Chesapeake Bay Foundation
Ved "Wade" Malhotra, Department of Engineering, Newport News
R.T. "Roy" Mills, Virginia Department of Transportation
Pat A. O'Hare, Home Builders Association of Virginia
Bob Kerr, Kerr Environmental Services Corporation
Reginald Parrish, U.S. Environmental Protection Agency
Jeff Perry, Environmental Management Engineer, Henrico County
David Rundgren, New River Valley PDC
Alyson Sappington, Thomas Jefferson Soil and Water Conservation District
Gerald Seeley, Jr., Department of Environmental Quality
Ingrid Stenbjorn, Town of Ashland
William H. Street, James River Association
Burton R. Tuxford, II, Virginia Department of Environmental Quality

Stormwater Management Regulations Technical Advisory Committee Members Not Present

Alecia Daves-Johnson, Piedmont Soil and Water Conservation District
Jerry W. Davis, Northern Neck PDC
Phil Schirmer, City of Roanoke
John Tippet, Friends of the Rappahannock

Facilitator

Judy Burtner, J. Burtner & Associates
Kathryn Burruss, J. Burtner & Associates

DCR Staff

David C. Dowling, Director of Policy, Planning and Budget

Eric R. Capps, E&S Control and Construction Permitting Manager
Anne Crosier, Enforcement and Compliance Manager
Joey Fagan, Karst Specialist
Michael R. Fletcher, Director of Development
Kevin Landry, Stormwater Compliance Specialist
John Mlinarcik, Shenandoah Watershed Office
Christine Watlington, Policy, Planning and Budget Analyst
Ryan Brown, Office of the Attorney General

Observers

Joe Battiata, Contech Stormwater Solutions
Barbara Brumbaugh, City of Chesapeake
Michael Dieter, Hanover County
Nancy Frantell, Midlothian
Larry Land, VACO
Laura Wheeling, Hampton Roads PDC
Charles Williamson, Prince William County

Introductory Remarks

Ms. Burtner welcomed attendees to the third session of the Virginia Stormwater Management Technical Advisory Committee and reviewed the session objectives.

- Identify questions that need to be addressed and information that is needed relative to setting of fees that will enable localities and state to recover their costs (Part XIII).
- Advance work of Part III by continuing to provide input and guidance into resolution of questions/issues that have been raised thus far relative to administration of local stormwater management program.
- Explore plans relative to agendas for next two scheduled TAC meetings (July 11, July 25) and subcommittees meetings.

Observers were reminded they could provide input during the session by writing their comments on note cards with their name and contact information, and give the card to a staff member.

Minutes

Committee members were asked if they had found any corrections to the minutes that had been posted on the website. None were offered. They were asked to provide any modifications to the minutes to Ms. Watlington by Friday, June 23, 2006.

Preliminary Discussion – Part XIII (fees)

Ms. Burtner lead a preliminary discussion about Part XIII relative to fees. Members were asked to respond to the following questions:

1. What information do you need to make an informed decision?
2. What are the “right” questions?

The following comments were made:

- What constitutes the various costs of a local program? There are different types of programs, different costs structures and staffing structures.
- What are the activities, tasks and responsibilities for each part of the local program? Which tasks are allotted to whom as a means of determining cost?
- How much does DCR need to run its program at the state level? How much will DCR need to run local programs for localities that choose not to run their own programs? It would be useful for DCR to generate some model numbers. At what level should fees be set to cover costs?
- What is the number of permits issued yearly?
- For VDOT, how much does it cost to run their programs and can they receive funds to recoup costs?
- Need to clarify the expectations of DCR for local programs that have to review the permits.
- What is the cost based on and how much of the split will the localities and DCR get? (30/70 is noted in the regulations)
- What are the required staff hours for various functions?
- What will be the staffing levels, including, how many inspectors will be required?
- It would be helpful to have a breakdown on how many programs are projected to be large, medium and small.
- What additional costs will be associated with running a more stringent program? What are the costs of maintaining ongoing programs?
- How much time does it take to process the permits by staff and is there a reasonable relationship between the fees and the amount of time and staff required?
- What will the major impact be relative to single-family homes?
- What were the past costs of maintaining a program and which of those costs will need to be covered under this program? Identify what is needed to make the program run.
- Currently, large projects have the same fees as smaller ones; there should be categories of fees based on size and charge more based on larger size.
- What are the steps in a permitting program? Who receives the registration statement? Who reviews the registration statement? Who would review the stormwater management plan? Need to look at associated costs.
- DCR has historical information and it would be helpful if they would share the number of permits by localities.

- What is DCR's cost of providing permits now and are the current fees covering the costs? What is the cost to do the MS4 permits?
- What is the mechanism for updating fees?
- How much overlap is there in what is currently being done and what will be expected to be done?
- What is the proposed cost for individual project permits?
- What are the number and type of plans reviewed by the localities now?
- The cost per permit is important and also knowing how many are issued.
- Having an understanding of the current E&S costs/fees may be helpful. These are set locally.
- Look at the time required to review a site plan for 2500 sq. ft. - 1 acre and a site of 1-5 acres and base fees upon that review.
- 10.1-562 speaks to the setting of fees—how many different fees schedules will there be if localities set their own? Suggestion: Look at the E & S program for a reference.
- DCR is allowed to set the stormwater fees and if stormwater and E & S fees are not merged, it is not an issue (70/30 split).
- E & S and Stormwater fees vary by locality.
- The percent of impervious areas per situation may impact the costs.
- How many states delegate the program to the localities?
- Do localities have the authority to charge higher fees than what the state sets?
- Should the state get 30%?
- Once the fees are set, we need to define the process and timeframe to adjust the fees and how long it will be before there is a review and fees can be adjusted to reflect reality.
- Do the regulations state that the state will get 30% or is there some flexibility in the amount the state gets?

Review of Part III – Local Administration of Program

The committee continued its review and response to the questions that had been raised by TAC members and also staff related to Part III—Local Program Administration. The process started with item 56 from the handout distributed at the previous session. When there were differences in viewpoints/perspectives, items were moved to the parking lot. Comments were captured as given.

4VAC50-60-140. Administrative procedures: exceptions.

A. A request for an exception shall be submitted, in writing, to the locality. An exception from the stormwater management regulations may be granted, provided that: (i) exceptions to the criteria are the minimum necessary to afford relief and (ii) reasonable and appropriate conditions shall be imposed as necessary upon any exception granted so that the intent of the Act and this chapter are preserved.

B. Economic hardship is not sufficient reason to grant an exception from the requirements of this chapter.

TAC or staff Questions:
Exceptions/ variances

56) What are the exceptions applicable to, the plan review, the General Permit requirements, etc.?

- Why specify since everything can't be anticipated?
- Who has the authority to grant an exception? Is it administrative or legislative?
- Is the phrase, "economic hardship" in conflict with a phrase in Part II, "to the maximum extent practicable?" Which is more appropriate under what conditions?
- This language needs to be softened to say "ordinarily economic hardship" and not "because of".
- EPA doesn't grant exceptions so do we need to check this with them?
- Can exceptions be granted with general and individual permits?
- Not sure we want to create a loophole by using the phrase, "ordinarily economic hardship".
- If it is based on regulations for stormwater management plan or the general permit then exception applies.
- Self-imposed hardships should not get exception (when developer buys property knowing there are significant issues with it and he expects to be granted an exception)
- Exceptions are required when the regulations are prescriptive but are not when they are guidelines that allow negotiations.

57) Define exceptions and make sure they are limited

- Answered in above responses

58) Does this section or another also need to address stringency?

- Including it would allow localities to be more stringent than the state because of specific local situations.
- The statute gives the authority and we don't need more here.
- To a question as to "whether the state will run a more stringent program or if will state run a more stringent program if the locality requests it," it was noted that DCR will run the basic program so if the locality wants a more stringent program, they will have to run it.
- What happens if the locality can't afford to run the program? Can they still ask DCR to run a more stringent program?
- It would be unusual for a locality to ask the state to run a more stringent program because localities don't want the state being stringent?
- Don't close this door.

59) Where the local program is not adopted, the state is running the local program. How does being more stringent apply to that because there has been no local ordinance adopted by a locality. How does that apply to a state run program? What about the review of the state's operation of a local program?

- Answered above

60) Need to insert "satisfies 10.1-603.7 (scientific basis)"

- As a rule it is not a good idea to take language from the statute and put it into regulations.

61) D. In addition to subsections B and C of this section permit-issuing authorities, by local ordinance may, or the board by state regulation may, adopt more stringent channel analysis criteria or design standards to ensure that the natural level of channel erosion, to the maximum extent practicable, will not increase due to the land-disturbing activities. These criteria may include, but are not limited to, the following:

1. Criteria and procedures for channel analysis and classification.
 2. Procedures for channel data collection.
 3. Criteria and procedures for the determination of the magnitude and frequency of natural sediment transport loads.
 4. Criteria for the selection of proposed natural or man-made channel linings. [Existing language from Part II]
- How can the localities make the program more stringent since this is getting more specific on something that we have already talked about?
 - This is redundant.
 - Do we want this in addition to what we have already talked about?
 - Questions 62 and 63 are another way to look at the same thing.
 - May want examples of how and why programs may want to be more stringent in order to help localities when they write their ordinances.
 - This should stay but take out redundancies.
 - Question 62 is replacing the 2-year control with a 1-year control (Response: you are mixing apples and oranges. It may depend on how Part II is written.)
 - It is difficult to make a final decision until we know what is in Part II. If it is not in Part II, having in this section will let the localities adopt it if they want to.

62) C. The permit-issuing authority may determine that some watersheds or receiving stream systems require enhanced criteria in order to address the increased frequency of bankfull flow conditions (top of bank) brought on by land-disturbing activities. Therefore, in lieu of the reduction of the two-year post-developed peak rate of runoff as required in subsection B of this section, the land development project being considered

shall provide 24-hour extended detention of the runoff generated by the one-year, 24-hour duration storm. [Existing language from Part II]

- Answered above

63) C. In lieu of subsection B of this section, localities may, by ordinance, adopt alternate design criteria based upon geographic, land use, topographic, geologic factors or other downstream conveyance factors as appropriate. [Existing language from Part II]

- Answered above

- **Associated Examples from the Code:**

- **§ 10.1-603.7. Authorization for more stringent ordinances.**

- A. Localities are authorized to adopt more stringent stormwater management ordinances than those necessary to ensure compliance with the Board's minimum regulations, provided that the more stringent ordinances are based upon factual findings of local or regional comprehensive watershed management studies or findings developed through the implementation of a MS4 permit or a locally adopted watershed management study and are determined by the locality to be necessary to prevent any further degradation to water resources or to address specific existing water pollution including nutrient and sediment loadings, stream channel erosion, depleted groundwater resources, or excessive localized flooding within the watershed and that prior to adopting more stringent ordinances a public hearing is held after giving due notice.

- B. Any local stormwater management program in existence before January 1, 2005 that contains more stringent provisions than this article shall be exempt from the requirements of subsection A.

- **§ 10.1-603.4. Development of regulations.**

- 7. Require that stormwater management programs maintain after-development runoff rate of flow and characteristics that replicate, as nearly as practicable, the existing predevelopment runoff characteristics and site hydrology, or improve upon the contributing share of the existing predevelopment runoff characteristics and site hydrology if stream channel erosion or localized flooding is an existing predevelopment condition. Any land-disturbing activity that provides for stormwater management shall satisfy the conditions of this subsection if the practices are designed to (i) detain the water quality volume and to release it over 48 hours; (ii) detain and release over a 24-hour period the expected rainfall resulting from the one year, 24-hour storm; and (iii) reduce the allowable peak flow rate resulting from the 1.5, 2, and 10-year, 24-hour storms to a level that is less than or equal to the peak flow rate from the site assuming it was in a good forested condition, achieved through multiplication of the forested peak flow rate by a reduction factor that is equal to the runoff volume from the site when it was in a good forested condition divided by the runoff volume from the site in its proposed condition, and shall be exempt from any flow rate capacity

and velocity requirements for natural or manmade channels as defined in any regulations promulgated pursuant to this section, or any ordinances adopted pursuant to § 10.1-603.3 or 10.1-603.7;

4VAC50-60-150. Administrative procedures: maintenance and inspections.

A. Responsibility for the operation and maintenance of stormwater management facilities, unless assumed by a governmental agency, shall remain with the property owner and shall pass to any successor or owner. If portions of the land are to be sold, legally binding arrangements shall be made to pass the basic responsibility to successors in title. These arrangements shall designate for each project the property owner, governmental agency, or other legally established entity to be permanently responsible for maintenance.

B. In the case of developments where lots are to be sold, permanent arrangements satisfactory to the locality shall be made to ensure continued performance of this chapter.

C. A schedule of maintenance inspections shall be incorporated into the local ordinance. Ordinances shall provide that in cases where maintenance or repair is neglected, or the stormwater management facility becomes a danger to public health or safety, the locality has the authority to perform the work and to recover the costs from the owner.

D. Localities may require right-of-entry agreements or easements from the applicant for purposes of inspection and maintenance.

E. Periodic inspections are required for all stormwater management facilities. Localities shall either:

1. Provide for inspection of stormwater management facilities on an annual basis; or
2. Establish an alternative inspection program which ensures that stormwater management facilities are functioning as intended. Any alternative inspection program shall be:
 - a. Established in writing;
 - b. Based on a system of priorities that, at a minimum, considers the purpose of the facility, the contributing drainage area, and downstream conditions; and
 - c. Documented by inspection records.

F. During construction of the stormwater management facilities, localities shall make inspections on a regular basis.

G. Inspection reports shall be maintained as part of a land development project file.

TAC or staff Questions:
BMP Maintenance

- 64) In accordance with the Code, how do we require the provision of long-term responsibility for and maintenance of stormwater management control devices and other techniques specified to manage the quality and quantity of runoff?
 - Long-term maintenance needs a maintenance agreement that stays with the land (have it put in the deed if you can. Question: Can it be added to the deed?)
 - Banks will want a say in this if it is in the deed.
 - This is fine as it is with a maintenance agreement that stays with the land.
 - If there are no problems now, leave as it is.
 - A problem could arise when the property is sold and the new owner is not aware of the agreement.
 - In the short-term, the developer deals with it.
 - The responsibility may rest with the Homeowners Association where they exist.
 - Bonding—can you require a bond? If there is a problem, then the bond would cover the costs up to one year.
 - The maintenance issue will not be solved in a TAC meeting. The localities need to enforce the agreements that are in place but it doesn't make good news.
 - Localities should require developers to provide funds for the maintenance long- term.
 - The issue of maintenance always comes back to the locality and they need a mechanism to do it.
 - DCR may want to provide a proposed agreement for the locality to use.
 - City attorneys need to enforce agreements.
 - There is the ability for the locality to fix the problem and then charge the association or developer or who ever is responsible.
 - This area needs to be included so localities have some support for action.
 - If it is a state run locality, they will have to do this and a process will have to be put in place to do it.
 - Annual services contract could be developed allowing a contractor to do the required maintenance and with a lien placed against the property if it is not done.
 - This program is to protect water and it is political. Localities should charge for maintenance.
 - Enforcement actions generate money and we can use funds to take care of emergencies.
 - Statute has a mechanism in place for maintenance. (603.8)
 - Many elements are not working.

- Legislation was introduced but not passed that would have set up a database of maintenance agreements so they won't fall through the cracks.
- Homeowner associations need to understand that it is as important to maintain their stormwater devices as it is to spend money to maintain the flowers. They will never have money to dredge, etc. unless planned for.
- With new BMPs money can be put aside in a fund to cover the cost of the initial maintenance as well as longer-term maintenance.
- If the county's name is on the deed then the cost would come out of the general fund.
- Some homeowner associations can handle maintenance while others can't because of the size of the subdivision. The "one size does not fit all" rule applies.
- Long-term maintenance is not as much of a problem as the short term because the drains are not being kept clean because there is a lack of inspections. This is a legal issue if a lien is put on each property. Think of the man-hours required in this action.
- Public awareness could occur through signage.
- LIDs must be in public ownership to be properly maintained.
- Rain guards, etc. become part of homeowner's landscape and it is hard to get them to be responsible for maintaining them.
- In actuality an LID in a subdivision that would require maintenance that the owners would have to do would not be approved.
- Is this discussion about in-yard elements are we talking about curb elements? There is a need to be clear about the elements we are talking about.
- A homeowner who wants to use LID elements is fine but it is not the way for a subdivision to address stormwater management.
- Homeowners are given a tax break for implementing devices but tax breaks need to be a sizable for it to be an incentive. For commercial properties, the break would be enough to be an incentive.
- As an example locality said there was a subdivision with LID elements and the homeowners destroyed it and then wanted the locality to come in and fix it. The locality refused.
- If basic elements are in place, the individual homeowners can put in additional elements. This would be helpful.
- Not sure LID should be mentioned here at all.
- If a locality approves LID, then it must be recognized and arrangements made to have it maintained.
- If LIDs are used, as basic elements for stormwater, then they must be inspected and maintained.
- If LID is used it should include a yearly inspection. If not LID, then it becomes inspected when we get a call with an issue/problem.
- There is a need to use general statements in the regulations and not spell out LID.

65) How are LID structures handled?

- Answered above

66) Who is responsible?

- Answered above

67) For how long?

- Answered above

68) How is it funded (service fees, bonds, etc.)?

- Answered above

69) 50-60-150B – should the state “ensure continued performance of improved practice?”

- Need clarification of the language contained in the “question.”
- What does “improved practice” mean?

70) Long term inspection of BMPs.

- Answered above

71) GPS locations of BMPs.

- This is too specific for regulations.

72) BMPs in series.

- This is more opinion than technical. Everyone is doing it differently. Need the state to provide central guidance.
- DCR has a document about this subject.
- There is a maximum load that can be removed and we need to define what that is.

74) I. All stormwater management facilities shall have an inspection and maintenance plan that identifies the owner and the responsible party for carrying out the inspection and maintenance plan. [Existing language from Part II]

- This is needed to remain in control.
- Who is responsible for which elements, needs to be defined; also who will do the maintenance.

- In a small locality there may not be any public facilities. There is no question that this has to be included.
- They would be locally maintained.
- Ultimately it falls on the locality but the TAC has agreed that landowner has to maintain it. DCR can if necessary.
- Would the General Assembly have to make this into law or can this be in regulations? Can't require the localities to do something on private land.
- The BMP was approved by the locality, thus they have the ultimate responsibility.
- If the program is local, then can a locality opt in or out? If they opt out, the state will have to deal with it.

75) All BMPs installed need maintenance agreements; Specify who is responsible; funding for maintenance (ability to charge/Cole's bill/ bonding); state \$\$'s (how to handle); BMPs may have a range; plan approval dependant on developer demonstrating long-term maintenance.

- This is part of "Plan Review 101".

Certification Program

76) Is there need for a certification program such as one for E&S for local (District/ PDC) staff? If so what might it look like and work?

- No comments offered.

Easements

77) Storm drainage easements shall be recorded to identify the locations of integrated management practices on lots or parcels. The property owner shall not remove or structurally alter integrated management practices without prior written approval from the program administrator.

- This is part of the BMP

Inspections

78) How will monitoring and inspections of land development projects work?

- Monitoring and inspection are already part of the general permit.
- This has long-term components because of the BMP.

79) Who conducts it? (contractor, landowner, whoever?)

- Local inspection has to include sending the inspector out.

- Self-inspection and reporting with periodic oversight by inspection occurs and when no problems are found, then it becomes a lower priority. If problems are found, additional inspections become a high priority.
- Are localities satisfied with land disturbance inspections? There are some good land disturbers and there are some bad ones.
- During construction, what needs to be inspected for stormwater that is not part of the E & S?
- There are two things. E & S has no permanent elements in place during construction. It is part of the SWPPP inspection after a rain event. There is no need to inspect beyond what is now being inspected.
- Now it's optional if a contractor has to do a required report. Some localities require them and some don't. The contractors don't know that they are required and some don't even know how to fill them out. Need to be consistent statewide.
- 150-F states that the locality will periodically inspect. The audit is important. How and when should be described.
- It is impossible to maintain staff to inspect all sites. DCR can only do a periodic inspection. Need to clearly establish who is responsible, what records are required, and what follow-up the locality can take if records are not kept.
- Locality may want to keep a closer eye on individual permits.
- When the E & S inspections occur, they are doing a major component of the general permit inspection. The E & S plan specifies the date for the inspection.
- Need to discuss both the individual and general permit inspection requirements.
- Need language that would tie inspections together.

80) As part of an Administrative matrix is there a minimum staffing level requirement for conducting inspections?

- No comments offered.

81) How do you see inspections being handled?

- No comments offered.

82) How much time after a rain event?

- Some localities have a problem getting to every site within 48 hours after a rain event. Does this mean the county staff has to get to the sites or does it mean the RLDs have to get to the site? If it means RLDs, then it is no problem.

- Inspection section needs to specify which inspection is being talked about and use clear language. (The SWPPP/general inspection and municipal inspection once it is built)
- There is also an issue with the general inspection and the E & S control law inspection.
- Most localities are not doing what law requires for E & S inspections.
- E & S and the SWPPP inspections are likely to be merged.
- General permit requires land disturbance to be inspected and localities need to do oversight inspections.
- The 48 hours E & S and general inspection by RLDs is a good move and having the locality do oversight and enforcement makes this work.
- 48-hour inspection is the responsibility of the developer and the E & S and SWPPP part of the inspection is the responsibility of the local inspection staff.
- For the locality to not be responsible, we would have to change the E & S regulations.
- A locality can seek Board approval for an alternative inspection program that includes an alternative to the 48-hours requirement.
- The two sets of regulations need to be compatible.

83) Frequency of inspections?

- No comments offered.

84) How to prioritize sites?

- Sites can't be prioritized.
- It's a local issue and they know whom they can trust and whom they can't.
- Alternate Inspection Programs are a consideration.
- Impaired water area is a greater issue.
- DCR will have to live by the same regulations as the localities.

85) Can we give building inspectors the ability to change inadequate plans in the field? How would it work?

- There should be the ability to make changes in the field but must bring those back to the plan reviewer.
- The reviewer must also agree to the changes made in the field.
- Who is the building inspector? This needs to be defined.
- Often a problem is spotted during inspection and the inspector should cite the location as being in non-compliance. The regulations state that the variance cannot be verbal and it has to be from the reviewer.
- There are 2 variables (1) submitting the plan, (2) during construction—E & S regulations would have to be looked at also.

- If the change requires computations, then the issue is brought back to the office.
- Need a consistent way to implement the E & S plan and SWPPP/general permit. The field makes changes and the change is reviewed by the reviewer
- What is a variance and what can an inspector change or not change in the field?

86) What are the minimum requirements for inspection records?

- Leave this as it is.
- Locality shall maintain inspection records.
- Program should have a consistent record retention plan/procedure.

87) What records need to be kept? How long?

- This is part of the above and is also part of the parking lot issue from the last session.

88) How does that relate to 50-60-150 (G) whose file and what belongs in that file vs. the other reports that are done?

- Part of the above and is also part of the parking lot issue from the last session

OTHER SECTIONS/ ISSUES FOR DISCUSSION

TAC or staff Questions:

Enforcement

89) How would enforcement be handled?

- It needs to be done fairly, consistently, be equally harsh, and to the extent the locality has the tools to do it and if not, DCR will do.
- In the short-term, the tools need to be such they can be implemented fast and be a disincentive to noncompliance.
- Consider the site and use enforcement. Need to break down what requires an enforcement action. Stop work orders are effective and should be used as a last resort.
- Threatening with a stop work order gets their attention fast.
- There is nothing that precludes the locality from using the stop work order. Generally the stormwater plan includes the E & S tools.
- A locally run E & S program can use the stop work order but DCR doesn't have that option and this may need to change.
- DCR needs the ability to use enforcement on the worksite—when it usually happens is after the fact and this is the problem.

- Enforcement should happen at anytime. Inspector should be able to write a note stating that something needs attention. Need to define enforcement and have levels/stages of it.
- Match E & S with stormwater enforcement.
- State has RLD criteria for submitting reports and what should be in them.
- Construction projects require something faster than what is in place. Need to be able to write up a “traffic ticket” type of penalty.
- Concern was expressed about some inspectors having the final authority at the site.
- Board could establish some fees/fines. Can fees/fines be delegated locally?

90) What is tracking process for enforcement actions?

- This is the same as with E & S. Use E& S regulations as a starting point.
- How many enforcements are taking place? These should be put in the program file.

91) Clarify enforcement, issuing, policing, revoking and how the locality polices self.

- Localities can't police themselves.
- The state does it all the time through an executive compliance agreement that allows them to reach an agreement of what needs to be done to comply.
- A review of local programs needs to include a local project review.

92) What teeth do localities receive for enforcement?

- Need to look into having the issuing of building permits stop if the developer does not come into compliance. This would give the locality another avenue to use in enforcement. Can this legally be done?
- The statute gives the locality the option of imposing sizable fines.
- Statute allows a \$32,500 fine but it rarely happens. The developer negotiates and a consent order occurs. This is a long process.
- County attorneys need to use the fines, so it will become an incentive to do things correctly.
- Stop work orders fall back on the county administrator and the board of supervisors and then it may become political.
- Need graduated tools to use for enforcement.
- Violation requires frequent inspections so there should be an additional inspection fee that can be applied.

93) Can a locality enforce against itself? How does sovereign immunity work under the Dillon rule?

- A local school division has been fined, with the money going into the county's general fund.
- If locality can't take action, can it be bumped to DCR for local projects?

94) Authority for orders & administrative actions; can not go to the Courts on all actions

- No comments were offered.

Penalties

95) Enforcement needs to have effective penalties for non-compliance.

- Because of the amount of effort required to do enforcement, save the effort for those where damage is done to the environment.
- How do you assess penalties when the Chesapeake Bay has thousands of tributaries contributing to the damage?

96) How are fines handled?

- What can be done with fines? According to 10.1-603.14, it speaks to cleanup of pollution with fines staying in locality to address water quality issues. This can generate money for maintenance that improves water quality.
- Fines should not be described as a revenue source. If fines are collected for clean up and maintenance then we can justify them. Need to be very specific about the money and how it is handled with accountability.
- What about setting up a special fund?

97) Board develop a schedule of civil penalties.

- Is it a state requirement?
- Develop a penalty matrix, which shows what the fees would be if there is harm to the environment and the variances from acceptable practices and what the violation is.
- Schedule would be most helpful in small projects and could be used with the "traffic ticket" enforcement.
- Need a list of violations and how much the fine should be. This has been developed and approved by the Board. It is on the Internet in the enforcement manual.
- The issue is post construction.
- EPA expects civil charges and fines to be a part of the program.
- In the construction phase the stop work order is first and then comes the fines.
- Fines are not as useful in upfront enforcement.
- Stop work orders should also include the developer having to pay a fee to get their permit back.

- The localities will want to know about fines, the process, etc. before determining whether they want the program delegated to them.
- Stop work orders are good for 7 days and if they don't correct then there are other steps. We need a quicker process in place.
- The regulations cannot be written to cover the entire list of possibilities.

Fee Collection

98) How are fees for E&S being collected now? How should they be collected?

- No comments offered since there was an extensive discussion of this at the previous session.

99) Identify in a local program that the fees will be used to fund the requirements of a local program.

- No comments offered.

100) Need administrative procedures for the local program – who to collect the fees, how they can be spent, how to submit to DCR, etc.

- No comments offered.

Public Outreach & Education

101) What might this component include?

- The educational/public awareness effort that was used for the underground storage tanks issue may be helpful. State took the lead with the localities having ownership for part of it. This would apply to those who must comply.
- Permanent sites should be required to have signs.
- MS4 already covers this but not all localities have MS4s.
- Associations and other groups could be educated at their meetings. Need to know how we would educate homeowner associations that could be fined for noncompliance.
- Localities that have delegated programs could locate the homeowners associations that have installed BMPs and educate them what needs to be done to maintain them or we can wait until there is an issue and then respond.
- A plan needs to be developed to educate homeowner of what is needed to comply or provide maintenance.
- Perfect world wouldn't need inspections. We need to be more proactive with educational/outreach efforts.
- Are there other groups who could help with educational efforts?
- Is there expectation for public outreach/education? If it is, what are they and how would we find Homeowners associations to educate?

- Would the educational efforts exceed what is required for MS4s. The programs need to be consistent across the state?
- DCR needs to share with members the MS4s requirements for education and outreach.
- MS4 requirements tell us what we will do to educate and do public outreach.

General

102) Who handles Federal & State agency projects? — DCR

- No comments offered.

103) How are utility & linear projects addressed?

- When a project crosses jurisdictional boundaries, we need to decide who approves it?
- Stormwater law requires gas fields to be exempt. Is this a conflict with the new law and if so we may need to look at it?

Regional Plans

104) If developed, a regional plan shall, at a minimum, address the following:

1. The specific stormwater management issues within the targeted watersheds.
2. The technical criteria in 4VAC50-60-40 through 4VAC50-60-80 as needed based on subdivision 1 of this section.
3. The implications of any local comprehensive plans, zoning requirements, local ordinances pursuant to the Chesapeake Bay Preservation Area Designation and Management Regulations adopted pursuant to the Chesapeake Bay Preservation Act, and other planning documents.
4. Opportunities for financing a watershed plan through cost sharing with neighboring agencies or localities, implementation of regional stormwater utility fees, etc.
5. Maintenance of the selected stormwater management facilities.
6. Future expansion of the selected stormwater management facilities in the event that development exceeds the anticipated level. [Existing language from Part II]

- Target watershed should be defined.
- Where does concept of regional plan come from?
- This allows localities to look at a watershed in its entirety instead of site by site.
- James City and Fairfax have regional plans.
- Watersheds across jurisdictions would require both to sign off on it.
- This would be the most help in less developed areas.
- Who does the pre-planning?

- BMP thinking is long term and we tend to be thinking of something new. We need to make sure we are not writing something that we can't enforce or is in conflict.
-

Parking Lot Issues

The following items were placed on the parking lot for the subcommittees to consider and develop recommendations for consideration by the TAC at a future meeting:

- Provision of law that allows localities to generate funds to use for maintenance (treating it as a utility)
 - Long-term maintenance, how to fund, how to staff, how state handle maintenance if it is operating a local program, how much teeth wanted in the regulations.
 - E & S inspections/SWPPP and changes in the field
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Subcommittee Membership

Participants reviewed their commitments to being a part of a subcommittee. The current listing of membership is as follows:

Part II

Michelle Brickner, Alecia Daves-Johnson, Michael Doczi, Shelby Hertzler, Bob Kerr, Wade Malhotra, Roy Mills, Pat O'Hare, Reggie Parrish, John Tippett, and Bill Street.

Part III

Michelle Brickner, Jack Frye, Bill Johnston, Steve Kayser, Joe Lerch, David Rundgren, Alyson Sappington, Gerry Seeley, and Ingrid Stenbjorn.

Part XIII

Bill Johnston, Steve Kayser, Pat O'Hare, Bill Street, Burt Tuxford, and Ingrid Stenbjorn.

Close and Discussion of Next Meetings

Mr. Dowling explained that an extension to the regulatory process is being requested and discussed a potential timeline. Members will be polled for a series of new subcommittee and TAC dates.

The next meeting dates were listed as follows:

- Tuesday, July 11 (this meeting has been postponed)
- Thursday, July 25

The meeting adjourned at 3:30 p.m.