

**Virginia Stormwater Management Program (VSMP) Permit Regulations Parts I, II  
and III (4 VAC 50-60) Regulatory Advisory Panel (RAP)  
Auditorium Pocahontas Building, Richmond, Virginia  
Monday, November 29, 2010**

**Regulatory Advisory Panel Members Present**

David A. Johnson, Department of Conservation and Recreation, Chairman  
Philip Abraham, The Vectre Corporation  
David Anderson, Advantus Strategies  
Barbara Brumbaugh, City of Chesapeake  
Judy Cronauer, Fairfax County  
Katie Frazier, Virginia Agribusiness Council  
Andrew Gould, Timmons Group  
Steve Herzog, Hanover County  
David Hirschman, Center for Watershed Protection  
Ann Jennings, Chesapeake Bay Foundation  
Jennifer Johnson, Joyce Engineering  
William Johnston, City of Virginia Beach  
Bob Kerr, Kerr Environmental Services Corporation  
Larry Land, Virginia Association of Counties  
Joe Lerch, Virginia Municipal League  
Roy Mills, Virginia Department of Transportation  
Rick Parrish, Southern Environmental Law Center  
Jeff Perry, Henrico County  
Chris Pomeroy, AquaLaw PLC  
Michael Rolband, Wetland Studies and Solutions, Inc.  
Alyson Sappington, Thomas Jefferson Soil and Water Conservation District  
Ingrid Stenbjorn, Town of Ashland  
William Street, James River Association  
Michael Toalson, Virginia Association of Home Builders  
Jenny Tribo, Hampton Roads Planning District Commission  
Shannon Varner, Troutman Sanders  
Keith White, Henrico County  
Joe Wilder, Frederick County  
Todd Chalmers, Balzer and Associates  
Daniel Proctor, Williamsburg Environmental Group

**Regulatory Advisory Panel Members Not Present**

William Bullard, Department of Defense REC  
Ryan Dunn, Virginia Chamber of Commerce  
Mike Gerel, Chesapeake Bay Foundation  
Normand Goulet, Northern Virginia Regional Commission  
Chris Hornung, Silver Companies  
George Simpson, Roanoke County

Kurt Stephenson, Virginia Tech  
John Tippet, Friends of the Rappahannock  
Doug Beisch, Williamsburg Environmental Group

**DCR Staff Present**

David C. Dowling  
Michael R. Fletcher  
Jack E. Frye  
Lee Hill  
Christine Watlington  
Elizabeth Andrews, Office of the Attorney General

**Others Present**

Brian Chambers  
David Nunnally, Caroline County  
Bethany Bezak, Wetland Studies and Solutions, Inc.  
Jennifer Brophy-Price, Wetland Studies and Solutions, Inc.  
Adrienne Kotula, James River Association  
Doug Mosely, GKY  
Peggy Sanner, Chesapeake Bay Foundation  
Cabell Vest, Aqualaw

**Welcome and Introductory Comments**

Mr. Johnson called the meeting to order.

Mr. Johnson noted that the date of the meeting, November 29, was the date that the state was required to submit the Watershed Implementation Plan (WIP) to EPA. He said that the intent was to submit the plan by 5:00 p.m. that day. At that point the plan will be on the DCR website and the agency will issue a press release.

Mr. Johnson said that staff at DCR and DEQ worked throughout the Thanksgiving holiday to complete the WIP and were to be commended. He said a number of things had changed since the initial draft.

Mr. Johnson noted that members were provided with the current draft of the regulations Parts I and II that included subcommittee recommendations. A copy of this version is available from DCR at the following link:

<http://www.dcr.virginia.gov/documents/lrdraftreglangparts1and2.pdf>

Additional materials distributed included:

Article: Is Impervious Cover Still Important? Review of Recent Research

<http://www.dcr.virginia.gov/documents/lrimperviouscoverarticle.pdf>

and

Article: Urbanization and the Loss of Resource Lands in the Chesapeake Bay Watershed

<http://www.dcr.virginia.gov/documents/lrmperviouscoverarticle.pdf>

### **Discussion of water quality design criteria requirementu**

Mr. Johnson said that a lot of work had transpired with the subcommittees. He said that staff felt that it was now time to bring the RAP back together. He again stated that the commitment from DCR is that the regulations be science based. He said that the corollary was that scientists do not always agree.

Mr. Johnson called on Michael Rolband with Wetland Studies and Solutions, Inc. for a presentation.

Mr. Rolband gave a presentation regarding “Stormwater Regulation in Virginia: Status Report to the Regulatory Advisory Panel.” He said that the presentation would look at several options for water quality. A copy of Mr. Rolband’s presentation is available on the DCR website at the following link:

<http://www.dcr.virginia.gov/documents/lrmikerolbandpresentationfinal.pdf>

Mr. Street said that by using the average forest cover that was saying it was sufficient to protect water quality.

Ms. Bezak said that the method used in the example accounted for the total number of forest acres within the Chesapeake Bay Watershed.

Mr. Kerr said that needed to be clarified.

Mr. Lerch said that the method needed to be something that would work statewide. He said that one of the options talked about impervious cover as a standard. He said that the other models seem to be more complicated.

Mr. Johnson said that there were several approaches that were basically boiled down to two. 1) Is the impact on water quality measured by the amount of impervious cover or 2) is the concept related to land conversion. He said that he would like to hear discussion regarding what the RAP thought would be a more appropriate use.

### *Grandfathering*

Mr. Toalson said that line 853 of the draft was basically the new grandfathering language as proposed by the committee. He said that the language on line 873 was from VDOT and was designed to cover linear projects.

Mr. Toalson said that the committee left the decision regarding grandfathering to the approving authority.

Mr. Lerch said that it would be helpful of the local government attorneys association reviewed this language.

### *Local Programs*

Mr. Herzog gave the following report of the Local Programs subcommittee.

1. Stormwater plan requirements that were previously in Part III are recommended to be moved to Part II in order to clarify that submittal of a “complete stormwater plan” is the responsibility of the applicant, not the qualified local program.
2. Definition of Stormwater Pollution Prevention Plan (SWPPs) is recommended to be added to the regulations and then requirements incorporated into both Part II and Part III so SWPPs can be enforced through local ordinances.
  - a. Requirements of SWPP will be part of stormwater regulations rather than being incorporated by reference to VSMP permit.
3. The four EPA requirements for a local program to be a “qualified local program” are being explicitly added to the regulations. (erosion and sediment control program, construction waste control required, preparation and implementation of a stormwater pollution prevention plan required, and site plan approval)
4. SWCB will continue to issue VSMP Construction Permits.
  - a. Approved localities should have ability to provide “one-stop” shopping for development community. Locality will be able to provide VSMP general construction permit number to project as part of approval process.
  - b. Approved localities will be able to enforce VSMP equivalent requirements through local ordinances. DCR would continue to have ability to enforce under VSMP.
5. Preliminary plans will need to meet all requirements for a stand-alone project. Consideration is being given to removing the language addressing preliminary plans for this reason.
6. Consensus of committee is that the post construction stormwater quality requirements belong in stormwater regulations and should be removed from VSMP permit requirements during next permit cycle assuming that State stormwater requirements are in place.
  - a. Removes post-construction requirements from “construction permit.”
  - b. Accomplishes goal of requiring post construction water quality and quantity controls under state regulations.
  - c. Local programs can enforce provisions under local programs. Difficult if not impossible for local programs to enforce requirements of state permit.
  - d. Eliminates conflicting requirements.
7. Requirements for State managed local programs and locality managed local programs should be identical.
8. Erosion and sediment control regulations will need to be updated to conform with stormwater regulations.

- a. In the meantime the subcommittee recommends that SWCB make a general finding the projects that comply with the requirements of the new stormwater regulations are in compliance with minimum standard 19 from the erosion and sediment control regulations as the stormwater regulations are the more stringent of the two requirements. Want to save development community cost of showing compliance with two standards.
9. While not within its scope, the subcommittee believes that improvements to the stormwater regulation could be made by revisiting Part XIII, fees and the authorizing statutes.
  - a. While the regulations do allow for some local flexibility, fees will be more difficult to manage with a one system fits all as required by the regulation. Localities would like to be given more flexibility to incorporate fees as appropriate into their existing plan review process.
10. Program costs for long-term inspection and maintenance programs are not covered by the proposed fees.
  - a. Another unfunded mandate for localities.
  - b. How will the state fund activities associated with these post-construction activities in state administered localities? State general fund?
11. General issue requiring further consideration. The regulations do not clearly distinguish that there are many land disturbing projects which are NOT required to obtain coverage under the VSMP permit i.e. sites with less than 1 acre of land disturbance outside the CBPA areas, or small land disturbance sites within the CPBA areas (less than 2500 sq ft). This distinction needs to be made throughout the regulations and in the model ordinances that are developed. This issue will also further complicate the fee structure and fee collection. There are many localities in the state which will not be able to collect fees in accordance with Part XIII for projects with land disturbance less than one acre, even if they want to be more stringent than the state regulations and address post-construction water quality/quantity on sites less than 1 acre. Part XIII should be re-examined and may need to be re-opened to address these issues.

Mr. Johnson said that with the holidays and the General Assembly approaching the RAP needed to have another meeting. He said that members needed time to review the water quality information provided.

Mr. Land said that he believed there needed to be additional discussion regarding grandfathering.

Mr. Johnson said that Ms. Watlington would be in touch regarding the meeting schedule.

The meeting was adjourned.