

Virginia Soil and Water Conservation Board
Stormwater Management Regulations Technical Advisory Committee (TAC)
Thursday, June 8, 2006
Virginia Department of Forestry
Charlottesville, Virginia

Stormwater Management Regulations Technical Advisory Committee Members Present

Alecia Daves-Johnson, Piedmont Soil and Water Conservation District
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
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
Burton R. Tuxford, II, Virginia Department of Environmental Quality

Stormwater Management Regulations Technical Advisory Committee Members Not Present

Michelle Brickner, Land Development Services, Fairfax County
Jerry W. Davis, Northern Neck PDC
Bob Kerr, Kerr Environmental Services Corporation
Phil Schirmer, City of Roanoke
William H. Street, James River Association
John Tippett, 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
Michael R. Fletcher, Director of Development
Kevin Landry, Stormwater Compliance Specialist
Christine Watlington, Policy, Planning and Budget Analyst
Ryan Brown, Office of the Attorney General

Observers

Jeff Blackford, Fairfax County
Dan Clark, City of Charlottesville
Craig Carlinci, Fairfax County
Michael Dieter, Hanover County
Andrea Futrell, Virginia Cave Board
Doug Moseley, PBS&J
Kristel Riddersvold, City of Charlottesville
Elfaith Salim, Fairfax County
John Sheehan, Aqualaw PLC
Michelle Virts, Timmons Group
Laura Wheeling, Hampton Roads PDC
Charles Williamson, Prince William County

Introductory Remarks

Ms. Burtner welcomed attendees and reviewed the session objectives.

- Advance the work of Part III by providing input and guidance into the resolution of the questions/issues that have been raised thus far relative to the administration of a local stormwater management program.
- Develop a process for how a decision can be made and what information is needed relative to the setting of fees that will enable localities and the state to recover their costs.

Ms. Burtner reviewed documents provided to members.

- Meeting agenda
- Minutes from last meeting
- Chapter 60 of the Regulations
- Questions for the day's discussions
- Information regarding Part XIII (fees)

Ms. Burtner reviewed the agenda and the participation guidelines.

There were no corrections or changes to the minutes. Any edits that TAC members may have should be sent to Ms. Watlington by June 13th.

A member asked the status of comments submitted with regard to the technical aspects of Part II.

Mr. Dowling said that, at the last meeting, staff had presented a trial balloon to start the discussion. Since that meeting, staff have held several meetings to draft a revision.

Mr. Dowling said that the thought process is to set up some subcommittees to sit down and start working through some of the items staff have redrafted. Those revisions will be brought back to the TAC for further discussion. Timing for bringing that back to the TAC will depend on the progress with Part III and Part XIII.

Presentation of existing Part III language (local program administration)

Ms. Burtner explained that Mr. Capps would review the existing Part III language. Questions would be taken for clarification purposes only. Ms. Burtner explained that, following this review, Mr. Dowling would walk the TAC through the Part III language discussion document that includes a series of questions for the TAC's consideration.

Mr. Capps reviewed the existing Part III language with the TAC.

Mr. Dowling reminded members that this was the existing language in the regulations. This was developed prior to the passage of HB 1177 when stormwater management programs were merged into the Department of Conservation and Recreation. DCR already had provisions for a voluntary stormwater management program. The question to be addressed was how does Part III need to be revised in order to allow delegation of the program, the issuance of land disturbing permits (registration statements) by localities, and what a local stormwater management program needs to look like.

A member asked if there were any localities currently operating under the law as it exists.

Mr. Hill said there were about 19 currently.

A member asked if, based on practical experience, staff could provide a checklist of what should be changed.

Mr. Hill said there are always questions when a local stormwater program is reviewed, for example how often are plans reviewed, etc.

Mr. Frye said that DCR was not sure that the regulations make it clear the difference between operating a local program and operating a program dealing with new construction sites. He said that theoretically there could be a locality interested in stormwater management that is already completely built out but may still have a reason to have a stormwater management program. He also noted that DCR might be tasked with administering a program for a locality and therefore has an interest in more clarity about what is required at that level.

Mr. Frye noted that with the existing 19 localities there are issues with long-term accessibility and maintenance of existing structures.

Detailed discussion of Part III

Mr. Dowling lead a review of the Part III discussion document. He noted that in the materials provided the text in red were the questions posed by the TAC or staff. The sections in blue were the Code excerpts that relate to the discussion.

Ms. Burtner said there were 104 questions or statements. She said that the TAC would work through these and would record where there appears to be agreement.

A member asked if there were requirements from the EPA that say what a state must do with the delegation of a program.

Mr. Hill said that EPA has a statement regarding the delegation of an MS4, but that staff has not had further discussions with regard to delegation. He said that the TAC was attempting to develop a program that would be acceptable to the Soil and Water Conservation Board. He said it is DCR's job to work with EPA and to propose an acceptable program.

Mr. Dowling noted that DCR has done considerable research to see how other states deal with the program and have noted several that have located certain responsibilities to localities. In addition, staff have been in communication with EPA. He said that the concept was to develop a program that was right for Virginia. He said he believed EPA would accept a sound program.

Part III

Local Programs

4VAC50-60-100. Applicability.

This part specifies technical criteria, minimum ordinance requirements, and administrative procedures for all localities operating local stormwater management programs.

1) What else does this section need to cover or explain?

A member said that other than general technical criteria, this section should list what is needed for a construction permit.

For the benefit of local government programs, there is a need to decide the effectiveness of a silt/sand fence.

2) Are there items in the Code of Virginia that need to be addressed in this section to add clarity.

A member said it was important to have as a precondition for delegation authority to have a consistent rating for the Erosion and Sediment control program as well as for the MS4 program.

A member asked if this was the section that should explain which criteria are optional and which are requirements.

This section should explain which localities are optional and which are required to be delegated to.

A member asked if there would be a possibility of anyone other than DCR to monitor local programs such as an approved third party.

A member asked about a Soil and Water Conservation District monitoring the program.

Mr. Dowling said that the law does provide that the PDC or SWCD could perform the inspections and other administrative functions.

It was noted that DCR may want to consider delegating to a Soil and Water Conservation District when a locality does not want the delegation.

A member asked about the applicability and responsibility of the local government.

A member noted that smaller localities have no incentive for enforcement.

Examples from the Code

- **KEY AUTHORITY NOTES:** The Stormwater Act specifies that a "Local stormwater management program" or "local program" means the various methods employed by a locality to manage the quality and quantity of runoff resulting from land disturbing activities and shall include such items as local ordinances, permit requirements, policies and guidelines, technical materials, inspection, enforcement, and evaluation consistent with this article.

- 5. Cause investigations and inspections, or delegate authority to do so, to ensure compliance with any permits, conditions, policies, rules, regulations, rulings and orders which it may adopt, issue or establish and to furnish advice, recommendations, or instructions for the purpose of obtaining such compliance.
- 6. Adopt rules governing the procedure of the permit issuing authority with respect to: (i) hearings; (ii) the filing of reports; (iii) the issuance of permits and special orders; and (iv) all other matters relating to procedure; and to amend or cancel any rule adopted. Public notice of every rule adopted under this section shall be by such means as the permit issuing authority may prescribe but must be consistent with the Administrative Process Act (§ 2.2-4000 et seq.).
- 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.
- D. The Department shall develop a model ordinance for establishing a local stormwater management program consistent with this article.
- E. Each locality that is required to or that elects to adopt and administer an approved local stormwater management program shall, by ordinance, establish a local stormwater management program that may be administered in conjunction with a local MS4 program and a local erosion and sediment control program, which shall include, but is not limited to, the following:
 1. Consistency with regulations adopted in accordance with provisions of this article;
 2. Provisions for long-term responsibility for and maintenance of stormwater management control devices and other techniques specified to manage the quality and quantity of runoff; and
 3. Provisions for the integration of locally adopted stormwater management programs with local erosion and sediment control, flood insurance, flood plain management, and other programs requiring compliance prior to authorizing construction in order to make the submission and approval of plans, issuance of permits, payment of fees, and coordination of inspection and enforcement activities more convenient and efficient both for the local governments and those responsible for compliance with the programs.
- F. The Board shall delegate a local stormwater management program to a locality when it deems a program consistent with this article.
- G. Delegated localities may enter into agreements with soil and water conservation districts, adjacent localities, or other entities to carry out the responsibilities of this article.
- H. Localities that adopt a local stormwater management program shall have the authority to issue a consolidated stormwater management and erosion and sediment control permit that is consistent with the provisions of the Erosion and Sediment Control Law (§ 10.1-560 et seq.).

§ 10.1-603.4. Development of regulations.

The Board is authorized to adopt regulations that specify minimum technical criteria and administrative procedures for stormwater management programs in Virginia. The regulations shall:

1. Establish standards and procedures for delegating the authority for administering a stormwater management program to localities;
2. Establish minimum design criteria for measures to control nonpoint source pollution and localized flooding, and incorporate the stormwater management regulations adopted pursuant to the Virginia Erosion and Sediment Control Law (§ 10.1-560 et seq.), as they relate to the prevention of stream channel erosion. These criteria shall be periodically modified as required in order to reflect current engineering methods;
3. 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;
4. Require as a minimum the inclusion in local programs of certain administrative procedures which include, but are not limited to, specifying the time period within which a local government that has adopted a stormwater management program must grant permit approval, the conditions under which approval shall be granted, the procedures for communicating disapproval, the conditions under which an approved permit may be changed and requirements for inspection of approved projects;

4VAC50-60-110. Technical criteria for local programs.

A. All local stormwater management programs shall comply with the general technical criteria as outlined in 4VAC50-60-50.

B. All local stormwater management programs which contain provisions for stormwater runoff quality shall comply with 4VAC50-60-60. A locality may establish criteria for selecting either the site or a planning area on which to apply the water quality criteria. A locality may opt to calculate actual watershed specific or locality wide values for the average land cover condition based upon:

1. Existing land use data at time of local Chesapeake Bay Preservation Act Program or department stormwater management program adoption, whichever was adopted first;
2. Watershed or locality size; and
3. Determination of equivalent values of impervious cover for nonurban land uses which contribute nonpoint source pollution, such as agriculture, forest, etc.

C. All local stormwater management programs which contain provisions for stream channel erosion shall comply with 4VAC50-60-70.

D. All local stormwater management programs must contain provisions for flooding and shall comply with 4VAC50-60-80.

E. All local stormwater management programs which contain provisions for watershed or regional stormwater management plans shall comply with 4VAC50-60-110.

F. A locality that has adopted more stringent requirements or implemented a regional (watershed-wide) stormwater management plan may request, in writing, that the department consider these requirements in its review of state projects within that locality.

G. Nothing in this part shall be construed as authorizing a locality to regulate, or to require prior approval by the locality for, a state project.

TAC or staff Questions:

3) Can this section be condensed to include reference to Part II and a few of these statements?

A member suggested referencing other sections wherever possible.

A member suggested that the data needed to be current regarding impervious land cover.

A member asked, in part B, what is the purpose to setting data to the Chesapeake Bay Program implementation when the Chesapeake Bay data is old or outdated. It was suggested that current data be used and that the data be kept up to date.

Another member expressed concern about the percent of land cover changing. When there is a land cover change, the locality should tell DCR if it is using a higher percent. If using current data, would the locality have to do a study to determine what they now have?

Mr. Hill said this may be impacted by the revisions to Part II.

4) Any other items to include?

A member recommended that if a locality is adopting more stringent requirements to meet goals of the state, those requirements should be mandatory when DCR reviews the projects.

Another member said that the state or locality can not impose requirements on a federal project, but noted that the federal government has an executive order to comply with those requirements.

A member noted that Item C addresses MS19. The stream channel needs to be clearly well defined. A member will provide wording to DCR.

5) (staff item) B. The permit-issuing authority shall require compliance with subdivision 19 of 4VAC50-30-40 of the Erosion and Sediment Control Regulations, promulgated pursuant to Article 4 (§10.1-560 et seq.) of Chapter 5 of Title 10.1 of the Code of Virginia. [Existing language from Part II]

A member agreed that the MS19 section needed work and suggested including this in the stormwater regulations and eliminating from the Erosion and Sediment control regulations.

Possible Key Minimum Components of a Local Stormwater Program

<u>Category</u>	<u>Section where the category is addressed</u>
Administration	4VAC50-60-120A – local ordinance requirement 4VAC50-60-120B – DCR local program review
Plan Review	4VAC50-60-130
Maintenance	4VAC50-60-150
Inspections	4VAC50-60-150
Enforcement	not addressed in Part III
Public Outreach & Education	not addressed in Part III

6) Are above the key components?

A member asked how public outreach and education would be measured. It was suggested that Public Outreach and Education did not need to be in the program. Others noted that this should not be eliminated and that it is an important component.

Another member noted that EPA preferred the term public participation.

A member said that long-term file maintenance should be addressed.

It was suggested that the list serve as a Table of Contents for requirements for a local program.

A member asked what qualifications a person would need and where certifications and qualifications would be listed.

A question was raised with regard to tributary strategies.

Mr. Hill said if a locality is properly implementing, stormwater, erosion and sediment and the Bay Act that the locality was probably implementing a portion of the tributary strategies.

7) Are there other subsections of the key components above?

A member said that it was assumed there would be changes under administration.

8) Are the components of a DCR administered program the same or similar?

A member suggested that the regulations have a separate section for state and federal projects.

A member asked if EPA would perform periodic reviews of the DCR program.

4VAC50-60-120. Requirements for local program and ordinance.

A. At a minimum, the local stormwater management program and implementing ordinance shall meet the following:

1. The ordinance shall identify the plan-approving authority and other positions of authority within the program, and shall include the regulations and technical criteria to be used in the program.
2. The ordinance shall include procedures for submission and approval of plans, issuance of permits, monitoring and inspections of land development projects. The party responsible for conducting inspections shall be identified. The local program authority shall maintain, either on-site or in local program files, a copy of the approved plan and a record of all inspections for each land development project.

B. The department shall periodically review each locality's stormwater management program, implementing ordinance, and amendments. Subsequent to this review, the department shall determine if the program and ordinance are consistent with the state stormwater management regulations and notify the locality of its findings. To the maximum extent practicable the department will coordinate the reviews with other local government program reviews to avoid redundancy. The review of a local program shall consist of the following:

1. A personal interview between department staff and the local program administrator or his designee;
2. A review of the local ordinance and other applicable documents;
3. A review of plans approved by the locality and consistency of application;
4. An inspection of regulated activities; and
5. A review of enforcement actions.

C. Nothing in this chapter shall be construed as limiting the rights of other federal and state agencies from imposing stricter technical criteria or other requirements as allowed by law.

TAC or staff Questions:
Ordinances

9) What party is responsible for conducting inspections?

It was suggested that in most situations it would be the locality inspecting. DCR would also periodically conduct inspections.

It was suggested there was a need to clarify how the PDC or SWCD would factor into this. The capability of the locality should be addressed.

Regarding a construction permit, after a storm event the developer inspects with no authority to regulate self or fine. There is a disconnect.

A member suggested a paragraph be included regarding what localities should achieve and determine who can carry it out.

Additionally, the following issues were noted:

- Must be clear what the inspector is talking about; E&S covers some post-development.
- Have certified people in place to do the work. This may add additional certification which some did not want.
- During and at close of construction versus post development, who has the authority and how?
- E&S inspectors could do construction inspections and the stormwater inspections associated with this program.
- E&S means to protect water quality during construction and MS19 meant to protect long-term after construction. Okay with moving MS19 out of E&S and modifying it for this program.

- It was noted that this TAC does not have the authority to remove MS19 from the E&S regulations, but the question was asked if section 50-60-63 pre-empt MS19.

Mr. Hill noted that DCR would need to develop a model ordinance.

10) Model ordinance based on local adoption of program. Do need for those who don't – have that they must do something (coordination of regional) – define state procedures for those when don't have local delegation.

The program must meet the minimum standards as defined by the Board.

A member asked if certification was required for the inspectors.

It was noted that MS19 could be moved into this section, however, that would also require an additional regulatory process.

Mr. Hill said that the question is that if DCR has to administer the general permit program should the locality still be able to issue permits for projects to begin.

Mr. Frye said the issue was that with the recent change in state law, localities are required to tell DCR about their land disturbing activities. Some localities are permitting their own land disturbing activities under Erosion and Sediment control. There should be some type of requirement to work with the state.

A member said a separate ordinance would not be needed. If a locality does not adopt a program, no permit should be issued until the applicant provides the necessary information to the state. Localities will want to keep the development moving.

It was noted that the local ordinance adoption process requires a public hearing. Further, the state cannot force a locality to adopt an ordinance.

Mr. Dowling said that staff had not previously contemplated incorporating the ordinance into the regulation. Staff will develop a model ordinance.

An inquiry was made, as to what does DCR enforce if the locality does not adopt an ordinance.

Staff noted that we will need to spell out DCR's authorities in the regulations.

Record Keeping

11) Where is the copy of the approved plan and a record of all inspections for each land development project kept? (short-term and long-term)

If a locality opts out of the program the records are kept with DCR. Otherwise the locality maintains the records.

12) How long to keep records? (Records must be kept forever, but where, how, and what?)

Mr. Hill noted that for a general permit the records must be kept indefinitely.

It was noted that for a locality to issue the state permit, that there must be a standardized process.

DCR indicated they would inquire of EPA what their expectations are and that we would also look at the State's record retention policies.

At this time the committee recessed for lunch.

Local Program Review

13) Should 120 B become its own section titled Department program reviews?

It was noted that this does not apply to Section A.

It was suggested this be labeled Stormwater Program Review.

14) Should the department periodically review each locality's stormwater management program, implementing ordinance, and amendments?

A member asked if there would be a review if DCR is implementing the program.

15) Should the review include program and ordinance consistent evaluations with the state stormwater management regulations and notify the locality of its findings.

16) Should there be a more frequent audit of local programs with deficiencies corrected within a certain time period?

17) What does the program include, and what are the expectations and criteria for the annual review?

Ms. Burtner noted that this questions came from the TAC.

A member said that DCR should have an annual reporting requirement, but that there was not time for an annual review.

It was noted that there should be a list of expectations for an annual report.

18) Should we include monitoring data as part of an audit?

Mr. Frye asked what type of data this referred to. Would an audit just consider if there is a monitoring program? Or would it be an audit of that monitoring?

A member suggested that putting a monitoring requirement in here is redundant and unnecessary. It is not necessary to have two different regulations having the same requirement in two locations.

19) Coordinate local review with the Erosion and Sediment Control Program and the Chesapeake Bay Act – coordinate all programs as if they were one program.

Mr. Hill said that coordination of the programs is difficult because of the current cycles for review. There are 85 localities in the Chesapeake Bay Act and 165 in the Erosion and Sediment program. Currently the five-year cycles do not match up.

Mr. Dowling clarified that the consensus of the TAC was that the preference was to do the reviews for E&S, Bay Act, and Stormwater at the same time.

A member said it would be helpful to localities to have the reviews coordinated at the same time.

Delegation Authorization

20) In your opinion, what steps need to be taken to delegate program to a locality?

A member suggested a questionnaire or application for the locality to complete.

Another member said that it would be difficult to use an application because the program would differ between localities.

A member asked if a locality had to request the delegation or if DCR automatically assumed the program unless the locality requests.

Mr. Frye said that MS4 and Bay Act area localities are tasked by the law to be delegated. There still needs to be Board approval to document that the locality is deemed capable of running the program.

Non MS4 and non Bay Act localities do not have the program unless they request it.

The need for adequate staff was addressed.

Mr. Hill said the Board would have to take into consideration in the delegation package the matter of adequate staffing.

Mr. Frye said that if a locality makes an application but does not have adequate staffing the recommendation may not move forward to the Board.

21) What is impact on this program if locality has an inconsistent E&S program?

A member said that the optional localities should not be able to have the delegation if their Erosion and Sediment Control program is inconsistent.

22) Prerequisite to a locality delegation – have a rating on the locality’s E&S

State administration of a local program

23) If a locality decides not to adopt a program, what is the program that DCR will administer? Will it be the same as the minimum or will it be different?

A member said there needs to be incentives for localities to adopt.

24) If locality does not opt in, does state administer same program (being developed for localities) for localities? If not, what should be different?

25) What should be in local ordinance should they choose not to opt in?

It was noted that in the morning session the consensus was that there should be a change in the law that requires the proper permits before the issuance of land disturbance permits. The development may not move forward until the proper permits have been acquired.

Roles of other parties

26) What are roles, if any, of Soil & Water Conservation Districts if localities adopt own program?

This would not be a change. It is up to the localities.

27) If a locality chooses not to adopt a program, should DCR consider delegation to a SWCD?

It was noted that this may not be permissible under the law. A locality has the authority to contract with the District.

Mr. Frye said that perhaps it is the issue of allowing DCR to contract with a third party to act as an agent to administer the program. That may or may not be the Soil and Water Conservation District.

It was noted that most state agencies have a lack of resources. It would be helpful to have a provision to allow the opportunity to coordinate with other agencies.

A third party arrangement does not shift the responsibility for the program authority.

General

28) Who permits a local government’s project?

The local government with state oversight.

29) Are localities with a limited number of land disturbances per year handled differently?

A member said the guidelines should be the same.

It was noted that DCR has a model for any non-delegated program regardless of location or number of land disturbances.

30) Account for topographic and development differences across the Commonwealth.

It was noted that karst topography might cause specific differences.

The methodology will be different, but the regulations address intent, not methodology. Localities should use good practices that work with the topography.

It was noted that within a watershed, one size fits all may not be appropriate.

31) Recognition of rapid development change and low impact vs. no impact on development.

32) Need a level playing field in jurisdictions within a watershed.

4VAC50-60-130. Administrative procedures: stormwater management plans.

A. Localities shall approve or disapprove stormwater management plans according to the following:

1. A maximum of 60 calendar days from the day a complete stormwater management plan is accepted for review will be allowed for the review of the plan. During the 60-day review period, the locality shall either approve or disapprove the plan and communicate its decision to the applicant in writing. Approval or denial shall be based on the plan's compliance with the locality's stormwater management program.
2. A disapproval of a plan shall contain the reasons for disapproval.

B. Each plan approved by a locality shall be subject to the following conditions:

1. The applicant shall comply with all applicable requirements of the approved plan, the local program, this chapter and the Act, and shall certify that all land clearing, construction, land development and drainage will be done according to the approved plan.
2. The land development project shall be conducted only within the area specified in the approved plan.

3. The locality shall be allowed, after giving notice to the owner, occupier or operator of the land development project, to conduct periodic inspections of the project.
4. The person responsible for implementing the approved plan shall conduct monitoring and submit reports as the locality may require to ensure compliance with the approved plan and to determine whether the plan provides effective stormwater management.
5. No changes may be made to an approved plan without review and written approval by the locality.

TAC or staff Questions:

General

33) Does “localities” need to be changed to “permit issuing authority” or other terminology to reflect DCR’s potential program administrative role?

It was questioned whether the term “permit issuing authority” incorporated enforcement. “Program administering authority” was suggested as a substitution. Upon looking at the definition of “permit issuing authority” it was determined that this would work.

Plan review

34) As part of an Administrative matrix is there a minimum staffing level requirement for plan review staff?

It was suggested that a minimum should be established based on the project number of annual plan reviews.

The issue of staffing was placed in the discussion parking lot.

Question 76 was referred to with regard to a certification program.

It was noted that perhaps a stormwater component could be added to the Erosion and Sediment control certification.

It was discussed that certification needs to be more than the current online process. There also needs to be a grace period for certification.

There was not consensus on the need for certification. The issue was placed on the discussion parking lot.

35) How to handle incomplete plans?

It was agreed that there should be the opportunity to submit corrections.

The following was suggested:

- 15-30 days to be notified if a program is incomplete.
- When the additional information is received then the 60-day review process begins

36) How long to review?

37) Discrepancy between localities 60 day & 30 day—plan review; E&S 45 & state 60.

A member suggested this should be 45 days to be consistent with E&S.

Mr. Hill noted that this was for the stormwater management plan and not the general permit.

A member suggested there should be an approved land distribution plan before a general permit is granted.

It was suggested there was a need to develop a checklist for criteria for developing an individual permit.

38) What are the general procedures for submission and approval of plans?

There was a discussion about combining E&S and stormwater permits. There was not consensus on this issue.

A member said his locality would not issue a grading permit until proof of application for a general permit is received. There must be a thorough review and approval of the site plan and the stormwater management plan. The E&S permit is usually the last issued.

It was noted that this would make it more difficult for developers. A member suggested that it be explained that the process would be streamlined for developers. There would be one general construction permit.

Ms. Burtner suggested that the issue be placed on the discussion parking lot. If there was a way to put the programs together that would be pursued. However, it was noted that there were issues of implementation.

Mr. Hill noted that merging the permits would create issues with the distribution of fees between the state and locality.

At this time the committee took a break.

Ms. Burtner directed members to question 39.

39) Consider agreement in lieu of plan for 1 to 5 acre areas – need to be addressed and maintained?

It was discussed that this was not intended to be another layer of bureaucracy but that projects should be in terms of scale.

A member asked if there would be individual building permits on each individual lot or could an agreement be signed in lieu of a plan?

It was suggested that the developer is responsible, not the individual.

Mr. Capps said that currently with an E&S agreement in lieu of a plan, that is applicable to single family residences.

A member said that a stormwater management plan is too cumbersome for single family homes where less than an acre is disturbed.

A member noted that much of the pollution comes from the cattle and poultry, not only the construction.

Mr. Hill said that agricultural activities are exempt, but that the building of poultry houses or other structures is not exempt. What is exempt is tilling, planting and farm roads that are truly farm roads.

- 40) Do the Plan developers & reviewers need to be an engineer?
- 41) Changing approved Stormwater plans in the field?

Plans that are changed in the field must be documented and must meet approval.

Permit issuance

- 42) Do we need to work in a subsection on permit issuance procedures?
- 43) How will permits be issued?
- 44) What permits will be issued and are they integrated at all?
- 45) How does the General permit registration statement fit in?
- 46) Is there a sequencing of permit issuance?

A member said the issue was how differences in permits would be allowed.

A locality noted that his locality already issues 10 different types of permits.

Another member noted that his locality issues different permits but that one check may be written at the service center.

It was suggested that each locality can streamline the program as they see fit.

A member noted that this would again be discussed in the fee section.

47) How are disapprovals handled?

A member suggested these are best handled face to face and that local governments should handle that.

It was suggested that disapprovals also be issued in writing with the reasons for the decision.

A member asked the difference between disapproving and saying an application is incomplete.

It was suggested that the phrase “disapproval” not be used. Rather than being disapproved the application is incomplete and does not meet the requirements.

A member said that true disapproval happens because of an improper use of the land. That is a zoning or planning issue.

48) How are permit revocations handled?

Revocations are currently handled in writing with the reasons stated. This is basically a stop order with the conditions that must be met for resuming the project.

Mr. Hill said a stop work order is different from a revocation of a permit.

It was noted that localities have their own established procedures for issuing stop work orders and revoking permits. When DCR is responsible for administering the program the issue would come to the Board.

Mr. Capps noted that the regulations specify situations for the revocation of a permit. That includes noncompliance by the permittee or a determination that the permitted activity endangers human health or the environment.

49) How will permit tracking be accomplished?

DCR will develop a reporting format.

50) Do we need criteria for distinguishing between general and individual permits?

Mr. Hill said this criteria already exists. DCR can issue general and individual permits.

A member suggested the distinction needed to be the scope and size of the project.

It was noted that the Board could delegate the authority to issue an individual permit to the Director.

Mr. Capps said that there may be an issue of whether or not EPA was willing to allow the delegation of the issuance of individual permits.

51) Who handles individual permits?

It was noted that one of the differences was the need for public notice.

52) Evidence of approval of all necessary permits shall be presented. [Existing language from Part II]

A member noted a concern about the number of permits. It was suggested that there be a provision to note that obtaining permits is the responsibility of the developer and not the locality. The locality should not be liable where there might be something missed.

Reporting

53) What reports are required and how might it work?

54) How do you see reporting being handled from locality to state?

Mr. Hill said that DCR would develop the reporting format.

Unusual or extraordinary discharges would be reported to the locality.

55) What might be considered "sufficient" staff?

The staffing issue was placed on the discussion parking lot.

The following will be addressed at the June 20th meeting. The meeting will be held at the Science Museum of Virginia.

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.?

- 57) Define exceptions and make sure they are limited

Stringency

- 58) Does this section or another also need to address stringency?
- 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?
- 60) Need to insert "satisfies 10.1-603.7 (scientific basis)"
- 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]
- 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]
- 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]

- **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?
- 65) How are LID structures handled?
- 66) Who is responsible?
- 67) For how long?
- 68) How is it funded (service fees, bonds, etc.)?
- 69) 50-60-150B – should the state “ensure continued performance of improved practice?”
- 70) Long term inspection of BMPs.
- 71) GPS locations of BMPs.
- 72) BMPs in series.
- 73) Converting basin from E&S to SW before stabilization.
- 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]
- 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; Channels between BMPS – adequacy.

Certification Program

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

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.

Inspections

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

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

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

81) How do you see inspections being handled?

82) How much time after a rain event?

83) Frequency of inspections?

84) How to prioritize sites?

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

86) What are the minimum requirements for inspection records?

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

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?

OTHER SECTIONS/ ISSUES FOR DISCUSSION

TAC or staff Questions:

Enforcement

89) How will enforcement being handled?

90) What is tracking process for enforcement actions?

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

92) What teeth do localities receive for enforcement

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

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

Penalties

- 95) Enforcement needs to have effective penalties for non-compliance.
- 96) How are fines handled?
- 97) Board develop a schedule of civil penalties.

Fee Collection

- 98) How are fees for E&S being collected now? How should they be collected?
- 99) Identify in a local program that the fees will be used to fund the requirements of a local program.
- 100) Need administrative procedures for the local program – who to collect the fees, how they can be spent, how to submit to DCR, etc.

Public Outreach & Education

- 101) What might this component include?

General

- 102) Who handles Federal & State agency projects? — DCR
- 103) How are utility & linear projects addressed?

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]

Ms. Burtner reminded members that the next meeting would be on Tuesday, June 20, beginning at 9:00 a.m. at The Science Museum of Virginia.

She noted that information relative to fees had been provided in member packets. That discussion will continue at the next meeting.

The planning team will work with focus groups regarding the issues in the discussion parking lot. Members interested in working with the discussion groups were asked to identify themselves to DCR staff.

The meeting concluded at 4:00 p.m.

REVISED: Monday, June 19, 2006