



**ACTIVITIES CONSTITUTING
“SUBSTANTIVE PROGRESS”
TOWARDS LOCAL DEVELOPMENT
OF A VIRGINIA STORMWATER
MANAGEMENT PROGRAM**

(Approved December 13, 2012)

Summary:

This guidance document serves to identify those activities considered as constituting “substantive progress” made by a locality in developing a Virginia stormwater management program that warrant a 12-month extension by the Virginia Soil and Water Conservation Board (Board) for the locality to complete their program development in accordance with the Virginia Stormwater Management Act (§ 10.1-603.2 et seq. of the Code of Virginia) and its attendant regulations [Virginia Stormwater Management Program (VSMP) Permit Regulations (4VAC50-60)]. Requests for the 12-month extension must be submitted to the Department of Conservation and Recreation’s (DCR’s) Regional Office staff by April 1, 2013 in order to be considered by the Board at its June 2013 meeting, otherwise, the VSMP adopted program must be submitted to the Board by June 13, 2013.

Electronic Copy:

An electronic copy of this guidance document is available in PDF format on the Regulatory Town Hall website at <http://townhall.virginia.gov/> under the “Guidance documents” tab (see Virginia Soil and Water Conservation Board).

Contact Information:

Please contact the Department of Conservation and Recreation’s Stormwater Management Division at the appropriate regional office with any questions regarding the application of this guidance (see http://www.dcr.virginia.gov/stormwater_management/swmrollout-tools.shtml for contact information). Additional information on the program adoption process may be found in the Frequently Asked Questions document also found at this web address.

Disclaimer:

This document is provided as guidance and, as such, sets forth the process for the Board and DCR to work with localities on the development of Virginia stormwater management programs. The guidance does not carry the force of law and is not intended, and cannot be relied on, to create any rights, substantive or procedural, on the part of any person or entity. DCR reserves the right to modify the guidance at any time without public notice. In addition, DCR may deviate from the guidance as it deems necessary and within the confines of law to carry out the intent of the stormwater management law and regulations.

“Substantive Progress” Towards Virginia Stormwater Management Program Development

I. Background:

Current law and regulation require localities in the Commonwealth, with the exception of towns who are not designated as Municipal Separate Storm Sewer Systems (MS4s), to adopt a Virginia stormwater management program as approved by the Virginia Soil and Water Conservation Board by June 13, 2013. Section 10.1-603.3 of the Code of Virginia establishes the timeframe for the development of a Virginia stormwater management program by a locality and the ability of the Virginia Soil and Water Conservation Board to issue a 12-month extension for program development provided that the locality “has made substantive progress” towards developing a program. In accordance with the Code of Virginia, the Virginia Administrative Code (see 4VAC50-60-148 and 150) sets out additional authorization procedures for Virginia stormwater management programs. This guidance document has been prepared to provide guidance to localities on the Virginia stormwater management program development schedule and outlines what is considered “substantive progress.”

II. Definitions:

"Virginia Stormwater Management Program" or "VSMP" means a program approved by the Board after September 13, 2011, that has been established by a VSMP authority to manage the quality and quantity of runoff resulting from land-disturbing activities and shall include such items as local ordinances, rules, permit requirements, annual standards and specifications, policies and guidelines, technical materials, and requirements for plan review, inspection, enforcement, where authorized in this article, and evaluation consistent with the requirements of this article and associated regulations.

"Virginia Stormwater Management Program authority" or "VSMP authority" means an authority approved by the Board after September 13, 2011, to operate a Virginia Stormwater Management Program or, until such approval is given, the Department. An authority may include a locality; state entity, including the Department; federal entity; or, for linear projects subject to annual standards and specifications in accordance with subsection B of § 10.1-603.5, electric, natural gas, and telephone utility companies, interstate and intrastate natural gas pipeline companies, railroad companies, or authorities created pursuant to § 15.2-5102.

III. Authority:

Timeframe for Development Authority:

Section 10.1-603.3 of the Code of Virginia establishes the timeframe for development of Virginia stormwater management programs by localities.

§ 10.1-603.3. Establishment of Virginia stormwater management programs.

A. **Any locality, excluding towns, unless such town operates a regulated MS4, shall be required to adopt a VSMP for land-disturbing activities consistent with the provisions of this article according to a schedule set by the Board. Such schedule shall require adoption no sooner than 15 months and not more than 21 months following the effective date of the regulation that establishes local program criteria and delegation procedures, unless the Board deems that the Department's review of the VSMP warrants an extension up to an additional 12 months, provided the locality has made substantive progress.**

B. Any town lying within a county, which has adopted a VSMP in accordance with subsection A, may adopt its own program or shall become subject to the county program. If a town lies within the boundaries of more than one county, the town shall be considered to be wholly within the county in which the larger portion of the town lies. Towns shall inform the Department of their decision according to a schedule established by the Department. Thereafter, the Department shall provide an annual schedule by which towns can submit applications to adopt a VSMP.

NOTE: For the purposes of subsection A above, the effective date of “the regulation that establishes local program criteria and delegation procedures” was September 13, 2011.

Authorization Procedures:

The Virginia Stormwater Management Program (VSMP) Permit Regulations contain the following authorities applicable to this guidance.

4VAC50-60-150. Authorization procedures for Virginia stormwater management programs.

A. **A locality required to adopt a VSMP in accordance with § 10.1-603.3 A of the Code of Virginia or a town electing to adopt its own VSMP in accordance with § 10.1-603.3 B of the Code of Virginia, must submit to the board an application package** which, at a minimum, contains the following:

1. **The draft VSMP ordinance(s) as required in 4VAC50-60-148;**
2. **A funding and staffing plan;**
3. The policies and procedures including, but not limited to, agreements with Soil and Water Conservation Districts, adjacent localities, or other public or private entities for the administration, plan review, inspection, and enforcement components of the program; and
4. Such ordinances, plans, policies, and procedures must account for any town lying within the county as part of the locality's VSMP program unless such towns choose to adopt their own program.

B. Upon receipt of an application package, the board or its designee shall have 30 calendar days to determine the completeness of the application package. If an application package is deemed to be incomplete based on the criteria set out in subsection A of this section, the board or its designee must identify to the VSMP authority applicant in writing the reasons the application package is deemed deficient.

C. **Upon receipt of a complete application package, the board or its designee shall have 120 calendar days for the review of the application package, unless an extension of time, not to exceed 12 months unless otherwise specified by the board in accordance with § 10.1-603.3 M of the Code of Virginia, is requested by the department, provided the VSMP authority applicant has made substantive progress.** During the 120-day review period, the board or its designee shall either approve or disapprove the application, or notify the locality of a time extension for the review, and communicate its decision to the VSMP authority applicant in writing. If the application is not approved, the reasons for not approving the application shall be provided to the VSMP authority applicant in writing. Approval or denial shall be based on the application's compliance with the Virginia Stormwater Management Act and this chapter.

D. A VSMP authority applicant in accordance with § 10.1-603.3 A of the Code of Virginia shall submit a complete application package for the board's review pursuant to a schedule set by the board in accordance with § 10.1-603.3 and shall adopt a VSMP consistent with the Act and this chapter within the timeframe established pursuant to § 10.1-603.3 or otherwise established by the board.

4VAC50-60-148. Virginia stormwater management program administrative requirements.

A. A VSMP shall provide for the following:

1. Identification of the authority accepting complete registration statements and of the authorities completing plan review, plan approval, inspection, and enforcement;

B. A locality's VSMP authority shall adopt and enforce an ordinance(s) that incorporates the components set out in subdivisions 1 through 5 and 7 of subsection A of this section.

IV. Discussion and Interpretation:

A. Schedule for Virginia stormwater management program development.

Section 10.1-603.3. A. of the Code of Virginia stipulates that specified localities “shall be required to adopt a VSMP for land-disturbing activities consistent with the provisions of this article according to a schedule set by the Board”. It further states that “[s]uch schedule shall require adoption no sooner than 15 months and not more than 21 months following the effective date of the regulation that establishes local program criteria and delegation procedures, unless the Board deems that the Department's review of the VSMP warrants an extension up to an additional 12 months, provided the locality has made substantive progress”.

In accordance with the Code of Virginia, localities are therefore required to adopt a Virginia stormwater management program between December 13, 2012 (15 months) and June 13, 2013 (21 months) unless the Board provides an extension for such programs upon DCR's recommendation to do so. The benchmark for the Board issuing an extension from the specified 15-21 month schedule is for the locality to be making “**substantive progress**” towards program development by June 13, 2013.

The Department, upon its review of the locality's draft application package, will review the minimum activities set out in IV B below to develop a recommendation to the Board regarding whether an extension may be warranted. DCR's recommendations for an extension based on “substantive progress” will be considered by the Board at its June 2013 meeting. In order to meet the substantive progress criterion and to provide for adequate time for DCR staff review prior to presenting to the Board, supporting documentation for these three activities should be submitted to DCRs Region Offices **no later than April 1, 2013**.

B. Minimum requirements to show “substantive progress”.

The activities noted below and in Table 1 represent those activities that a local government should submit that will constitute “substantive progress” in the development of their local stormwater management program.

1. Identification of the authorities accepting registration statements, completing plan review and plan approval, and conducting inspections and enforcement functions;
2. Draft of the local stormwater management ordinance (the draft local ordinance does not have to be approved by the local elected and/or appointed local officials prior to submittal); and
3. Draft staffing and funding plan.

Approval of the 12-month extension in June of 2013 will allow localities additional time to complete their Virginia stormwater management program application package. All three activities listed as necessary prior to an extension being considered, represent a reasonable expectation of “substantive progress” as called for in the Virginia Stormwater Management Act and attendant regulations.

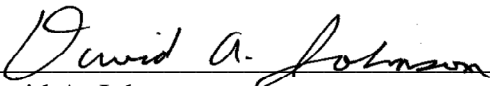
Table 1: Substantive Progress Checklist

Item #	Code/Regulatory citation	Information needed for review	Review Strategy	Activities considered as constituting “substantive progress”
1	Section 4VAC50-60-148 A.1 Section 10.1-603.3 H 4VAC50-60-150 A.3	Identification of authorities, accepting registration statements, completing plan review and plan approval, and conducting inspections and enforcement functions. This includes identification of whether the locality intends to partner with adjacent localities or other entities and who those partners will or might be.	<i>Local staff should identify the responsible authorities that will be performing the listed functions.</i>	<p><i>Identify local positions that will perform the listed functions or partners that may perform specified functions.</i></p> <p><i>If working with a partner, No agreements, MOUs, or contracts are required for submittal at this time.</i></p>
2	Section 10.1-603.3 E 4VAC50-60-150 A.1	<p>Copy of the local Stormwater Management Ordinance (s).</p> <p>It is understood that the draft ordinance submitted as part of “substantive progress” should be consistent with the version of the model ordinance in place as of April 1, 2013 and will be updated in the final submittal to reflect the final model ordinance.</p>	<i>Local staff should provide a copy of the most recent Stormwater Management Ordinance(s) that reflect the necessary elements of a VSMP.</i>	<p><u><i>Preliminary draft stormwater ordinance (does not need to be approved by local elected and/or appointed officials), other ordinances and/or local manuals that include the following minimum information:</i></u></p> <ol style="list-style-type: none"> <i>1. Identification of plan review, inspection, enforcement & registration statement authorities;</i> <i>2. Erosion and Sediment Control plan review process;</i> <i>3. Preliminary requirements for compliance with Stormwater Pollution Prevention Plan (SWPPP), Pollution Prevention and Stormwater management plans;</i> <i>4. Inspection and monitoring;</i> <i>5. Long-term maintenance of Best Management Practices (BMPs); and</i> <i>6. Enforcement and civil penalty procedures.</i> <p><i>Due date to be established by the Board for final ordinance that includes necessary elements based on the revised General Permit for Stormwater Discharges from Construction Activities.</i></p>

3	Section 4VAC50-60-150 A.2	Provide funding and staffing plan.	<p><i>Local staff should provide a general description of staffing (i.e. number of new positions, estimation of percentages of existing positions, etc.) needed to operate their Virginia Stormwater Management Program. General description of how funds will be distributed. If partnering, the plan should also discuss staffing and funding relationships.</i></p>	<p><i>Draft funding and staffing plan to include:</i></p> <ol style="list-style-type: none"> <i>1. List of roles (plan review, inspection and administration/enforcement);</i> <i>2. Local department responsible;</i> <i>3. Number of staff estimated to be necessary under each role; and</i> <i>4. List of sources of funding.</i>
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V. Adoption, Amendments, and Repeal:

This guidance document shall remain in effect until rescinded, amended or superseded.



David A. Johnson
Director, Virginia Department of Conservation and Recreation

12/13/2012
Date