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Regulatory
Town Hall

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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Virginia Soil and Water Conservation Board
Virginia Administrative Code (VAC) citation	4 VAC 50-60
Regulation title	Virginia Stormwater Management Program (VSMP) Permit Regulations
Action title	Amend, modify or delete provisions of the regulations to: (1) allow for changes in the statewide permit fee schedule supporting the Stormwater Management Program; and (2) allow for related changes as needed to improve the administration and implementation of the stormwater management fees.
Document preparation date	November 1, 2005

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

The purpose of this proposed action is to consider the development and adoption of regulations that establish or revise the statewide stormwater permit fees at a level sufficient to carry out the stormwater management program per §10.1-603.4.5 of the Code of Virginia; and to revise the related provisions in the regulations, as needed, to improve the administration and implementation of fees under the Virginia Stormwater Management Act (§10.1-603.2 et seq.).

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

The Virginia Stormwater Management Program was created by Chapter 372 of the 2004 Virginia Acts of Assembly (HB1177) and this action transferred the responsibility of the permitting programs for MS4s and construction activities from the State Water Control Board and DEQ to the Virginia Soil and Water Conservation Board and DCR. In the resulting revised Stormwater Management Act, §10.1-603.4.5 of the Code of Virginia allows for the establishment of a statewide permit fee at a level sufficient to carry out the program. The current fees will be evaluated and necessary increases or decreases made to implement this section of the Code.

§10.1-603.4. subsection 5 Establish, with the concurrence of the Director, a statewide permit fee schedule for stormwater management related to land disturbing activities of one acre or greater. The fee schedule may also include a provision for a reduced fee for land disturbing activities between 2,500 square feet and up to 1 acre in the Chesapeake Bay Preservation Act (§10.1-2100 et seq.) localities. The regulations shall be governed by the following:

- a. The revenue generated from the statewide stormwater permit fee shall be collected and remitted to the State Treasurer for deposit in the Virginia Stormwater Management Fund established pursuant to §10.1-603.4:1. However, whenever the Board has delegated a stormwater management program to a locality or is required to do so under this article, no more than 30 percent of the total revenue generated by the statewide stormwater permit fees collected within the locality shall be remitted to the State Treasury for deposit in the Virginia Stormwater Management Fund.*
- b. Fees collected pursuant to this section shall be in addition to any general fund appropriation made to the Department; however, the fees shall be set at a level sufficient for the Department to carry out its responsibilities under this article;*

Chapter 102 of the 2005 Virginia Acts of Assembly (HB2365), changed the “may” provision to “shall” for the development of a fee for activities between 2,500 square feet and up to 1 acre in Chesapeake Bay Preservation Act localities.

§10.1-603.4. Subsection 5. Establish, with the concurrence of the Director, a statewide permit fee schedule for stormwater management related to land disturbing activities of one acre or greater. The fee schedule shall also include a provision for a reduced fee for land disturbing activities between 2,500 square feet and up to 1 acre in Chesapeake Bay Preservation Act (§ 10.1-2100 et seq.) localities. The regulations shall be governed by the following:

Also, requirements set forth in the federal Clean Water Act (33 USC § 1251 et seq.), formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972, Public Law 92-500, as amended by Public Law 95-217, Public Law 95-576, Public Law 96-483, and Public Law 97-117, or any subsequent revisions thereto, and its attendant regulations set forth in 40 CFR Parts 122, 123, 124 and 125 requires states to establish a permitting program for the management of stormwater for municipal separate storm sewer systems (MS4s) and construction activities disturbing greater than or equal to an acre.

Additionally, the Virginia Soil and Water Conservation Board has authority to adopt and amend regulations to advance the Stormwater Management program pursuant to § 10.1-603.2:1. This

section stipulated that the powers and duties of the Virginia Soil and Water Conservation Board include the following:

In addition to other powers and duties conferred upon the Board, it shall permit, regulate, and control stormwater runoff in the Commonwealth. In accordance with the VSMP, the Board may issue, deny, revoke, terminate, or amend stormwater permits; adopt regulations; approve and periodically review local stormwater management programs and management programs developed in conjunction with a municipal separate storm sewer permit; enforce the provisions of this article; and otherwise act to ensure the general health, safety and welfare of the citizens of the Commonwealth as well as protect the quality and quantity of state waters from the potential harm of unmanaged stormwater.

Substance

Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed. Include the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. Delineate any potential issues that may need to be addressed as the regulation is developed.

The existing Virginia Stormwater Management Program (VSMP) Permit Regulation is currently funded exclusively from permit fees. The current fee schedule was in existence prior to the consolidation of the state program into DCR. The fees will be revised to cover the costs associated with program implementation. To assist localities in the implementation of a locally delegated program, at least 70% of the collected fees will be shared with the localities to cover program costs.

The collection of sufficient fees to cover program costs along with the allowance for local delegation (which will have handled through a separate regulatory action) should improve program implementation statewide. Improved implementation provides protection and improvement of water quality that will restore and enhance the living resources of Virginia's waters, provide clean water for recreational uses and conservation in general, and contribute to the protection of Virginia's rivers and the Chesapeake Bay. These actions are essential for the protection of the health, safety, and welfare of the citizens of the Commonwealth.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action.

The current fees generated are insufficient to cover the Department's administrative costs associated with this program. This shortfall is expected to increase when localities are authorized to administer certain program functions for which they may retain at least 70% of the collected fees to cover their program costs. Alternatives to a change in the regulatory fee

provisions include the provision of state general funds to support the Department's administration of the program.

Public Participation

Please indicate the agency is seeking comments on the intended regulatory action, to include ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also indicate whether a public meeting is to be held to receive comments on this notice. Indicate that 1) the agency is not holding a public meeting because the agency has authorized proceeding without holding a meeting or 2) the agency is holding a meeting. If a public meeting is to be held, indicate that the date, time and place of the meeting may be found in the calendar of events section of the Virginia Register of Regulations.

The Board is seeking comments on the intended regulatory action, including the revision of the fee schedule and general ideas on how to improve the implementation and operation of the VSMP. The Virginia Stormwater Management Program (VSMP) Permit Regulations (Chapter 60) can be found at <http://leg1.state.va.us/000/reg/TOC04050.HTM>.

The Board is also seeking information regarding impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include: (1) Projected reporting, recordkeeping and other administrative costs, (2) Probable effect of the regulation on affected small businesses, and (3) Description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Persons desiring to submit written comments pertaining to this notice may do so by mail, the Internet, or facsimile. Comments pertaining to this notice should be sent to the Regulatory Coordinator at: Virginia Department of Conservation and Recreation, 203 Governor Street, Suite 302, Richmond, Virginia 23219. Comments may also be e-mailed to the Regulatory Coordinator at: regcord@dcr.state.va.us. Or comments may be faxed to the Regulatory Coordinator at: (804) 786-6141. All written comments must include the name and address of the commenter (e-mail addresses would also be appreciated). In order to be considered, comments must be received by 5:00 p.m. on the date established as the close of the comment period.

The Department as authorized by the Board intends to utilize a public participatory approach to these regulatory amendments and hold a public meeting to provide opportunity for public comment. Notice of the meeting will be posted in the Calendar of Events section of the Virginia Register of Regulations and be posted on the Town Hall. Both oral and written comments may be submitted at that time.

Following publication of the proposed regulation in the Virginia Register, the Department as authorized by the Board will hold at least one public hearing to provide opportunity for public comment. Notice of the hearing(s) will be posted in the Calendar of Events section of the Virginia Register of Regulations and be posted on the Town Hall. Both oral and written comments may be submitted at that time.

Participatory Approach

Please indicate the extent to which an ad hoc advisory group will be used in the development of the proposed regulation. Indicate that 1) the agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach; 2) the agency is using the participatory approach in the development of the proposal; or 3) the agency is inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.

The Board is using the participatory approach to develop the proposal. The Department, as authorized by the Board, will be forming a Technical Advisory Committee to consist of relevant stakeholders to assist in the development of proposed regulations. Persons interested in participating on the advisory committee should provide their name, address, phone number, e-mail address, and the name of the organization that they represent in writing to the agency contact person by no later than 5:00 p.m. on the last day of the comment period.

Family impact

Assess the potential impact of the proposed regulatory action on the institution of the family and family stability.

It is not anticipated that this regulation will have a direct impact on the institution of the family or family stability. However, the improvement of water quality does have public health and safety benefits that have an indirect impact on families.