

**Virginia Soil and Water Conservation Board
Stormwater Management Regulations
Regulatory Advisory Panel
March 9, 2011
Senate Room 3, State Capital
Richmond, Virginia**

Regulatory Advisory Panel Members Present

David Anderson, LeClair Ryan
David A. Johnson, DCR Director, Chair
Philip Abraham, The Vectre Corporation
Asaad Ayoubi, Fairfax County
Joe Battiata, Center for Watershed Protection
Doug Beisch, Williamsburg Environmental Group
Barbara Brumbaugh, City of Chesapeake
Mike Bumbaco, City of Virginia Beach
Todd Chalmers, Balzer and Associates
Judy Cronauer, Fairfax County
Mike Gerel, Chesapeake Bay Foundation
Andrew Gould, Timmons Group
Normand Goulet, Northern Virginia Regional Commission
Steve Herzog, Hanover County
Bob Kerr, Kerr Environmental Services Corporation
Adrienne Kotula, James River Association
Larry Land, Virginia Association of Counties
Joe Lerch, Virginia Municipal League
Jerry McGraner, Joyce Engineering
Roy Mills, Virginia Department of Transportation
Rick Parrish, Southern Environmental Law Center
Mike Rolband, Wetland Studies and Solutions, Inc.
George Simpson, Roanoke County
Alyson Sappington, Thomas Jefferson Soil and Water Conservation District
Bill Street, James River Association
Mike Toalson, Home Builders Association of Virginia
Jenny Tribo, Hampton Roads Planning District Commission
Shannon Varner, Troutman Sanders
Keith White, Henrico County
Joe Wilson, Frederick County

DCR Staff Present

David Dowling
Doug Fritz

Michael Fletcher
Lee Hill

Christine Watlington
Ryan Brown, Office of the Attorney General

Gary Waugh

David Johnson called the meeting to order. He thanked members for their input during the process with the Regulatory Advisory Panel. He said he would like to particularly thank the Subcommittee Chairs for their work to bring the more controversial subjects to a near consensus.

Mr. Johnson said that the process for this meeting would be to walk through the draft regulations in their current form.

Mr. Johnson noted that the General Assembly Session had concluded since the last meeting. He noted that SB1099 had a direct impact on the Regulations, but noted that much of what was in the bill was similar to what had been proposed. He noted that staff had revised the draft Regulations to be consistent with the legislation. DCR's recommendation was for the Governor to sign the bill.

Mr. Johnson said that staff had reviewed the Regulations line by line and had sent some of the revisions to Subcommittee Chairs for review.

Mr. Johnson said that he would call on Ms. Watlington to review the draft. However, first, he called on Mr. Dowling to review the Timetable for Stormwater Regulatory Action.

Mr. Dowling presented the following schedule:

Timetable for Stormwater Regulatory Action

- December 29, 2010, EPA establishes the Bay TMDL
- February 28, 2011 RAP Meeting
- March 9, 2011, Submit public notice for 30-day public comment period
- March 28, 2011, Publication of notice in Virginia Register and beginning of 30-day public comment period
- Early March advise EPA of regulations and public comment period
- Mid April begin meetings with Board members to discuss regulations
- April 27, 2011, Close of 30-day public comment period
- Summarize comments and modify regulations accordingly [RAP MEETING??]
- Mail to Board by May 12, 2011
- May 19, 2011, Board adoption of final regulations
- Finalize the Regulatory Document for Filing
- June 10, 2011 thru August 5, 2011 (about 60-days), Review by the Administration

- Official OAG review – 3 days
- 14 days DPB fiscal analysis review
- 14 days SNR
- No deadline Governor
- August 10, 2011, Deadline for submittal of regulatory materials to the Registrar for publication
- August 29, 2011, Publication in Virginia Register (30-day final adoption period)
- September 28, 2011, End of 30-day final adoption period
- October 5, 2011, Statutory Effective Date Target (280 days)

Mr. Johnson said that DCR's obligation was to have the effective date of the Regulations be 280 days after the signing of the Chesapeake Bay TMDL. He said that if some time could be gained in the review process that would allow for more time for Administration review.

Mr. Toalson asked if there was some flexibility with the legislation.

Mr. Johnson said that initially it was not certain that EPA would have had the TMDL by the end of December 2010.

Mr. Johnson asked Ms. Watlington to move ahead with the draft. Mr. Street noted that he would have to leave the meeting early and requested that the Water Quantity section be reviewed first.

Ms. Watlington referred to a handout containing alternate suggested language for Water Quality. A copy of this handout is available at the following link:
<http://www.dcr.virginia.gov/documents/swmaltver0311.pdf>

Mr. Dowling said that the draft contained the recommendations from the subcommittee. He noted that in review staff did not believe the language flowed in a logical manner. He said that the redraft was to develop more of a parallel flow between the channel protection criteria and the flood protection criteria.

Mr. Toalson noted that there were some qualifications where local governments could adopt more stringent standards.

Ms. Watlington said that the term "qualifying local program" had been stricken. The terms now used are either "local stormwater management program", which refers to locality-operated program only or "Stormwater program administrative authority" refers to both the stormwater management programs operated by the Department of Conservation and Recreation or a locality.

Mr. Hill reviewed the changes within the Water Quality Section.

Mr. Dowling and Mr. Hill led a discussion of the regulations as currently drafted at the end of the last RAP meeting and a comparison water quality document based on staff review and revisions for the purpose of clarity.

Consensus was to accept the reorganization of the language as presented but not to make the technical edits proposed by DCR staff.

Mr. Hill reviewed the section on Flood Protection.

Mr. Johnson noted that this section dealt with erosion as a result of flooding as opposed to stream capacity.

A member noted that there had been great efforts to keep channel protection and flood issues as separate. He said that he preferred the subcommittee proposal.

Consensus was to stay with the initial recommendations of the subcommittee as noted in the draft available at this link:

<http://www.dcr.virginia.gov/documents/swmdrftregs0311.pdf>

At this time the committee recessed for lunch.

Following lunch, Ms. Watlington reconvened the meeting.

Ms. Watlington began a review of the draft regulations by each section.

Mr. Fritz noted that a Chesapeake Bay Preservation Act definition had been added. He said that this enables DCR to maintain a state consistency in the existing Bay program. Regulations section by section.

Staff was asked to review the definition of a large MS4 for clarity and consistency.

4VAC50-60-20 Purposes

There were no recommended changes to the draft for this section.

4VAC50-60-30 Applicability

There were no recommended changes to the draft for this section.

4VAC50-60-40 Authority

There were no recommended changes to the draft for this section.

4VAC50-60-45 Implementation date

There were no recommended changes to the draft for this section.

4VAC50-60-46 General objectives

There were no recommended changes to the draft for this section.

4VAC50-60-47 Applicability of other laws and regulations

There were no recommended changes to the draft for this section.

4VAC50-60-48 Grandfathering

Mr. Goulet asked where the additional permits came from.

Mr. Johnson said that the language was written strictly to accommodate larger projects. A permit obtained on this date would have 12 ½ years for completion.

Mr. Gerel noted that this moved the date from 2019 to 2023.

Mr. Dowling said that the concept was that whatever permit the project was under that would remain in effect for an additional two cycles if necessary.

4VAC50-60-51 Chesapeake Bay Preservation Act land-disturbing activity

It was noted that Mr. Fritz had explained this section at the beginning of the meeting.

4VAC50-60-54 Stormwater pollution prevention plan

It was noted that part of the Effluent Limit Guidelines (ELGs) were included in this section. Virginia is required to adopt the ELGs within 18 months of the federal adoption. The language was copied from the federal requirements and included in this section.

Members discussed whether this was the right vehicle to included these requirements.

Mr. Johnson said that they must be included because of the EPA requirement.

It was suggested that this be modified to say “to the extent otherwise required by state law or regulation.”

Staff agreed to address this section again, noting concerns.

4VAC50-60-55 Stormwater management plans

There were no recommended changes to this section.

4VAC50-60-56 Pollution prevention plans

There were no recommended changes to this section.

4VAC50-60-57 Requesting an exception

There were no recommended changes to this section.

4VAC50-60-58 Responsibility for long-term maintenance or permanent stormwater management facilities

There were no recommended changes to this section.

4VAC50-60-59 Applying for VSMP permit coverage

There were no recommended changes to this section.

Part II B

4VAC50-60-62 Applicability

There were no recommended changes to this section.

4VAC50-60-63 Water quality design criteria requirements

There were no recommended changes to this section.

4VAC50-60-65 Water quality compliance

In Section A it was agreed to remove the second sentence.

4VAC50-60-66 Water quantity

This section and the suggested alternative language were discussed at the beginning of the meeting as detailed above.

4VAC50-60-69 Offsite compliance options

Mr. Varner said that structural changes to the language were needed. He said that it needed to be structured so that there are options available that may be used by a permit issuing authority.

Mr. Varner agreed to edit and submit revised language.

4VAC50-60-72 Design storms and hydrologic methods

There were no recommended changes to this section.

4VAC50-60-74 Stormwater harvesting

There were no recommended changes to this section.

4VAC50-60-76 Linear development projects

There were no recommended changes to this section.

4VAC50-60-85 Stormwater management impoundment structures or facilities

A member asked what structural integrity meant.

Mr. Hill said that if there was a 100-year storm event that overtops the structure, will the structure remain intact.

4VAC50-60-92 Comprehensive watershed stormwater management plans

There were no recommended changes to this section.

Part II C

4VAC50-60-94 Applicability

There were no recommended changes to this section.

4VAC50-60-95 General

There were no recommended changes to this section.

4VAC50-60-97 Stream channel erosion

There were no recommended changes to this section.

4VAC50-60-98 Flooding

There were no recommended changes to this section.

4VAC50-60-99 Regional (watershed-wide) stormwater management plans

There were no recommended changes to this section.

Part III

4VAC50-60-102 Authority

There were no recommended changes to this section.

4VAC50-60-103 Stormwater program administrative authority requirements for Chesapeake Bay Preservation Act land-disturbing activities

There were no recommended changes to this section.

4VAC50-60-104 Criteria for programs operated by a stormwater program administrative authority

There were no recommended changes to this section.

4VAC50-60-106 Additional requirements for local stormwater management programs

There were no recommended changes to this section.

4VAC50-60-108 Management plan review

There were no recommended changes to this section.

4VAC50-60-112 Long-term maintenance of permanent stormwater management facilities

There were no recommended changes to this section.

4VAC50-60-114 Inspections

There were no recommended changes to this section.

4VAC50-60-116 Enforcement

Mr. Land asked if on line 2662 that suggested that there were two entities in the state with enforcement authority acting separately.

Mr. Dowling said that it addressed the overfiling authority of DCR and the EPA.

There were no further changes recommended to the remainder of the document.

Mr. Johnson thanked members for their participation and their input in to the draft regulations.

The meeting was adjourned.