

**Virginia Soil and Water Conservation Board  
Stormwater Management Regulations Technical Advisory Committee (TAC)  
Thursday, May 04, 2006  
The Science Museum of Virginia**

**Stormwater Management Regulations Technical Advisory Committee Members Present**

Michelle Brickner, Land Development Services, Fairfax County  
Alecia Daves-Johnson, Piedmont Soil and Water Conservation District  
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  
Bob Kerr, Kerr Environmental Services Corporation  
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  
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  
William H. Street, James River Association  
John Tippet, Friends of the Rappahannock  
Burton R. Tuxford, II, Virginia Department of Environmental Quality

**Stormwater Management Regulations Technical Advisory Committee Members Not Present**

Jerry W. Davis, Northern Neck PDC  
Michael E. Doczi, Michael E. Doczi & Associates, PLLC  
Jeff Perry, Environmental Management Engineer, Henrico County  
Phil Schirmer, City of Roanoke

**Facilitator**

Judy Burtner, J. Burtner & Associates  
Kathryn Burruss, J. Burtner & Associates

**DCR Staff**

David C. Dowling, Director of Policy, Planning and Budget  
Joan Salvati, Director, Division of Chesapeake Bay Local Assistance  
Anne Crosier, Enforcement and Compliance Manager  
Jim Echols, Urban Program Compliance Engineer  
Michael R. Fletcher, Director of Development  
Kevin Landry, Stormwater Compliance Specialist  
Christine Watlington, Policy, Planning and Budget Analyst

**Observers**

Joe Battiata, Contech Stormwater Solutions  
Barbara Brumbaugh, City of Chesapeake  
Amber Foster, James River Association  
Nancy Frantel, Midlothian  
Drew Gould, Timmons Group  
Kim Hummel, Isle of Wight County  
Doug Moseley, PBS&J  
Tom Pakurar, Sierra Club  
Rick Parrish, SELC  
Amy Ring, Isle of Wight County  
John Sheehan, Aqualaw PLC  
Steve Snell, City of Richmond  
Laura Wheeling, Hampton Roads PDC  
Keith White, Henrico County  
Charles Williamson, Prince William County

**Opening remarks and delegation of charge to TAC**

Mr. Jack Frye, Director of the Division of Soil and Water Conservation for the Department of Conservation and Recreation (DCR) called the meeting to order and welcomed attendees. He noted that the Technical Advisory Committee (TAC) would be working on these regulatory actions through July.

Mr. Frye explained briefly the selection of the TAC membership. He said that there had been a tremendous amount of interested generated with regard to stormwater management. Through the NOIRA process, DCR received requests from a number of individuals wishing to participate in the TAC process. In forming the TAC, DCR sought representation from key stakeholders who would be impacted by changing the stormwater regulations or who would be charged with implementation. He said that the TAC members were chosen to represent a broad range of groups while seeking to maintain a workable size.

Mr. Frye reviewed the charge to the committee:

Mr. Frye noted that the TAC was working on behalf of the Virginia Soil and Water Conservation Board to develop the regulatory changes. He noted that DCR is required by federal law to coordinate actions with the Environmental Protection Agency.

### **Committee Charge**

Develop, in coordination and cooperation with the Environmental Protection Agency, amendments to the Virginia Soil and Water Conservation Board's Virginia Stormwater Management Program (VSMP) Permit Regulations (§§ 4 VAC 50-60-10 et seq.) to address

- the minimum water quality and quantity criteria and administrative functions that a local stormwater management program must contain to receive program delegation by the Board for administration of the VSMP or portions thereof,
- administrative procedures by which the Board makes its delegation determinations,
- DCR program administration and oversight procedures, and
- revisions to the statewide stormwater permit fee schedule to a level sufficient to carry out the stormwater management program by localities and the Department.

### **Introduction of the Facilitator**

Mr. Frye introduced Judy Burtner of J. Burtner and Associates and indicated that Ms. Burtner would serve as the facilitator for the meeting.

Ms. Burtner welcomed attendees and introduced Kathryn Burruss also of J. Burtner and Associates.

Ms. Burtner reviewed the objectives for the first TAC meeting:

#### **Session Objectives**

- To become familiar with background/expertise of others on Committee
- To become familiar with historical background, regulations as they currently exist, & Code requirements for making changes to current stormwater management program
- Review questions/issues that have been raised by stakeholders & DCR staff, & identify any additional ones not currently identified
- Identify technical components that need to be addressed in statewide management program relative to water quality & water quantity on statewide basis
- Identify regulation drafting & process issues for next session

Ms. Burtner explained that the process for the committee would be to try to achieve consensus on the recommendations. She stated that for purposes of these meetings consensus may mean that while a recommendation is not exactly what a member would

like to see, it would be one they could accept. She said in the event that the TAC could not reach consensus, then other means of decision making would be addressed.

Ms. Burtner asked TAC members to introduce themselves and to indicate their affiliation and interest in working with the TAC.

Ms. Burtner then asked DCR staff and observers to introduce themselves. She noted that the role of the observers was to listen and that the members of the TAC would be engaging in the actual discussion.

Ms. Burtner called on Mr. Frye to review the areas to be discussed and to provide additional background information.

#### **Areas to be Discussed**

- Background leading up to the regulatory action
- Tentative Regulatory Process
- NOIRA issues
- Stormwater Program Overview
- Code Requirements
- Regulatory Requirements

#### **Items in the Notebooks**

- TAC Member List
- NOIRA - Local Programs
- NOIRA - Fees
- Virginia Stormwater Management Act
- Virginia Stormwater Management Program (VSMP) Permit Regulations
- Erosion and Sediment Control Regulations
- Chesapeake Bay Local Assistance Regulations
- Model Stormwater Ordinance
- Summary of Comments Received
- Meeting Materials....

#### **Background Leading up to the Regulatory Action**

#### **Need for Streamlining and Improvements**

- Legislative Study Commission
- Commission on the Future of Virginia's Environment

- Governor's Natural Resources Leadership Summit

#### **Governor's Natural Resources Partnership Agenda**

"The Secretary of Natural Resources will work with the DEQ, DCR, CBLAD, other agencies and the public to streamline the current storm water management process. A plan and recommendations are due to the Governor by October 1, 2003 that provides for improved water quality protection and evaluates storm water programs statewide."

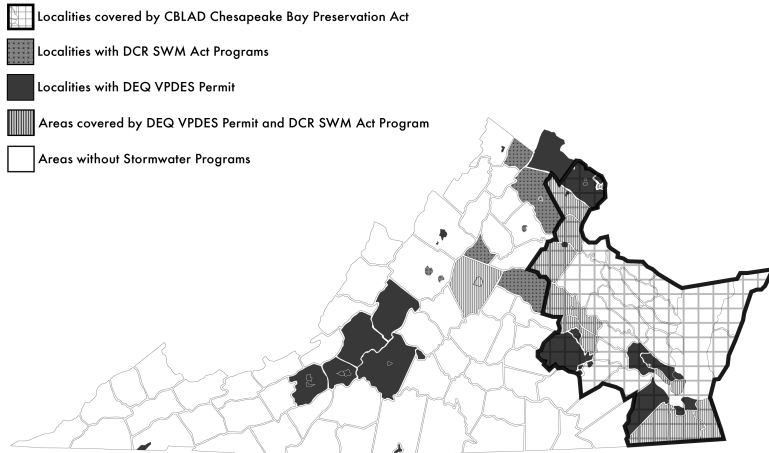
#### **Stormwater Task Force Established**

- As a result of the Governor's Summit (April 2003), the Secretary of Natural Resources requested the Director of DCR to convene an inter-agency task force to develop a plan and recommendations.
- Task force included the Director of DCR, the Deputy Director of DEQ, the Director of CBLAD, SNR staff, and agency headquarters and field staff.

#### **Agencies and Boards Implementing Stormwater Management Programs**

- Department of Conservation and Recreation
  - Board of Conservation and Recreation
  - Virginia Soil and Water Conservation Board
- Department of Environmental Quality
  - State Water Control Board
- Chesapeake Bay Local Assistance Department
  - Chesapeake Bay Local Assistance Board

## State Stormwater Programs as Currently Applied in Virginia



**NOTE: Erosion & Sediment Control is mandated statewide.**

### Task Force Program Restructuring Goals

- Reduce public confusion
- Clarify requirements and oversight
- Create more even playing field
- Coordinate inspections and findings
- Improve enforcement authority
- Eliminate overlap in local reporting requirements
- Eliminate redundant agency program reviews

### Environmental Goals

- Reduce sediment impacts during construction and concentrated runoff, pollutants, channel erosion and flooding following construction.
- Support sediment and phosphorus reduction goals under Chesapeake Bay tributary strategies and in Southern Rivers.
- Support TMDL reductions in streams impaired by excess sediment and nutrients.
- Better protect drinking water supplies.

### Stakeholder Group Meetings

- Several meetings held with groups representing local governments, Soil and Water Conservation Districts, Homebuilders Association, and environmental and conservation groups.
- Reviewed potential alternatives and suggestions for streamlining stormwater management.

- Developed recommendations for Governor based on taskforce work and stakeholder recommendations.

### **Key Recommendations**

1. Consolidate stormwater programs related to construction activities within DCR.
2. Transfer oversight of municipal stormwater programs to DCR.
3. Establish a more uniform statewide construction permitting program.
4. Establish statewide stormwater requirements for projects with land disturbances of acre or greater (with allowance for lower threshold in CBPA).
5. Empower local governments to implement stormwater management programs.
6. Develop a statewide permit fee system.
7. Encourage low-impact approaches and better site designs.
8. Consolidate SWM and ESC local program reviews.
9. Increase role for the Virginia Soil and Water Conservation Board.
10. Industrial stormwater permit program would remain at DEQ.
11. Eliminate separate CBLAD requirements by incorporating into new statewide approach.

### **HB1177**

- *Chief Patron:* Bryant, *House Patrons:* Abbitt, Albo, Amundson, Dillard, Morgan, Plum and Pollard; *Senate Patrons:* Hanger, Howell, Puckett, Quayle and Whipple
- 01/14/04 Prefiled in House
- 01/28/04 Reported from House ACNR with substitute (22-Y 0-N)
- 02/02/04 Passed House (100-Y 0-N)
- 02/23/04 Reported from Senate ACNR with substitute (15-Y 0-N)
- 02/25/04 Passed Senate with substitute (40-Y 0-N)
- 02/27/04 Senate substitute agreed to by House (98-Y 0-N)

### **Consolidation: 2 Step Process**

1st Step: Transfer to VSWCB & DCR

- Transferred regulatory responsibility to Virginia Soil and Water Conservation Board on July 1, 2004.
- Filled 15 new stormwater management positions
- Amended current Virginia Stormwater Management regulations to reflect changes made in HB1177
- Received EPA authorization for DCR to administer federal portion.
- Educated and involves stakeholders.

Program Transfer Effective - January 29, 2005

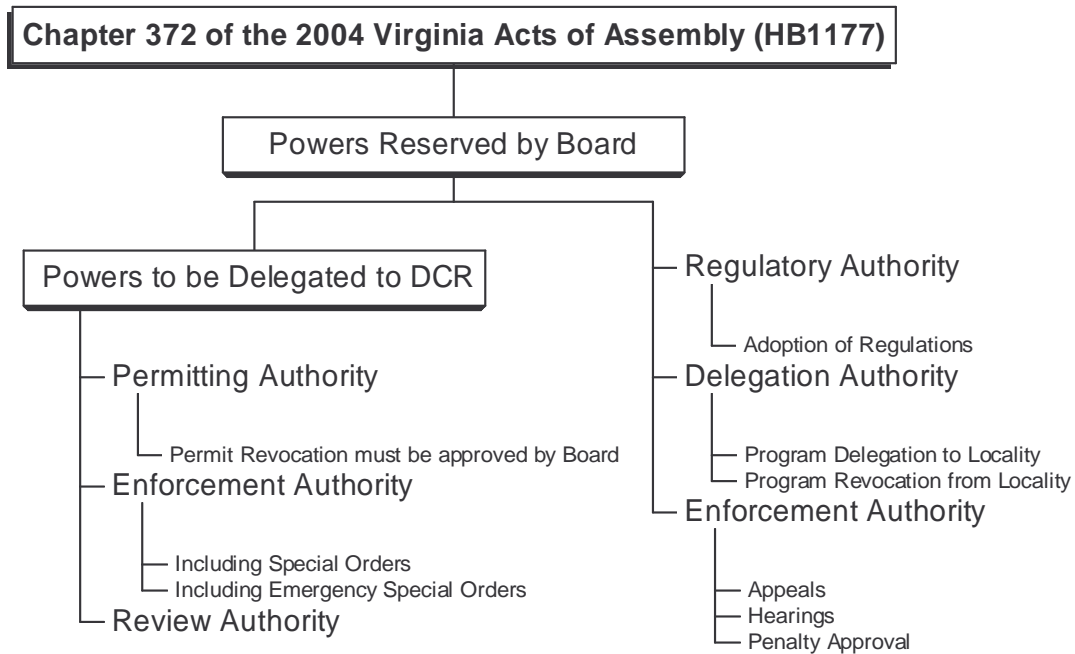
**The Board May:**

*Delegate to the Department or to an approved locality any of the powers and duties vested in it by this article except the adoption and promulgation of regulations.*

**Delegation shall not remove from the Board authority to enforce the provisions of this article.** (§10.1-603.2:1.2)

**Motion of Delegation to DCR**

The Virginia Soil and Water Conservation Board does hereby delegate to the Department of Conservation and Recreation all administrative, programmatic and legal authorities prescribed under Chapter 372 of the 2004 Acts of Assembly to implement the Virginia Stormwater Management Act, excluding the authority for the adoption and promulgation of regulations, which shall remain solely with the Board. It is understood that delegation to DCR does not remove from the Board authority to enforce the provisions of the Act.



2nd Step: Transfer Stormwater Permitting to Localities



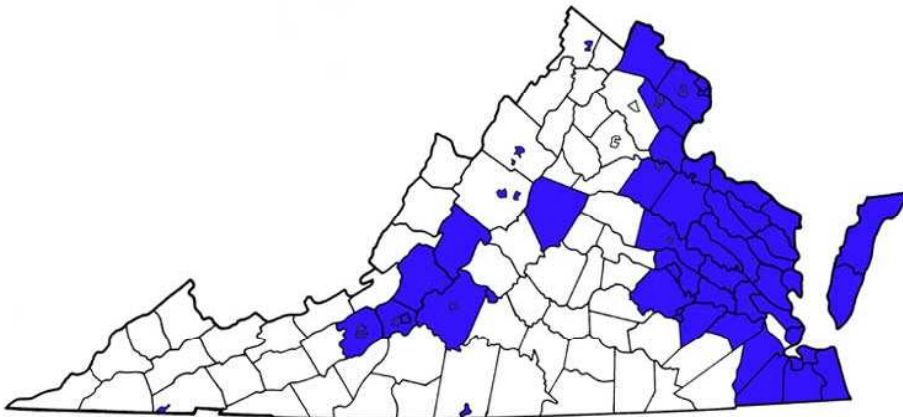
- Develop additional regulatory procedures for delegating responsibilities to localities, addressing state agency project review, LID, etc.
- Develop model ordinance

#### 2nd Step - Locality Impacts

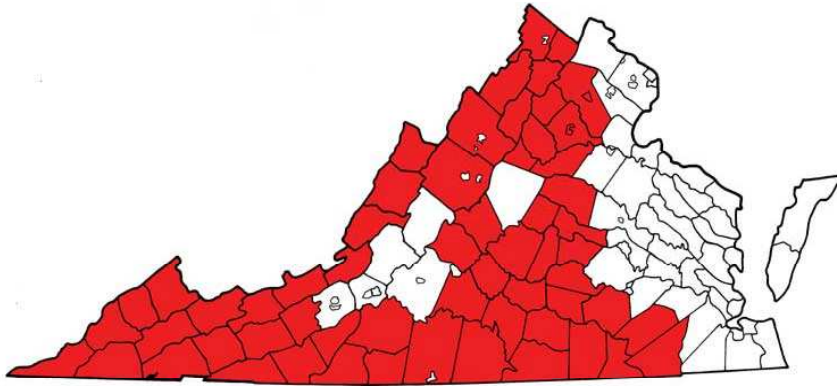
Localities with MS4 permits and localities within the CBPA Area must adopt a local stormwater management program *according to a schedule set by the Board but no sooner than 12 months and not more than 18 months following the effective date of the regulation that establishes local program criteria and delegation procedures.*

Localities not covered by a MS4 permit or not within the CBPA Area may elect to adopt a local stormwater management program. They shall inform the Board and the Department of their initial intention to seek delegation for the stormwater management program for land disturbing permits *within six months following the effective date of the regulation that establishes local program criteria and delegation procedures.*

### **Localities required to establish local stormwater management program**



## **Localities which may adopt local stormwater programs and required to notify DCR of intention**



**In absence of local stormwater programs, DCR will administer stormwater requirements for locality.**

### 2nd Step - Construction Permits

- Localities that adopt an approved local stormwater management program will operate the minimum program and issue the General Permit for Discharges of Stormwater from Construction Activities.
- DCR will continue to issue the General Permit and operate a minimum program in localities not electing to adopt an approved stormwater management program.

A member noted that the deadline was amended from July 1, 2006 and asked if there was a concrete deadline for local enactment.

Mr. Frye said that localities would have to implement a plan no sooner than 12 months and not more than 18 months following the effective date of the regulations. He noted that the Commonwealth must also receive approval for delegation from the Environmental Protection Agency.

A member asked if that meant a locality could not adopt a program now.

Mr. Frye said that localities may adopt programs now under the current regulations but would possibly need to amend the programs once the final revisions to the regulations are made.

A member asked where federal law specified delegation to localities.

Mr. Frye said there was no federal requirement, but that was a state preference. He noted that currently the EPA has not yet expressed a position on Virginia delegating to the local level.

A member asked if localities would create their own general permits or use DCR permits.

Mr. Hill noted that if permission is granted to delegate the program to the localities the localities would use permits as provided by DCR.

### **Regulatory Process and NOIRA**

Mr. Dowling gave an overview of the Regulatory Process and the NOIRA.

#### **Regulatory Process and Notice of Intended Regulatory Action (NOIRA)**

##### Regulatory Process

###### A. NOIRA Phase

- Notice of Intended Regulatory Action (NOIRA) published in the Virginia Register December 26, 2005 initiating a 60-day public comment period.
- Two public meetings were held: February 16<sup>th</sup> in Roanoke and February 17<sup>th</sup> in Richmond.
- Public comment period on the NOIRA ended on February 24, 2006.

###### B. 180 Day Proposed Regulation Development Phase

- Proposed regulation should be submitted to the Department of Planning and Budget (DPB) within 180 days of the close of the public comment period.
- This would be late August. Prior to submittal of the Regulation we will need to assemble a Technical Advisory group, hold meetings, draft the proposed regulation, seek Attorney General review, and discuss with the Board and seek approval.

Mr. Dowling noted that during this 180-day period it was important that DCR coordinate with the EPA to make sure that they are comfortable with how the process is moving forward.

###### C. Review of Draft Regulations

- DPB review through early October - develop an economic impact analysis.
- October – review by the Administration
- November - proposed regulation published initiating a 60-day public comment period.
- Public comment period, unless extended, would end in late January. Public hearings on the regulation would need to be held across the state in mid January.

Mr. Dowling said there were potential problems with that timing, particularly because the legislative session begins in mid January and that requires that DCR be focused on those activities.

- Should the regulation proceed on this tentative schedule, the final regs would be due around the end of June with an anticipated effective date of the final regs around the end of September.

Mr. Dowling said that this effective date was contingent upon EPA approval. He noted that this was a substantive amendment to the program and that the federal government may also be required to have a public review process associated with the changes.

#### NOIRA Identified Issues

##### **NOIRA 1: Local Stormwater Management Program and Delegation Procedures Development**

1. develop minimum criteria that a local stormwater management program must contain to receive program delegation by the Board;
2. develop program approval and delegation procedures for the Virginia Stormwater Management Program, or parts thereof, by the Board
  - -to localities located within Tidewater Virginia as defined by the Chesapeake Bay Preservation Act (§10.1-2100 et seq.);
  - -to localities partially or wholly designated as an MS4 under the provisions of the federal Clean Water Act; and
  - -to localities requesting delegation from the Board;
3. develop a framework by which the Department of Conservation and Recreation will administer the responsibilities of the Virginia Stormwater Management Program for localities not delegated program authority;
4. allow for changes as needed to improve the administration and implementation of the stormwater management program; and
5. allow for the removal of the out-of-date Best Management Practices (BMP) nutrient removal efficiency information from the current regulations and reflect its addition into the Virginia Stormwater Management Handbook guidance document where it shall be more regularly updated for public use.

## NOIRA 2: Fee Modifications

6. allow for changes in the statewide permit fee schedule to a level sufficient to cover the state and local costs associated with program implementation; and
7. allow for related changes as needed to improve the administration and implementation of the stormwater management fees.

Mr. Dowling said that although there were two NOIRAs, it was determined that the issues go hand in hand and that one TAC should address both NOIRAs. He said that with that consideration, the first four meetings would likely focus on what the program should look like while the final two would address the issue of fees.

### Public Comments

- We had 24 people attend the public meeting in Roanoke (not including DCR staff). No one wished to provide any formal comments, although clarifying questions were asked by a number of individuals in attendance.
- We had 23 people attend the public meeting in Richmond with 4 people who spoke. Again, questions were asked by other individuals in attendance.
- In addition to the individuals who spoke at the public meeting, 10 people submitted written comments.
- Comment summary has been provided in your notebooks.

## **Stormwater Program Presentation**

Mr. Hill gave an overview of the Stormwater Program.

### **Stormwater Management Program**

Within the Department of Conservation and Recreation the primary responsibility to reduce pollutant loads to Virginia's waters falls to the Division of Soil and Water Conservation.

#### **§ 10.1-104.1. Department to be lead agency for nonpoint source pollution program.**

A. The Department, with the advice of the Board of Conservation and Recreation and the Virginia Soil and Water Conservation Board and in cooperation with other agencies, organizations, and the public as appropriate, shall have the lead

responsibility for the Commonwealth's nonpoint source pollution management program.....

**DCR Boards, Foundations, etc.**

Three Policy Boards

- Board of Conservation and Recreation
- Virginia Soil and Water Conservation Board**
- Chesapeake Bay Local Assistance Board

Three Foundations

- Virginia Land Conservation Foundation
- Chippokes Plantation Farm Foundation
- Virginia Outdoors Foundation

One Commission

- Breaks Interstate Park Commission

Three Advisory Boards

- Virginia Scenic River Advisory Board
- Cave Board
- Lower James Historic River Advisory Committee

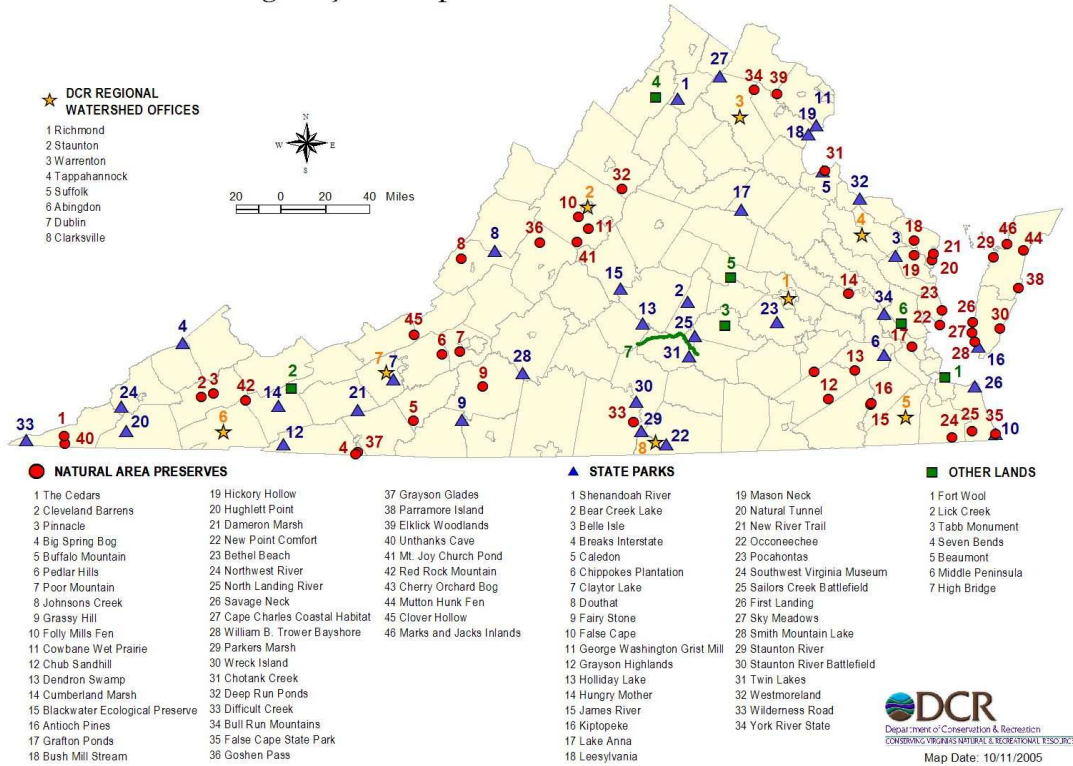
One Council

- Invasive Species Council

**The Division's key responsibilities include:**

- Designated as the Commonwealth's lead for Nonpoint Source Pollution Management.
- Administers Consolidated Stormwater Management Permit Program and the Erosion and Sediment Control Law.
- Provides administrative and financial management to the 47 Soil and Water Conservation Districts.
- Administers Nutrient Management Training & Certification Program.
- Administers Agricultural Programs: Agricultural Cost-share Program and Conservation Reserve Enhancement Program.
- Lead for development of Chesapeake Bay Program Tributary Strategies.
- Operates 8 regional offices.

### Lands Managed by the Department of Conservation and Recreation



- 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 DEQ to the Virginia Soil and Water Conservation Board and DCR.
- This transfer became effective January 29, 2005. As a result, DCR is responsible for the issuance, denial, revocation, termination and enforcement of NPDES permits for the control of stormwater discharges from MS4s and land disturbing activities under the Virginia Stormwater Management Program.
- The consolidation of the Commonwealth’s Stormwater Management Program into the Department of Conservation and Recreation resulted in additional staff needs to implement the program.
- The initial primary staffing for the Virginia Stormwater Management Program (VSMP) totals 15 FTE with seven (7) positions in the Richmond Central Office and eight (8) positions located in the regional offices.

- The new staff complements the existing 26.5 positions presently involved with the Erosion and Sediment Control and Stormwater Management Programs.
- The Virginia Stormwater Management Program seeks to protect properties and aquatic resources from damages caused by increased volume, frequency and peak rate of stormwater runoff. Further, the program seeks to protect those resources from increased nonpoint source pollution carried by stormwater runoff.

*Quantity of Stormwater Runoff* - Urban landscape typically covers areas with impervious surfaces, such as pavement and rooftops. These impervious surfaces generate runoff every time it rains. (A typical city block generates nine times more runoff than a woodland area of the same size!) The quantity of runoff from these areas quickly overwhelms natural channels and streams, often causing channel erosion, localized flooding and property damage.

*Quality of Stormwater Runoff* - The pervious and impervious surfaces in the urbanizing landscape collect pollutants such as automobile oil, grease, brake pad dust, sediment from construction sites, bacteria from animal waste, excess lawn care fertilizers and pesticides, as well as atmospheric deposition of phosphorus, nitrogen and other airborne pollutants. Rainfall washes these surfaces so that the initial flush of runoff can carry high concentrations of these pollutants to nearby drinking water supplies, waterways, beaches and properties. Pollution washed from the land surface by rainfall is called nonpoint source pollution.

- SWM programs are implemented according to the Virginia Stormwater Management Law and Virginia Stormwater Management Program (VSMP) Permit Regulations. The law is codified at Title 10.1, Chapter 6, Article 1.1 of the Code of Virginia and the Regulations are found at § 4VAC50-60-10 et seq. of the Virginia Administrative Code.
- These statutes specifically set forth regulations regarding land development activities to prevent water pollution, stream channel erosion, depletion of groundwater resources, and more frequent localized flooding to protect property value and natural resources.
- SWM programs operated according to the law are intended to address these adverse impacts and comprehensively manage the quality and quantity of stormwater runoff on a watershed-wide basis.



A member asked to clarify that the original source of the law was the Clean Water Act for the general permit. The member asked what standards needed to be achieved.

Mr. Hill said that would be part of the TAC discussion including what technical aspects need to be addressed. This ties back to the water quality standards.

A member asked for clarification that the Stormwater Management was for nonpoint pollution.

Mr. Hill said that the General Permit addresses nonpoint pollution. He said that MS4 systems are for nonpoint sources that flow to a point source discharge.

A member noted that the EPA includes construction permits as a point source. Once the controls are implemented, the outflow is channeled to a point source discharge.

### **Code Requirements**

#### **§ 10.1-603.2:1. Powers and duties of the Virginia Soil and Water Conservation Board.**

The Board may 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.

Additionally the Board may:

- Issue, deny, amend, revoke, terminate, and enforce permits for the control of stormwater discharges from Municipal Separate Storm Sewer Systems and land disturbing activities.
- Delegate to the Department or to an approved locality any of the powers and duties vested in it except the promulgation of regulations
- Take administrative and legal actions to ensure compliance
- Cause investigations and inspections, or delegate authority to do so
- 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.
- Issue special orders and emergency special orders.
- Issue consent orders for the payment of civil charges for violations.

#### **§ 10.1-603.2:2. Permits.**

- It shall be unlawful to cause a stormwater discharge from an MS4 or a land disturbing activity except in compliance with a permit issued by a permit issuing authority.
- All permits issued by the permit issuing authority under this article shall have fixed terms.....

**§ 10.1-603.3. Establishment of stormwater management programs by localities.**

A. Any locality located within Tidewater Virginia as defined by the Chesapeake Bay Preservation Act, or any locality that is partially or wholly designated as an MS4 under the provisions of the federal Clean Water Act, shall be required to adopt a local stormwater management program for land disturbing activities consistent with the provisions of this article according to a schedule set by the Board but no sooner than 12 months and not more than 18 months following the effective date of the regulation that establishes local program criteria and delegation procedures.

B. Any locality not specified in subsection A may elect to adopt and administer a local stormwater management program for land disturbing activities pursuant to this article. Such localities shall inform the Board and the Department of their initial intention to seek delegation for the stormwater management program for land disturbing permits within six months following the effective date of the regulation that establishes local program criteria and delegation procedures. Thereafter, the Department shall provide an annual schedule by which localities can submit applications for delegation.

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.

A member clarified that item C addressed those localities that did not voluntarily implement a stormwater management program.

Mr. Hill said that the stormwater program is mandatory statewide, but that if a locality opts not to adopt a program, the Department will then manage the program for that locality. DCR will implement the minimum stormwater management program for that locality.

Mr. Hill noted that all MS4 localities, whether Phase I or Phase II must develop a stormwater management program.

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.

Mr. Hill noted again that this delegation is subject to EPA approval.

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.

I. Any local stormwater management program adopted pursuant to and consistent with this article shall be considered to meet the stormwater management requirements under the Chesapeake Bay Preservation Act and attendant regulations.

#### **§ 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, 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;
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 localities. The regulations shall be governed by the following:
  - a. .... 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 Treasurer, 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;

A member asked if a fee is created, if landowners with less than an acre, but more than 2,500 square feet will have to comply and have a permit.

Mr. Hill said they would have to have a permit. The General Permit also applies to 2,500 square feet to an acre for those areas designated as localities covered by the Chesapeake Bay Act.

A member asked if the regulations under discussion could modify that requirement.

Mr. Dowling said that requirement was set out in the Code and he did not believe these regulations could change that requirement.

A member noted that he was less concerned with how to collect the fee than with how to be in compliance with the requirements.

6. Establish statewide standards for stormwater management from land disturbing activities of one acre or greater, except as specified otherwise within this article, and allow for the consolidation in the permit of a comprehensive approach to addressing stormwater management and erosion and sediment control, consistent with the provisions of the Erosion and Sediment Control Law and this article. However, such standards shall also apply to land disturbing activity exceeding an area of 2500 square feet in all areas of the jurisdictions designated as subject to the Chesapeake Bay Preservation Area Designation and Management Regulations adopted pursuant to the Chesapeake Bay Preservation Act;
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;
8. Encourage low impact development designs, regional and watershed approaches, and nonstructural means for controlling stormwater; and

9. Establish, with the concurrence of the Director, a statewide permit fee schedule for stormwater management related to municipal separate storm sewer system permits.

**§ 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 .....

Mr. Hill noted that the plan review may not be more stringent, but other items may.

**§ 10.1-603.9. Permit application required for issuance of grading, building, or other permits.**

Upon the adoption of a local ordinance no grading, building or other permit shall be issued for a property unless a stormwater permit application has been approved that is consistent with the stormwater program and this article and unless the applicant has certified that all land clearing, construction, disturbance, land development and drainage will be done according to the approved permit conditions.

**§ 10.1-603.11. Monitoring, reports, investigations, and inspections.**

A. The permit issuing authority (i) shall provide for periodic inspections of the installation of stormwater management measures (ii) may require monitoring and reports from the person responsible for meeting the permit conditions to ensure compliance with the permit and to determine whether the measures required in the permit provide effective stormwater management, and (iii) conduct such investigations and perform such other actions as are necessary to carry out the provisions of this article.....

**Regulatory Requirements**

CHAPTER 60 VIRGINIA STORMWATER MANAGEMENT PROGRAM  
(VSMP) PERMIT REGULATIONS

Part I Definitions, Purposes, and Applicability

**Part II Stormwater Management Program Technical Criteria**

**Part III Local Programs**

Part IV Technical Criteria and Permit Application Requirements for State Projects

Part V Reporting

Part VI VSMP General Program Requirements Related to MS4s and Land-Disturbing Activities

Part VII VSMP Permit Applications

Part VIII VSMP Permit Conditions

Part IX Public Involvement

Part X Transfer, Modification, Revocation and Reissuance, and Termination of VSMP Permits

Part XI Enforcement of VSMP Permits

Part XII Miscellaneous

**Part XIII Fees**

Part XIV General Virginia Stormwater Management Program (VSMP) Permit for Discharges of Stormwater from Construction Activities

Part XV General Virginia Stormwater Management Program (VSMP) Permit for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems  
FORMS

#### **4VAC50-60-10. Definitions.**

"Local stormwater management program" or "local program" means a statement of 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 the Act and this chapter. The ordinance shall include provisions to require the control of after-development stormwater runoff rate of flow, the proper maintenance of stormwater management facilities, and minimum administrative procedures.

"Permit-issuing authority" means the board, the department, or a locality that is delegated authority by the board to issue, deny, revoke, terminate, or amend stormwater permits under the provisions of the Act and this chapter.

### **Part II Stormwater Management Program Technical Criteria**

#### **4VAC50-60-40. Applicability.**

▪Explains that this Part specifies the water quality (and soon water quantity) technical criteria for every stormwater management program and land-disturbing activity.

#### **4VAC50-60-50. General.**

Specifies general stormwater management issues such as:

- Flooding and channel erosion impacts to receiving streams shall be measured at each point of discharge,
- Specifications for design storms,
- Assumptions for computing runoff,
- Compliance with all applicable laws and regulations,
- Design standards for non-regulated impounding structures,
- Pre-development and post-development runoff rates verification practices,
- Discharge of outflows to an adequate channel,
- Application of stormwater management criteria to the land disturbance from proposed residential, commercial, or industrial subdivisions,
- Need for inspection and maintenance plans for all stormwater management facilities,



- Avoidance of stormwater management impoundment structure construction in designated 100-year floodplains,
- Natural channel characteristics preservation,
- Compliance with Erosion and Sediment Control Law and regulations, and
- The citing of flood control and stormwater management facilities in Resource Protection Areas with specified provisions.

**4VAC50-60-60. Water quality.**

- Compliance with the water quality criteria may be achieved by applying performance-based criteria or technology-based criteria to either the site or a planning area.

**4VAC50-60-70. Stream channel erosion.**

- Establishes that properties and receiving waterways downstream of any land-disturbing activity shall be protected from erosion and damage due to changes in runoff rate of flow and hydrologic characteristics

**4VAC50-60-80. Flooding.**

- Establishes that downstream properties and waterways shall be protected from damages from localized flooding due to changes in runoff rate of flow and hydrologic characteristics, including but not limited to, changes in volume, velocity, frequency, duration, and peak flow

**4VAC50-60-90. Regional (watershed-wide) stormwater management plans.**

- This section enables localities to develop regional stormwater management plans.
- The objective of a regional stormwater management plan is to address the stormwater management concerns in a given watershed with greater economy and efficiency by installing regional stormwater management facilities versus individual, site-specific facilities. The result will be fewer stormwater management facilities to design, build and maintain in the affected watershed.

**Part III Local Programs**

**4VAC50-60-100. Applicability.**

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

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

- Specifies that all local stormwater management programs shall comply with the general technical criteria and provisions for stormwater management setout in Part II,
- Notes that 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, and
- Establishes that 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.

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

- Establishes minimum criteria that the local stormwater management program and implementing ordinance shall meet,
- Requires the department to periodically review each locality's stormwater management program, implementing ordinance, and amendments, and
- Establishes that nothing in the regulations 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.

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

- Establishes that localities shall approve or disapprove stormwater management plans within a maximum of 60 calendar days from the day a complete stormwater management plan is accepted for review and that disapproval of a plan shall contain the reasons for disapproval,
- Requires each plan to specify that the applicant shall comply with all applicable requirements of the approved plan, the local program, this chapter and the Act, and for the applicant to certify that all land clearing, construction, land development and drainage will be done in accordance with the approved plan,
- Specifies that the locality shall be allowed to conduct periodic inspections of the project and that the person responsible for implementing the approved plan shall conduct monitoring and submit reports.

**4VAC50-60-140. Administrative procedures: exceptions.**

- Specifies that a request for an exception to the regulations shall be submitted, in writing, to the locality and that an exception may be granted, provided that the exceptions are the minimum necessary to afford relief

and that reasonable and appropriate conditions shall be imposed to preserve the intent of the Act and regulations,

- Notes that economic hardship is not sufficient reason to grant an exception from the requirements of the regulations.

**Part XIII Fees**

- 4VAC50-60-700. Purpose.
- 4VAC50-60-710. Definitions.
- 4VAC50-60-720. Authority.
- 4VAC50-60-730. Applicability.
- 4VAC50-60-740. Exemptions.
- 4VAC50-60-750. Due dates for Virginia Stormwater Management Program (VSMP) Permits.
- 4VAC50-60-760. Method of payment.
- 4VAC50-60-770. Incomplete payments and late payments.
- 4VAC50-60-780. Deposit and use of fees.
- 4VAC50-60-790. General.
- 4VAC50-60-800. Fee schedules for VSMP Municipal Separate Storm Sewer System new permit issuance.
- 4VAC50-60-810. Fee schedules for major modification of individual permits or certificates requested by the permittee.
- 4VAC50-60-820. Fees for filing permit applications (registration statements) for general permits issued by the permit-issuing authority.
- 4VAC50-60-830. Permit maintenance fees.

**4VAC50-60-800. Fee schedules for VSMP Municipal Separate Storm Sewer System new permit issuance.**

The following fee schedule applies to permit applications for issuance of a new VSMP Municipal Separate Storm Sewer System permit.

VSMP Municipal Stormwater / MS4 Individual (Large and Medium)	\$21,300
VSMP Municipal Stormwater / MS4 Individual (Small)	\$2,000
VSMP Municipal Stormwater / MS4 General Permit (Small)	\$600

**4VAC50-60-810. Fee schedules for major modification of individual permits or certificates requested by the permittee.**

The following fee schedules apply to applications for major modification of an individual permit requested by the permittee:

The permit application fees listed in the table below apply to a major modification of a VSMP Municipal Separate Storm Sewer Systems Permit that occurs (and becomes effective) before the stated permit expiration date.

VSMP Municipal Stormwater / MS4 (Large and Medium)	\$10,650
VSMP Municipal Stormwater / MS4 Individual (Small)	\$1,000

**4VAC50-60-820. Fees for filing permit applications (registration statements) for general permits issued by the permit issuing authority.**

The following fees apply to filing of permit applications (registration statements) for all general permits issued by the permit issuing authority, except:

VSMP Stormwater Construction General Permits

The fee for filing a permit application (registration statement) for coverage under a VSMP stormwater general permit issued by the permit issuing authority shall be:

VSMP General / Stormwater Management - Phase I Land Clearing ("Large" Construction Activity - Sites or common plans of development equal to or greater than 5 acres)	\$500
VSMP General / Stormwater Management - Phase II Land Clearing ("Small" Construction Activity - Sites or common plans of development equal to or greater than 1 acre and less than 5 Acres)	\$300

**4VAC50-60-830. Permit Maintenance Fees.**

A. The following annual permit maintenance fees apply to each VSMP permit identified below, including expired permits that have been administratively continued:

VSMP Municipal Stormwater / MS4 (Large and Medium)	\$3,800
VSMP Municipal Stormwater / MS4 Individual (Small)	\$400
VSMP General / Stormwater Management - Phase I Land Clearing ("Large" Construction Activity - Sites or common plans of development equal to or greater than 5 acres)	\$0
VSMP General / Stormwater Management - Phase II Land Clearing ("Small" Construction Activity - Sites or common plans of development equal to or greater than 1 acre and less than 5 Acres)	\$0

B. An additional permit maintenance fee of \$1,000 shall be paid annually by permittees in a toxics management program. Any facility that performs acute or chronic biological testing for compliance with a limit or special condition requiring monitoring in a VPDES permit is included in the toxics management program.

At this time the committee recessed for lunch.

**General Brainstorming/Discussion of Key Issue to be addressed by TAC**

Ms. Burtner led a general brainstorming session.

***Part II – Local Program Technical Water Quality and Quantity Criteria***

Mr. Hill gave general comments regarding this section.

Mr. Hill said that basically Part II sets out to define the technical criteria that a stormwater management program needs to address. That includes both water quality and quantity factors including flooding and channel erosion.

Members suggested the following should be considered for inclusion in Part II.

- Determination of flooding erosion impacts in areas that do not have a defined channel or outlet/receiving areas without receiving channels
- Over arching statement – large MS4 –not doing a lot of Greenfield development. Need to make sure regulations address new development and redevelopment. Guidance of performance standards on how to deal with increases in volume and duration
- Need performance standards for increased volume and duration.
- Determining removal efficiencies for LID structures that are going to be used as a BMP.

- Long term maintenance and how to address for innovative technologies and LID.
- Watershed plan on a regional basis – provision in state planning code that deals with shared clusters of regional plans. Criteria targeting regional watershed solutions and the financing of that.
- Are the quantity and quality requirements being taken from existing standards including the Chesapeake Bay requirements and stormwater requirements in the DCR handbook or from new standards? Concern is consistency issues with DCR and other agencies.
- For the purposes of percent impervious cover, refine definition of planning area to include several drainage areas.
- Use the term other pollutants – not just focus on sediments and nutrients.
- Where the regulations would allow the regional watershed stormwater management, how does that happen when the state is running a local program as opposed to when a locality has adopted.
- Establishment of riparian buffers.
- Stream channel erosion – dual erosion/protection analysis.
- In the flooding would like to know if some floodplain management criteria would be incorporated.
- Requirement for inspection and maintenance plan for SW management facilities. Concerned about the choices the builder has, and who has the responsibility the homeowner or the builder?
- State run program –how does that interact with maintenance and inspections?
- Achieving pollution reduction goals for impaired waterways.
- Maximizing the use of on site soils for volume control/predevelopment soils assessment.
- Criteria – incentives for reducing total land disturbance in the construction process and development process.
- Impaired waterways issues. Defining a minimum standard for impaired waters.
- BMP efficiency table expanded to include manufactured BMPs.
- Stream channel erosion – adequate channel criteria to establish engineering limits Should include depth and width.
- Limit the depth ratios resolve MS19 pipe situations.
- Limit on the use of the modified rational method.
- VAC 50-60-60 – item 4 – regulation BMPs – need to clarify the language.
- Method to address existing inadequate conditions.
- Guidance and criteria for granting exceptions
- Criteria for why an area would want to develop a regional BMP program.
- Item 6, page 20 – future expansion of selected SW management facilities, - criteria, who pays and why. Unanticipated future expansion.
- VAC 50-60-60 item 4 – seems to deal with regional BMPs - clarify the language
- Ensure that the quantity control aspects of water quality practices are accounted for
- Groundwater impacts – quality and quantity – infiltration issues, diverted to runoff issues.

- Are the minimum standards adequately set? Even minimum standards should be adequate to assure adequate water quality – consider implementation and results for water quality.
- Take the BMP efficiency table and put in another medium to be revised more quickly.
- Limit/eliminate – modified rational method
- Site specific not city –wide. Percent impervious area.
- More specification section 4 VAC 50-60-80, item C – how much freedom this item C allows with regard to this section.
- Allow localities to adopt alternate design criteria. – what is appropriate.
- Adopt a standard definition and computation procedure for LID
- Address fine soil particles as well as other materials in run-off. Change the name of a silt fence to a sand fence.
- Standard definition – relative to approach, strategy and computation for LID relative to approach, strategy, implementation.
- Acknowledgement of preserving forest buffers.
- 50-60-80. Flooding section –one criteria. The flooding sets out several things volume, frequency, duration but only talks about peak flow rate.
- Some kind of reference for technology based criteria.
- LID benefits – incorporated into CBPA quality computations.
- Eliminate MS19 from the regulations
- Define water quality parameters and how you do the calculations. How to calculate how you get credit for the water quality computation you need to do.
- Don't have specific rule on BMPs should be a specified range.
- Performance criteria based on water quality monitoring.
- Process to promote reductions in impervious cover.
- Reassess the appropriateness of a two-year storm.
- Law states we have to look at flow characteristics, frequency and how do we address those components.
- Land cover should be tied to zoning.
- Need to define “modified rational method.”

Mr. Hill reviewed a selection the comments provided through the public comment period and staff discussions. Summaries of the public comments, including written correspondence received, were included in member notebooks. The following concerns were raised:

- BMP table removal
- Make sure we include all necessary Bay Act language
- LID issues incorporation
- Pollutants outside of keystone pollutants (P)
- No net increase in P over the existing average land condition
- Separate section for water quality
- Move situations to handbook or clean up [60]

- Eliminate planning area or define better [90]
- Deed restriction on platte requirement-indicating a facility at a location & maintenance agreement
- BMPs as part of a homeowners association; no money to fix; permission for locality to charge for maintenance
- Can drainage structures be concrete over steel
- Build on Stormwater Water maintenance/service area concept
- Developer put money/bonding for long term maintenance irrevocable credit (bond)
- Plan approval require developer to indicate how maintenance would be handled
- Review of endangered & threatened species in General Permit
- Dam Safety compliance
- Confusion on how to evaluate; how to size for LID
- Anti degradation statement [DEQ had language]
- County by county average land cover conditions/specifications—performance based—statement in regulations/chart in manual annually defining average land cover area
- Limits on acreage for modified rational method [50B]
- What storm do we design to
- Application of pesticides in or around BMPs; Certified applicators; chemicals approved for use
- Storage of fertilizers (ex. A superstore parking lot)
- Duplicate inspections [permit holder; locality] set inspection regulations
- Add TMDL statement
- Better definition of adequate channel to address karst
- Karst loss
- Impoundment or BMP development in karst
- Sump pump discharges; be included in modeling
- Sale of credits on oversized BMPs in different watersheds—needs to be tightened up
- Stream perennality as it relates to BMP location (currently being done on antiquated quads)
- Riparian buffers requirements
- Regional ponds; neglecting channel in between
- Requiring easements for drainage ways & BMPs (address through adequate channel)

### **Part III (Local Program Administrative and Delegation Procedures and Requirements)**

Ms. Burtner led a brainstorming session regarding Part III.

The following ideas were noted:



- Certification of local staff
- Section 50-60-20 Incentives for low impact development
- Section 50-60-120B – audit of local programs annually with deficiencies corrected within a certain time period.
- Section 50-60-120B – performance for local program water quality administration matrix, compliance regulations
- Locality needs to have an understanding of what the program is, the expectations, and criteria for the annual review
- water quality administrative methods...
- Administrative matrix – minimum staffing level requirements for inspection and plan review staff
- Criteria for distinguishing between general and individual permits
- Include monitoring data as part of an audit
- Give building inspectors the ability to change inadequate plans in the field.
- Administrative procedures maintenance and inspections. Some form of standard and minimum agreement.
- Jurisdictional level playing field in a watershed.
- How long files need to be maintained.
- Periodic review of the program.
- What the program is and expectations and criteria and expectations for an annual review.
- 50-60-130 – some definition of that “first responsible for implementing the approved plan” who shall conduct the monitoring...contractor, landowner, whoever?
- How does that relate to 50-60-150 (G) whose file and what belongs in that file vs. the other reports that are done.
- The administration matrixes – define minimum staff requirements for inspection and plan review based on permit load.
- If a locality chooses not to adopt a program, DCR should consider delegation to a SWCD
- 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?
- What steps does the Board follow to delegate to a local program. How does the Board delegate?
- Field inspection – need the ability to change inadequate plans in the field
- Coordinating local review with the Erosion and Sediment Control Program and the Chesapeake Bay Act – coordinate all programs as if they were one program
- Need to find a way to explain to those folks that aren’t required to take program what the advantages are to them running the program instead of having DCR run it. Dozens of localities don’t want to touch.
- Agreement lieu of plan for 1 to 5 acre areas – need to be addressed and maintained.
- Training for local governments.

- 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?
- Account for topographic and development difference across the Commonwealth
- Recognition of rapid development change and low impact vs. no impact on development.
- Recognize that some criteria may not apply because of the limited number of land disturbances per year – how do you do this with a non-penalty?
- Unification of code into one model ordinance. ENS, Stormwater and Bay Act in one piece.
- What is the model ordinance?
- Identify in a local program that the fees will be used to fund the requirements of a local program.
- Some form of agreement of what is inspected – 50-60-150 – what is maintained – need to clarify terms
- Clarify enforcement, issuing, policing, revoking and how the locality polices self
- 50-60-150 – minimum requirements for inspection records
- 50-60-150B – should the state “ensure continued performance of improved practice?”
- Pre-requisite to a locality delegation – have a rating on the locality’s E&S program
- 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
- Need administrative procedures for the local program – who to collect the fees, how they can be spent, how to submit to DCR, etc.
- Enforcement needs to have effective penalties for non-compliance
- 50-60-110 – more stringent requirements – need to insert “satisfies 10.1-603.7 (scientific basis)”
- 5060-140 – define exceptions and make sure they are limited
- Need a level playing field in jurisdictions within a watershed
- 40 VAC 50-60-30 – go with a 45 or 60 day for approvals – any for other state, federal, erosion program participation
- How long will a locality have to keep their files?

Mr. Hill reviewed the comments from the public comment period as well as comments included from staff:

Mr. Dowling suggested that members take time following the meeting to review the information included in the notebooks. He said there were more detailed comments and questions from the public beyond what was spelled out in the bullet points of the presentation.

- Develop local program minimum criteria
- Delegation procedures

- DCR oversight procedures
- DCR program administration role as program implementer for non-opt-in localities
- Stipulate sufficient staff to operate a program
- Discrepancy between localities 60 day & 30 day—plan review; E&S 45 & state 60
- Revocation of permits by a locality
- Who handles individual permits
- Maintenance/financial security for BMPs
- Reporting & tracking of inspections; enforcement actions, deadlines, required info format & intervals
- Long term inspection of BMPs
- GPS locations of BMPs
- Who permits a local government's project
- Who issues next BP—(DCR): local ordinance revisions
- Archiving requirements/plan; how long to keep inspection records
- Notification system for expediting individual permits + for 5 yr.
- What teeth do we give localities for enforcement
- Can a locality enforce against itself? How does sovereign immunity work under the Dillon rule?
- Who handles Federal & State agency projects—DCR
- How are fines handled
- Look at exception & exemptions—some need better definition before delegating [140]
- Is there a certification program for administrators, inspections, etc
- Do the Plan developers & reviewers need to be an engineer?
- Board develop a schedule of civil penalties
- BMPs in series
- Converting basin from E&S to SW before stabilization
- How do we look at utility & linear projects
- Requirements for maintaining documentation for inspections & enforcement
- Authority for orders & administrative actions; can not go to the Courts on all actions
- Changing approved Stormwater plans in the fields

A member noted that there was a need to define the term “localities” whether it is city, county, town or all three.

### **Part XIII (Fees)**

Ms. Burtner led a brainstorming session with regard to Fees. The following comments were addressed:

- Tie fees to impervious cover instead of land disturbance.

- Fees should be based on regional areas or watershed situations in order for higher density areas of NOVA to be separated from less active areas of the state.
- Fees to be based on type of project, agricultural, residential commercial industrial
- Define how localities are expected to handle collected fees. How often to the state, put in escrow? The process of handling the actual the cash once it is collected.
- How would the fees be able to be used for implementing the programs and inspections, record keeping – what percentage of that fee can stay with the local government for the management of the program and fines. What happens to the fines that are collected?
- Do not provide disincentives for Stormwater utility.
- Definition of what are the cost factors that go into the calculation of the fee both from the state and from the local side. How that gets added together?
- Exemption for fees – most focused on 2500 square feet or an acre.
- Consider a base fee and add-ons for plan re-submittal that don't meet criteria
- Fees to be used to cover the costs of the program and can't be siphoned off to other uses.
- Give some thought to having a separate schedule for individual vs. general permits.
- Clarify annual maintenance fees.
- Graduated fee based on land disturbance. Fee structure tied to water quality/water quantity considerations.
- Fee structure created to centralize LID better site sign, watershed planning.
- MS4 – permit fees – incentives for localities with the fee structure to reduce their volume and their number of outfalls and achieve significant reductions.
- Do not de-incentivize development – stormwater utility.
- For scenario where one GP ends and another begins. Grandfather for projects issued under previous period without having to issue additional fees.
- General section as to when the fee schedule will be reviewed by DCR, how to be submitted to APA, how all the fees are good for and when can they be amended and how. Need a permit schedule amendment process.
- Incentive for locals to reduce volume. – other words to be added – incentives for local to reduce volume within the fee structure – retrofit something –
- Suggest that DCR check with some of the permit reviewers/writers and see what the true cost is.
- Explore tying fees to area of impervious cover.
- Issue related to running the program in an area – fees are either MS4 fees or GP construction fees, then there is running a local program. What's related to the cost of that.
- Would local governments be able to charge additional fees based on cost of living in an area?
- Local additional fees, cost of living – regional fees.
- Source of the authority for the fees.
- Is it possible to revoke a general permit for noncompliance?
- Encourage watershed planning – a portion of fee goes for this purpose.

- Localities should be defined in such a way that it includes cities, towns, counties, regional – currently don't know if that means cities, counties, towns and regions.
- Fees need to be based on type of project – is it industrial, residential, agricultural, or commercial?
- Define how localities handle fees, how often sent to the state, how to handle cash, etc. – what procedures are followed and when
- How fees can be used needs to be defined – implementation, record keeping, etc. how much the local government will get, also include information about fines.

Mr. Hill reviewed the public comment with regard to fees:

- 2,500 sq. ft. to 1 acre in Bay areas
- Consider a fee per each additional acre above some threshold (5 acres?)
- Annual maintenance fee for both construction & MS4 GP
- How to deal with a permit at the end of 5 years (does it require a new permit of \$500)
- Regional versus statewide fees
- MS4 permit fees, are they enough?
- Split 70%/30% issue
- Fees only for program implementation
- Stormwater proffers
- How to collect fee
- How to transmit fees to state
- How accounting works
- Fees high enough to be attractive to localities
- Ensure fees are spent on program administration
- If fee is high enough to be attractive to locality –what kind of savings to they realize?

Ms. Burtner led a discussion of other issues of concern, noting that the issues may not fit into only the Sections addressed.. The following were noted:

- How old is the BMP technology. Will DCR be involved in any research?
- BMPs need to be researched to come up with new ones where appropriate.
- Code provision to encourage low impact development. Provide an incentive to get an exemption or reduction.
- Evidence that the Department is encouraging LID should be reflected in the regulations.
- Need to know incentives for a developer to do LID.
- LID – is it more about understanding than incentives? Some LIDs are more effective.
- There has been little public education on LID because the public does not recognize installed elements – the regulations should include the education of the public.

- DCR and the Home Builders Association of Virginia are sponsoring programs that focus on LID.
- When does a forestry operation cross the line into development with land disturbance.
- Definition of a channel as a waterway. More definitive definition of channel.
- Inspections within 48 hours. Change to standard rain rate. Regulations require 48 hour water/rain run-off producing event – need numbers – be more specific in terms of amount of rain – a standard (1/2” or 1/4” or something).
- High priority to combine E&S and grading, stormwater permits into 1 permit, 1 plan, 1 inspection.
- How often to update BMP manual
- One permit, one plan, one inspector.
- Stress the importance of stormwater meeting tributary strategies.
- Monitoring – need to be very careful. Are we monitoring water quality or monitoring programs?
- Be careful with combining permits – keep open so locality can do what works for them. Record keeping is the issue.
- Issue of termination notice – how do we resolve?

Ms. Burtner reviewed the public comment with regard to other issues and concerns:

- Construction General Permit
  - Need for E&S Plan
  - Plan approval process
  - Need for SWPPP
- TMDL language on Registration Statement
- Registration statement simplification/user friendly [if we do not need the info, why do we request (provided federal law does not require)]
- Requirement to list BMPs (perhaps on the Notice of Termination)
- State project criteria [4VAC50-60-160]
- Timing for submittal of application to when project can commence [currently immediately—Consider 30 days]
- Approved SW plan as part of a SWPPP

### **Discussion of Drafting and Review Process**

Ms. Burtner reviewed DCR’s preferred method for moving forward with the process. She indicated that DCR would like the TAC to brainstorm the issues and identify in which direction they would like the issues to move.

Ms. Burtner noted that between sessions, DCR staff would begin drafting the regulations and would provide to the TAC as available for comment. Regulations would be addressed at future meetings for modification and approval

Mr. Frye noted that information collected at this meeting should give DCR the opportunity to begin drafting Part II, based on comments received. That would move forward and be brought back to the next meeting.

A member asked if actual verbiage or suggestions could be submitted for inclusion.

Mr. Dowling said the Department would welcome and consider anything that would assist in the thought process. He said that there had been a lot of good ideas presented. In the drafting process, DCR may need to come back to the TAC for additional clarification.

A member suggested that DCR work with a parallel process to identify the questions from the federal level that might need to be answered.

A member asked about the process if a meeting is missed. Ms. Burtner explained that the decision had been made that if a TAC member misses a meeting, they can send a representative, but only the actual TAC member will be allowed to participate in the discussion.

Members wishing to submit actual verbiage or additional comment may email Christine Watlington at [Christine.Watlington@dcr.virginia.gov](mailto:Christine.Watlington@dcr.virginia.gov).

Ms. Burtner reviewed the schedule for future meetings:

Thursday, May 18 – Department of Forestry, Charlottesville

Locations will be determined for the following dates:

- Thursday, June 8
- Tuesday, June 20
- Tuesday, July 11
- Tuesday, July 25

The meeting adjourned at 4:00 p.m.