

# Stormwater Management Program Permit Regulations Supplemental Information

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Hampton Roads Planning District Commission

April 21, 2011

Agenda Item #17





MEMBER JURISDICTIONS

April 27, 2011

CHESAPEAKE

Mr. David Johnson, Director  
Department of Conservation and Recreation  
203 Governor Street, Suite 302

FRANKLIN

Richmond, VA 23219

GLOUCESTER

RE: Amendments to the Virginia Stormwater Management Program (VSMP)  
Permit Regulations (Parts I, II, and III) (POW: Stormwater Regulations)

HAMPTON

Dear Mr. Johnson:

ISLE OF WIGHT

On behalf of the Hampton Roads Planning District Commission, I want to recognize the substantial effort undertaken by the staff of the Department of Conservation and Recreation in developing these regulatory amendments and attempting to facilitate compromise. We appreciate your efforts to include representatives of the regulated community – local governments in particular– in this endeavor, which has significant implications for the quality of our environment and the daily operations of our local governments. As you know, several representatives from the Hampton Roads region served on the most recent Regulatory Advisory Panel (RAP) and remain fully engaged in the process of ensuring these regulations achieve the desired goals.

JAMES CITY

NEWPORT NEWS

NORFOLK

POQUOSON

After conferring with the Region's RAP representatives, the Joint Environmental Committee has relatively few concerns regarding the proposed amendments to the VSMP permit regulations. We support the methodology that was utilized to calculate the water quality technical criteria of 0.41 pounds per acre per year of phosphorus for new development statewide. We believe this statewide standard will be protective of local water quality as well as water quality within the Chesapeake Bay. However, we encourage Virginia DCR to clearly document that this technical criterion will be consistent with Virginia's Chesapeake Bay TMDL Phase I Implementation Plan (WIP) and DCR's intention that the post development loads from new development will produce no net increase from the existing pollutant load based on the average land cover within the Chesapeake Bay Watershed in Virginia.

PORTSMOUTH

SOUTHAMPTON

SUFFOLK

SURRY

VIRGINIA BEACH

WILLIAMSBURG

YORK

The Hampton Roads localities do have some concerns with revisions to the VSMP that were proposed by DCR at the last RAP meeting. The Joint Environmental Committee believes that extending grandfathered technical criteria for an additional two permit cycles in Part II and incorporating the EPA's Effluent Limitations Guidelines and Standards in Part II A are outside the scope of the current intended regulatory action.

Within Part II of the VSMP (4VAC50-60-48), DCR inserted language allowing land disturbing activities permitted under the VSMP General Permit for Discharges of Stormwater from Construction Activities to be subject to the technical criteria within that permit for an additional two permit cycles. Ostensibly, this could allow land disturbing projects receiving General Permit coverage before 2019, but subject to the grandfathered technical criteria in Part II C, to be covered under the grandfathered technical criteria until 2029. The Hampton Roads localities question whether this change is consistent with other Parts of the VSMP that address permit duration and reissuance requirements.

- Part VI: VSMP General Program Requirements Related to MS4s and Land-Disturbing Activities
  - 4VAC50-60-330 Continuation of expiring permits
- Part VIII: VSMP Permit Conditions
  - 4VAC50-60-480 Duration of permits
- Part X: Transfer, Modification, Revocation and Reissuance, and Termination of VSMP Permits
  - 4VAC50-60-610 Modification, revocation and reissuance, or termination of permits

The Hampton Roads localities also question whether such a generous grandfathering provision is consistent with implementing post construction technical criteria to improve water quality and meet Chesapeake Bay TMDL milestones.

The Hampton Roads localities are aware that Virginia is required to incorporate EPA's recently approved "Effluent Guidelines for Discharges from the Development Industry," however we disagree with DCR's decision to include them in Part II A as well as with the language that was used to incorporate them. The ELGs should be in Part XIV General Virginia Stormwater Management Program (VSMP) Permit for Discharges of Stormwater from Construction Activities (4VAC50-60-1170. General Permit. Section II).

When DCR does incorporate EPA's requirements into the appropriate section of the Stormwater Regulations, the Hampton Roads localities request that DCR define the terms used in this section. For example the subsection requires natural buffers around surface waters, but there is no definition or other discussion of these buffers. If terms such as these are left undefined and additional guidance is not issued, then local programs will have difficulty determining whether permit applications comply with these Regulations.

The Hampton Roads localities have the following additional comments:

#### **Part I: Definitions, Purpose, and Applicability**

Several definitions that are referenced in Part II C Technical Criteria for Grandfathered Projects (4VAC50-60-94 through 4VAC50-60-99) have been removed from this section. These should be

copied to this section from the current regulations or Part II C should include the definitions from the existing regulations. Examples include the terms "adequate channel", "aquatic bench", and "average land cover condition."

**Part II:**

Section 4VAC50-60-48.

Administration of grandfathering requires review of existing permits for applicability to the conditions and dates stated in this section. We request the department manage the grandfathered permits, when allowed by law, to ensure conformance to the regulations. Otherwise, detailed and substantial guidance, assistance and funding may be necessary.

Section 4VAC50-60-51.

This section pertains to regulation of Chesapeake Bay Preservation Act land-disturbing activities. Based on the references to other sections of the regulations, it is presumed that the grandfathering provisions in 4VAC50-60-48 do not apply to this section. Please provide a statement in this section indicating that Chesapeake Bay Preservation Act land-disturbing activities that meet the criteria in Section 4VAC50-60-48 will be subject to the technical criteria in Part II C instead of Part II B.

**Part II B: Technical Criteria for Regulated Land-Disturbing Activities**

4VAC50-60-63. Water Quality Design Criteria Requirements

Subsection A.2.c requires that for redevelopment sites where the impervious cover is increased over pre-development conditions, the new development criteria will be applied to the increased impervious area. The rest of the site can be developed using the redevelopment standard. This is going to be very difficult and impractical to implement. It will be difficult to treat certain portions of a site to a different standard than the rest of the site.

Section C requires that if a TMDL WLA has been established, control measures must be provided to address this pollutant WLA. The state needs to provide guidance on the performance (removal efficiencies) of BMPs to reduce the loads of pollutants other than nutrients and sediment, such as bacteria, if this is going to be a requirement. Otherwise, localities will have no way to properly evaluate this requirement but will be held responsible for addressing the TMDL.

4VAC50-60-65. Water Quality Compliance

The regulations should not include the specific reference to the version and date of the BMP standards and specifications in the BMP Clearinghouse. The purpose of the Clearinghouse was to allow BMP designs to be updated frequently and remain current with the state of the art without going through the lengthy process of updating the handbook or regulations. The BMP types should be listed with a statement that the most recent version of the Clearinghouse will establish the appropriate treatment efficiencies.

4VAC50-60-66 Water Quantity.

Subsection E (line 1243-1249). Eliminate "from prior development lands", so sentence reads "For purposes of computing predevelopment runoff, all pervious lands on the site shall be assumed to be in good hydrologic condition. . . "

4VAC50-60-72 Design Storms and Hydrologic Methods

Subsection B (lines 1308 -1310) Rewrite the sentence to read "Unless otherwise specified, all hydrologic analyses shall be based on watershed characteristics that reflect good hydrologic condition for current conditions and the expected hydrologic condition for the ultimate development condition.

The modified Rational Method has been found to significantly underestimate the volume of stormwater runoff and should not be used to design stormwater treatment facilities draining up to 200 acres. Subsection D (lines 1316-1319) should be edited to read, "Except for linear development projects, the Modified Rational Method should be limited to 20 acres of drainage area or less; not 200 acres or less."

**Part III A: Programs Operated by a Stormwater Program Administrative Authority**

4VAC50-60-114. C. Lines 1681 – 1686 should read, "The stormwater program administrative authority may utilize the inspection reports of the owner of a stormwater management facility as part of an inspection program established in subsection B of this section if the inspection is conducted by a person who is licensed as a professional engineer, architect, landscape architect, or land surveyor pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1 or who holds an appropriate certificate of competence from the board.

4VAC50-60-116. D.

Regarding the statement: "authorization to administer a local stormwater management program shall not remove from the board the authority to enforce the provisions of the Act and attendant regulations," we trust the Department of Conservation and Recreation will notify the local stormwater program administrator and arrange to be accompanied by representatives of the qualifying local stormwater management program, prior to conducting inspections, enforcement, plan review, or program review within the locality. A standard written procedure or process flow chart for department oversight of the qualifying local stormwater management program would help reduce confusion and misdirection given to permittees and other stakeholders.

### **Part III B: Department of Conservation and Recreation Procedures for Review of Local Stormwater Management Plans**

4VAC50-60-144.F.

This paragraph pertains to deficiencies noted in the Department's and Board's reviews of local stormwater management programs. It states: "the board shall notify the local stormwater management program concerning the deficiencies and provide a reasonable period of time for corrective action to be taken." The duration for corrective action depends on the complexity and extent of the deficiency. The locality may need three months for minor corrective actions and as much as five years for major, complex corrective actions. We suggest the department develop standard written procedures and process flow charts for consultation and negotiation with the locality to determine reasonable time frames for correcting deficiencies due to the department's and board's reviews of the local program.

### **Part III C: Virginia Soil and Water Conservation Board Authorization Procedures for Local Stormwater Management Programs**

4VAC50-60-148. Local Stormwater Management Program Administrative Requirements. DCR should provide model ordinances as soon as possible for localities to use in developing local programs in order to allow adequate time for program implementation.

4VAC50-50-150. Authorization Procedures for Local Stormwater Management Programs.

This section currently states that localities required to adopt a local program must submit an application package to the Board consistent with § 10.1-603.3 A of the Code of Virginia. This section currently requires localities to adopt programs within 15-21 months following the effective date of the VSMP Regulations. If the effective date of the Regulations becomes October 2011 as DCR expects, then localities will have to adopt local programs between January and July 2013. Requiring a full year between the time localities must adopt programs and July 1, 2014 when the technical criteria of these regulations will be implemented seems excessive. Localities will need additional time to adopt the ordinances required by this regulation. The Hampton Roads localities suggest that § 10.1-603.3 A of the Code of Virginia be revised to require that local programs be in place prior to July 1, 2014. Given the complexity and extent of this proposed regulation, the Chesapeake Bay and other water quality TMDL's, and the organizational structure of existing MS4 programs; a substantial amount of leadership, effort, and coordination will be required to implement the local stormwater management program. We request starter funding and assistance for establishing the proposed local stormwater management program, as well as the next MS4 permits and related permit programs. These expanded requirements will require much larger, more detailed and complex stormwater management programs than the current programs.

Mr. David Johnson  
April 27, 2011  
Page 6

The Hampton Roads localities appreciate the opportunity to comment on these revisions to the VSMP Permit Regulations, and look forward to a continued partnership with Virginia DCR during the implementation of the revised technical criteria and local program adoption.

Sincerely,

Dwight L. Farmer  
Executive Director/Secretary

JLT/kg

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