

Presentation Materials for Agenda Items 2, 3 and 4

Stormwater Legislation and RAP Charge from the 2010 General Assembly Session

HB 1220 (Hugo) [Chapter 137] and SB 395 (Wagner) [Chapter 370] - Stormwater management regulations; changes effective date that establishes local program criteria.

CHAPTER 137 [H 1220] and CHAPTER 370 [S 395]

An Act to amend and reenact the second enactment of Chapter 18 of the Acts of Assembly of 2009, relating to stormwater management regulations.

Approved March 11, 2010; Approved April 10, 2010

Be it enacted by the General Assembly of Virginia:

1. That the second enactment of Chapter 18 of the Acts of Assembly of 2009 is amended and reenacted as follows:

2. That the regulation that establishes local program criteria and delegation procedures and the water quality and water quantity criteria, and that is referenced in subsections A and B of § [10.1-603.3](#) of this act, shall ~~not become effective prior to July 1, 2010~~ *within 280 days after the establishment by the United States Environmental Protection Agency of a Chesapeake Bay-wide Total Maximum Daily Load (TMDL) but in any event no later than December 1, 2011.*

2. That the Virginia Soil and Water Conservation Board shall convene an advisory panel of stakeholders to review the regulation and to make recommendations to the Board on revisions to the regulations necessary to, among other things, comply with such TMDL.

[Incorporated similar bills by Delegates Bulova (HB 1311) and Dance (HB 155) and Senators Hanger (SB 677), Watkins (SB 245) and Whipple (SB 681). A Senate budget amendment, item 351 #5s also contained the delay language.]

Framework of Stormwater Regulations

The regulations are comprised of 15 parts.

VIRGINIA STORMWATER MANAGEMENT PROGRAM (VSMP) PERMIT REGULATIONS [4 VAC 50-60-10 et seq.]

Part I: Definitions, Purpose, and Applicability

Part II: Stormwater Management Program Technical Criteria (Water Quality and Quantity)

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 – Effective February 3, 2010

Part XIV: General Virginia Stormwater Management Program (VSMP) Permit for Discharges of Stormwater from Construction Activities – Effective July 1, 2009

Part XV: General Virginia Stormwater Management Program (VSMP) Permit for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems – Effective July 9, 2008

FORMS

DOCUMENTS INCORPORATED BY REFERENCE

ADVISORY GROUP GUIDELINES

Role of the Regulatory Advisory Panel (RAP)

The purpose of the panel is to assist in the continuing refinement of the draft stormwater regulations. This panel has been formed to help the Department and the Board balance the concerns of all those interested in this regulatory action. All such concerns will be addressed by the panel, and any panel member is free to advance any opinion.

The role of the panel is advisory. The panel's primary responsibility is to collaboratively contribute to a regulation that is in the best interests of the Commonwealth as a whole.

The panel's goal is to reach a consensus on these regulations and make recommendations to the Department and Board. For the purposes of this RAP, consensus is generally defined as a willingness of each member of a panel to be able to say that he or she *can live with the decisions reached and will not actively work against them outside of the process*. This is not to say that everyone will be completely satisfied by the results of the process. It is necessary, however, that each participant come prepared to negotiate in good faith around complex and sensitive issues. Also, because the panel represents many different interests, all members should expect to compromise in order to accomplish the group's mission. If the group cannot reach consensus, the Department staff will present the differing opinions to the Board as well as the Department's recommendation.

Voting, per se, is contrary to a consensus-based process, but people may be asked to demonstrate their strength of feeling for or against a particular idea, and may be asked to help set priorities during the course of the process.

Participation by Persons not on the Panel

Because these types of panel meetings are public meetings, any member of the public may attend and observe the proceedings. However, only panel members have a seat at the table (or their designated alternate in their absence) and only those members may actively participate in the discussions. Those persons not on the panel are encouraged to work with the panel members that have common interests to ensure their concerns are heard. The Department will also provide a means for those persons not on the panel to make their concerns known to the panel to ensure full consideration of all issues surrounding the regulation in question, provided it is not disruptive or does not inhibit the advancement of the work of the panel. For the stormwater RAP, those persons not on the panel will have an opportunity to be formally heard during public comment portions scheduled at each RAP meeting. Time limitations may be necessary in order to ensure all persons have an opportunity to address the panel. Additional public comment opportunities may also be offered at the discretion of the Department and the Board.

When a Panel Assisting in Regulation Development is Finished

After the panel makes its recommendations, Department staff managing the panel will summarize the deliberations, outcomes and recommendations. Utilizing this information, Department management will determine recommendations that will be sent to the Board prior to the meeting where the subject is scheduled for consideration.

Areas where the panel was unable to reach consensus or where the Department's recommendation differs from the panel's recommendation will be identified in the material sent to the Board. In turn, the Board will decide if the Department's recommendation should be further modified before acting upon it.

As with all other members of the public, members of the panel are free to attend the meeting at which Department staff will present its recommendation. The Board will determine whether it will receive further public comment at that time. It is hoped that if the regulation is essentially that developed by the panel through the consensus-based process, members of the panel will actively support the work of the panel.

GENERAL GUIDELINES FOR DISCUSSIONS

Listen with an open mind and heart - it allows deeper understanding and, therefore, progress.

Speak one at a time; interruptions and side conversations are distracting and disrespectful to the speaker. "Caucus" or private conversation between members of the audience and people at the table may take place during breaks or at lunch, not during the work of the group.

Be concise and try to speak only once on a particular issue, unless you have new or different information to share.

Simply note your agreement with what someone else has said if you feel that it is important to do so, it is not necessary to repeat it.

If you miss a meeting, get up to speed before the next one as the group cannot afford the luxury of starting over.

Focus on the issue, not the speaker - personalizing makes it impossible to listen effectively.

Present options for solutions at the same time you present the problems you see.

Stay positive; despairing of the group's inability to reach agreement will almost certainly make it so.

Turn off all beepers and cell phones; take or make all calls outside the room.

INFORMATION MANAGEMENT

The Department will continue to keep an archive of information regarding the workings of its advisory committees on this regulatory action. Handouts and meeting minutes will be posted to the Policy, Regulations and Public Comments portion of the Department's website and may be accessed at:

<http://www.dcr.virginia.gov/lawregs.shtml>

Information on the Chesapeake Bay TMDL may be found at the following websites:

EPA: <http://www.epa.gov/chesapeakebaytmdl/>

VA-DCR: http://www.dcr.virginia.gov/soil_and_water/baytmdl.shtml

VA-DEQ: <http://www.deq.virginia.gov/tmdl/chesapeakebay.html>

Regulatory Process, Status, and Timetable Associated with Parts I, II, and III Action

- Board originally passed a motion authorizing the development of a NOIRA (Notice of Intended Regulatory Action) on July 21, 2005
- The NOIRA was filed on: November 15, 2005
- On December 26, 2005 the original Virginia Stormwater Management Program VSMP Permit Regulations NOIRA related to the development of local stormwater program criteria and permit delegation procedures was published in the Virginia Register of Regulations by DCR on behalf of the Board.
- The 60-day public comment period and two public hearings were held between December 26, 2005 and February 24, 2006.
- During March and April of 2006 the Department selected the TAC and secured a facilitator.
- The TAC was assembled during March and April of 2006 and was composed of 23 members including local governments (9); environmental groups (3); state agencies (5 members; 4 agencies); federal agencies (1); consultants - Home Builders (3); soil and water conservation district (1); planning district commission (1).
- Between May 4, 2006 and August 21, 2007, the Department held 12 TAC, 4 TAC subcommittee, and 1 technical discussion group meetings.
 - The 1st meeting of the TAC: May 4, 2006 at the Science Museum of Virginia.
 - The 2nd meeting of the TAC: May 18, 2006 at Department of Forestry.
 - The 3rd meeting of the TAC: June 8, 2006 at Department of Forestry.
 - The 4th meeting of the TAC: June 20, 2006 at the Science Museum of Virginia.
 - Part III subcommittee meeting: August 8, 2006 at DEQ regional office.
 - Part II subcommittee meeting: August 16, 2006.
 - The 5th meeting of the TAC: August 21, 2006 at the Science Museum. (Part III)
 - Part XIII subcommittee meeting: August 29, 2006 at DEQ regional office.
 - Part II subcommittee meeting (2nd meeting): September 21, 2006 at DOF in New Kent.
 - The 6th meeting of the TAC: October 3, 2006 at DOF in New Kent. (Tributary Strategies Presentation, Part II, Part III)
 - Part II technical discussion meeting; October 12 at DCR.
 - The 7th meeting of the TAC: October 16, 2006.
 - The 8th meeting of TAC: May 22, 2007.
 - The 9th meeting of the TAC: June 14, 2007.
 - The 10th meeting of the TAC: June 26, 2007.
 - The 11th meeting of the TAC: June 29, 2007.
 - The 12th meeting of the TAC: August 21, 2007.

- At the September 20, 2007 Board meeting, the Board approved the staff recommendation to withdraw the NOIRA stage for Parts I, II, and III in order to eliminate any question regarding the intent of the original NOIRA related to the Part II water quality and quantity technical criteria and authorized the Department to file a new NOIRA. As part of this motion, the Board directed the Department and the new TAC it would form, to build on the work of the previous TAC. The Board also directed the Department to:
 - Assemble a workgroup to develop water quantity language for the TAC's consideration.
 - Continue work on BMP Clearinghouse.
 - Continue work on Handbook Revisions.
 - Hold a series of regulation discussion and plan review meetings to address water quality calculations and spreadsheet approach.
 - Work on fiscal analysis of proposed regulation.
- 60-day public comment period associated with the new NOIRA for Parts I, II, and III opened on the TownHall on February 18, 2008.
- New NOIRA published in Register March 17, 2008 (previous NOIRA stage withdrawn).
- 60-day public comment period closed April 16, 2008.
- 29-member TAC was appointed that included most of the original TAC but incorporated a number of additional stormwater engineers to bring additional technical expertise to the TAC.
- Between June 10, 2008 and September 9, 2008, the Department held an additional 5 TAC and 4 water quantity workgroup meetings. The water quantity group was a separate advisory committee that was established and made up of technical experts.
 - The 1st Water Quantity workgroup meeting: April 22, 2008.
 - The 2nd Water Quantity workgroup meeting: May 20, 2008.
 - The 3rd Water Quantity workgroup meeting: May 27, 2008.
 - The 1st meeting of the TAC: June 10, 2008.
 - The 4th Water Quantity workgroup meeting: July 9, 2008.
 - The 2nd meeting of the TAC: July 16, 2008.
 - The 3rd meeting of the TAC: August 14, 2008.
 - The 4th meeting of the TAC: August 26, 2008.
 - The 5th meeting of the TAC: September 10, 2008
- The Department contracted with the Center for Watershed Protection to provide recommendations to the Department and the Board regarding the water quality and quantity criteria portions of the regulations. The Center, utilizing the best stormwater data sets and scientific methodologies available in the nation, put forth technical recommendations to the Department and developed the Virginia Runoff Reduction Method and worksheet. These recommendations and processes were incorporated into the proposed regulations.
- The Department also contracted out with Dr. Kurt Stephenson, an economist at Virginia Tech in June of 2008 to assist in determining the cost of the regulations as well as the general off-setting costs associated

with further degradation of Virginia's waters in the absence of these regulatory revisions. A final report was completed December 31, 2008.

- The Department held three rounds of Charrettes to test the Virginia Runoff Reduction Method and the achievability of the regulations and to familiarize the public with the method:
 - First round of charrettes were held (in association with ASCE):
 - #1 Dorey Park, Richmond (Jan. 31, 2008)
 - #2 Lakes and Watersheds Conference (March 11, 2008)
 - #3 Environment VA (April 1, 2008)
 - #4 Hampton Roads (April 29, 2008)
 - #5 Northern VA (May 12, 2008)

The product was refined during the summer of 2008 based on comments received.

- Second round of charrettes were held:
 - #1 Pocahontas State Park, Chesterfield (September 3, 2008)
 - #2 Wetland Studies and Solutions, Gainesville (September 16, 2008)
- Third series of charrettes on the Runoff Reduction Method and stormwater regulations were held in February, March, and April of 2009.

Between the series of charrettes, we would estimate that we had about 400+ different people attend, with 55-60% of those from consulting firms or construction companies, and about 25-30% from local governments.

- The Department distributed the methodology to interested entities that were willing to conduct testing. Additionally, the James River Association contracted with Williamsburg Environmental Group to methodically test the regulations and methodology and to look at cost implications.
- To ensure that standard designs were available for the required best management practices, the Department established a Stormwater BMP Clearinghouse Advisory Committee that met on 12 occasions to date. The Department contracted with the Virginia Water Resources Research Center at VT to develop the website and assist DCR in the administration of the advisory committee. The Department has worked with both CWP and Dr. Tom Schueler of the Chesapeake Stormwater Network to develop the BMP specifications and checklists:
 - Meeting dates were as follows: May 30, 2007, June 21, 2007, September 11, 2007, December 12, 2007, March 13, 2008, June 12, 2008, September 11, 2008, January 13, 2009, June 11, 2009, September 10, 2009, January 25, 2010, April 19, 2010.
- To assist in the review of Stormwater Handbook chapters, an advisory committee was formed. The committee has been utilized to review and comment on the content of the draft handbook.
- Upon completion of the technical advisory group meetings, proposed regulations were approved by the Board at the September 24, 2008 meeting.
- DCR submitted the proposed regulations for review to the Administration on March 26, 2009; review completed on May 28, 2009.
- A 60-day public comment period began on June 22, 2009 and closed on August 21, 2009.

4007.06 of the Virginia Administrative Process Act to allow time for a 30-day public review and comment period on changes made since the original proposed regulation was approved on September 24, 2008. The public comment period opened on February 15, 2010 and closed on March 17, 2010 and the regulations currently remain suspended in order to address recent legislation from the 2010 Session. Approximately 23 comments were received.

Future Potential Target Dates

- December 31, 2010, EPA establishes the Bay TMDL
- May, 2011, Board adoption of final regulations
- Mid June 2011 thru mid August 2011 (estimated 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)
- October 7, 2011, Statutory Effective Date Target (280 days)

Draft Final Regulation Summary

In the outline presented below, items in grey or yellow represent areas where changes were made between the proposed and final regulations. Specifically, areas in yellow represent items that were amended since the October 5th version of the Board's final regulations.

Part II A and Part II B [4VAC50-60-40 through 4VAC50-60-99] [Pages 20 – 43]

- 1) In the final regulations, a new section numbered **4VAC50-60-48 [Pages 21 – 22]** and entitled **Grandfathering** was added. In order to accommodate the grandfathering provision, the proposed Part II was split into a Part II A and a Part II B. Part II A [Pages 20 - 38] contains the new water quality and quantity technical criteria and Part II B [Pages 38 - 43] contains today's current standards that grandfathered projects will be subject to in accordance with the following:
 - Subsection A specifies that if a project receives general permit coverage prior to adoption of a local stormwater management program within the jurisdiction within which the project is located, the project shall remain subject to the Part II B criteria until June 30, 2014. This reiterates the process already embodied in the Construction General Permit.
 - Subsection B specifies that if the operator of a project has by July 1, 2010 met the three listed local vesting criteria related to significant affirmative governmental acts and has received general permit coverage also by July 1, 2010, then the project is grandfathered until June 30, 2014. If permit coverage is maintained by the operator, then the project will remain grandfathered until June 30, 2019. Significant affirmative governmental acts was expanded to include state and federal projects that have received approval of state or federal funding or the approval of a stormwater management plan. This will allow for state agency projects to be treated like any other developer's project
 - Additionally, in the event that the affirmative governmental act or the general permit coverage is modified during the grandfathering period and the amendments do not result in any increase in the amount of phosphorus leaving the site through stormwater runoff or any increase in the volume or rate of runoff, the project may remain grandfathered.
 - Past June 30, 2019 or if the project's general permit coverage is not maintained, portions of the project not yet completed shall become subject to the new technical criteria set out in Part II A.
 - Subsection C specifies that a project that is part of a common plan of development or sale and that has obtained general permit coverage by July 1, 2010 shall remain grandfathered and subject to the Part II B criteria.
 - Subsection D specifies that incases where governmental bonding or public debt financing has been issued for a project prior to July 1, 2010, the project shall remain grandfathered and subject to the Part II B criteria. [This refers to projects where public debt has been issued and that involves a repayment obligation over a specified time period.]
- 2) Section **4VAC50-60-63** entitled **Water Quality Design Criteria Requirements [Pages 25 - 26]** specifies that in order to protect the quality of state waters and to control stormwater pollutants, a local program shall apply the minimum technical criteria and statewide standards set out in this section for stormwater management associated with land disturbing activities unless such project is grandfathered as discussed above.

NOTE: In general, since 2005 when the Board took over the federal stormwater permit program, the current water quality technical criteria for construction activity statewide are as follows:

- Sites between 0 and 15% imperviousness for new development, all stormwater runoff goes virtually untreated.
 - New development above the 16% imperviousness threshold requires a post development pollutant load that is approximately 0.45 lbs/acre/year phosphorus.
 - A 10% reduction in the pre-development load is required on redevelopment sites.
- The water quality technical criteria for construction activity in the proposed regulations prior to the final changes outlined below were as follows:
 - For new development, a statewide 0.28 lbs/acre/year phosphorus standard was established.
 - On prior developed lands, total phosphorus loads were required to be reduced to an amount at least 20% below the pre-development phosphorus load.

In the final regulations, statewide water quality technical criteria for construction activities are as follows:

- For new development, a statewide 0.45 lbs/acre/year phosphorus interim standard was established.
- Language was added that specified that should the Board establish by regulatory action a standard more stringent than 0.45 pounds per acre per year in the Chesapeake Bay Watershed, then authority is given to the qualifying local program to establish a standard of no more than 0.45 lbs/acre/year phosphorus in a UDA in order to encourage compact development that achieves superior water quality benefits.
 - In this situation, the qualifying local program is required to provide to the Board for approval a justification for any standards established greater than the state established standard. Factors are provided upon which the standard may be based.
- Language is added that upon the completion of the Virginia TMDL Implementation Plan for the Chesapeake Bay Nutrient and Sediment TMDL approved by EPA, the Board shall by regulatory action establish a water quality design criteria for new development activities that is consistent with the pollutant loadings called for in the approved Implementation Plan. [Before the Board today will be a motion to initiate this regulatory action and to establish a regulatory advisory panel that will work with the Department and EPA on this issue.]
- On prior developed lands the following technical criteria apply:
 - Where land disturbance is greater than or equal to 1 acre, total phosphorus loads shall be reduced to an amount at least 20% below the pre-development phosphorus load.
 - Where land disturbance is less than 1 acre, total phosphorus loads shall be reduced to an amount at least 10% below the pre-development phosphorus load.
 - The total phosphorus load shall not be required to be reduced to below the applicable standard for new development unless a more stringent standard has been established by a qualifying local program.
- As was the case in the proposed regulations, the following continue to apply in the final regulations:
 - If a wasteload allocation for a pollutant has been established in a TMDL and is assigned to stormwater discharges from a construction activity, control measures must be implemented to meet the WLA.

- A qualifying local program may establish more stringent standards.

- 3) **Water Quality Compliance** set out in **4VAC50-60-65 [Pages 26 - 29]** specifies the following:
- Compliance with the water quality criteria shall be determined utilizing the Virginia Runoff Reduction Method. (The Method and associated spreadsheets were refined between proposed and final regulations.)
 - BMPs listed in the BMP Pollutant Removal Efficiency table (Table 1) of Part II shall be utilized to reduce the phosphorus load. (The table was updated between proposed and final.) The practice names and several of the efficiencies have been updated in the table in the final regulations. Design specifications for the BMPs listed in the table can be found on the Virginia Stormwater BMP Clearinghouse website. Other approved BMPs available on this website may also be utilized to achieve compliance.
 - A locality may establish limitations on the use of specific BMPs (such as wet ponds or certain infiltration practices).
 - Offsite alternatives where allowed (as specified in a new section numbered 4VAC50-60-69) may be utilized to meet the technical standards. (Offsite options set out in 4VAC50-60-65 in the proposed regulations were moved to the new section in the final regulations and refined.)

- 4) A new section numbered **4VAC50-60-69** entitled **Offsite Compliance Options [Pages 33 - 35]** is added to the final regulations. The section is outlined as follows:
- Subsection A specifies that a qualifying local program shall have authority to consider the use of 4 specified offsite compliance options.
 - **COMPREHENSIVE PLAN:** Specifies that if a local comprehensive watershed stormwater management plan has been adopted for the local watershed within which a project is located, then the development may be able to use offsite options to achieve all or part of the water quality and quantity technical criteria. In the final regulations additional details on this option are set out in Section 4VAC50-60-92 (section 4VAC50-60-96 in the proposed version.)
 - **LOCAL PRO-RATA:** Specifies that a locality may use a pro rata fee in accordance with § 15.2-2243 or similar local funding mechanism to achieve offsite the water quality and quantity reductions required. Participants will pay a locally established fee sufficient to fund improvements necessary to adequately achieve those requirements.
 - **NUTRIENT OFFSET:** Incorporates the new offset option passed by the 2009 General Assembly (HB2168) for water quality and is to be applied in accordance with the stipulations set out in the Code of Virginia (§10.1-603.8:1).
 - **DEVELOPER SITE:** The option was modified to specify that water quality controls must be located within the same HUC or within the upstream HUCs in the local watershed that the land disturbing activity directly discharges to. The option may be utilized where no comprehensive watershed stormwater management plan or pro-rata fee exists, or where a qualifying local program elects to allow this option.
 - Language is added that specifies that should the Board establish by regulatory action a standard more stringent than 0.45 pounds per acre per year in the Chesapeake Bay Watershed, that the **STATE BUY DOWN** option in Subsection B may be utilized where 1) the 4 options outlined above are not available; 2) the fee established by a qualifying local program to offset a pound of phosphorus removal on site exceeds \$23,900; or, 3) a qualifying local program elects to allow its use. The section further specifies the following:

- The payment shall be \$15,000 per pound of phosphorus not treated on site in a UDA and \$23,900 per pound in all other cases.
- Payments will be deposited to the Virginia Stormwater Management Fund.
- The Board shall establish priorities for the use of these payments by December 1 of each year (a list of priorities are provided for the Board to consider).
- At least 50% of the payments shall be utilized for projects to address local urban stormwater quality issues.
- The remaining payments shall be utilized to acquire certified nonpoint nutrient offsets where they exist and then any remaining funds may be utilized to establish contracts for long-term agricultural best management practices.
- The Department shall track the monies received and expended and the reductions needed and achieved.
- The Department may annually utilize up to 6% of the payments to administer the stormwater management program.
- The Board shall periodically review the payment amount, at least every five years or in conjunction with the development of a new construction general permit and shall evaluate the performance of the fund and the sufficiency of the payment rate in achieving the needed off-site pollution reductions. The Board shall adjust the payment amount based upon this analysis.
- Use of the STATE BUY DOWN option is in accordance with the following limitations:
 - A new development project disturbing greater than or equal to 1 acre in the Chesapeake Bay Watershed must reduce its phosphorus discharge to a level of 0.45 pounds per acre per year of phosphorus on site, or less, and then may achieve all or a portion of the remaining required phosphorus reductions through a payment.
 - A new development project disturbing less than 1 acre in the Chesapeake Bay Watershed may achieve all necessary phosphorus reductions through a payment.
 - Development on prior developed lands disturbing greater than or equal to 1 acre must achieve at least a 10% reduction from the predevelopment total phosphorus load on site and then may achieve the remaining required phosphorus reductions through a payment.
 - Development on prior developed lands disturbing less than 1 acre may achieve all necessary phosphorus reductions through a payment.
- Subsection C stipulates that where the Department is administering a local program, only the DEVELOPER SITE, NUTRIENT OFFSET, and when available STATE BUY-DOWN offsite options shall be available.

NOTE: Like the UDA provision, the state buy down option has been “parking lotted” until such time as the state develops a standard less than 0.45 should the data support that decision.

- 5) Section 4VAC50-60-66 entitled **Water Quantity** [Pages 29 - 33] specifies minimum standards to address channel protection and flood protection.
 - Channel protection shall be achieved through one of the following:
 - Stormwater released into a man-made conveyance system from the 2-year 24-hour storm shall be done without causing erosion of the system.

- Stormwater released into a restored stormwater conveyance system, in combination with other existing stormwater runoff, shall not exceed the design of the restored system nor result in instability of the system.
- Stormwater released to a stable natural stormwater conveyance shall not cause the system to become unstable from the one-year 24-hour storm discharge and it shall provide a peak flow rate from the one-year 24-hour storm that is less than or equal to the pre-development peak flow rate as ascertained by the energy balance equation. [Keep a stable stream stable.] [For this situation, it was further clarified that the peak flow rate for the developed project needs to be less than or equal to the peak flow rate of the pre-developed condition.]
- Stormwater released to an unstable natural stormwater conveyance shall provide a peak flow rate from the one-year 24-hour storm that is less than or equal to the good pasture peak flow rate as ascertained by the energy balance equation, unless the pre-developed condition is forested, in which case, both the peak flow rate and the volume of runoff from the developed site shall be held to the forested condition. (In the proposed regulation the specified standard was the forested condition instead of the good pasture condition that is now included in the final regulations.) [For this situation, it was further clarified that the peak flow rate for the developed project needs to be less than or equal to the peak flow rate of the good pasture or forested condition as may be applicable.]
- In the final regulations, exceptions to the unstable natural stormwater conveyance situation were added for land disturbing activity less than 5 acres on prior developed lands or a regulated land disturbing activity less than 1 acre for new development. In these situations, the sites are only expected to improve upon the pre-developed runoff condition.
- Flood protection shall be achieved through one of the following:
 - The post-development peak flow rate from the 10-year 24-hour storm is confined within a man-made conveyance system.
 - The post-development peak flow rate from the 10-year 24-hour storm is confined within a restored stormwater conveyance system.
 - The post-development peak flow rate from the 10-year 24-hour storm is confined within a natural stormwater conveyance that currently does not flood.
 - The post-development peak flow rate from the 10-year 24-hour storm shall not exceed the pre-development peak flow rate from the 10-year 24-hour storm based on good pasture conditions in a natural stormwater conveyance where localized flooding exists, unless the pre-developed condition is forested, in which case the peak flow rate from the developed site shall be held to the forested condition. (In the proposed regulation the standard was the forested condition instead of good pasture condition that is now included in the final regulations.)
 - In the final regulations, exceptions to the criteria for natural stormwater conveyance systems where localized flooding exists were also added for land disturbing activity less than 5 acres on prior developed lands or a regulated land disturbing activity less than 1 acre for new development. In these situations, the postdevelopment peak flow rate for the 10-year 24-hour storm must be less than the predevelopment peak flow rate from the 10-year 24-hour storm.
 - As was the case with water quality, a qualifying local program may establish more stringent water quantity standards.

- If either of the following conditions are met, the channel protection and flood protection criteria do not apply:
 - The site's contributing drainage area is less than or equal to one percent of the total watershed area draining to the point of discharge.
 - The development of the site results in an increase in the peak flow rate from the one-year 24-hour storm that is less than one percent of the existing peak flow rate from the one-year 24-hour storm generated by the total watershed area draining to the point of discharge.
- 6) Section **4VAC50-60-122** entitled **Qualifying Local Program Exceptions** in Part III A [**Pages 52-53**] specifies that a local program may also grant exceptions to the water quality and quantity provisions of Part II A and Part II B in accordance with the following:
- The exception is the minimum necessary to afford relief.
 - Reasonable and appropriate conditions are imposed to preserve the intent of the Act.
 - Granting will not confer on the permittee any special privileges denied to others under similar circumstances.
 - The exception requests are not based upon conditions or circumstances that are self-imposed or self created.
 - Economic hardship alone is not sufficient reason to grant an exception.
 - In the final regulations, additional language was added to tighten up the provision and specify that any exception to the water quality technical criteria of 4VAC50-60-63 subdivisions 1 and 2 shall require that all available offsite options be utilized before an exception is granted and that any necessary phosphorus reductions unable to be achieved on site, or through the available offsite options of subsection A of 4VAC50-60-69, be achieved through a payment made in accordance with subsection B of 4VAC50-60-69, **when such payment option is available**. In the case of the granting of an exception, the minimum on site thresholds of subsection B of 4VAC50-60-69 shall not apply.

Part III A - D [4VAC50-60-102 through 4VAC50-60-159] [Pages 43 - 60]

- 7) Section **4VAC50-60-106** entitled **Qualifying Local Program Administrative Requirements** [**Pages 43 - 44**] specifies the minimum criteria and ordinance requirements (where applicable) which include but are not limited to administration, plan review, issuance of coverage under the General Virginia Stormwater Management Program (VSMP) Permit for Discharges of Stormwater from Construction Activities, inspection, enforcement, reporting, and record keeping, for a Board-authorized qualifying local program (**Part III A**) or for a Board-authorized department-administered local stormwater management program (**Part III B**).

A local program shall provide for the following:

- a) Identification of the authority(ies) issuing permit coverage, reviewing plans, approving plans, conducting inspections, and carrying-out enforcement.
- b) Any technical criteria differing from those set out in the regulations.
- c) Plan submission and approval procedures.
- d) Project inspection and monitoring processes.
- e) Enforcement

- f) Procedures for long-term inspection and maintenance of stormwater management facilities. (The order of e and f was switched in the final regulations.)
 - An ordinance that incorporates the components (a - e) outlined above is required.
 - A local program shall report specified information to the Department.
 - A local program may require performance bonds or other financial surety.
- 8) Section **4VAC50-60-108** entitled **Qualifying Local Program Stormwater Management Plan Review** [Pages 44 – 46] specifies that a local program shall require stormwater management plans that include the following elements:
- Location of points of discharge, receiving waters, pre and post-development conditions.
 - Contact information.
 - Project narrative.
 - Location and design of stormwater management facilities.
 - Hydrologic characteristics and structural properties of the soils utilized during facility installation.
 - Hydrologic and hydraulic computations of the pre and post-development runoff conditions for the required design storms.
 - Calculations verifying compliance with the water quality and quantity requirements.
 - A site map that includes the specified elements.
 - Plans shall be appropriately signed and sealed by a professional.
 - Plan approval is required prior to commencement of land disturbing activities.
 - The final regulations move the language in section 4VAC50-60-93 related to plan requirements in the proposed regulations into this section and strike the former section.

This section also establishes timelines for establishing plan and application completeness, for plan review and approval, and for plan modifications. It also establishes applicant notification requirements.

- 9) Section **4VAC50-60-112** entitled **Qualifying Local Program Authorization of Coverage Under the VSMP General Permit for Discharges of Stormwater from Construction Activities** [Pages 47 - 48] establishes that coverage under the construction general permit shall be authorized in accordance with the following:
- The applicant must have an approved stormwater management plan.
 - The applicant must have submitted proposed right-of-entry agreements or easements granted from the owner to the local program for the purposes of inspection and maintenance of stormwater management facilities as well as maintenance agreements, including inspection schedules, where required for such facilities.
 - An approved general permit registration statement.
 - The required fee form and total fee.
- 10) Sections **4VAC50-60-114** entitled **Inspections** [Pages 48 - 49] and **4VAC50-60-124** entitled **Qualifying Local Program Stormwater Management Facility Maintenance** [Pages 53 - 54] collectively specify that inspections shall be conducted as follows:
- The local program or its designee shall inspect the land disturbing activity during construction.

- At the termination of the project and prior to any bond or surety release of the performance bond or surety (if required), construction record drawings for the permanent stormwater facilities shall be submitted to the local program.
- The owner of the stormwater management facilities shall conduct inspections in accordance with the inspection schedule in the recorded maintenance agreement and shall submit the inspection report to the local program.
- The local program shall develop a Board approved inspection schedule.
- In the final regulations language was added that specified that stormwater management facilities designed to treat stormwater runoff primarily from an individual lot, at the qualifying programs discretion, are not subject to the locality inspection requirements (once every five years), homeowner inspections, maintenance agreement requirements, or construction record drawing requirements.

11) Section **4VAC50-60-116** entitled **Qualifying Local Program Enforcement [Pages 49 - 52]** outlines enforcement procedures and establishes a Schedule of Civil Penalties as guidance for a court as required by law.

12) Section **4VAC50-60-126** entitled **Qualifying Local Program Report and Recordkeeping [Page 54]** specifies that information shall be reported by the local program to the Department on a fiscal year basis by October 1st annually as follows:

- Information regarding permanent stormwater facilities completed during the fiscal year.
- Number of permitted projects inspected by acreage categories.
- Number and type of enforcement actions taken.
- Number of exceptions granted or denied.

13) Establishes in **Part III D [Pages 59 - 60]** the procedures the Board will utilize in authorizing a locality to administer a qualifying local program. The application package shall include the following:

- The local program ordinance(s);
- A funding and staffing plan based on the projected permitting fees;
- The policies and procedures, including but not limited to, agreements with Soil and Water Conservation Districts, adjacent localities, or other entities, for the administration, plan review, permit issuance, inspection and enforcement components of the program.
- The department shall operate a program in any locality in which a qualifying local program has not been adopted in accordance with a Board-approved schedule.

14) Establishes in **Part III C [Pages 58 - 59]** the criteria the Department will utilize in reviewing a locality's administration of a qualifying local program. The review shall consist of the following:

- An interview between department staff and the qualifying local program administrator or his designee;
- A review of the local ordinance(s) and other applicable documents;
- A review of a subset of the plans approved by the qualifying local program and consistency of application including exceptions granted;
- An accounting of the receipt and of the expenditure of fees received;
- An inspection of regulated activities; and

- A review of enforcement actions and an accounting of amounts recovered through enforcement actions.

Part I [4VAC50-60-10 through 4VAC50-60-30] [Pages 2 - 20]

15) Makes changes to definitions in **Part I** as follows [Pages 2 - 20]:

- Deletes unnecessary definitions;
- Establishes abbreviations for commonly used terms;
- Updates definitions such as “adequate channel”, “channel”, “development”, “drainage area”, “flood fringe”, “floodplain”, “floodway”, “impervious cover”, “local stormwater management program”, “permit-issuing authority”, “pre-development”, “site”, and “watershed”; and
- Adds needed definitions such as “comprehensive stormwater management plan”, “karst features”, “man-made stormwater conveyance system”, “natural channel design concepts”, natural stormwater conveyance system”, natural stream”, “point of discharge”, pollutant discharge”, “prior developed lands”, “qualifying local program”, “restored stormwater conveyance system”, “runoff characteristics”, “runoff volume”, “site hydrology”, “stable”, “stormwater conveyance system”, “stormwater management standards”, “unstable”, “Virginia Stormwater Management Handbook”, and “Stormwater management standards”.
- In the final regulations, additional refinements were made to the definitions “adequate channel”, “comprehensive stormwater management plan”, “development”, “drainage area”, flood fringe”, “linear development project”, natural stream”, point of discharge”, “pollutant discharge”, “predevelopment”, and “runoff characteristics”. Clarified that the definitions of “flood fringe”, “floodplain”, and “floodway” are associated with the 100-year storm.
- In the final regulations, definitions were added for “Chesapeake Bay Watershed”, “karst area”, and “urban development area”.

DOCUMENTS INCORPORATED BY REFERENCE [Pages 60 - 61]

16) In the final regulations, the Documents Incorporated by Reference section [Pages 60 - 61] has been updated to include new dates and to include the Virginia Runoff Reduction Method Worksheet associated with Redevelopment.