

Comments received during the comment period on the final regulations from October 26, 2009 to November 25, 2009 are as follows:

## **Comment Table and Responses for Stormwater Management Regulations (Parts I, II, and III regulatory action)**

### **Contents**

Contents .....	1
Stormwater Regulation Comments Parts I, II, and III .....	3
General Support .....	3
General Opposed.....	4
Continue suspension of regulations .....	5
Costs and the economic analyses .....	6
Sprawl .....	8
Chesapeake Bay TMDL.....	8
4VAC50-60-10 Definitions .....	9
4VAC50-60-48 Grandfathering.....	10
4VAC50-60-50. General.....	15
4VAC50-60-56 Applicability of other laws and regulations.....	15
4VAC50-60-63 Water quality requirements.....	15
4VAC50-60-65 Water quality compliance .....	18
4VAC50-60-66 Water quantity.....	19
4VAC50-60-69 Offsite compliance options .....	23
4VAC50-60-72 Design storms and hydrologic methods.....	28
4VAC50-60-74 Stormwater harvesting .....	28
4VAC50-60-92 Comprehensive watershed stormwater management plans .....	29
4VAC50-60-99 Regional (watershed-wide) stormwater management plans.....	31
Part III General Issues.....	31
4VAC50-60-108 Qualifying local program stormwater management plan review.....	32
4VAC50-60-112 Qualifying local program authorization of coverage under the VSMP General Permit for Discharges of Stormwater from Construction Activities.....	33
4VAC50-60-114 Inspections .....	33
4VAC50-60-122 Qualifying local program exceptions.....	33

4VAC50-60-124 Qualifying local program stormwater management facility maintenance ..... 34  
4VAC50-60-136 Stormwater management plan review..... 35  
Commenters via Action Alerts..... 37

## Stormwater Regulation Comments Parts I, II, and III

### General Support

Commenter	Comment	Agency response
<p>Kim Sandum (Rockingham County's Community Alliance for Preservation); Kate Wofford (Shenandoah Valley Network); Marirose Pratt (Southern Environmental Law Center); Rick Parrish (Southern Environmental Law Center); Assateague Coastkeeper; Audubon Naturalist Society; Blackwater Nottoway Riverkeeper Program; Cabell Brand Center, Chesapeake Bay Foundation; Civil &amp; Environmental Services, LLC; Dan River Basin Association; Friends of Dyke Marsh; Friends of Powhatan Creek Watershed; Leslie Mitchell-Watson (Friends of the North Fork of the Shenandoah River); Friends of the Rappahannock; Friends of the Rivers of Virginia; Friends of the Roanoke River; James River Association; Lynnhaven River NOW; Patrick Felling (Potomac Conservancy); Rainwater Management Solutions; Rivanna Conservation Society; Scandia USA LivinGreen; Shenandoah Riverkeeper; The Nature Conservancy; Virginia Conservation Network; Virginia</p>	<p>Improved regulations are important step in the right direction for clean water; regulations are critically important to Virginia's waterways; stormwater runoff only growing source of pollution; proposed regulations represent a compromise outcome.</p>	<p>It is agreed that the revised regulations are an important step toward improving the Commonwealth's water quality and quantity and meeting our Chesapeake Bay goals.</p>

<p>Council of Trout Unlimited; Virginia League of Conservation Voters; Virginia Wilderness Committee; Wild Virginia; John Eckman (Valley Conservation Council); Thomas Schueler (Chesapeake Stormwater Network); Kim Woodell (Shenandoah Forum); Eric Beck (Hope Community Builders)</p>		
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**General Opposed**

<p>Greg Koontz (Koontz-Bryant); Paul Johnson</p>	<p>Pollutants from existing untreated land projects and agriculture make up the vast majority of pollutants entering our streams, rivers and bays.</p>	<p>While it is recognized that many sources contribute to the Commonwealth's water quality problems, pollutant loads from land disturbing activities continue to increase and must be addressed along with loads from other sources. If the Commonwealth is to meet its water quality goals, all sources must be addressed.</p>
<p>Pete Burkheimer (Engineering Services, Inc.)</p>	<p>Alternative suggestion: drop regulation initiative, cut associated staff in half, use remaining staff to visit localities around state to improve existing programs, and remain as a technical resource</p>	<p>The Board and the Department currently provide technical assistance to localities regarding the development and implementation of a locality's stormwater management program. For localities that adopt a qualifying local program, the Department intends to continue delivering technical assistance while day to day administration of the program will be conducted by the locality.</p>
<p>Scott Camp</p>	<p>Value of land will be greatly reduced</p>	<p>It is not believed that these regulations will reduce land values. The Agency Statement associated with the proposed regulations includes a discussion of costs and example site plans. Additional flexibility has been included in the final regulations, reducing costs even further.</p>
<p>Mark Rinaldi</p>	<p>Have applied environmental regulations in an ill-conceived attempt to manage growth, to the result that neither is the environment adequately protected nor is growth directed and influenced to be of a form and pattern and in locations that will be sustainable long-term.</p>	<p>The revised regulations were not conceived or designed to manage growth. Growth is managed by planning and other land use regulation. The purpose of these regulations is to protect the water quality and quantity of the Commonwealth.</p>
<p>Stephen Romeo; Greg Koontz</p>	<p>Too many unanswered questions about science, pollutant</p>	<p>The regulations have been developed through an</p>

(Koontz-Bryant); Edward Goode (Colonial Homecrafters, Inc.)	removal measures and techniques	extensive public process that examined the science behind the regulations. The Virginia Stormwater BMP Clearinghouse has been developed to continue to review pollutant removal measures and techniques over time to ensure their effectiveness and proper utilization.
Diana Parker; Carol Buckingham	Ask that go back to original proposed regulatory actions and reinstate stricter guidelines in support of our waters.	The regulations have been finally revised and do result in great improvements in stormwater management regulation in the Commonwealth. The initial water quality technical criteria contained in the proposed regulations were developed based on Virginia's Tributary Strategy goals. Since the time of the proposal, data related to Bay restoration needs has been further refined, indicating that the 0.28 standard may not be appropriate. The updated level of reduction necessary to achieve Bay goals will continue to develop over the coming months.
Jeanne Stosser (CMG Leasing, Inc.); Robert Duckett (Peninsula Housing and Builders Association); Ralph DeRosa (NTS); Michael Stonehill (Hour Homes, Inc.); Barrett Hardiman (Home Builders Association of Virginia); Action Alert*	Request that board does not reaffirm their action from October 5, 2009	Further revisions have been made to the final regulations since the time of the October 5 meeting of the Board. It is believed that the revised final regulations, and their adoption at this time, is appropriate.
Mike Barrett	The real issue is not new development it is existing development that was constructed long before the current requirements were put in place; scrap these regulations and start to work on the retrofitting legacy developments.	It is recognized that existing development does contribute to Virginia's water quality problems. However, new development is also a contributor and all sources must be accounted for in order to achieve water quality goals. Allowing new development to further contribute would create a need for that development to be retrofitted in the future at a much higher cost. Additionally, the Board's authority under the Stormwater Management Act extends only to development activities and does not allow for retrofitting of existing properties not undergoing redevelopment to be required.

### Continue suspension of regulations

C. Warren Wakeland (Home	Continue suspension and bring a technical advisory	The regulations have been developed over an
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<p>Building Association of Richmond); Ralph DeRosa (NTS); Philip Abraham (Virginia Association for Commercial Real Estate); David Anderson and David Johnson (Virginia Fountainhead Alliance); Tyler Craddock (Virginia Chamber of Commerce)</p>	<p>committee together again to work on a regulation that makes sense</p>	<p>approximately four year time span and are the result of one of the most public processes to date in environmental regulations. It is not believed that a further suspension and technical advisory committee process would be beneficial.</p>
<p>Amar Dwarkanath (City of Chesapeake); Dwight Farmer (Hampton Roads Planning District Commission)</p>	<p>Continue suspension for at least another 180 days and (1) contract for additional economic analysis for the regulations as they are now amended; (2) conduct an analysis of land consumption and availability and associated impacts of the additional BMP requirement on development and redevelopment and (3) develop guidance on what constitutes a qualifying local program, a framework for local buy-down programs and a template for acceptable watershed plans.</p>	<p>The regulations have been developed over an approximately four year time span and are the result of one of the most public processes to date in environmental regulations. It is not believed that a further suspension and technical advisory committee process would be beneficial. The Board and the Department will continue to develop guidance and provide technical assistance for use by localities in developing a qualifying local program during the time between the effective date of the regulations and the adoption period for qualifying local programs.</p>
<p>David Anderson and David Johnson (Virginia Fountainhead Alliance)</p>	<p>Suspend all further rulemaking on the entire section 4VAC50-60 until the proposed regulations are brought into conformance with the USEPA background science that was presented to the Chesapeake Bay Program Principal Staff Committee on October 23, 2009.</p>	<p>The development of refined data related to Chesapeake Bay goals by USEPA is recognized and revisions were made to the regulations as a result of this ongoing process. Specifically, the 0.28 pounds per acre per year phosphorus standard, which was specifically developed from Virginia's Tributary Strategies, has not been retained. Other provisions of the regulations are not dependent upon Bay data and it is deemed appropriate to finalize those provisions at this time.</p>

**Costs and the economic analyses**

<p>Jeanne Stosser (CMG Leasing, Inc.)</p>	<p>Cost associated with regulations makes development in Southwest Virginia almost prohibitive; not a helpful step to encouraging recovery for the state.</p>	<p>The 0.45 pounds of phosphorus per acre per year standard for Southwest Virginia and other non-Bay areas has been effective since 2005, and the final regulations keep this standard (note that the proposed regulations had imposed a 0.28 standard in these areas). The 0.45 standard has not impeded development in Eastern Virginia, and it is not believed</p>
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		that the final regulations will hamper development in Southwest Virginia.
C. Warren Wakeland (Home Building Association of Richmond); Robert Duckett (Peninsula Housing and Builders Association); Ralph DeRosa (NTS); Michael Stonehill (Hour Homes, Inc.); Bonnie Johnson (Bath County); Tyler Craddock (Virginia Chamber of Commerce); Action Alert*	Will still impose a severe burden on Virginia's economy without providing the environmental protection desired.	It is not believed that these regulations will burden Virginia's economy. The Agency Statement associated with the proposed regulations includes a discussion of costs and example site plans. Additional flexibility has been included in the final regulations, reducing costs even further. Moreover, the regulations will protect the Commonwealth's water quality and quantity at a level not previously experienced and necessary to meet our water quality and Chesapeake Bay goals.
James Campbell (Virginia Association of Counties); Darryl Fisher (Westmoreland County)	Commonwealth must assume any and all expenses imposed by these new regulations [rather than localities].	The regulations provide for fees to be collected by administering localities that are estimated to be sufficient to fully cover the costs of program administration. Even in the event that these fees are shown to be inadequate in a particular locality, the regulations allow for the fees to be raised to a level which would fully support the program.
William Street (James River Association)	Proposed changes to the regulations provide cost savings in some of the case studies; in 3 of the 6 case studies, proposed changes to the regulations and associated methodology resulted in decreased cost of compliance, and in the other 3, the cost of compliance remained the same. The cost of compliance decreased 33% for commercial sites and 37% for residential sites with the proposed changes.	It is agreed that the utilization of the Runoff Reduction Method and new BMPs can greatly decrease compliance costs for both commercial and residential sites.
Annie Mickens (Crater Planning District Commission)	Program is too complex to impose when localities are being forced to retrench rather than add new responsibilities and requirements; implementation should be delayed during of severe economic constraints.	The new regulations will be implemented according to a schedule set forth in §10.1-603.3 of the Code of Virginia. This schedule allows localities a period of 15 to 21 months following the effective date of these regulations to develop and receive Board approval for local programs. The Department will assist localities during this period of time and is also considering making limited grant funding available to assist localities if such funding is available to the Department. Finally, the fees established by the regulatory action amending Part XIII of the Board's regulations will provide permit fees sufficient to cover the costs of program administration for adopting localities.

Terence Elkins (James City County Citizens Coalition)	New regulations will not lead to increased costs due to availability of new techniques; saving money for developments now will lead to greater costs incurred in the future.	It is agreed that the utilization of the Runoff Reduction Method and new BMPs can greatly decrease compliance costs for both commercial and residential sites. It is further agreed that not achieving pollutant reductions at the time of development will lead to a need for more expensive retrofits to be conducted in the future.
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### **Sprawl**

Terence Elkins (James City County Citizens Coalition)	No support for the assumption that improved regulations will lead to sprawl.	The revised regulations were not conceived or designed to manage growth. Growth is managed by planning and other land use regulation. The purpose of these regulations is to protect the water quality and quantity of the Commonwealth.
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### **Chesapeake Bay TMDL (Total Maximum Daily Load)**

James Campbell (Virginia Association of Counties)	A state standard that differs from a federal standard will impose major administrative complications on local governments; differing standards are likely to have major financial impacts	It is recognized that the science related to Chesapeake Bay restoration efforts has continued to evolve over recent time. The Department has been in active discussions with EPA to help ensure that there will not be conflicting federal and state standards, and the regulations have been revised as a result. Specifically, the 0.28 pounds per acre per year phosphorus standard has been restored to the original, existing 0.45 standard in reaction to recent EPA Bay data.
James Campbell (Virginia Association of Counties)	Any new technical criteria, local caps or other requirements on local governments, whether related to new development, redevelopment or existing development, must have sound scientific justifications	It is recognized that a scientific basis is necessary for regulatory requirements. The Department and the Board believe that the final regulations are based on sound science.
James Campbell (Virginia Association of Counties); David Anderson and David Johnson (Virginia Fountainhead Alliance); Tyler Craddock (Virginia Chamber of Commerce)	A technical advisory committee needs to be formed to take into account scientific justifications, cost-effective, manageable and affordable at the local level as Bay TMDL is developed.	It is recognized that additional public processes may be necessary as further data related to the Bay is obtained. As may be shown necessary, the Board is prepared to engage in further discussions and actions over time to make any necessary adjustments to the regulations. The final regulations as adopted are, however, believed to be appropriate at this time.
Steven Herzog (Hanover County); David Anderson and	How do the recently released preliminary load allocations for the Bay States impact the loading requirements	It is recognized that the science related to Chesapeake Bay restoration efforts has continued to evolve over

David Johnson (Virginia Fountainhead Alliance); Tyler Craddock (Virginia Chamber of Commerce)	required in these regulations? The new load allocations significantly increase the loading goals for phosphorus while decreasing those for nitrogen for the portions of Virginia that contribute runoff to the Chesapeake Bay.	recent time. The Department has been in active discussions with EPA to help ensure that there will not be conflicting federal and state standards, and the regulations have been revised as a result. Specifically, the 0.28 pounds per acre per year phosphorus standard has been restored to the original, existing 0.45 standard in reaction to recent EPA Bay data.
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**4VAC50-60-10 Definitions**

Andrew M. Scherzer and Thomas Balzer; Balzer and Associates, Inc.	Is the base flood in the definition of floodway and floodplain referring to the 100-year event?	The base flood is recognized to be the 100-year storm. The floodplain is the area inundated by water from the 100-year storm. Further amendments to the regulations have been made to give clarity.
Andrew M. Scherzer and Thomas Balzer; Balzer and Associates, Inc.	In regards to the flood fringe, what agency will approve and/or establish the limits of the flood fringe?	The locality establishes the limits of the floodplain as part of the National Flood Insurance Program, which includes the floodway and flood fringe areas.
Andrew M. Scherzer and Thomas Balzer; Balzer and Associates, Inc.	Clarification as to the Natural Stream Conveyance System is needed.	The term "natural stream conveyance system" is not found in the regulations. The regulations do, however, provide a definition for "natural stormwater conveyance system." This definition, in light of the explanation of the term "floodplain" given above, provides information on how to delineate a natural stormwater conveyance system.
Mike Bumbaco (Kerr Environmental Services)	In the definition of "development" the following phrase was added to the end of the definition [or the clearing of land for nonagricultural or nonsilvicultural purposes]. We suggest that the legal validity of this statement be checked thoroughly with regards to conflict with other laws and regulations of the Commonwealth of Virginia.	The phrase was added for clarity purposes as this term applies within these regulations. It is not believed to be in conflict with any other applicable definitions and does not attempt to override any other definitions of the term found in the Code of Virginia.
Ellen Gilinsky (Virginia Department of Environmental Quality)	Stormwater harvesting is not defined in the regulation; we believe that it should be so that the public understands what this term encompasses and in particular understands that this is a way to reclaim and reuse stormwater.	Considerable information has been developed on the issue of stormwater harvesting by the Department and may be found on the new BMP Clearinghouse that has been developed to accompany the regulations and provides design specifications for the development of allowable BMPs. In addition to the rainwater harvesting design specifications, an extensive cistern design Excel spreadsheet has also been developed. This information may be found at

<p>Terence Elkins (James City County Citizens Coalition)</p>	<p>We object to your removal of the terms “shallow marsh, stormwater detention basin or detention basin, stormwater extended detention basin or extended detention basin, and stormwater extended detention basin enhanced or extended detention basin enhanced” and any reference thereof, and deleting more innovative Best Management Practices (BMPs) from the entirety of the legislation. It is imperative that these BMPs be included in order to provide state recognition to the technologies that are most effective at managing and mitigating the negative effects of storm events. Including these BMPs would legitimize their implementation and thus the stormwater management programs of localities whose inclusion of said BMPs is done as a way to enact more stringent environmental standards.</p>	<p><a href="http://www.vwrrc.vt.edu/swc/NonProprietaryBMPs.html">http://www.vwrrc.vt.edu/swc/NonProprietaryBMPs.html</a>. The Virginia Stormwater Management BMP Clearinghouse has been developed in coordination with this regulatory action to review and approve designs and standards for new and innovative BMPs on an ongoing basis, and descriptions of all BMPs will be found on the Clearinghouse website. Removal of the definitions for BMPs from these regulations does not limit BMP availability; on the contrary, more BMPs will be available under the new regulations than ever before.</p>
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**4VAC50-60-48 Grandfathering**

<p>Andrew M. Scherzer and Thomas Balzer (Balzer and Associates, Inc.)</p>	<p>Can a project be granted a permit if construction plans are not approved by the local agency in order to guarantee grandfathering.</p>	<p>Coverage under the current VSMP General Permit for Discharges of Stormwater from Construction Activities can be obtained prior to local plan approval. Statement #12 on the VSMP general permit registration statement states that “A stormwater pollution prevention plan (SWPPP) must be prepared in accordance with the requirements of the General VSMP Permit for Discharges of Stormwater from Construction Activities <u>prior to</u> submitting this Registration Statement.” The SWPPP can be developed and reference the erosion and sediment control plan, the stormwater management plan and other plans to be approved by the locality. However, Section II of the General Permit (4VAC50-60-1170) states, in subdivision (A)(3), that where an erosion and sediment control plan is being incorporated by reference, such plan “must be approved by the locality in which the construction activity is to occur or by another appropriate plan approving authority authorized under the Virginia Erosion and Sediment Control Regulations (4VAC50-30) prior to the commencement of land disturbance.”</p>
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<p>Andrew M. Scherzer and Thomas Balzer (Balzer and Associates, Inc.)</p>	<p>In the grandfathering section, what is the definition of specific use or density? If a statement is not included in the zoning that specifically states the density or use will the project meet grandfathering conditions? What happens if zoning for a project changes will it remain grandfathered?</p>	<p>The language utilized in section 48 (Grandfathering) largely mirrors the language contained in the Code of Virginia’s vesting statute (§15.2-2307) and is intended to have a similar meaning. Projects that are determined to be vested by local governments under that Code section would meet the vesting-related requirements of section 48. In addition, projects would need to obtain VSMP permit coverage by July 1, 2010. As is specifically noted in subsection B, in the event that the qualifying significant affirmative governmental act or the VSMP permit is subsequently modified or amended in a manner such that there is no increase in the amount of phosphorus leaving the site through stormwater runoff, and such that there is no increase in the volume or rate of runoff, the grandfathering shall continue as before.</p>
<p>Andrew M. Scherzer and Thomas Balzer (Balzer and Associates, Inc.)</p>	<p>How does grandfathering work for common plans of development.</p>	<p>Subsection C of section 48 (Grandfathering) specifies that “[w]here a land-disturbing activity is part of a common plan of development or sale that has obtained VSMP general permit coverage from the department prior to July 1, 2010, the land-disturbing activity will be subject to the technical criteria of Part II B. The registration statement shall include the permit coverage number for the common plan of development or sale for which association is being claimed.” Permit coverage termination by the larger project of which a second land disturbing activity is a part does not prevent the operator of the second activity from obtaining coverage under this subsection and such site shall remain subject to the technical criteria under which the common plan of development or sale was approved.</p>
<p>Greg Koontz (Koontz-Bryant); Philip Abraham (Virginia Association for Commercial Real Estate)</p>	<p>Projects that have been zoned and are in early stages of development are at substantial risk with the current grandfathering even though substantial amounts of money are spent just to obtain zoning.</p>	<p>The grandfathering provisions of section 48 have been established to mirror, to a great extent, the vesting law of the Commonwealth that applies to all projects with regard to locality zoning ordinances. It is believed that this approach provides land developers with a predictable and reasonable approach to grandfathering of existing projects.</p>
<p>C. Warren Wakeland (Home Building Association of Richmond); Robert Duckett</p>	<p>Does not provide any real protection for projects where large investments have been made for permits that have not been secured; poses an undue burden on projects still</p>	<p>The grandfathering provisions of section 48 have been established to mirror, to a great extent, the vesting law of the Commonwealth that applies to all projects with</p>

<p>(Peninsula Housing and Builders Association); Barrett Hardiman (Home Builders Association of Virginia); Action Alert*</p>	<p>in the works.</p>	<p>regard to locality zoning ordinances. It is believed that this approach provides land developers with a predictable and reasonable approach to grandfathering of existing projects. The additional requirement for a project to obtain and maintain VSMP permit coverage is not an onerous requirement; rather, it simply requires the submission of a registration statement and the required fee to the Department.</p>
<p>Keith White (Henrico County)</p>	<p>Based on explanations of the “grandfathering” provisions, it seems as if the language in §4VAC50-60-48 doesn’t have a significant impact to projects conducted in Henrico.</p> <p>Our understanding is that projects approved by Henrico (or any other locality with current programs adopted in accordance with the SWM law and regulations) before or after July 1, 2010 will not be expected to comply with the new regulations until such time that the County revises its local program to include the new regulatory provisions. This “transition” was established to eliminate the need for a project to attempt the probably impossible task of satisfying both programs. And since our program will not be revised until sometime after July 1, 2010, this means projects will be submitted after July 1, 2010 that will require VSMP permit coverage issued by DCR (until Henrico becomes the permit-issuing authority). And these permits will be issued based on the current local program, not the new regulatory provisions.</p> <p>We are receiving many questions about grandfathering and this transition period and ask that you confirm or correct our understanding of the issue.</p>	<p>Even after the final adoption of the regulations, until a qualifying local program is adopted in a jurisdiction, VSMP permit coverage will still be obtained from the Department, and the technical criteria applicable to a project that receives coverage from the Department will be that referenced by the current VSMP General Permit for Discharges of Stormwater from Construction Activities until its expiration on June 30, 2014.</p>
<p>Daun Klarevas (Christopher Consultants, Ltd.)</p>	<p>Does an approved preliminary plan suffice? Or does the final site plan need to be approved by July 1, 2010 or does it just need to be submitted for review to the locality by July 1, 2010?</p> <p>What if the plan is part of a phased project, does only one part of the phase need to be approved or the entire phased project? Or would an overall Stormwater Management Plan for the phased project cover the entire project while</p>	<p>Subsection B of section 48 specifically includes “the governing body or its designated agent has approved a preliminary subdivision plat, site plan, or plan of development for the landowner's property and the applicant diligently pursues approval of the final plat or plan within a reasonable period of time under the circumstances” in its list of items deemed to constitute a significant governmental act. The final site plan itself would not need to be approved by July 1, 2010.</p>

	the other phases are being developed?	For phased projects, the entire project does not need to have an approved plan, however, VSMP permit coverage for the entire project must be obtained by July 1, 2010 and maintained thereafter.
Robert Duckett (Peninsula Housing and Builders Association); Barrett Hardiman (Home Builders Association of Virginia); Lamont Myers	The requirement to obtain a VSMP permit to maintain grandfathered status appears to circumvent the General Assembly's intent to respond to the current economic crisis [related to amendments to §15.2-2209.1]	The grandfathering provisions of section 48 allow for grandfathering of projects until June 30, 2014, and so long as permit coverage is maintained, until June 30, 2019. These dates are not believed to conflict with provisions of §15.2-2209. The requirement for a permit to be obtained can be fulfilled by the filing of a registration statement and the required fee.
Mark Ayles (Hughes Associates Architects)	Allow projects nearing completion design wise and those that are under construction to be grandfathered.	The grandfathering provisions of section 48 are believed to provide adequate relief to projects that meet its requirements. These requirements largely mirror the requirements of the existing state vesting requirements, with an additional requirement that permit coverage be obtained by the filing of a registration statement and the required fee.
Barrett Hardiman (Home Builders Association of Virginia)	Request that the grandfathering provisions take effect upon approval of a preliminary plan and remain in effect in perpetuity.	The grandfathering provisions of section 48 are believed to provide adequate relief to projects that meet its requirements. These requirements largely mirror the requirements of the existing state vesting requirements, with an additional requirement that permit coverage be obtained by the filing of a registration statement and the required fee. As the VSMP program is also a federal NPDES program, regulated activities must come into compliance with new standards. The phased-in approach adopted by the regulations is believed to be appropriate.
Philip Abraham (Virginia Association for Commercial Real Estate); Lamont Myers	Remove requirement to obtain a VSMP permit.	As the VSMP program is also a federal NPDES program, regulated activities must come into compliance with new standards. The phased-in approach adopted by the regulations is believed to be appropriate.
Patrick Felling (Potomac Conservancy)	Allows a very gradual adjustment by the development community; ten year reprieve is granted to ongoing projects under the provisions.	The grandfathering provisions have been retained. As the VSMP program is also a federal NPDES program, regulated activities must come into compliance with new standards. The phased-in approach adopted by the regulations is believed to be appropriate.
Jon Capacasa (U.S.	Projects that are currently operating under existing	The grandfathering provisions of section 48 have been

Environmental Protection Agency)	approved permits can be grandfathered, so long as the department can demonstrate that such projects continue to comply with federal requirements; currently proposed grandfathering clause has significantly expanded the grandfathering universe, so that it must ensure that it is consistent with federal regulatory requirements.	retained. While it is recognized that all regulated activities must come into compliance with new standards, the timeframes set forth in section 48 are believed to be a reasonable approach to phasing in requirements for existing projects. It is notable that these projects must still meet the requirements of Part IIB, which include water quality requirements that equate to a 0.45 pounds per acre per year phosphorus standard.
Jeffrey Sitler (University of Virginia)	Recommends clarification in sections B and C if reference should be made to the general permit for the discharges of stormwater from construction activities or if these sections can apply for the general permit for discharges of stormwater from small municipal separate storm sewer systems.	Subsections B and C require projects to obtain permit coverage. As land disturbing projects can obtain coverage either under the General Permit for Discharges of Stormwater from Construction Activities or an individual permit, it is not believed advisable to specifically require coverage under the General Permit. Land disturbing activities are not eligible for coverage under the MS4 General Permit.
Jeffrey Sitler (University of Virginia)	Concerned about linking the grandfathering conditions to a requirement for having obtained VSMP general permit coverage; have projects that we would like grandfathering, but are concerned they will not meet the proposed grandfathering criteria simply by not having a VSMP permit issued for the project or for the entire plan of development.	Permit coverage be obtained by the filing of a registration statement and the required fee. Plan requirements can be met at a later time so long as they are approved prior to the commencement of land disturbance.
Jeffrey Sitler (University of Virginia)	Can small projects (i.e., those less than one acre) be grandfathered if they have approved stormwater management plans but no VSMP permit; most of the campus is covered under a regional stormwater management plans, we address stormwater impacts below the one acre threshold to ensure that we are properly tracking the capacity in our regional stormwater management facilities.	All projects seeking to be grandfathered must obtain coverage under a VSMP permit. Permit coverage can be obtained by the filing of a registration statement and the required fee.
Jeffrey Sitler (University of Virginia)	Being a state agency, we do not seek plan approvals from the localities, so we are uncertain how to interpret "significant affirmative governmental acts" in our situation; does being granted state funds qualify or have plans reviewed by DCR?	Clarifying language has been added to section 48 to give examples (though not exhaustive) of significant governmental acts as they apply to state projects.

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

<p>Terence Elkins (James City County Citizens Coalition)</p>	<p>No greater measure exists for the degree of the department's capitulation than the total elimination of this section. So now it is okay to "(J) Construct stormwater management impoundment structures within a Federal Emergency Management Agency (FEMA) designated 100-year floodplain." No need for "(K) Natural channel characteristics to be preserved to the maximum extent practicable." No need for "(I). All stormwater management facilities to have an inspection and maintenance plan that identifies the owner and the responsible party for carrying out the inspection and maintenance plan."</p>	<p>While section 50 has been repealed, review of the regulatory language reveals that its requirements have been relocated elsewhere. Item (J) is now addressed in 4VAC50-60-85(B). The protection of channels has been heightened to a level much greater than before with the new water quantity criteria of section 66. Finally, long term maintenance and inspection of BMPs has been more fully described than had been done previously in Part III of the regulations, notably sections 114 and 124.</p>
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#### 4VAC50-60-56 Applicability of other laws and regulations

<p>John Keifer (City of Norfolk); Amar Dwarkanath (City of Chesapeake); Randy Bartlett (Virginia Municipal Stormwater Association); Dwight Farmer (Hampton Roads Planning District Commission)</p>	<p>Ensure regulations are consistent with MS4 permits and also with that future permit requirements be consistent with these regulations.</p>	<p>It is intended that MS4 permit requirements be consistent with the requirements of these regulations. The full development of MS4 permit requirements, however, also depends upon a determination that those permits will adequately protect water quality. This determination is made jointly with EPA and future discussions will be necessary to develop and refine MS4 permit requirements.</p>
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#### 4VAC50-60-63 Water quality requirements

<p>Joe Lerch (Virginia Municipal League); Bonnie Johnson (Bath County)</p>	<p>Should have one statewide standard of 0.45 lbs. for phosphorus, regardless of land area disturbed.</p>	<p>The regulations have been revised to utilize a 0.45 standard statewide. This standard has been in place since the Board received responsibilities for stormwater management in 2005.</p>
<p>Joe Lerch (Virginia Municipal League); John Keifer (City of Norfolk); Randy Bartlett (Virginia Municipal Stormwater Association); Jeffrey Sittler (University of Virginia)</p>	<p>Support the reduced standard for redeveloped sites less than one acre.</p>	<p>The standards applicable to sites of less than one acre have been retained.</p>
<p>Joe Lerch (Virginia Municipal League)</p>	<p>Support ability of local governments to allow for a phosphorus standard between 0.28 and 0.45 in the urban</p>	<p>As the 0.28 phosphorus standard has not been retained, the allowance for a standard to be developed for UDAs</p>

	development areas.	between 0.28 and 0.45 is no longer necessary. However, this language has been retained in form for use in the case that a more stringent standard is developed in the future.
John Keifer (City of Norfolk)	Support 0.45 standard for newly developed sites of less than one acre.	The standards applicable to sites of less than one acre have been retained.
C. Warren Wakeland (Home Building Association of Richmond); Robert Duckett (Peninsula Housing and Builders Association); Action Alert*	Support the removal of statewide standard	The water quality requirements of the regulations have been further revised to utilize a statewide standard of 0.45 pounds of phosphorus per acre per year. This standard has been utilized since the Board received responsibilities for stormwater management in 2005.
C. Warren Wakeland (Home Building Association of Richmond); Robert Duckett (Peninsula Housing and Builders Association); Barrett Hardiman (Home Builders Association of Virginia); Philip Abraham (Virginia Association for Commercial Real Estate); David Anderson and David Johnson (Virginia Fountainhead Alliance); Tyler Craddock (Virginia Chamber of Commerce); Action Alert*	Have yet to provide any evidence that 0.28 standard is necessary through science and the inability to prove the validity of the standard	Though the 0.28 standard was based on Virginia's Tributary Strategies, this requirement has been removed due to the receipt of further data related to Bay restoration. A statewide standard of 0.45 has been adopted. This standard has been utilized since the Board received responsibilities for stormwater management in 2005.
Steven Herzog (Hanover County)	The word "distributing" should be changed to "disturbing" in the first sentence of subsection 2(a).	The typographical error has been corrected.
Barrett Hardiman (Home Builders Association of Virginia)	If 0.28 standard is kept, then the board should make the 0.45 standard mandatory within an urban development area, removing the requirement for application from the locality for a less stringent standard.	The water quality requirements of the regulations have been further revised to utilize a statewide standard of 0.45 pounds of phosphorus per acre per year. This standard has been utilized since the Board received responsibilities for stormwater management in 2005.
James Shelton	Southern rivers should be protected from excess runoff; regulations should not exempt areas outside the Chesapeake Bay watershed.	The regulations do not exempt areas outside of the Chesapeake Bay watershed. These areas have been subject to regulation since the Board received responsibility for stormwater management in 2005. Under the final regulations, these areas are subject to the same water quality requirements as areas in the Bay watershed.
David Anderson and David Johnson (Virginia Fountainhead	Unclear why the board would include the 0.45 standard in the regulation; has never had the full force and effect of	The 0.45 standard has been in place since the Board received responsibilities for stormwater management in

Alliance); Tyler Craddock (Virginia Chamber of Commerce)	law.	2005, and was additionally made applicable through the Chesapeake Bay Preservation Act regulations in 1989. It has had the full force and effect of law throughout this time.
Jon Capacasa (U.S. Environmental Protection Agency)	Concerned that by allowing local qualifying programs to establish relaxed phosphorus limits in the Bay watershed, it will preclude the attainment of water quality goals; local program must demonstrate to the board that the proposed limit is consistent with local and tributary water quality requirements when considering the jurisdiction as a whole; any relaxation in urban areas must be compensated with either more stringent limits in other areas or through the use of offsite controls or allowances.	The water quality requirements of the regulations have been further revised to utilize a statewide standard of 0.45 pounds of phosphorus per acre per year. No provision for relaxation of this standard in a UDA is currently in force. This standard has been utilized since the Board received responsibilities for stormwater management in 2005.
Jon Capacasa (U.S. Environmental Protection Agency)	2(c); in order to meet or maintain water quality standards, it may be necessary to implement a stricter redevelopment standards; in cases where P levels of existing conditions are extremely high, the proposed regulations do not require a proportionate level of reduction to meet some reasonable standard; should specify criteria for exceeding the 20% reduction	The 20% reduction for redevelopment projects represents a doubling of the current 10% requirement and is deemed to be a reasonable step toward achieving improvements on redevelopment sites.
Terence Elkins (James City County Citizens Coalition)	Do not support separate standard for UDA areas.	The water quality requirements of the regulations have been further revised to utilize a statewide standard of 0.45 pounds of phosphorus per acre per year. No provision for relaxation of this standard in a UDA is currently in force. This standard has been utilized since the Board received responsibilities for stormwater management in 2005.
Terence Elkins (James City County Citizens Coalition)	Perplexed by the decision to relax the water quality standard in non-Bay areas.	The 0.28 pounds per acre per year phosphorus standard contained in the proposed regulations had been developed based upon what the Tributary Strategies showed to be necessary for Virginia to meet its Chesapeake Bay goals. While it is recognized that this standard could have led to improved water quality in the Southern Rivers as well, there was no evidence to demonstrate that it was the proper level of reduction for non-Bay areas. Therefore, the existing 0.45 standard was retained. This standard will continue to be evaluated over time in relation to actual needs of the non-Bay regions of the Commonwealth.

**4VAC50-60-65 Water quality compliance**

Andrew M. Scherzer and Thomas Balzer (Balzer and Associates, Inc.)	What items of a BMP may be limited by a local jurisdiction?	Subsection D of section 65 allows for qualifying local programs to establish limitations on the use of specific BMPs. This is intended to allow localities to disallow or place limitations upon the use of certain BMP types where local soil conditions, high water table, etc., make those BMPs unsuitable for use. It does not allow for a modification of the efficiency assigned to the BMPs contained in Table 1.
Steven Herzog (Hanover County)	Table 1: We are uncertain where footnote 2 applies. It appears that the intent is for footnote 2 to apply everywhere that footnote1 applies.	Footnote 2 does not apply everywhere that footnote 1 applies. Corrections have been made to Table 1 to indicate where footnote 1 and other footnotes apply.
Terry Siviter (Filterra Stormwater Bioretention Systems)	The proposed Treatment Volume of 1" of runoff should be dropped in deference to the existing definition of Water Quality Volume for purposes of sizing stormwater quality treatment systems, namely treatment of 90% of the annual runoff volume, and/or the first 1/2" of runoff. There is not sufficient scientific basis demonstrating that 1" Treatment Volume is required to meet the Commonwealth's stormwater quality objectives.	The proposed treatment volume is one inch of rainfall, not one inch of runoff. One inch of rainfall is nearly equivalent to one half inch of runoff based on impervious acreage. No amendments have been made.
Terry Siviter (Filterra Stormwater Bioretention Systems)	The Runoff Reduction Method is the design tool used for calculating Total Phosphorus removal from BMPs. This design tool provides a calculation method for treatment-train systems using runoff reduction as the method for removing Total Phosphorus in the entire treatment-train system. The Runoff Reduction Method design tool should be modified to allow determination of Total Phosphorus removal in the entire treatment-train system using the individual Total Phosphorus removal rates of each component of the treatment train. Therefore, for a treatment-train system composed of BMPs that have ZERO runoff reduction yet have a specific Total Phosphorus removal rate, one can calculate the cumulative reduction in Total Phosphorus as the stormwater runoff is processed by successive BMPs linked in series fashion. Total Phosphorus removal rates would be established by the BMP Clearinghouse Committee for such treatment-train systems.	The Virginia Stormwater Management BMP Clearinghouse technical advisory committee is evaluating procedures for the use of manufactured BMPs, either singularly or in treatment trains.
Terry Siviter (Filterra Stormwater Bioretention Systems)	Any existing VA DCR approval of stormwater quality BMPs (both public domain and proprietary) that is current as of	BMPs, including manufactured BMPs, having existing approval will need to be evaluated and re-approved by

	the adoption date of these regulations should be grandfathered.	the Virginia Stormwater Management BMP Clearinghouse technical advisory committee.
Darryl Fisher (Westmoreland County)	Request that requirements be further studied to determine if standardized best management practices for single family and other small development and redevelopment projects can be used as an alternative to individually engineered designs.	Many single family residences are exempt from the VSMP regulations pursuant to §10.1-603.8 of the Code of Virginia. For those not exempt, it is believed important to retain the same standards as is applied to other projects, as these regulations govern permanent stormwater management on a site (in contrast to Erosion and Sediment Control requirements, which address only activities on the site during the construction process).

**4VAC50-60-66 Water quantity**

Andrew M. Scherzer and Thomas Balzer (Balzer and Associates, Inc.)	For the good pasture condition, where can the coefficient of runoff be found?	Information related to the coefficient of runoff (C-factor) for pasture condition for use in the rational or modified rational method is presently available in Chapter 4 the current Stormwater Management Handbook and will continue to be included in the revised handbook.
Andrew M. Scherzer and Thomas Balzer (Balzer and Associates, Inc.)	“Good engineering practices and calculations” as used in the regulations needs definitive guidance as to what it entails.	“Good engineering practices and calculations” is a term of art recommended by the engineers on the technical advisory committee that assisted with the development of the regulations. This phrase traditionally refers to the body of engineering methods commonly used in the practice of engineering. The specific methods applicable to stormwater management are set forth and explained in the current stormwater management handbook and will continue to be included in the new handbook. Additionally, the specific BMP design standards are available on the BMP Clearinghouse.
Andrew M. Scherzer and Thomas Balzer (Balzer and Associates, Inc.)	Under the 1% rule, how is undeveloped land upstream of the project handled? Is it at a future developed rate based on a local comprehensive plan? How does Technical Bulletin #1 apply?	The 1% rule is based on the existing conditions (not the future developed rate) of the watershed to include the developed conditions of the proposed project at the point of stormwater discharge. As is indicated by subsection H of section 66, Technical Bulletin #1 is to be followed in determining flooding and channel erosion impacts to stormwater conveyance systems at the points of discharge. It is not utilized in determining whether the one percent rule is applicable to a site.

<p>Joe Lerch (Virginia Municipal League); Jeffrey Sitler (University of Virginia)</p>	<p>Support revision to the water quantity standards for discharges into an unstable channel.</p>	<p>The amendment made to requirements for discharges to unstable channels is believed to strike a balance between water quantity protection and reasonableness for channel protection. Support for this amendment is noted.</p>
<p>Amar Dwarkanath (City of Chesapeake)</p>	<p>Consideration should be given to coastal plain areas that can not use infiltration best management practices to meet the requirements of 4VAC50-60-66; recommend a coastal plain guidance or supplement be adopted.</p>	<p>While the use of infiltration BMPs may be limited in the selected areas of the coastal plain, the Virginia Stormwater BMP Clearinghouse website contains additional BMPs that are effective in the coastal plain. Land disturbing projects that properly implement BMPs can comply with the water quality and quantity requirements of the regulations.</p>
<p>Keith White (Henrico County)</p>	<p>Section 4VAC50-60-66.B.4 of the final regulations includes language (lines 1219 through 1221) that reads:</p> <p>However, in the case that the pre-developed condition is forested, both the peak flow rate and the volume from the developed site shall be held to the forested condition.</p> <p>In previous discussions (most recently at the VAMSA meeting on October 22, 2009), this provision was explained to require the energy balance evaluation (<math>Q_{post} \times Volume_{post} \leq Q_{pre} \times Volume_{pre}</math>) back to the forested condition instead of the good pasture condition if the pre-developed condition was forested.</p> <p>However, the regulatory language clearly requires control of both <math>Q_{post}</math> and <math>Volume_{post}</math>, not just the product of the two (the energy balance concept). Providing controls such that <math>Q_{post} \leq Q_{forested}</math> and <math>Volume_{post} \leq Volume_{forested}</math> is much more restrictive than the energy balance requirement (it requires extreme detention as well as extreme volume reduction).</p> <p>Based on statements by DCR staff during previous discussions of this language, it does not seem this was the intent. Therefore, we ask this language be revised to reflect the expressed intent – that in the case the pre-developed condition is forested, a forested condition will be used instead of a good pasture condition in the equation on</p>	<p>Amendments have been made to the language of section 66 of the regulations to provide clarity regarding the energy balance equation.</p>

	line 1212 of the regulation.	
John Matusik (The Engineering Groupe, Inc.)	On page 29 of 60 lines 1232 and 1233 there is the definition “Q(Developed) = The allowable peak flow rate from the developed site. Such peak flow rate must be less than Q(Predeveloped). Additionally on page 30 of 60 lines 1237 and 1238 the definition given is “RV(Developed) = The volume of runoff from the developed site. Such volume must be less than RV (Pre-Developed).” Unless I’m missing something I don’t understand how the developed discharge and the developed volume are less than the pre-developed discharge and volume. The only way the Q(developed) is less than Q(predeveloped) is if the Q(developed) is the unknown quantity and the equation is re-written as $Q(\text{Developed}) = Q(\text{Predeveloped}) * [RV(\text{Predeveloped})/RV(\text{developed})]$ . The ratio of $RV(\text{prevdeveloped})/RV(\text{developed})$ is less than 1 and when multiplied by Q(predeveloped) would result in the Q(developed) value less than Q(developed). However, as written, there would be confusion. I suggest different wording in lines 1232, 1233, 1237, 1238.	Amendments have been made to the language of section 66 of the regulations to provide clarity regarding the energy balance equation.
Steven Herzog (Hanover County)	<b>B.4.:</b> The sentence “However, in the case that the predeveloped condition is forested, both the peak flow rate and the volume of runoff from the developed site shall be held to the forested condition.” is not consistent with the other sections of the regulation and is incorrect. We believe that the following language “However, in the case that the predeveloped condition is forested, forest in good condition rather than pasture in good condition should be utilized in the formulas above.” is the intent and that the language should be modified to reflect this.  <b>B.5.:</b> The definition of RV developed should have the words “Such volume must be less than RV pre-developed.” removed. This language contrary to the methodology being utilized whose purpose is to balance runoff rate with runoff volume.	An amendment has been made to subdivision (B)(4) to clarify the intent of that language in a matter similar to the suggestion made by the comment.  The language in subdivision (B)(5) that is cited by the comment has been removed.
Terence Elkins (James City County Citizens Coalition)	(D) (2): By exempting from sections A and B of this regulation “any development of the site resulting in an increase in the peak flow rate from the one-year 24-hour storm that is less than 1.0% of the existing peak flow rate	The one percent rule has historically been utilized in the Erosion and Sediment Control program (which governs water quantity) and piecemeal development has not been experienced as a result. It is not believed that the

	<p>from the one-year 24-hour storm generated by the total watershed area draining to that point of discharge,” you obviously encourage piecemeal development and sprawl rather than clustering. Further, the assumption that both pre and post development flows can be predicted accurately to a resolution of two significant figures (1.0%) is false. As multiple values of predicted flow rates for both pre and post development may be given, an obvious conflict of interests arises when considering which values are ultimately chosen. Setting an exemption value of 1.0% only creates incentives for engineering firms to predict pre and post development flows using the most generous values in order to minimize the difference between them, thus creating an exemption status that does not reflect the true ecological impact of the development.</p>	<p>inclusion of the one percent rule in these regulations will lead to sprawl or piecemeal development.</p>
<p>Terence Elkins (James City County Citizens Coalition)</p>	<p>(B) (4) (a) We oppose changing the runoff threshold in this formula (and in all subsequent references) from “forested” to “good pasture.” Good pasture land is only 60% as effective as forested land at retaining water, and peak runoff from “good pasture” is 2 to 3 times higher than from forested land. For the DCR to blithely reduce this standard is irresponsible. In addition to providing an increased function of water retention, forested land also has a greater capacity and effectiveness in sequestering carbon dioxide and nitrogen that would otherwise be released into the atmosphere and surrounding waterways, respectively. Runoff into unstable natural channels should be held to higher, not lower, standards. This is all the more so because the standard uses a one-year, 24-hour storm as a determinant, and that is a very low (just 2.9 inches) threshold. (C) (4) (a) We again object to the change from “forested” to “good pasture.” Flood prevention is not an area in which to compromise.</p>	<p>The change from forested condition to good pasture condition averages less than a 10% change in runoff curve numbers, as used in the NRCS TR-55 runoff calculation method. For example, using Table 2.1 of TR-55, one inch of rainfall on B soils has no change in runoff value between forested and good pasture conditions.</p>
<p>Terence Elkins (James City County Citizens Coalition)</p>	<p>(C) (4) (b) We note that the threshold that the DCR uses in this section on flood control is a 10-year 24-hour storm. Why do you use the ten-year storm in flood prevention, where it should be lower (i.e. a one or two-year storm) and a one-year storm in limiting runoff in Section (B), where it should be higher?</p>	<p>The 10 year storm has historically been utilized for flood protection purposes and is also used by many other states. It has proven to be an appropriate standard. While the 2 year storm has historically been utilized for channel protection, experience has shown that the 1 year storm is a more appropriate standard for channel forming flows.</p>

Terence Elkins (James City County Citizens Coalition)	(G) We object to your removal of language permitting municipalities to enforce more stringent standards. Localities must have authority to impose good engineering practices that meet or exceed the standards set by the Virginia Stormwater Management Handbook.	Section 66(A) notes that “Nothing in this section shall prohibit a qualifying local program from establishing a more stringent standard.” This language applies to all of section 66, including subsection G.
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**4VAC50-60-69 Offsite compliance options**

John Keifer (City of Norfolk); Amar Dwarkanath (City of Chesapeake); Dwight Farmer (Hampton Roads Planning District Commission)	Request that the board require utilization of local buy-down program where one has been established	It is not believed to be appropriate to require that a local buy down option be utilized in these regulations. However, it is of note that the final regulations suspend the use of the state buy down option until such time as more stringent standard is adopted for sites within the Chesapeake Bay Watershed. This will encourage the use of local options.
John Keifer (City of Norfolk)	Cost of urban stormwater retrofits is higher than the current limit of \$23,900.	It is of note that the final regulations suspend the use of the state buy down option until such time as more stringent standard is adopted for sites within the Chesapeake Bay Watershed. This will allow for further consideration of the \$23,900 limit in the current language, although that figure is believed to be an appropriate average based upon current data.
J. Curtis Bradley	Appears to (1) limit the flexibility in administration needed by qualifying local programs and (2) to limit or cap the responsibility for phosphorus removal at \$15,000 in urban development areas and \$23,900 in other areas without regard for the actual cost of removal. Suggestions: (1) in paragraph A specify that the qualifying local program shall determine which of the options 1 through 4 shall be used; (2) in paragraph B make payment of a fee in lieu of the options in paragraph A entirely a local option and (3) in paragraph B remove the \$15,000/\$23,900 caps and enable the local qualifying program to set fees at the level appropriate to remove the required phosphorus for that jurisdiction.	It is of note that the final regulations suspend the use of the state buy down option until such time as more stringent standard is adopted for sites within the Chesapeake Bay Watershed. This will encourage the use of local options and allow for further consideration of the limits in the current language.
C. Warren Wakeland (Home Building Association of Richmond); Robert Duckett (Peninsula Housing and Builders)	Do not provide adequate alternatives for projects that cannot meet the new runoff criteria onsite; must be made available for any portion of the pollutant mitigation	As the water quality requirements have been amended to a statewide standard of 0.45 pounds per acre per year, it is believed that on site compliance will be more easily achieved and the state buy down option will not

Association); Barrett Hardiman (Home Builders Association of Virginia); Action Alert*		be available at this time. Other offsite options remain available and it is believed that these options, coupled with a less stringent requirement, provide sufficient relief.
Amar Dwarkanath (City of Chesapeake); Randy Bartlett (Virginia Municipal Stormwater Association); Dwight Farmer (Hampton Roads Planning District Commission)	Where a local buy-down program does not exist, the state should invest buy-down revenue near the location of the land disturbing activity.	It is of note that the final regulations suspend the use of the state buy down option until such time as more stringent standard is adopted for sites within the Chesapeake Bay Watershed. This will allow for further consideration of the use of funds generated when the buy down option does become available.
Amar Dwarkanath (City of Chesapeake); Dwight Farmer (Hampton Roads Planning District Commission)	Buy-down programs should be based on regional cost figures rather than a flat fee approach and should not be subject to this cap (\$23,900 is essential a cap for local program buy down option).	It is of note that the final regulations suspend the use of the state buy down option until such time as more stringent standard is adopted for sites within the Chesapeake Bay Watershed. This will allow for further consideration of the \$23,900 limit in the current language, although that figure is believed to be an appropriate average based upon current data.
Randy Bartlett (Virginia Municipal Stormwater Association); Victoria Greenfield (Arlington County);	Clarify that local governments can require on-site controls for some or all of the pollutant reductions required for a given development project, including when (1) a water quality impairment exists, (2) a TMDL is in place, or (3) an MS4 permit requires retrofitting targets within a locality.	It is of note that the final regulations suspend the use of the state buy down option until such time as more stringent standard is adopted for sites within the Chesapeake Bay Watershed. This effectively places the use of offsite controls within the discretion of the qualifying local program.
Randy Bartlett (Virginia Municipal Stormwater Association)	Recommends (1) making availability of state buy down payment a local option and (2) in any case eliminating the \$23,900 ceiling on the local phosphorus removal fee.	It is of note that the final regulations suspend the use of the state buy down option until such time as more stringent standard is adopted for sites within the Chesapeake Bay Watershed. This effectively places the use of offsite controls within the discretion of the qualifying local program and will allow for further consideration of the \$23,900 limit in the current language, although that figure is believed to be an appropriate average based upon current data.
Randy Bartlett (Virginia Municipal Stormwater Association)	If don't remove \$23,900 cap, insert the following: "D. From time to time but at least once every three years, the department shall report to the board on the cost of implementing urban BMPs in Virginia. In preparing such a report, the department shall consider information reasonably available from qualifying local programs in addition to other information available to the department. Wherever the board finds that such costs exceed \$23,900	It is of note that the final regulations suspend the use of the state buy down option until such time as more stringent standard is adopted for sites within the Chesapeake Bay Watershed. This will allow for further consideration of the \$23,900 limit in the current language, although that figure is believed to be an appropriate average based upon current data.

	per pound of phosphorus, the board shall amend subsection B accordingly".	
Randy Bartlett (Virginia Municipal Stormwater Association)	The 50% minimum in 69 B.2.b.i should be replaced with a goal of investing 100% of buy down revenue in the local area. Where opportunities are not available, then and only then would the funds be released for investment in other areas.	It is of note that the final regulations suspend the use of the state buy down option until such time as more stringent standard is adopted for sites within the Chesapeake Bay Watershed. This will allow for further consideration of the use of funds generated when the buy down option does become available.
Randy Bartlett (Virginia Municipal Stormwater Association); Victoria Greenfield (Arlington County);	Recommends that at least the 0.45 standard for sites less than 1 acre be retained, and instead allow the locality the option, at its discretion, of waiving this requirement (in which case the buy down option could be used as described in current 69 B.3.b)	It is of note that the final regulations suspend the use of the state buy down option until such time as more stringent standard is adopted for sites within the Chesapeake Bay Watershed. Unless local offsite options are utilized, this will require the achievement of 0.45 pounds per acre per year of phosphorus on all sites at this time.
Randy Bartlett (Virginia Municipal Stormwater Association)	Insert "for purposes of water quality standards, TMDL and MS4 permits compliance, reductions accomplished through the use of revenue from such payments shall be credited to the locality where the land disturbing activity occurred" and the end of B.2.	It is of note that the final regulations suspend the use of the state buy down option until such time as more stringent standard is adopted for sites within the Chesapeake Bay Watershed.
Keith White (Henrico County)	Section 4VAC50-60-69.B.3 provides for several stormwater quality compliance options with respect to payments to the Virginia Stormwater Management Fund (partial payment for new development disturbing greater than or equal to one acre, complete payment for new development disturbing less than one acre of disturbance, partial payment for development on prior developed lands disturbing greater than or equal to one acre, and complete payment for development on prior developed lands disturbing less than one acre).  Given that these compliance options are allowed when payments are made to the state fund, we feel inclusion of any or all of these options would also be acceptable options in a local comprehensive watershed management program when a local pro rata fee / fund is available. Is this an appropriate conclusion?	Similar conditions could be appropriate for inclusion in a comprehensive stormwater management plan or pro rata program. Any such plan must be approved by the Board prior to its implementation.
Keith White (Henrico County)	Based on our reading of the language in §4VAC50-60-69.B , it appears that if the local in lieu fee for stormwater quality compliance exceeds \$23,900 per pound (either within or	When it becomes effective (upon the adoption of a standard more stringent than the 0.45 standard in the final regulations) The buy down option of section 69 is

	outside a UDA), a developer can make payment to the state fund at \$15,000 per pound in a UDA or \$23,900 per pound if located outside a UDA. If this is the case, this language creates a “cap” on local charges even though projects resulting in equivalent water quality benefit may cost more than that. Is our understanding of this provision correct?	available, with conditions, where no other offsite options are available, where the fee established by a qualifying local program to offset a pound of phosphorus removal onsite exceeds \$23,900, or where a qualifying local program otherwise elects to allow its use. The commenter correctly understands the availability of the buy down option in light of a locally-established pro rata fee.
Shannon Varner (Troutman Sanders on behalf of the Chesapeake Bay Nutrient Land Trust)	All of the offsite options in proposed subsection A and B fail to protect water quality except offsets. When offsets are available they should be given priority, otherwise nutrients will continue to enter state waters unabated.	It is of note that the final regulations suspend the use of the state buy down option until such time as more stringent standard is adopted for sites within the Chesapeake Bay Watershed. Offsets remain available and the priority given to them is explained in the Code of Virginia.
Shannon Varner (Troutman Sanders on behalf of the Chesapeake Bay Nutrient Land Trust)	Proposed state buy-down prioritizes future projects with potentially little nutrient reduction per dollar spent.	It is of note that the final regulations suspend the use of the state buy down option until such time as more stringent standard is adopted for sites within the Chesapeake Bay Watershed.
Shannon Varner (Troutman Sanders on behalf of the Chesapeake Bay Nutrient Land Trust)	The buy down fee should be a minimum with flexibility to meet nutrient reduction needs; if anything, the \$15,000 figure should be set as a minimum with a great degree of flexibility to increase that fee as DCR gains experience with the program.	It is of note that the final regulations suspend the use of the state buy down option until such time as more stringent standard is adopted for sites within the Chesapeake Bay Watershed. This will allow for further consideration of fee amounts.
Shannon Varner (Troutman Sanders on behalf of the Chesapeake Bay Nutrient Land Trust)	Default buy down provisions should be applicable to nonpoint nutrient offsets as well; subsection B 3 would allow default buy down on certain projects without examination of on-site controls; guidance on nonpoint nutrient offsets should be amended to allow this same default provision.	It is of note that the final regulations suspend the use of the state buy down option until such time as more stringent standard is adopted for sites within the Chesapeake Bay Watershed. While the existing provisions of the buy down program are believed appropriate, this will allow for additional consideration and any necessary amendments could be made through a future regulatory action.
Shannon Varner (Troutman Sanders on behalf of the Chesapeake Bay Nutrient Land Trust)	Move immediately to develop criteria for determining whether other offsite options are substantially equivalent to offsets as required by HB2168.	It is recognized that there must be a determination as to whether other offsite options are substantially equivalent to nonpoint nutrient offsets. The recommendation is recognized, but is believed to be more appropriately addressed through a separate action of the Board rather than within this regulatory action.
Barrett Hardiman (Home Builders Association of Virginia)	Offset options offered are less comprehensive than what is currently available under the present stormwater regulation. Statewide offset option is one of last resort;	The offsite options contained in section 48 include all options available under the current regulations, with the addition of nonpoint nutrient offsets. If a standard more

	could result in price gouging from private providers and local governments and/or the loss of useable acreage in another parcel of developable land owned by the developer.	stringent than 0.45 pounds per acre per year of phosphorus is adopted by a future regulatory action of the Board, the buy down option will also become available.
Jon Capacasa (U.S. Environmental Protection Agency)	When a permittee can demonstrate that BMP utilization to meet design loads is not feasible, EPA supports the use of offsite controls to meet post-development pollutant loads, provided that the use of offsite controls does not lead to the impairment of local water quality; credits for offsite controls can only be generated after the installation of required baseline BMPs necessary to meet water quality objectives.	It is of note that the final regulations suspend the use of the state buy down option until such time as more stringent standard is adopted for sites within the Chesapeake Bay Watershed. While the existing language is believed to protect water quality, this will allow for further consideration of many aspects of the buy down program, and needed adjustments could be made through a future regulatory action.
Terence Elkins (James City County Citizens Coalition)	Buy Down: We strenuously object to this section in its entirety. This capitulation gives developers the opportunity to build in ecologically sensitive, hard-to-mitigate areas and then simply pay a fee to mitigate a less sensitive area that is easier and cheaper to work. This works in direct opposition to common sense and to the goals of the enabling legislation. This is also another instance where the consistent application of regulations across jurisdictions for the purpose of greater environmental integrity is completely undermined, resulting in the ability of developers to shop for the jurisdiction with the most lenient development codes. It will place the burden upon jurisdictions and pressures them to lower their environmental standards in an attempt to secure development projects. Finally, it creates a management nightmare and encourages opacity in government. Assuming the DCR will pursue this despite its obvious shortcomings, our group has the following objections to specific revisions: (A)(4)c. This section should be deleted. In reality, new development adds more nutrients into the bay unless the development utilizes a nutrient management plan and a stormwater management plan that includes infiltration-type LIDs. If DCR insists on keeping this section, it must require a nutrient management program and require the development to minimize offsite runoff with onsite LID features. (B)(1) \$15,000 per pound of phosphorous over the .28	It is of note that the final regulations suspend the use of the state buy down option until such time as more stringent standard is adopted for sites within the Chesapeake Bay Watershed. This will allow for further consideration of many aspects of the buy down program, and needed adjustments could be made through a future regulatory action.

	<p>threshold is woefully inadequate when measured against the economic loss of the Chesapeake Bay.  (B)(2) If the DCR is going to permit continued pollution of our watersheds, at least let the fees collected remain in the affected jurisdiction, since the responsibility for mitigating the damage will ultimately fall there.</p>	
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**4VAC50-60-72 Design storms and hydrologic methods**

<p>Terry Siviter (Filterra Stormwater Bioretention Systems)</p>	<p>Use of NRCS rainfall distribution and models should be expanded to Proprietary BMPs, including calculation of Routed Volumes for compliance with Treatment Volume requirements. For high-flow proprietary BMPs, such Routed Volumes are a small fraction of the Treatment Volume and therefore require significantly smaller physical storage volume. The allowance of these calculation methods should include but are not limited to NRCS TR-55 methods described in Chapters 2, 4, 5 and 6, and Equations 2-1 through 2-5, Equations 4-1, Equations 6-1 through 6-3, Figure 2-1, Exhibit 4-II and Figure 6.1.</p>	<p>The Virginia Stormwater Management BMP Clearinghouse is developing procedures applicable to the use of manufactured BMPs. This comment will be considered by the Clearinghouse technical advisory committee.</p>
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**4VAC50-60-74 Stormwater harvesting**

<p>Ellen Gilinsky (Virginia Department of Environmental Quality)</p>	<p>When you refer to being consistent with federal, state and local regulatory authorities - that seems vague. We are not aware of any federal laws or regulations, or local ordinances adopted in Virginia that relate directly to the reclamation and reuse of stormwater. At the state level, design specifications and treatment standards for rainwater harvesting systems are included in the Construction and Professional Services Manual published by the Virginia Department of General Services, Division of Engineering and Buildings. This manual, however, does not address the reclamation and reuse of all types of stormwater and applies only to state construction projects. The Water Reclamation and Reuse Regulation, 9VAC25-740, addresses the reclamation and reuse of domestic, municipal or industrial wastewater, and sewage, but</p>	<p>The Department has developed extensive BMP design specifications for rainwater harvesting BMPs. However, as also noted, we do not have sufficient authority to prescribe any operational requirements concerning the reuse of the captured stormwater. The regulations as developed, suggest potential uses of the stormwater and include a non-exhaustive list of example uses for harvested stormwater, including landscape irrigation systems, fire protection systems, flushing water closets and urinals, and other water handling systems, much of it modeled after DGS's standards on rainwater harvesting systems. Additionally, the intent here is not to reference any other body's standards for using harvested stormwater; rather, the intent is essentially that the Board encourages stormwater harvesting so</p>
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	<p>specifically excludes gray water and by definition would exclude the reclamation and reuse of stormwater. Therefore, we believe it is important for the DCR regulation to address regulatory standards and operational requirements for the reclamation and reuse of stormwater that are protective of state waters and public health, and minimize the direct discharge of pollutants into state waters.</p>	<p>long as no other authority prohibits the use of stormwater for these purposes-i.e., that no other federal, state, or local agency having jurisdiction over a project has prohibited harvested stormwater from being utilized for a desired purpose. Further, the Department of Health, the Department of Housing and Community Development, DCR, and others are in discussions regarding the reconciliation of their regulations to facilitate the use of rainwater harvesting.</p>
<p>Ellen Gilinsky (Virginia Department of Environmental Quality)</p>	<p>How are you thinking of ensuring compliance with this section - i.e., is this something that would be part of a stormwater permit?</p>	<p>A developer is required to meet the new water quality and quantity standards embodied in the regulations. A developer will be allowed to utilize a suite of BMPs to achieve these reductions. The BMPs selected by the developer have specified nutrient removal efficiencies when built to the design specifications. At the end of the day, a developer must meet his required water quality and quantity reductions through the implementation of these BMPs, as they are included in the Stormwater Pollution Prevention Plan (SWPPP) that is developed as a permit requirement. During construction, site inspections will ensure that the BMPs are being constructed properly and post construction requirements for inspections and BMP maintenance have also been included in the regulations.</p>

**4VAC50-60-92 Comprehensive watershed stormwater management plans**

<p>Keith White (Henrico County)</p>	<p>In developing a local comprehensive watershed management program, localities may want to submit concepts and ideas to DCR for conceptual “buy-in” before spending time and resources to fully develop the details ultimately needed for implementation. This is especially true for program provisions that take advantage of the provisions in §4VAC50-60-69.A.1 and 2 that allow for offsite reductions and pro rata payments.</p> <p>In the past, state agencies have been reluctant to formally review and provide comments for draft proposals. Instead,</p>	<p>Localities may submit draft comprehensive watershed management programs to DCR for review and comment. However, DCR staff will review the draft comprehensive watershed management plans in order of receipt and on an as time is available basis. DCR staff cannot guarantee a set review time limit for submitted plans.</p>
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	<p>formal review was delayed until local adoption. Given the complexity of the regulations and the wide variations in local program components, is there (or will there be) an interim DCR review process that localities can take advantage of to make the best use of our time and resources?</p>	
<p>David Nunnally (Caroline County)</p>	<p>Comprehensive watershed plans should be reviewed and approved by the locality. Perhaps Board approval would be appropriate for multi-jurisdictional swm plans or other similar large scale plans. However, as proposed, Board approval would be required for even the smallest 'regional' coordination of swm protection.</p> <p>This section, as proposed, imposes the unreasonable burden of obtaining Board approval of regional or watershed plans. The details of this proposed requirement are not provided (for example, timeline for review/approval, plan requirements, etc.). The seemingly simple act of submitting such plans to DCR for review creates significant inefficiency. In addition, the proposed amendment requires SWC Board approval if any there are any changes in land use (again, a vague term that is subject to interpretation).</p> <p>The Virginia SWM Act and Regulations do not appear to provide any procedures, etc. for Board approval of regional plans. This requirement appears to be in conflict with the Virginia SWM Act, specifically 10.1-603.3.E.3 and H (coordination of the permitting process, locally), 10.2-603.8 (encourages development of regional and watershed approaches), and 10.1-603.7 (includes provisions for regional and watershed studies).</p> <p>Should DCR have concerns that a locally approved plan or regional/watershed plan is inconsistent, the local swm review provides the proper review and analysis. And on a more day-to-day basis, DCR staff should endeavor to create a working relationship with the local programs, to provide technical assistance and advice, rather than this proposed requirement.</p>	<p>Comprehensive watershed stormwater management plans are intended to be reviewed by the Board prior to implementation to ensure that results equivalent to those required by the regulations will be achieved. These plans can be approved prior to a development being proposed or contemporaneously with several developments being proposed. The review and approval process is not believed to be an unreasonable requirement.</p>

	Local swm programs are authorized to approve and administer the swm program for individual projects within a given region or watershed. Localities (and property owners, developers, etc.) should not be burdened for coordinating and cooperating, effectively and efficiently, in the local program.	
Jeffrey Sitrer (University of Virginia)	Already have 2 approved regional stormwater management plans; facilities were installed and documented excess water quality and quantity treatment capacity for future projects; how will proposed regulations affect the current credit system that has been established under our current plans; very difficult to correlate the current and proposed methodologies for calculating water quality and quantity compliance; suggests that approve regional stormwater management plans be grandfathered such that the approved current credit banking system for water quality and water quantity are maintained and managed under the current methodology.	Existing regional stormwater management plans will need to be reviewed and approved by the Board as comprehensive stormwater management plans. Once approved, they may be utilized.

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

David Nunnally (Caroline County)	This section refers to 4VAC50-60-92 which burdens the planning process by requiring Board approval of the regional plan, as well as "any amendments" to the plan, rather than allowing local program approval and implementation as currently authorized under existing regulation (ref 4VAC50-60-90). Development projects that are in the planning process (or 'significant affirmative government act') should be allowed to proceed, as planned, with local approval, without the having to obtain Board approval. In addition, the administrative procedures (for example, plan review timelines, plan details, etc.) for such Board approval are not provided	Comprehensive stormwater management plans utilized by qualifying local programs must be approved by the Board, either during its review and authorization of a qualifying local program or thereafter. Older regional plans are not intended to be utilized after the approval of a qualifying local program unless they have been approved by the Board. Grandfathered projects may utilize comprehensive stormwater management plans that are approved, as well as the additional offsite options available in section 69.
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**Part III General Issues**

John Keifer (City of Norfolk)	Suggest setting a specified date for all of the local approved programs to go into effect; different implementation dates will have a detrimental affect on	The implementation dates for qualifying local programs is set out in the Code of Virginia (§10.1-603.3) and the Board does not have the authority to alter this schedule
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	development in our community	absent further legislation.
Andrew M. Scherzer and Thomas Balzer; Balzer and Associates, Inc.	If a locality has a policy that is in conflict with the regulations, how is that handled?	In accordance with Part IIID of the regulations, localities seeking to adopt qualifying local programs will submit application packages for review that must demonstrate compliance with the requirements of the regulations before the Board's approval may be obtained. In addition, the application packages must identify areas in which the locality is proposing to be more restrictive than the proposed regulations, as permitted (with conditions) by §10.1-603.7 of the Code of Virginia. The Board will review the application package and, if the proposed program complies with the regulatory requirements, authorize a locality to administer a qualifying local program. As noted above, qualifying local programs are authorized by the regulations to limit the use of specific BMPs in appropriate cases. In such cases, other BMPs could be utilized by the operator to meet water quality and quantity requirements.

**4VAC50-60-108 Qualifying local program stormwater management plan review**

Steven Herzog (Hanover County)	<b>A.3.:</b> This section is problematic for several reasons. First, water from infiltration type BMP's, which are required/encouraged by these regulation, will often come to the surface and become surface runoff. How is this to be addressed? Second, the methods required by the regulations address stormwater runoff from storm events, not surface flow from all sources. The regulations provide no guidance on how subsurface flows being converted to surface flows should have handled. Third, water from cisterns and other rain capturing devices is intended to be placed on the surface at a later date, normally for irrigation purposes. It seems wasteful to have to address issues such as this in the plan. We would recommend deleting this section or limiting its scope to an area of particular regulatory concern. We are uncertain what the area of concern is and so are not in a position to suggest language at this time.	The storage capacity of an infiltration BMP and runoff occurring after the BMP has filled is accounted for in runoff calculations. Stormwater that flows through an underdrain of an infiltration practice to the conveyance system typically occurs after the conclusion of a storm event. The language utilized in this subdivision relates to instances where subsurface flows are purposely converted to surface runoff, such as through pumping to protect basements and foundations during storm events.
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**4VAC50-60-112 Qualifying local program authorization of coverage under the VSMP General Permit for Discharges of Stormwater from Construction Activities**

Joe Lerch (Virginia Municipal League)	Separate the administration of the VSMP General Permit for Discharges of Stormwater from Construction Activities from the technical requirements to treat the discharge from post-construction stormwater runoff.	The Construction General Permit is the mechanism by which the technical criteria have been made effective as to a regulated land disturbing activity under the Board's administration of the VSMP program. It is intended that compliance with the technical criteria will remain a requirement of the Construction General Permit following authorization of a qualifying local program.
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**4VAC50-60-114 Inspections**

Randy Bartlett (Virginia Municipal Stormwater Association)	Supports allowing the local program develop a strategy with alternative methods for addressing maintenance of BMPs on individual lots; also supports the clarification that local governments may continue in their discretion to require maintenance agreements to ensure long-term BMP performance, even where an alternative to routine inspections is used.	Additional flexibility for maintenance agreement and long term inspection requirements for stormwater management BMPs located on and designed to primarily treat the runoff from an individual residential lot is deemed appropriate and support for the amendments is noted.
Steven Herzog (Hanover County)	D.: We would recommend that the language be changed to read "A qualifying local program shall develop a strategy for addressing maintenance of stormwater management facilities designed primarily to treat stormwater runoff on an individual residential lot. ..." It appears to us that the language as currently drafted might require that drainage divides follow individual lot lines, which is often not the case, for this section to apply. We don't believe that this is the intent of this section.	The requested amendment has been made.

**4VAC50-60-122 Qualifying local program exceptions**

Andrew M. Scherzer and Thomas Balzer (Balzer and Associates, Inc.)	What is the appeal process to a decision of a local program?	As with other decisions of the Board or a qualifying local program, determinations as to requests for variances are subject to the hearings and appeals provisions of §§10.1-603.12:6, 603.12:7, and 603.13 of the Code of Virginia (please review these sections for greater detail).
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		These sections of the Stormwater Management Act give any permit applicant or permittee who is aggrieved by any action of the permit issuing authority or Board a right to a formal hearing provided the conditions of those sections are met. Judicial review of permit and enforcement decisions is also provided.
Jon Capacasa (U.S. Environmental Protection Agency)	There is a need for greater specificity as to when an exception is appropriate to ensure that the permit satisfies the requirements of 40 C.F.R. §122.44(s), both as to small construction activity and other construction activity; should establish a more detailed standard so that the local program can be evaluated with regard to the appropriate use of exceptions and in reference to 40 C.F.R. §122.44(s).	Similar conditions for the granting of an exception have been utilized historically under the Chesapeake Bay Preservation Act program and the Department and localities have experience with these conditions. The exception criteria will not allow for all requirements to be ignored by a site (any exception must be the minimum necessary to afford relief), and all offsite options must be utilized before any exception to a portion of the water quality technical criteria may be granted. It is believed based on historical experience that exceptions will be granted on a very limited basis, and that the maximum achievable onsite will still be required even where an exception is considered appropriate.

**4VAC50-60-124 Qualifying local program stormwater management facility maintenance**

Keith White (Henrico County)	<p>The final regulations address our concern related to required inspections of BMPs on individual lots. However, the language in §4VAC50-60-124.A.2 that reads ...provided that it is demonstrated to the satisfaction of the qualifying local program that future maintenance of such facilities will be addressed through a deed restriction or other mechanism enforceable by the qualifying local program" still implies that the locality would be responsible for enforcing long term maintenance of these facilities.</p> <p>When we discussed this at the VAMSA meeting on October 22, 2009, it was indicated that was not the intent and that the language was a way to "enable" localities to enforce maintenance if they choose. It was also stated that this would not be an issue of consistency during future program reviews if the locality chose not to pursue maintenance of BMPs on individual lots.</p>	Additional language has been added to section 124 to clarify that taking enforcement on these BMPs will be at the discretion of the qualifying local program, and not mandatory upon the qualifying local program.
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	Based on our discussion, we ask that either this language be revised to clarify the intent (to provide localities the enabling authority to enforce future maintenance of these BMPs but not require that we do so) or provide a response that this issue was discussed and it is not the intent of the regulation to require localities pursue future maintenance of these BMPs.	
Steven Herzog (Hanover County)	A.2.: We would recommend that the language be changed to read "...stormwater management facilities designed primarily to treat stormwater runoff on an individual residential lot, provided it is demonstrated ...". It appears to us that the language as currently drafted might require that drainage divides follow individual lot lines, which is often not the case, for this section to apply. We don't believe that this is the intent of this section.	The requested amendment has been made.
Terry Siviter (Filterra Stormwater Bioretention Systems)	Annual maintenance requirements of BMP's (both public domain and proprietary) should be included in these regulations. They should be enforced at both local and state levels. What is the purpose of installing these BMP's if they do not perform as designed over time due to poor or no maintenance.	The regulations require maintenance agreements and long term inspections for most BMPs. BMPs located on and designed to primarily treat the runoff from an individual residential lot may be addressed by a qualifying local program through a separate strategy. Local oversight of long term maintenance will be evaluated by the Board in its review of a qualifying local program.

**4VAC50-60-136 Stormwater management plan review**

Andrew M. Scherzer and Thomas Balzer (Balzer and Associates, Inc.)	We are of the opinion that the Department should review initial plans, or give the consultants the ability to discuss preliminary plans with department staff.	Subsection C of section 136 states that the Department "shall not review or approve initial stormwater management plans". In this context, "initial stormwater management plans" refers to plans that may be generally regarded as clearing and grading plans. Certain localities allow land disturbance to begin upon approval of these types of plans, without the full submission of a complete stormwater management plan that covers the projected conditions of the site. The prohibition against the Department reviewing or approving initial stormwater management plans prevents this practice (approval of clearing and grading plans,
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		<p>commencement of land disturbance, and then submission of a full stormwater management plan after land disturbance has begun) from occurring where the Department administers the local stormwater management program. The proposed wording does not prohibit consultation between the Department and engineers and consultants during the development of stormwater management plans. This practice can be beneficial, as you note, and section 136 does not prevent this from occurring.</p>
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## Commenters via Action Alert

Timothy Smits  
Lisa Smits  
Amanda Shultz  
Roy Beckner, Jr.  
F. Gary Garczynski (National Capital Land & Development Company)  
Cindy Stackhouse (Virginia Association of Realtors)  
Kevin McNulty (LifeStyle Builders and Developers, Inc.)  
Joseph Jacobs (Elm Street Development)  
Betty Tolson  
James Owens (Harvey Lindsay Commercial Real Estate)  
Wendell Gibson, Inc.  
Top of Virginia Building Association (30 signatures)  
Logene Drexler  
Lisa Oglesby  
Shields Construction Company, Inc.  
Phillips Construction. LLC.  
William Luttrell  
Dwayne Smith  
Bonnie Newsome  
Wanda Witchey  
Jeanne Albert  
Giles Henry, Jr.  
Bob Williams (Tricord Incorporated)  
William Witt (WB&E Construction, Inc.)  
Matt Winkler  
Joe Annarino  
David Lesser (DML Development LLC)  
Ihsane Mouak  
Franklin Wilsons (McKinney & Company)  
Lee Hilbert  
Mark Caskey (Caskey Construction Company)  
George Phelps (Napolitano)  
James Gresock (S.L. Nusbaum Realty Company)  
Lisa Phillips  
Shawn Smith  
Ainslie Group

Tup Purcell (C.T. Purcell Excavating, Inc.)  
James Bonnell  
Kevin Montague  
Robert Mullins  
J. Alexander Boone (Boone Homes, Inc.)  
Greg Richardson (Crestline Homes, LLC)  
Yvonne Whitelaw  
Ruby Ainslie  
John Ainslie  
Denise Russell  
James Ingle  
Russell Willis, III (Design Craft Homes)  
Jeff Ellis (Pella Windows and Doors)  
Lisa May  
Bob Miller (MSA)  
Stephen Brewer (Wilcox & Savage)  
Sherman Patrick, Jr. (Compton & Duling, L.C.)  
Mark Simms  
Tracy White  
Scott Smith (Draper Aden Associates)  
Dean Stone (Stone Engineering, Inc.)  
David Reel  
Nancy Youngblood (Youngblood Properties, LLC)  
Evan Bryant  
Charlie King  
Tom Crouthamel  
Scott Sleeme  
Ed Kimple (Thalhimer)  
Tim Boone (National Asphalt Manufacturing Corporation)  
G.L. Robinson (Burton & Robinson, Inc.)  
Janet Turner (Mitchell Homes, Inc.)  
Kyle Hoffer (Mitchell Homes, Inc.)  
Guy Lowry  
Ben Hudson (Northern Neck Homes, Inc.)  
Thomas McMahan (McMahan Homes, Inc.)  
John Knibb (Divaris Real Estate, Inc.)  
Pete Kotarides (Tidewater Builders Association)

Mike Woolwine (Hughes Architects)  
Daniel Plucinik  
Suzanne Waterfield  
Carla Coffey (Arcadia Building Company)  
Estevan Segura (FlagStaffers, LLC)  
Jerry Brown (Brandonbilt Foundations, Inc.)  
Steve Lawson (The Lawson Companies)  
Heather FitzGerald (Rent-A-Crane, Inc.)  
Allen Harrison (Battlefield Homes, Inc.)  
Laszlo Eszenyi (The Heavy Construction Contractors Association of Northern Virginia)  
Joe Quetsch (Quarles Energy Services)  
Harvey Gold (Fredericksburg Area Builders Association)  
Tracy Meade  
George Duffield (Duffield Hauling, Inc.)  
Rhonda Allison  
John Scott  
Ollin Toler  
Ginger Slavic  
Sandra Cousins (Mitchell Homes, Inc.)  
George Bryant (Koontz-Bryant)  
Alan Nash  
Tom Lovegrove (BAyview Construction Company)  
Richard Entsminger  
James Gresock (S.L. Nusbaum Realty Company)  
John Olivieri  
J. Lohr  
Meredith Ward (Valley Engineering)  
George Rhodes  
Frank Gibson (Virginia Craft Homes, Inc.)  
Richard Costello (AES Consulting Engineers)  
Paula McCarty  
Gregory Taylor (Parker Design Group)

Vincent Haynie (Ingram Bay Contracting, Inc.)  
Susan Hadder  
David Fahy  
F. Craig Reed (Read Commercial Properties)  
Edwin Sompayrac  
Mark Trostle (Richmond American Homes of Virginia)  
Peter Eckert  
David Blalock, Jr. (FSK Property Management)  
Jamie Clark (Grubb & Ellis/Harrison & Bates)  
Scott Dearnley  
John Leitch (Grubb & Ellis/Harrison & Bates)  
Bill Ledbetter (Roudabush, Gale and Associates)  
Bruce Milam (Grubb & Ellis/Harrison & Bates)  
William Missell (Rinker Design Associates, P.C.)  
David Milstead  
Seth Turner (Heritage Construction Company, LLC)  
Fred Corbett  
Robert Wells  
Christopher Wells  
Kenneth Wells  
Jon Anderson (Evergreen Homecrafters, LLC)  
Jay Rowe  
Thomas Kellam  
Sarah Kellam  
Skip Eastman (Chesapeake Structural Systems, Inc.)  
Dana Walker  
Hyde Benton  
Clay Grogan (Parker Design Group)  
Mark Richardson  
Tom Page (GS Virginia)  
Jeffrey Huentelman (LPS)  
14 signatures were not clearly readable

Comments received during the comment period on the final regulations from October 26, 2009 to November 25, 2009 are as follows:

## Comment Table and Responses for Stormwater Management Regulations (Part XIII Regulatory Action)

Joe Lerch (Virginia Municipal League); Randy Bartlett (Virginia Municipal Stormwater Association)	Support revision to allow local program to establish higher fees if approved by the Board	The provision allowing for a local program to establish higher fees has been retained.
Joe Lerch (Virginia Municipal League); Randy Bartlett (Virginia Municipal Stormwater Association); Dwight Farmer (Hampton Roads Planning District Commission)	Supports the \$1,000 reduction but fees for MS4 general permit should be further reduced given current economic climate	The reduction in the fees for the MS4 general permit has been retained. The remaining fee is necessary to fully support the Board's responsibilities in administering these permits.
Donna Travis (J and D Builders); Michael Stonehill (Hour Homes, Inc.)	Against any increase in fees relating to development; impossible to continue to develop single family homes as a small developer; market not strong enough to handle cost increases	The fees contained in Part XIII are calculated to be those necessary to support program implementation, as directed by the Code of Virginia. Many single family residence construction projects are exempt from the requirements of these regulations, including fees. For those that are subject to the regulations and the fees, the fees are scaled based on acreage disturbed and in the case of many smaller sites do not represent a large increase from the fees charged today.