

Potential Key Changes to Address Public Comments Received on the Proposed Stormwater Management Regulations

1. Water Quality Standards for New Development and Redevelopment

Summary of Board Proposed Language and Recommended Amendments

Applying same standards to Chesapeake Bay and the Southern Rivers

As Proposed at the September 2008 Meeting:

- All parts of the state are covered under 0.28 phosphorus standard.
- No exceptions to this uniform standard exist for different portions of the state, small sites, redevelopment areas, or Urban Development Areas.

Recommended for change:

- 0.28 standard applies in the Chesapeake Bay for new development; 0.45 for non-Bay areas.
- Localities which have lands that drain into both the Bay watershed and non-Bay watersheds may choose which standard to apply to non-Bay areas.
- Localities statewide may always elect to use a stricter standard. (ex: Swift Creek Reservoir; 0.22 phosphorus standard)

Applying 0.28 standard on small sites (less than 1 acre; small infill and commercial sites)

As Proposed at the September 2008 Meeting:

- Land disturbance between 2500 sq. ft. and 1 acre in the Bay Act area would be subject to the statewide 0.28 standard.
- The threshold for regulation is an acre or greater outside of the Bay Act area.

Recommended for change:

- Land disturbance between 2500 sq. ft. and 1 acre in the Bay Act area would be held to the statewide 0.45 standard. (unless they are part of a “common plan of development” in which case, the “common plan of development” standard applies)

Applying the redevelopment standard of 20% on small sites

As Proposed at the September 2008 Meeting:

- The proposed regulations establish a redevelopment standard that requires 20% reduction in phosphorus below the predevelopment load.

Recommended for change:

- 10% for redevelopment sites disturbing less than 1 acre.
- 20% for redevelopment sites disturbing greater than or equal to 1 acre.

Applying the water quality standards in Urban Development Areas

As Proposed at the September 2008 Meeting:

- Not addressed.

Recommended for change:

- Within a UDA in the Bay watershed (greater than or equal to 1 acre), a qualifying local program may establish a standard between 0.28 and 0.45.

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- The rationale for the standard(s) selected shall be provided to the Board and shall discuss a series of factors utilized to make the determination.

Actual Recommended Language

4VAC50-60-63. Water quality [design]criteria requirements.

In order to protect the quality of state waters and to control [nonpoint source pollution stormwater pollutants], the following minimum technical criteria and statewide standards for stormwater management shall be applied to the site of a land-disturbing activity. [The local program shall have discretion to allow for application of the criteria to each drainage area of the site. However, where a site drains to more than one HUC, the pollutant load reduction requirements shall be applied independently within each HUC unless reductions are achieved in accordance with a comprehensive watershed stormwater management plan in accordance with 4VAC50-60-96.]

1. New development. The total phosphorus load of new development projects shall not exceed [0.28 0.45] pounds per acre per year, as calculated pursuant to 4VAC50-60-65[, except:

a. The total phosphorus load of a new development project disturbing greater than or equal to 1 acre in the Chesapeake Bay Watershed shall not exceed 0.28 pounds per acre per year, as calculated pursuant to 4VAC50-60-65.

b. Within Urban Development Areas designated pursuant to §15.2-2223.1 in the Chesapeake Bay Watershed a qualifying local program may establish a phosphorus reduction requirement between 0.28 and 0.45 pounds per acre per year in order to encourage smarter growth. The qualifying local program shall provide to the board a justification for any standards established if greater than 0.28. The standard shall be based upon factors including, but not limited to, number of housing units per acre for residential development, floor area ratio for non-residential development, level of imperviousness, brownfield remediation potential, mixed-use and transit oriented development potential, proximity to the Chesapeake Bay or local waters of concern, and the presence of impaired waters. This provision shall not apply to department administered local programs.

c. Localities that have lands that drain to both the Chesapeake Bay Watershed and other non-Chesapeake Bay watersheds may choose to apply the 0.28 pounds per acre per year phosphorus standard to land disturbing activities that discharge to watersheds other than the Chesapeake Bay Watershed.]

2. Development on prior developed lands.

[a.] The total phosphorus load of [projects a project] occurring on prior developed lands [and disturbing greater than or equal to 1 acre] shall be reduced to an amount at least 20% below the predevelopment total phosphorus load.

[b. The total phosphorus load of a project occurring on prior developed lands and disturbing less than 1 acre shall be reduced to an amount at least 10% below the predevelopment total phosphorus load.]

[c.] [However, the The] total phosphorus load shall not be required to be reduced to below [0.28 pounds per acre per year the applicable standard for new development] unless a more stringent standard has been established by a qualifying local program.

3. Compliance with [subdivisions 1 and 2 shall be determined in accordance with] 4VAC50-60-65 [shall constitute compliance with subdivisions 1 and 2 of this section].

4. TMDL. In addition to the above requirements, if a specific WLA for a pollutant has been established in a TMDL and is assigned to stormwater discharges from a construction activity,

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42 necessary control measures must be implemented by the operator to meet the WLA in
43 accordance with the requirements established in the General Permit for Discharges of
44 Stormwater from Construction Activities or an individual permit, which address both
45 construction and postconstruction discharges.

46 [5. Nothing in this section shall prohibit a qualifying local program from establishing a more
47 stringent standard.]

2. Water Quantity Standards for Channel Protection and Flood Protection

Summary of Board Proposed Language and Recommended Amendments

Channel protection

As Proposed at the September 2008 Meeting:

- Stormwater discharged from a site to an unstable channel must be released at or below a “forested” peak flow rate condition.
- No exceptions to the standard are provided.

Recommended for change:

- Stormwater discharged from a site to an unstable channel must be released at or below a “good pasture” peak flow rate condition unless the pre-developed condition for the site is forest, in which case, the runoff from shall be held to the forested condition.
- Exceptions to this standard are provided to a land disturbing activity:
 - less than 5 acres on prior developed lands.
 - less than 1 acre for new development.
- Under the exception, the sites are expected to improve upon the pre-developed runoff condition.

Flood Protection

As Proposed at the September 2008 Meeting:

- Where localized flooding exists during the 10-year 24-hour storm, the post-development peak flow rate must not exceed the predevelopment peak flow rate based on “forested” conditions.
- No exceptions to the standard are provided.

Recommended for change:

- Where localized flooding exists during the 10-year 24-hour storm, the post-development peak flow rate must not exceed the predevelopment peak flow rate based on “good pasture” conditions unless the pre-developed condition for the site is forest, in which case, the peak flow rate shall be held to the forested condition.
- Same as above, exceptions to this standard are provided to a land disturbing activity:
 - less than 5 acres on prior developed lands.
 - less than 1 acre for new development.
- Under the exception, postdevelopment peak flow rate for the 10-year 24-hour storm must be less than the predevelopment peak flow rate from the 10-year 24-hour storm.

Actual Recommended Language

1 **4VAC50-60-66. Water quantity.**

2 A. Channel protection and flood protection shall be addressed in accordance with the minimum
3 standards set out in this section, which are established pursuant to the requirements of subdivision 7 of
4 § 10.1-603.4 of the Code of Virginia.

5 B. Channel protection. Concentrated stormwater flow from the site and offsite contributing areas
6 shall be released into a stormwater conveyance system and shall meet one of the following criteria as
7 demonstrated by use of accepted hydrologic and hydraulic methodologies:

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8 1. Concentrated stormwater flow to manmade stormwater conveyance systems. The point of
9 discharge releases stormwater into a manmade stormwater conveyance system that, following
10 the land-disturbing activity, conveys the postdevelopment peak flow rate from the two-year 24-
11 hour storm without causing erosion of the system.

12 2. Concentrated stormwater flow to restored stormwater conveyance systems. The point of
13 discharge releases stormwater into a stormwater conveyance system that (i) has been restored
14 and is functioning as designed or (ii) will be restored. The applicant must demonstrate that the
15 runoff following the land-disturbing activity, in combination with other existing stormwater
16 runoff, will not exceed the design of the restored stormwater conveyance system nor result in
17 instability of the system.

18 3. Concentrated stormwater flow to stable natural stormwater conveyance systems. The point
19 of discharge releases stormwater into a natural stormwater conveyance system that is stable
20 and, following the land-disturbing activity, (i) will not become unstable as a result of the
21 discharge from the one-year 24-hour storm, and (ii) provides a peak flow rate from the one-
22 year 24-hour storm calculated as follows or in accordance with another methodology that is
23 demonstrated by the local program to achieve equivalent results and is approved by the board:

24 $Q_{\text{Developed}} * RV_{\text{Developed}} \leq Q_{\text{Pre-Developed}} * RV_{\text{Pre-Developed}}$, where

25 $Q_{\text{Developed}}$ = The allowable peak flow rate of runoff from the developed site.

26 $Q_{\text{Pre-Developed}}$ = The peak flow rate of runoff from the site in the predeveloped condition.

27 $RV_{\text{Pre-Developed}}$ = The volume of runoff from the site in the predeveloped condition.

28 $RV_{\text{Developed}}$ = The volume of runoff from the developed site.

29 4. [a. Except as set out in subdivision b, concentrated ~~Concentrated~~]stormwater flow to
30 unstable natural stormwater conveyance systems. Where the point of discharge releases
31 stormwater into a natural stormwater conveyance system that is unstable, stormwater runoff
32 following a land-disturbing activity shall be released into a channel at or below a peak flow
33 rate ($Q_{\text{Developed}}$) based on the one-year 24-hour storm, calculated as follows or in accordance
34 with another methodology that is demonstrated by the local program to achieve equivalent or
35 more stringent results and is approved by the board:

36 $Q_{\text{Developed}} * RV_{\text{Developed}} \leq Q_{\text{[Forested Good Pasture]}} * RV_{\text{[Forested Good Pasture]}}$, where

37 $Q_{\text{Developed}}$ = The allowable peak flow rate from the developed site.

38 $Q_{\text{[Forested Good Pasture]}}$ = The peak flow rate from the site in a [forested good pasture]
39 condition.

40 $RV_{\text{[Forested Good Pasture]}}$ = The volume of runoff from the site in a [forested good pasture]
41 condition.

42 $RV_{\text{Developed}}$ = The volume of runoff from the developed site.

43 [unless the pre-developed condition is forested, in which case, both the peak flow rate and
44 the volume of runoff from the developed site shall be held to the forested condition.

45 b. This subsection shall apply to concentrated stormwater flow to unstable natural stormwater
46 conveyance systems from: i) a land disturbing activity less than 5 acres on prior developed
47 lands, or ii) a regulated land disturbing activity less than 1 acre for new development. Where
48 the point of discharge releases stormwater into a natural stormwater conveyance system that is
49 unstable, stormwater runoff following a land-disturbing activity shall provide a peak flow rate
50 from the one-year 24-hour storm, calculated as follows or in accordance with another
51 methodology that is demonstrated by the local program to achieve equivalent or more stringent
52 results and is approved by the board:

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53 $Q_{\text{Developed}} * RV_{\text{Developed}} \leq Q_{\text{Pre-Developed}} * RV_{\text{Pre-Developed}}$, where
54 $Q_{\text{Developed}}$ = The allowable peak flow rate from the developed site. Such peak flow rate
55 must be less than $Q_{\text{Pre-Developed}}$.
56 $Q_{\text{Pre-Developed}}$ = The peak flow rate from the site in pre-development condition.
57 $RV_{\text{Pre-Developed}}$ = The volume of runoff from the site in pre-development condition.
58 $RV_{\text{Developed}}$ = The volume of runoff from the developed site. Such volume must be less
59 than $RV_{\text{Pre-Developed}}$.]

60 C. Flood protection. Concentrated stormwater flow shall be released into a stormwater conveyance
61 system and shall meet one of the following criteria as demonstrated by use of accepted hydrologic and
62 hydraulic methodologies:

63 1. Concentrated stormwater flow to manmade stormwater conveyance systems. The point of
64 discharge releases stormwater into a manmade stormwater conveyance system that, following
65 the land-disturbing activity, confines the postdevelopment peak flow rate from the 10-year 24-
66 hour storm within the manmade stormwater conveyance system.

67 2. Concentrated stormwater flow to restored stormwater conveyance systems. The point of
68 discharge releases stormwater into a stormwater conveyance system that (i) has been restored
69 and is functioning as designed or (ii) will be restored. The applicant must demonstrate that the
70 peak flow rate from the 10-year 24-hour storm following the land-disturbing activity will be
71 confined within the system.

72 3. Concentrated stormwater flow to natural stormwater conveyance systems. The point of
73 discharge releases stormwater into a natural stormwater conveyance system that currently does
74 not flood during the 10-year 24-hour storm and, following the land-disturbing activity,
75 confines the postdevelopment peak flow rate from the 10-year 24-hour storm within the
76 system.

77 4. [a.] Concentrated stormwater flow to natural stormwater conveyance systems where
78 localized flooding exists during the 10-year 24-hour storm. The point of discharge releases a
79 postdevelopment peak flow rate for the 10-year 24-hour storm that shall not exceed the
80 predevelopment peak flow rate from the 10-year 24-hour storm based on [forested good
81 pasture] conditions [, unless the pre-developed condition is forested, in which case the peak
82 flow rate from the developed site shall be held to the forested condition].

83 [b. Subsection (B)(4)(a) notwithstanding, this subsection shall apply to concentrated
84 stormwater flow to natural stormwater conveyance systems where localized flooding exists
85 during the 10-year 24-hour storm from: i) a land disturbing activity less than 5 acres on prior
86 developed lands, or ii) a regulated land disturbing activity less than 1 acre for new
87 development. The point of discharge releases a postdevelopment peak flow rate for the 10-
88 year 24-hour storm that is less than the predevelopment peak flow rate from the 10-year 24-
89 hour storm.]

90 5. A local program may adopt alternate flood protection design criteria that (i) achieve
91 equivalent or more stringent results, (ii) are based upon geographic, land use, topographic,
92 geologic, or other downstream conveyance factors, and (iii) are approved by the board.

93 D. One percent rule. If either of the following criteria are met, subsections A and B of this section
94 do not apply:

95 1. Based on area. Prior to any land disturbance, the site's contributing drainage area to a point
96 of discharge from the site is less than or equal to 1.0% of the total watershed area draining to
97 that point of discharge; or

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98 2. Based on peak flow rate. Based on the postdevelopment land cover conditions prior to the
99 implementation of any stormwater quantity control measures, the development of the site
100 results in an increase in the peak flow rate from the one-year 24-hour storm that is less than
101 1.0% of the existing peak flow rate from the one-year 24-hour storm generated by the total
102 watershed area draining to that point of discharge.

103 E. Increased volumes of sheet flow resulting from pervious or disconnected impervious areas, or
104 from physical spreading of concentrated flow through level spreaders, must be identified and
105 evaluated for potential impacts on down gradient properties or resources. Increased volumes of sheet
106 flow that will cause or contribute to erosion, sedimentation, or flooding of down gradient properties or
107 resources shall be diverted to a [~~detention facility~~, stormwater management facility] or a stormwater
108 conveyance system that conveys the runoff without causing down gradient erosion, sedimentation, or
109 flooding. If all runoff from the site is sheet flow and the conditions of this subsection are met, no
110 further water quantity controls are required.

111 F. For purposes of computing predevelopment runoff from prior developed sites, all pervious lands
112 on the site shall be assumed to be in good hydrologic condition in accordance with the U.S.
113 Department of Agriculture's Natural Resources Conservation Service (NRCS) standards, regardless of
114 conditions existing at the time of computation. Predevelopment runoff calculations utilizing other
115 hydrologic conditions may be utilized provided that it is demonstrated to and approved by the local
116 program that actual site conditions warrant such considerations.

117 G. Predevelopment runoff characteristics and site hydrology shall be verified by site inspections,
118 topographic surveys, available soil mapping or studies, and calculations consistent with good
119 engineering practices in accordance with guidance provided in the Virginia Stormwater Management
120 Handbook and by the qualifying local program.

121 H. Except where the compliance options under subdivisions B 4 and C 4 of this section are
122 utilized, flooding and channel erosion impacts to stormwater conveyance systems shall be analyzed for
123 each point of discharge in accordance with channel analysis guidance provided in Technical Bulletin #
124 1, Stream Channel Erosion Control, or in accordance with more stringent channel analysis guidance
125 established by the qualifying local program and provided to the department. Such analysis shall
126 include estimates of runoff from the developed site and the entire upstream watershed that contributes
127 to that point of discharge. Good engineering practices and calculations in accordance with department
128 guidance shall be used to evaluate postdevelopment runoff characteristics and site hydrology, and
129 flooding and channel erosion impacts.

130 If the downstream owner or owners refuse to give permission to access the property for the
131 collection of data, evidence of this refusal shall be given and arrangements made satisfactory to the
132 local program to provide an alternative method for the collection of data to complete the analysis, such
133 as through the use of photos, aerial surveys, "as built" plans, topographic maps, soils maps, and any
134 other relevant information.

3. Offsite Compliance Options

Summary of Board Proposed Language and Recommended Amendments

As Proposed at the September 2008 Meeting:

- The existing proposed regulations contained three provisions for offsite compliance.
 - COMPREHENSIVE PLAN: If a local comprehensive watershed stormwater management plan has been adopted for the area within which a project is located, then the development may be able to use offsite options to achieve all or part of the water quality and quantity technical criteria.
 - DEVELOPER SITE: Where no such plan exists, a development project may use offsite options to meet water quality technical criteria if they control or own property within the same HUC or the adjacent downstream HUC to the land-disturbing site.
 - LOCAL PRO-RATA: A pro-rata fee payment option also exists that is tied to the local comprehensive watershed management plan option.
- Each offsite option is at the discretion of the locality.

Recommended for change:

- Create a new section that contains all of the offsite compliance options (numbered 4VAC50-60-69).
- 5 offsite options are provided:
 - COMPREHENSIVE PLAN: Same as above.
 - DEVELOPER SITE: The option was modified to specify that controls must be located within the same HUC or within the upstream HUCs in the local watershed that the land disturbing activity directly discharges to.
 - LOCAL PRO-RATA: Expand use of this option. Specify that a locality may use a pro rata fee in accordance with § 15.2-2243 or similar funding mechanism to achieve offsite the water quality and quantity reductions required. Participants will pay a locally established fee sufficient to fund improvements necessary to adequately achieve those requirements.
 - NUTRIENT OFFSET: Incorporate the new offset option passed by the 2009 General Assembly (for water quality and is according to stipulations in the legislation).
 - BUY-DOWN: Add a new section to allow the developer at his discretion to meet the 0.28 onsite water quality standard (where applicable) or pay the difference at a set fee per acre/per pound into a state fund.
- The conditions that apply to the new BUY DOWN option are as follows:
 - This option may be utilized where the other 4 options are not available for use, or where a locality otherwise elects to allow the use.
 - The payment shall be \$15,000 per pound of phosphorus not treated on site.
 - In an Urban Development Area the poundage reduction multiplier ratio is 1:1 (pounds not treated: pounds purchased).
 - In all other cases the ratio shall be 1:1.5.
 - Payments will be deposited to the Virginia Stormwater Management Fund.
 - The board shall establish priorities for the use of these payments by September 1 of each year (a list of preferences are provided).
 - At least 50% of the payments shall be utilized for projects to address local urban stormwater quality issues.

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- The remaining payments shall be utilized to fund long-term agricultural best management or to purchase offsets in accordance with §10.1-603.8:1.
- The department shall track the monies received and expended and the reductions needed and achieved.
- The department may annually utilize up to 6% of the payments to administer the stormwater management program.
- The board shall periodically review the payment amount, at least every five years or in conjunction with the development of a new construction general permit.
- Use of the buy down option is in accordance with the following limitations:
 - A new development project disturbing greater than or equal to 1 acre in the Chesapeake Bay Watershed must achieve at least 0.45 pounds per acre per year of phosphorus on site and then may achieve all or a portion of the remaining required phosphorus reductions through a payment.
 - A new development project disturbing less than 1 acre in the Chesapeake Bay Watershed may achieve all necessary phosphorus reductions through a payment.
 - Development on prior developed lands disturbing greater than or equal to 1 acre must achieve at least a 10% reduction from the predevelopment total phosphorus load on site and then may achieve the remaining required phosphorus reductions through a payment.
 - Development on prior developed lands disturbing less than 1 acre may achieve all necessary phosphorus reductions through a payment.
- Where the department is administering a local program, only the DEVELOPER SITE, NUTRIENT OFFSET, and BUY-DOWN offsite options shall be available

Actual Recommended Language

- 1 **[4VAC50-60-69. Offsite compliance options**
- 2 A. A qualifying local program shall have the authority to consider the use of the following offsite
- 3 compliance options:
- 4 1. If a comprehensive watershed stormwater management plan has been adopted pursuant to
- 5 4VAC50-60-92 for the local watershed within which a project is located, then the qualifying local
- 6 program may allow offsite controls in accordance with the plan to achieve the water quality and
- 7 quantity reductions required for a site by this chapter. Such offsite controls shall achieve the required
- 8 reductions either completely offsite in accordance with the plan or in a combination of onsite and
- 9 offsite controls.
- 10 2. If the qualifying local program allows for a pro rata fee in accordance with § 15.2-2243 of the
- 11 Code of Virginia or similar funding mechanism, then the water quality and quantity reductions
- 12 required for a site by this chapter may be achieved by the payment of a fee sufficient to fund
- 13 improvements necessary to adequately achieve those requirements.
- 14 3. If the qualifying local program allows, a land disturbing activity may achieve compliance with
- 15 water quality reductions required for a site by this chapter pursuant to the nonpoint nutrient offset
- 16 program established by §10.1-603.8:1.
- 17 4. Where no comprehensive watershed stormwater management plan exists, offsite controls may
- 18 be used to meet the water quality reductions required for a site by this chapter provided:
- 19 a The applicant demonstrates to the satisfaction of the local program that offsite reductions
- 20 equal to or greater than those that would otherwise be required for the site are achieved.

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21 b. The applicant demonstrates to the satisfaction of the local program that the development's
22 runoff and the runoff from any offsite treatment area shall be controlled in accordance with
23 4VAC50-60-66;

24 c. Offsite controls must be located within the same HUC or within the upstream HUCs in the
25 local watershed that the land disturbing activity directly discharges to; and

26 d. The applicant demonstrates to the satisfaction of the local program that the right to utilize
27 the offsite control area and any necessary easements have been obtained and maintenance
28 agreements for the stormwater management facilities have been established pursuant to
29 4VAC50-60-124.

30 B. Where the offsite options of subsection A are not available for use, or where a qualifying local
31 program otherwise elects to allow the use of this subsection, offsite compliance may be achieved
32 through a payment in accordance with the following:

33 1. The payment shall be \$15,000 per pound of phosphorus and shall be calculated based on the
34 poundage not treated on site. When the land disturbing activity is in an Urban Development Area the
35 poundage reduction multiplier shall be at a 1:1 (pounds not treated: pounds purchased) ratio, in all
36 other cases the ratio shall be 1:1.5. Payment amounts shall be determined based upon the nearest 0.01
37 of a pound phosphorus.

38 2. All payments shall be deposited and utilized in accordance with the following:

39 a. Payments received shall be deposited to the Virginia Stormwater Management Fund and held in
40 a subaccount.

41 b. The board shall establish priorities for the use of these payments by September 1 of each year.
42 Payments held in the fund shall be promptly applied to ensure that nutrient reduction practices are
43 being implemented.

44 c. Priorities shall be established in accordance with the following:

45 i. At least 50% of the payments shall be utilized for projects to address local stormwater quality
46 issues related to the impacts of development activities including but not limited to urban retrofits,
47 urban stream restorations, and reduction of impervious areas.

48 ii. The remaining payments received shall be utilized to fund long-term contracts for agricultural
49 best management practices no less than 20 years in duration or long-term best management practices
50 including but not limited to stream fencing, alternative water supplies, and riparian buffers in
51 accordance with the Virginia Agricultural BMP Cost Share Program. Such payments may additionally
52 be used to purchase offsets in accordance with §10.1-603.8:1.

53 iii. Preference will be given to: purchasing existing credits; targeting equivalent reductions in the
54 same local watershed as where the payment came from; implementing urban practices/retrofits that
55 address TMDLs.; securing permanent practices; and achieving measurable reductions. When
56 purchasing agricultural best management practices, the board shall consider purchasing practices
57 beyond the baseline established under the Chesapeake Bay Watershed Nutrient Credit Exchange
58 Program in accordance with §62.1-44.19:12 et seq.

59 d. The department shall track the payment amount, the associated poundage of phosphorus
60 purchased, and the HUC for the land disturbing activity. The department shall additionally track the
61 annual expenditure of the funds including where the monies are expended and the cost per pound for
62 phosphorus reductions associated with the nutrient reduction practices.

63 e. The department may annually utilize up to 6% of the payments to administer the stormwater
64 management program.

65 f. The board shall periodically review the payment amount, at least every five years or in
66 conjunction with the development of a new construction general permit.

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- 67 3. Utilization of a payment to achieve compliance with the water quality technical criteria shall be
68 subject to the following limitations:
- 69 a. A new development project disturbing greater than or equal to 1 acre in the Chesapeake Bay
70 Watershed must achieve at least 0.45 pounds per acre per year of phosphorus on site and then may
71 achieve all or a portion of the remaining required phosphorus reductions through a payment.
- 72 b. A new development project disturbing less than 1 acre in the Chesapeake Bay Watershed may
73 achieve all necessary phosphorus reductions through a payment.
- 74 c. A new development project outside of the Chesapeake Bay Watershed must achieve all
75 necessary phosphorus reductions on site.
- 76 d. Development on prior developed lands disturbing greater than or equal to 1 acre must achieve at
77 least a 10% reduction from the predevelopment total phosphorus load on site and then may achieve the
78 remaining required phosphorus reductions through a payment.
- 79 e. Development on prior developed lands disturbing less than 1 acre may achieve all necessary
80 phosphorus reductions through a payment.
- 81 C. Where the department is administering a local program, only offsite options set out in
82 Subsections A3, A4, and B shall be available.]

4. Grandfathering

Summary of Board Proposed Language and Recommended Amendments

As Proposed at the September 2008 Meeting:

- Does not contain grandfathering language.
- NOTE: The new Construction General Permit that became effective on July 1, 2009 does contain language to ensure that those projects which have received General Permit coverage would be held to this standard until at least the end of the General Permit cycle on June 30, 2014.

Recommended for change:

- Establishes a new section on Grandfathering numbered 4VAC50-60-48.
- Establishes a Part II B that contains today’s existing stormwater standards and labels the new water quality and quantity provisions as Part II A.
- Grandfather multiple-phase projects that:
 - File with or obtain approval from a local government of their plan of development by January 1, 2010; and
 - Obtain VSMP general permit coverage by July 1, 2010.
- Where these two conditions are met the project is grandfathered to June 30, 2014.
- If permit coverage is continuously maintained, the project will remain subject to today’s existing criteria until June 30, 2019.
- Should permit coverage not be maintained or if project construction continues beyond June 30, 2019, portions of those projects not completed shall be subject to the new Technical Criteria.
- Grandfather a project that is part of a common plan of development or sale that received VSMP general permit coverage prior to July 1, 2010. In those cases, the same standard that applied to the common plan of development will apply to the land disturbing activity within it.

Actual Recommended Language

1 **[4VAC50-60-48. Grandfathering.**

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3 A. Where a plan of development for a multiple phase project, as determined by a local

4 government, has been filed or approved with a local government by January 1, 2010, and VSMP

5 general permit coverage has been obtained from the department prior to July 1, 2010, the land

6 disturbing activity associated with the project is grandfathered and shall remain subject to the Part II B

7 Technical Criteria until June 30, 2014. If permit coverage is continuously maintained for the land

8 disturbing activity within the entire project area, then the project shall remain subject to the Part II B

9 Technical Criteria until June 30, 2019. Should permit coverage not be maintained or if project

10 construction continues beyond June 30, 2019, portions of those projects not completed shall be subject

11 to the Part II A Technical Criteria.

12 B. Where a land disturbing activity is part of a common plan of development or sale that has

13 obtained VSMP general permit coverage from the department prior to July 1, 2010, the land disturbing

14 activity will be subject to the technical criteria of Part II B. The registration statement shall include

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15 the permit coverage number for the common plan of development or sale for which association is
16 being claimed.]

5. Inspections

Summary of Board Proposed Language and Recommended Amendments

As Proposed at the September 2008 Meeting:

- Inspection required by an owner’s engineer or the qualifying local program of all BMPs within a 5-year period.
- Maintenance agreements also required for all BMPs.

Recommended for change:

- Amend Section 124 so that maintenance agreements shall not be required for stormwater management facilities located on an individual residential lot, provided it is demonstrated to the satisfaction of the qualifying local program that future maintenance of such a facility will be addressed through a deed restriction or other mechanisms.
- Amend Section 114 to limit owner inspections to only those for which a maintenance agreement is required.
- Localities would not be required to inspect stormwater BMPs on individual lots every 5 years.
- Authorizes a qualifying local program to develop a strategy for addressing maintenance of stormwater management facilities located on and designed to treat stormwater runoff from an individual residential lot. Such a strategy may include periodic inspections, public outreach and education, or other method targeted at promoting the long-term maintenance of such facilities.

Actual Recommended Language

1 **4VAC50-60-114. Inspections.**

2 A. The qualifying local program or its designee shall inspect the land-disturbing activity during
3 construction for compliance with the VSMP General Permit for Discharges of Stormwater from
4 Construction Activities.

5 B. The person responsible for the development project or their designated agent shall submit to a
6 qualifying local program a construction record drawing for permanent stormwater management
7 facilities, appropriately sealed, and signed by a professional in accordance with all minimum standards
8 and requirements pertaining to the practice of that profession pursuant to Chapter 4 (§ 54.1-400 et
9 seq.) of Title 54.1 of the Code of Virginia and attendant regulations, certifying that the stormwater
10 management facilities have been constructed in accordance with the approved plan. The qualifying
11 local program shall have the construction record drawing and certification on file prior to the release
12 of the portion of the performance bond or surety associated with the stormwater management facility.

13 C. The [owners owner] of [a] stormwater management [facilities facility for which a
14 maintenance agreement is required pursuant to 4VAC50-60-124] shall be required to conduct
15 inspections in accordance with an inspection schedule in [a the] recorded maintenance agreement,
16 and shall submit written inspection and maintenance reports to the qualifying local program [upon
17 request]. Such reports, if consistent with a board-approved inspection program established in
18 subsection [D E] of this section, may be utilized by the qualifying local program if the inspection is
19 conducted by a person who is licensed as a professional engineer, architect, [certified] landscape
20 architect, or land surveyor pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1 or who

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21 holds a certificate of competence from the board. The reports, if so utilized, must be kept on file with
22 the qualifying local program

23 D. [A qualifying local program shall develop a strategy for addressing maintenance of stormwater
24 management facilities located on and designed to treat stormwater runoff from an individual
25 residential lot. Such a strategy may include periodic inspections, public outreach and education, or
26 other method targeted at promoting the long term maintenance of such facilities. Such facilities shall
27 not be subject to the requirement for an inspection to be conducted by the qualifying local program
28 every 5 years contained within subsection E of this section.

29 E.] A qualifying local program shall establish an inspection program that ensures that the
30 stormwater management facilities are being maintained as designed. Any inspection program shall be:

- 31 1. Approved by the board prior to implementation;
- 32 2. Established in writing;
- 33 3. Based on a system of priorities that takes into consideration the purpose and type of the
34 facility, ownership and the existence of a recorded maintenance agreement and inspection
35 schedule, the contributing drainage area, and downstream conditions;
- 36 4. Demonstrated to be an enforceable inspection program that meets the intent of the
37 regulations and ensures that each stormwater management facility is inspected by the
38 qualifying local program or its designee, not to include the owner, except as provided in [
39 subsection subsections] C [and D] of this section, at least every five years; and
- 40 5. Documented by inspection records.

41 [~~E. F.~~] Inspection reports shall be generated and kept on file in accordance with 4VAC50-60-126
42 for all stormwater management facilities inspected by the qualifying local program.

43

44 **4VAC50-60-124. Qualifying local program stormwater management facility maintenance.**

45 A. Responsibility for the operation and maintenance of stormwater management facilities in
46 accordance with this chapter, unless assumed by a governmental agency, shall remain with the
47 property owner or other legally established entity and shall pass to any successor.

48 [1.] The government entity implementing the qualifying local program shall be a party to [each a
49] maintenance agreement [for each stormwater management facility except as provided in subdivision
50 2]. Such maintenance agreement shall include a schedule for inspections by the owner, and, in
51 addition to ensuring that each facility is maintained as designed, shall ensure that the designed flow
52 and drainage patterns from the site to a permanent facility are maintained. Such agreements may also
53 contain provisions specifying that, where maintenance or repair of a stormwater management facility
54 located on the owner's property is neglected, or the stormwater management facility becomes a public
55 health or safety concern and the owner has failed to perform the necessary maintenance and repairs
56 after receiving notice from the locality, the qualifying local program may perform the necessary
57 maintenance and repairs and recover the costs from the owner. In the specific case of a public health
58 or safety danger, the agreement may provide that the written notice may be waived by the locality.

59 [2. Maintenance agreements shall not be required for stormwater management facilities located on
60 and designed to treat stormwater runoff from an individual residential lot, provided it is demonstrated
61 to the satisfaction of the qualifying local program that future maintenance of such a facility will be
62 addressed through a deed restriction or other mechanism enforceable by the qualifying local program.
63]

64 B. [~~The~~ Where a maintenance agreement is required for a stormwater management facility, the]
65 qualifying local program shall be notified of any transfer or conveyance of ownership or responsibility
66 for maintenance of a stormwater management facility.

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67 C. [~~The~~ Where a maintenance agreement is required for a stormwater management facility, the]
68 qualifying local program shall require right-of-entry agreements or easements from the property owner
69 for purposes of inspection and maintenance.