



**County of Albemarle  
Department of Community Development**

---

**Memorandum**

**To:** Planning Commission

**From:** Mark B. Graham, Director of Community Development

**Date:** April 27, 2009

**Subject:** Virginia Stormwater Regulations Update

---

I have attached a copy of the latest update from the Virginia Department of Conservation and Recreation (DCR) on the subject. I will note several more recent changes since this information was published.

1. The document refers to regulations being in place by Fall of 2009. While DCR is still planning to promulgate the regulations this Fall, the General Assembly specifically limited the effective date until July 2010. From that date, local governments would then have approximately fifteen months to establish programs that comply with these regulations. Thus, it is anticipated the regulations will not affect development until 2011.
2. The General Assembly passed HB 2168, which allows nutrient trading for development where strict adherence to the regulations would effectively prohibit development. The following description is provided by the State for this legislation: *“Stormwater offsets. Authorizes permit issuing authorities to allow stormwater permit holders to comply with nonpoint nutrient runoff water quality criteria by acquiring nonpoint nutrient offsets that have been certified under the Chesapeake Bay Nutrient Exchange Program. The offsets have to be in the same tributary as the permitted activity and generated in the same or adjacent eight digit hydrologic unit code. The permit issuing authority may only allow the use of nonpoint nutrient offsets when the permit applicant demonstrates that (i) alternative site designs have been considered that may accommodate on-site best management practices (BMPs), (ii) on-site BMPs have been considered in alternative site designs, (iii) appropriate on-site BMPs will be implemented, and (iv) full compliance with postdevelopment nonpoint nutrient runoff compliance requirements cannot practicably be met on site. The bill also requires an offset broker to pay the permit issuing authority a fee equal to six percent of the amount paid by the permittee for the offsets.”*
3. DCR is considering “grandfathering” provisions, but nothing has been decided. This could become important for a number of projects, though it is still not clear if and how DCR might propose this. There has been some discussion in allowing this to extend to properties where there is a plan of development that was established as part of a rezoning.

## **Update on Stormwater Management Regulations in Virginia**

Three separate stormwater management permit regulations are currently being revised in Virginia and are as follows:

- 1) Modifications to the General Virginia Stormwater Management Program (VSMP) Permit for Discharges of Stormwater from Construction Activities (Part XIV of the stormwater regulations)
- 2) Revisions to the Stormwater Management Program Technical Criteria (Part II - Water Quality and Quantity), to the Local Programs Criteria (Part III), and to the Definitions, Purpose, and Applicability section (Part I)
- 3) Revisions to the Stormwater Fees (Part XIII) All three are being developed by the Virginia Soil and Water Conservation Board and the Virginia Department of Conservation and Recreation (DCR) and affect the Virginia Stormwater Management Program (VSMP) Permit Regulations. While the three are related, they address different aspects of Virginia's stormwater management program and each has its own implementation timeline.

## **Construction General Permit**

The regulatory action that will become effective initially is the revision to the **General Permit for Stormwater Discharges from Construction Activity**, the current version of which expires on June 30, 2009. This action amends Parts I and XIV of the VSMP regulations, and is not intended to greatly change technical requirements of the permit. It will not implement the recently proposed water quality and quantity technical and local program criteria discussed below. Rather, the regulations are being revised largely to increase clarity, improve permit administration and efficiency, and to mirror recent EPA changes to its own construction permit. However, because the general permit under which all individual construction permits are written expires next year, everyone holding an active construction permit will have to reapply by June 30, 2009. DCR will notify each affected permit holder in 2009 prior to the permit expiration date with instructions on how to reregister.

The Virginia Soil and Water Conservation Board is currently soliciting public comments on the revised construction general permit. Written comments must be received by DCR no later than 5 p.m., December 26, 2008. Comments, including the name and address or email address of the commenter, should be submitted to: The Regulatory Coordinator; Virginia Department of Conservation and Recreation; 203 Governor Street, Suite 302; Richmond, Virginia 23219. Comments may also be faxed to the Regulatory Coordinator at (804) 786-6141 or submitted electronically on the Virginia Regulatory Town Hall by selecting "enter a comment" at:  
**<http://townhall.virginia.gov/L/comments.cfm?stageid=4817>**.

The following public hearings will also be held to receive input on the proposed regulations. All meetings start at 7 p.m.:

Dec. 2 – Manassas City Council Chambers, 9027 Center Street, 20110

Dec. 3 – Roanoke City Council Chambers, Noel C. Taylor Municipal Building, 215 Church Avenue S.W., 24011

Dec. 10 – Williamsburg City Council Chambers, 412 North Boundary Street, 23185

## **Local stormwater programs and fees**

The remaining two regulatory actions [**Stormwater Water Quality and Quantity Technical Criteria and Local Program Criteria (Parts I, II, and III)** and **Revisions to Stormwater Fees (Part XIII)**] will result in more extensive changes to the VSMP regulations and seek to establish criteria for local stormwater management programs (including technical criteria) and establish new fees related to stormwater management permitting. Both have long range implications for land disturbing operations in order to better address water quality and quantity issues statewide and will eventually lead to a later

modification of the general construction permits mentioned earlier. Since any regulations adopted will be phased in over a timeframe included in the draft regulations, it is likely that localities and the regulated community will have time to adjust to the changes over several years.

The proposed action dealing with local program criteria is technically known as **Stormwater Water Quality and Quantity Technical Criteria and Local Program Criteria (Parts I, II, and III)**. Part I is simply definitions of terms and items used throughout the VSMP regulations, including Parts II and III. Part II establishes new water quality and quantity criteria that have been designed to minimize the impacts of nutrient and sediment runoff from land disturbing activities related to development and to stabilize stream channels and reduce downstream flooding. Part III establishes the requirements that localities will eventually need to meet in order to have a locality administered or “qualifying local” stormwater management program and it also outlines the requirements that DCR will utilize in those jurisdictions where DCR will administer the stormwater program instead of the local government. (Note: state law allows certain jurisdictions the option to opt-in to the program and requires others to have their own state-approved program.) Part III also includes procedures for program authorization and review and approval of local programs by the Virginia Soil and Water Conservation Board.

The proposal for new fees is labeled **Revisions to Stormwater Fees (Part XIII)**. As the name implies, this action seeks to set fees that are sufficient to cover expenses associated with all portions of the administration of the state’s stormwater management permit program at both the state and local levels, as mandated by the Virginia General Assembly. Unlike nearly all other environmental programs, state law requires that permit fees cover expenses associated with this program, as no state general funds are provided for it. The proposed permit fees have been set to cover plan review, permit review and issuance, inspections, enforcement, and program administration and oversight. They also include DCR’s oversight functions and database management costs. Annual maintenance fees have been proposed to allow local programs to recoup inspection and enforcement expenses for a project that has not been completed and terminated within the first year. The new fees will not apply to the development projects currently covered under the existing construction general permit.

## **Public comment**

There have already been several years of significant discussion with technical experts and other stakeholders in developing the technical and local program criteria. A Technical Advisory Committee, a Water Quantity Workgroup, a BMP Clearinghouse Advisory Committee, and a Handbook Advisory Committee have been at work with DCR staff over the past three years developing the draft criteria. Representatives from local government, the development/construction community and conservation organizations have been active participants in these advisory committees. Forty-four public meetings, ranging from technical advisory committee and subcommittee meetings, technical discussion group meetings and charettes (intensive planning sessions) attended by 300 people have been held as DCR has attempted to broaden public review and to have what is believed to be one of the most open and public environmental regulatory processes ever undertaken. DCR also contracted with the nationally acclaimed Center for Watershed Protection and Virginia Tech for scientific and technical support, BMP Clearinghouse development, and economic impact analysis to help support, direct, and evaluate the regulations.

Currently, these draft regulations have been authorized to move forward for even more public review and comment. It is anticipated that 60-day public comment periods for both the criteria and fee actions will begin in Spring 2009. Once the comment period is completed, DCR will review all of the comments and make appropriate changes that will be brought to the Virginia Soil and Water Conservation Board for final approval, likely in the Fall of 2009.

## **Who is affected when?**

**Contractors/Developers:** Those with active general construction permit coverage will either need to reapply for permit coverage prior to June 30, 2009, or, for completed projects, to submit Notices of Termination. More instruction from DCR will be sent to all registered under the current permit prior to the expiration date.

Contractors and developers will also be affected by new technical criteria, development of local programs and new fees. These changes are unlikely to occur before 2011.

**Local governments:** Establishment of local programs and fees are not likely to begin until 2010. It is unlikely that local programs will begin issuing the construction general permits before 2011.

**General Public:** The public is likely to begin seeing improvements in stormwater management once these regulations are put into place. Stormwater runoff is a significant contributor to the degradation of streams and creeks and the Chesapeake Bay. Virginia's proposed stormwater management regulations, along with upgrades in sewage treatment plants and increased conservation on agricultural lands, are major components to the Commonwealth's clean water plan.

### **There's more**

For much more detailed information on all of these stormwater regulation actions, go to the DCR website at [www.dcr.virginia.gov](http://www.dcr.virginia.gov). Then click on "Policy, Regulations and Public Comments" on the right of the page and then click on the tabs labeled "Stormwater Parts 1, 2, 3, and 13" or "Construction General Permit". Or contact DCR Policy and Planning Assistant Director Ryan Brown at (804) 786-2871 or [ryan.brown@dcr.virginia.gov](mailto:ryan.brown@dcr.virginia.gov).

Prepared by the Virginia Department of Conservation and Recreation  
November 22, 2008