

## MAIN POINTS ON UPCOMING WATER QUALITY REGULATIONS 12/14/07

**The Problem:** Land development activities are an increasing source of stormwater-related problems including water pollution, stream channel erosion, depletion of groundwater resources, and localized flooding.

Virginia is revising its Stormwater Regulations to clarify responsibilities and standards for addressing these adverse impacts of land development. These regulations will require significant changes in site design and thus in site design review. This will affect local development review programs at every level of government across the state.

### Current Regulations

Virginia already has stormwater regulations on the books requiring landowners or operators to get a Virginia Stormwater Management Program (VSMP) General Permit.

- Criteria: construction activities that disturb 1 acre or more of land
- Applies to entire state (some stricter regulations apply east of I-95)
- Single-family construction that is part of a subdivision that in total disturbs more than 1 acre must get a permit
- Exemptions include agriculture, except farm buildings and roads to them
- Permits issued by Virginia Department of Conservation and Recreation (DCR)
- For information: Mark Chambers, DCR Staunton office, (540) 332-9225
- Details on DCR website (Google 'Virginia Stormwater Management Program')
- Erosion and Sediment Control regulations address runoff during construction; water quality regulations address how a site functions after development.

### Upcoming Stormwater Regulations

The biggest change will be that development projects will need an approved stormwater permit before construction begins. This permit can only be obtained after review by a plan-approving authority. Stormwater management thus will become a standard, required part of site design review. Most localities in the Valley will be offered the option of running their own programs or letting the state administer their program. (The handful of designated MS4 localities will be required to establish local programs.)

The proposed regulations include many elements, all being developed at once:

- Stormwater Regulations (including site design criteria)
- Stormwater Management Handbook
- Web-based supporting resources
- Local Programs
- Fee Structure

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*Notes provided by the Valley Conservation Council (VCC) Much of this information was taken from the workshop Water Quality and Development: A Growing Challenge to Localities (Sept. 26, 2007) organized by VCC in coordination with a local Stormwater Advisory Committee and the Virginia Department of Conservation and Recreation.*

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**Status:**

A revised Notice of Intent of Regulatory Action (NOIRA) is expected soon. A rough estimated timeline is for completion of the proposed regulations by next summer, followed by reviews and public comment and then final approval from EPA in late 2009. (These regulations stem from EPA requirements as part of Virginia's NPDES permit.)

While these regulations may seem a long way off, the change to development design, and to the design review process, will be substantial. The sooner localities begin to understand and move their programs in this direction, the smoother this transition will be. The goal of VCC activities through the Shenandoah Land Use Network has been to help localities work through the complexities of these regulatory proposals and to support the development of ordinances and land use policies that protect water quality.

**Summary of Proposed Regulations:**

The core of the draft regulations will be a "Nutrient Design System" which does two things: 1) sets a specific numerical pollution limit for each site and 2) allows for site design best management practices (BMPs) to help meet the requirements.

Key design principle: Water quality is best protected by minimizing land disturbance and managing stormwater close to the source. This contrasts with the conventional practice of funneling stormwater efficiently through and off the site. 'Low impact development' (LID) designs will be encouraged. These should have many benefits, but will require more time-intensive design and review.

**Criteria:**

Specific pollution limits will be set and might be keyed to different nutrients depending on impervious surface area:

- < 40% impervious surface: Phosphorus limit of 0.28 lbs/acre/year
- > 40% impervious surface: Nitrogen limit of 2.68 lbs/acre/year

**Site Design Credits:**

Site design credits will provide a common language for reviewers and developers so that Best Management Practices (BMPs) can be used to reduce compliance requirements. The amount of credit for each practice will be specified. The developer can choose designs accordingly and the reviewer can determine whether a plan meets the regulations.

**Resources** – A revised Stormwater Handbook and a web-based clearinghouse through Virginia Tech will provide technical resources to support the site design process.

**Local Programs** – All localities (cities, counties, towns) will have to either set up programs or let the state administer them. DCR believes that most will 'opt in' because of the advantages of one-stop shopping for developers and more local control over the process. There will be possibilities for combining with other localities or agencies on program administration.

**State Fees** – Recognizing the costs associated with stormwater permitting programs, the state directed that a fee structure be set up that would cover these administrative costs.

These fees (set statewide) will be part of the proposed regulatory package. The fees are supposed to be enough to cover the costs of administering the program. Localities that run their own programs will keep 70% of the fees. The remaining 30% will go to DCR for program oversight. For this reason, stormwater fees should be kept separate from other fees.

**Upshot** – Localities should recognize that the stormwater regulations will require a permit program and staffing at a level and training necessary to conduct site plan review and ongoing inspections. These are costs, but the statewide fee system is intended to cover these costs. These measures also reflect a need. As one member of the SLUN Stormwater Advisory Committee commented, stormwater has long had costs; there just has not been a way to deal with them before.

### **More Information on the State Website**

Details can be found on the VDCR website: <http://www.dcr.virginia.gov/lawregs.shtml>

Items of note:

- Current stormwater regulations (Virginia Stormwater Management Program) are explained at [http://www.dcr.virginia.gov/soil\\_&\\_water/stormwat.shtml](http://www.dcr.virginia.gov/soil_&_water/stormwat.shtml).
- Current drafts of proposed elements (regulations, local programs, fees) are under the Sept. 21, 2007 meeting of Virginia Soil and Water Conservation Board.
- Nutrient Design System description (presentation by Center for Watershed Protection) is under the May 2007 meeting of the Stormwater Regulations TAC.