

**ACTION ITEM
BOARD OF SUPERVISORS**

DATE: August 18, 2009

TO: Board of Supervisors

FROM: Keith C. Dayton *KCD*
Director of Public Works

ISSUE: Provide Comments on Proposed Revisions to the Virginia Stormwater Management Regulations

STAFF RECOMMENDATION: Approval

BUDGET IMPACT: N/A

ATTACHMENTS: (2)

- [1] Background Report [2] **Reso/Ord/Proc # R09-321**
- [] [] **Reso/Ord/Proc #**
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REVIEW: [X] County Administrator's Office *Paul Powell*

[X] Legal *Joseph R. Howard, Jr.*

[X] Planning and Zoning *Katryn C. Boh*

- [] **Consent Agenda** [] **Other Business** [] **Public Hearing**
- [] **Discussion Item** [] **Presentation** [] **Unfinished Business**
- [X] **New Business**

PRESENTATION BY: N/A

ELECTION DISTRICT: N/A

BACKGROUND REPORT

The Commonwealth of Virginia, through the Department of Conservation and Recreation (DCR), has been working for several years to update the requirements of the Virginia Stormwater Management Regulations. The proposed revisions to the regulations include the following:

- Establishment of (and revision to) statewide technical criteria for stormwater quantity and quality control;
- Establishment of minimum criteria and ordinance requirements for a qualifying local stormwater management program;
- Establishment of criteria for a locality to administer the Virginia Stormwater Management Program (VSMP) for stormwater discharge from construction activities; and
- Establishment of a fee schedule for Virginia Stormwater Management Program (VSMP) stormwater discharge permits.

House Bill 1177, which was adopted by the General Assembly in 2004, was the impetus for the revisions to the regulations. House Bill 1177 requires all localities in Virginia that are regulated by either the Chesapeake Bay Preservation Act (CBPA) or the National Pollution Discharge Elimination System (NPDES) program to adopt a local stormwater management program and to develop a program to issue VSMP permits for construction activities. Since the County is regulated by NPDES and CBPA, we will be required to adopt the program as mentioned above.

The proposed regulations have been published in the Virginia Register and the comment period ends on August 21, 2009. The regulations will still have to be formally approved by the Virginia Soil and Water Conservation Board and the County will subsequently have 18 months from the approval date to implement the requirements of the regulations.

Stafford is a leader in the Commonwealth in stormwater programs and low impact development (LID). While staff supports the technical aspect of the regulations, we are concerned about some of the administrative aspects.

Staff recommends that the Board authorize the County Administrator to provide the following comments to DCR:

- The proposed regulations (4VAC-50-60-800 et seq.) establish prescriptive fees for localities that administer the Virginia Stormwater Management Program (VSMP) including stormwater plan review, program administration, and inspection activities. We recommend that the regulations do not prescribe specific fees for these services and that localities be allowed to establish their own fee schedules commensurate with the cost of providing the necessary services. If the regulations must provide prescriptive fees, we recommend that the proposed fees be increased.

- In addition to setting fee amounts, the proposed regulations (4VAC50-60-780) also specify that 28% of the fees that the County collects for administering the VSMP program shall be returned to DCR for program administration and oversight. We feel that remitting 28% of the collected fees to DCR for oversight is excessive. DCR currently provides oversight of our Erosion and Sediment Control program at no direct cost to the County. We feel that all of these funds should be kept by the County for our own stormwater program needs. If DCR must collect funds to support program administration and oversight, we recommend that their portion of the collected amount be much lower than 28%.
- The proposed regulations (4VAC50-60-800 and 4VAC 50-60-830) also propose an increase in fees for the County's VSMP Municipal Stormwater Discharge Permit (NPDES permit) from the current amount of \$600 to \$4000. In addition, the proposed regulations also establish an annual "permit maintenance" fee of \$4000 per year. Effectively, this would increase the permit fees for the County's NPDES permit from \$600 to \$20,000 for the 5 year permit term. We believe that such a significant increase in municipal permit fees is excessive.
- A significant amount of "guidance" is being developed to support these regulations (i.e. State Stormwater Handbook, BMP Clearinghouse Database); however, this "guidance" is not widely available to be reviewed or in some cases has not yet been prepared. Since the regulations rely heavily on the "guidance" it is difficult to fully evaluate them without also having the "guidance". We feel that all "guidance" documents needed to support the regulations should be available for review and comment prior to adoption of the regulations.
- The proposed regulations (4VAC50-60-10 and 4VAC50-60-66) provide definitions for the terms "stable" and "unstable" in the context of natural or restored receiving stream channel. We believe that the terms, as currently defined, are vague and could allow for subjectivity during the stormwater plan preparation and review process. We recommend that the regulations provide more detailed definitions of these terms and, if necessary, that additional guidance on implementing this portion of the stormwater quantity control requirements be prepared.

PROPOSED

BOARD OF SUPERVISORS
COUNTY OF STAFFORD
STAFFORD, VIRGINIA

RESOLUTION

At a regular meeting of the Stafford County Board of Supervisors (the Board) held in the Board Chambers, Stafford County Administration Center, Stafford, Virginia, on the 18th day of August, 2009:

MEMBERS:

George H. Schwartz, Chairman
Harry E. Crisp II, Vice Chairman
M. S. "Joe" Brito
Mark Dudenhefer
Paul V. Milde III
Cord A. Sterling
Robert "Bob" Woodson

VOTE:

On motion of , seconded by , which carried by a vote of , the following was adopted:

A RESOLUTION TO AUTHORIZE THE COUNTY ADMINISTRATOR
TO PROVIDE COMMENTS TO THE VIRGINIA DEPARTMENT OF
CONSERVATION AND RECREATION ON PROPOSED REVISIONS TO
THE VIRGINIA STORMWATER MANAGEMENT REGULATIONS

WHEREAS, the County of Stafford is subject to the requirements Virginia Stormwater Management Law and Regulations; and

WHEREAS, the Virginia Department of Conservation and Recreation (DCR) has been tasked with promulgating revisions to the Virginia Stormwater Management Regulations; and

WHEREAS, a public notice of proposed regulatory action was advertised in the *Virginia Register*; and

WHEREAS, the time period for public comments on the proposed revisions to the Virginia Stormwater Management Regulations expires on August 21, 2009; and

WHEREAS, the Board has concerns with the administrative requirements of the proposed regulations and desires to provide comments to DCR;

NOW, THEREFORE, BE IT RESOLVED by the Stafford County Board of Supervisors on this the 18th day of August, 2009, that the County Administrator be and he hereby is authorized to provide the following comments on proposed revisions to the Virginia Stormwater Management Regulations to the Virginia Department of Conservation and Recreation:

- The proposed regulations (4VAC-50-60-800 et seq.) establish prescriptive fees for localities that administer the Virginia Stormwater Management Program (VSMP) including stormwater plan review, program administration, and inspection activities. We recommend that the regulations do not prescribe specific fees for these services and that localities be allowed to establish their own fee schedules commensurate with the cost of providing the necessary services. If the regulations must provide prescriptive fees, we recommend that the proposed fees be increased.
- In addition to setting fee amounts, the proposed regulations (4VAC50-60-780) also specify that 28% of the fees that the County collects for administering the VSMP program shall be returned to DCR for program administration and oversight. We feel that remitting 28% of the collected fees to DCR for oversight is excessive. DCR currently provides oversight of our Erosion and Sediment Control program at no direct cost to the County. We feel that all of these funds should be kept by the County for our own stormwater program needs. If DCR must collect funds to support program administration and oversight, we recommend that their portion of the collected amount be much lower than 28%.
- The proposed regulations (4VAC50-60-800 and 4VAC 50-60-830) also propose an increase in fees for the County's VSMP Municipal Stormwater Discharge Permit (NPDES permit) from the current amount of \$600 to \$4,000. In addition, the proposed regulations also establish an annual "permit maintenance" fee of \$4000 per year. Effectively, this would increase the permit fees for the County's NPDES permit from \$600 to \$20,000 for the 5 year permit term. We believe that such a significant increase in municipal permit fees is excessive.
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