

**October 5, 2009**

### **Soil and Water Conservation Board acts on stormwater regulations**

On Oct. 5, the Virginia Soil and Water Conservation Board adopted on a 7-1 vote a heavily amended version of the Virginia Stormwater Management Permit (VSMP) Program regulations. Because of many substantive changes made to the original version of the regulations as they were adopted by the Board more than a year ago, the public will be provided with an additional 30-day period to review the amendments and provide comments. The new public comment period will formally begin on Oct. 26 when the amended VSMP regulations are expected to be published in the *Virginia Register*.

After reviewing the public comments, the Soil and Water Conservation Board is then scheduled to vote on final adoption of the VSMP regulations when it meets sometime around Dec. 9. Even if the new regulations are adopted in December, the General Assembly (under [HB 1991](#), Bulova) has prohibited the new rule from going into effect until July 1, 2010.

Here is a summary of the chief changes to the proposed rule:

#### **1.) Water quality standards for areas not included in the Chesapeake Bay Watershed.**

The original proposal required a statewide phosphorus limit of .28 pound per acre per year of stormwater runoff from construction sites. In response to concerns raised by local governments, developers and others, the Soil and Water Conservation Board adopted a limit of .45 pound per acre per year of phosphorus in stormwater runoff in areas outside of the Chesapeake Bay watershed. Localities with approved programs may adopt stricter standards at their option.

#### **2.) Phosphorus limits for projects with less than one acre in land disturbance.**

Under the original proposal all construction sites regardless of size would have been subject to the phosphorus limit of .28 pound per acre per year. For construction sites where less than one acre of land is disturbed, the Soil and Water Conservation Board amended the proposed rule by allowing maximum runoff limit of .45 pound per acre per year. Localities with approved programs throughout the state would be allowed to adopt stricter standards.

For redevelopment projects, the original proposal required the total phosphorus load from prior developed lands to be reduced to “at least 20 percent below the predevelopment total phosphorus load.” The Soil and Water Conservation Board has

adopted an amended rule allowing sites disturbing less than one acre to achieve a 10 percent reduction rate from pre-development loadings.

### **3.) Phosphorus limits in urban development areas (UDAs).**

The Soil and Water Conservation Board's amended rule would allow local governments with approved programs to adopt a maximum phosphorus runoff limit of .45 pound per acre per year in UDAs.

### **4.) Inspection and enforcement programs**

In response to concerns raised by VACo and many localities about the potential for unreasonable inspection burdens on individual lots, the Soil and Water Conservation Board adopted an amendment clarifying that a locality with an approved plan is allowed to develop strategies for dealing with de-centralized treatment systems on individual lots. The language specifies that "such facilities shall not be subject to the requirement for an inspection to be subject to the requirement for an inspection to be conducted by the qualifying local program every five years."

### **5.) Increased flexibility on fees**

In response to concerns raised by VACo and many localities, the Soil and Water Conservation Board made a change that would allow localities with approved programs more flexibility in developing a schedule of permit fees to pay for program costs. The VSMP regulations - as originally proposed - sought to establish a uniform, statewide schedule of fees. The amended rule allows localities with approved programs to impose higher fees if a successful demonstration is made to the Soil and Water Conservation Board that they are necessary to meet program costs.

### **6.) Grandfathering for Approved projects**

During the public comment period concerns were raised by many stakeholders over the absence of any grandfathering provisions. Where significant money and time had been invested on the basis of the current regulatory framework, this was largely seen as a major omission in the original proposal. The amended regulations grandfather projects

that receive coverage under the current VSMP General Permit for Discharges of Stormwater for Construction Activities that expires on June 14, 2014.

More information on the proposed VSMP regulations as amended is forthcoming. Please check VACo's Web site at [www.vaco.org](http://www.vaco.org) for the most up-to-date information.

Once the new version of the proposed rule is available, local governments are encouraged to review the amendments and provide comments to the Department of Conservation and Recreation.

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