Virginia Association of Counties

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August 21, 2009

Mr. David C. Dowling
Policy, Planning and Budget Director
Virginia Department of Conservation and Recreation
203 Governor Street, Suite 302
Richmond, VA 23219

Re: Comments on the proposed parts I, II, III and XIII of the Stormwater Regulations (4 VAC 50-60)

Dear Mr. Dowling:

The Virginia Association of Counties (VACo) has closely monitored the development of proposed amendments to the Virginia Stormwater Management Program (VSMP) Permit regulations.

VACo is a statewide, nonprofit, nonpartisan organization representing and serving the Commonwealth's 95 counties. VACo's purpose is to support county officials and to effectively represent, promote and protect the interests of counties to better serve the people of Virginia.

VACo sincerely appreciates efforts by the Department of Conservation and Recreation to involve all stakeholders in the process. At VACo, we are aware of the difficulties involved with these efforts, and recognize and appreciate DCR's inclusion of many representatives from local governments on the Technical Advisory Committee that met many times over the past two years on a regular basis to assist with development of the proposed rule.

The proposed VSMP Permit regulations contain many extremely significant provisions. VACo has received communications from several county officials expressing major concerns that need to be seriously considered as the proposed rule continues to be evaluated. VACo has also reviewed the *Economic Impact Analysis of Revisions to the Virginia Stormwater Regulation* developed by Kurt Stephenson and Bobby Beamer. This report identifies major issues that need to be in the public comment process. VACo has also reviewed other analyses of the proposed VSMP Permit Regulations that warrant serious attention.

The proposed VSMP Permit regulations need to be considered against the backdrop of harsh economic realities that counties currently face. Local governments in Virginia are now experiencing serious revenue shortfalls that are affecting their ability to provide services. Many counties have found no other alternative than to make painful spending cuts. Over the next several years, VACo expects these conditions to persist.

Under the proposed VSMP Permit regulations, 33 counties in Virginia will be required to adopt stormwater management programs. The remaining 62 counties have the option of adopting programs, so any county not exercising this option will have their stormwater programs managed and enforced by DCR. Those counties not administering their programs will have a major stake in DCR's performance in managing their programs.

It is within the context of these concerns that VACo submits the following comments on the proposed VSMP Permit regulations.

1.) Local government fiscal impacts and fees

The Stephenson-Beamer economic impact analysis states that the "local and state government cost to administer local stormwater programs will increase" and that "rough (not yet final) estimates ranges between $13 million and $17.5 million." The report also states "fee revenue would appear sufficient to pay for the majority or all of the incremental costs in an 'average' or typical year. Yet, program revenue will be largely dependent on the level of economic activity in the construction industry."

The fluctuating nature of fee revenues could cause major problems for both state and local program administrative activities associated with regular inspection and enforcement. Local governments administering their own programs should be allowed to adopt their own fee schedules to meet regular, long-term program costs. In developing the fee schedule, VACo is also concerned that variations in costs among different regions and localities across the state have not been adequately considered.

VACo is also concerned that the proposed rule significantly increases permit application and maintenance fees for small MS4s from $600 to $4,000 a year. Consideration should be given to a more reasonable fee increase.

2.) Overall economic impacts are extremely significant and justify a delay in adoption of Part II

Many analyses have reflected major economic impacts that would be caused by the proposed VSMP Permit regulations. One county has estimated that for a 10-acre residential infill

development project, compliance costs would increase from $1,200 to $23,000. Another county has estimated an increase in cost from $175,000 to $530,000 for a 15-acre school site. According to information from Hampton Roads Planning District (based on data compiled by the Tidewater Builders Association) the proposed regulations would increase from $596,429 to $5,050,526 compliance costs for an eight-acre redevelopment site. On this particular redevelopment site, the cost for each pound of reduction in phosphorus would increase from $180,736 to $863,338. The Timmons Group produced an analysis that showed a cost of $18,962 for each pound of phosphorus reduced on a 134-acre mixed use development project.

These significant impacts will limit the scope and nature of development and redevelopment projects for years to come. Because these added costs (described in some commentaries as "prohibitive") are likely to have inflationary impacts on other economic activities, VACo believes it is important to allow additional time for the technical criteria driving these costs to undergo further examination. VACo requests the adoption of proposed VSMP Permit regulations in two phases. The first phase would be adoption of amendments to Part I (Definitions, Purpose, Applicability) , Part III (A-D Local Programs/Administration), and Part XIII (Fees) in the first year of consideration (2009). Adoption of Part II (Stormwater Management Program Technical Criteria) would be targeted for the end of 2010 following additional review by DCR with the involvement of all stakeholders with adequate time allowed for public comment. This would allow an extended period of time to test the proposed criteria in all types of development situations. Furthermore, many local stormwater administrators have expressed concern that the Stormwater Handbook and BMP Clearinghouse that are frequently referenced in the proposed regulation are still not completed. Until these resources are available to local governments, it will be difficult to fully understand the impacts of the proposed regulations. The two-phase proposal would also allow an appropriate period of time to determine how the "offset" program approved by the 2009 General Assembly can be structured by state and local governments for the most effective and efficient stormwater management programs possible.

3.) Effects of the proposed rule on redevelopment

4VAC50-60-63.2 requires that the "total phosphorus load of projects occurring on prior developed lands shall be reduced to an amount at least 20 percent below the predevelopment total phosphorus load." Cost estimates of certain redevelopment projects cited in section "2" of this letter provide evidence of how this proposed "20 percent reduction" standard can constitute a financial disincentive toward redevelopment while generating sprawl, a development pattern that has been shown to cause environmental problems while increasing the costs of such public services as building and maintaining roads, extending water and sewer lines, and protecting public safety. For VACo, this is an extremely serious issue, and constitutes a very compelling reason to delay adoption of Part II of the proposed VSMP Permit regulations until impacts of the "20 percent reduction" standard for redevelopment are better understood and mitigated.

VACo also notes that the regulatory framework proposed by the Soil and Water Conservation Board actually may conflict with new state law supporting more compact development. Under HB 3202 passed by the 2008 General Assembly local governments with high population growth

rates are required to designate Urban Development Areas to encourage high density residential and commercial development. How the proposed regulations could inflate costs associated with such development, as well as needed public infrastructure, has not been adequately addressed.

4.) Administration, inspection and enforcement

Concerns have been raised over local government enforcement and inspection responsibilities especially with respect to such decentralized facilities as green roofs, rooftop downspout connections, cisterns, and pervious driveways that would be located on single family residences. Many local governments have commented that they will be held accountable through their MS4 permits for the ability of these facilities to achieve their designed removal rates on a long-term basis. This would place local governments in positions of relying upon actions by property owners to achieve water quality standards. This proposed enforcement regime would be difficult and expensive for local governments to administer.

VACo believes that a more effective approach for private residences is education and outreach rather than regular inspections by local governments. Within the context of reasonable and minimal criteria developed by DCR, many details associated with local administration, inspection and enforcement should be determined by the local government. Performance standards should be set by the Soil and Water Conservation Board with local governments being allowed to determine how to achieve them. For example, VACo believes it is unnecessary for the proposed regulations to establish a fifteen (15) day deadline for determining the completeness of a stormwater management plan as provided in 4VAC50-60-108.B.3. Typically, rather than being considered as a separate, stand-alone document, stormwater plans are evaluated as part of a more complete site plan, subdivision plan or grading plan. VACo recommends that localities be allowed to establish their own timeframes.

Also, 4VAC50-60-106.B requires a local government to adopt an ordinance that sets out procedures for long-term maintenance and inspection of stormwater management facilities. These are administrative activities that often are not established under ordinance. VACo recommends that an ordinance for these types of procedures be optional, not mandatory.

5.) Transition to new requirements and grandfathering.

VACo appreciates recent comments by DCR's staff relating to the establishment of clear rules applying to the transition from current to new requirements and how existing projects already submitted for approval to local governments will be affected. This will be significant for large, multi-phased developments where some of the plans have already been approved under existing requirements. It is vital that DCR release these newly proposed rules for public comment prior to final approval of the VSMP Permit regulations.

In summary

In recent years VACo has enjoyed a strong working relationship with DCR on many programs and issues of mutual interest and concern. During that period of time, VACo has been extremely appreciative of DCR's many attempts to consider issues raised by local government officials, and we are confident that the strong partnership between our organizations will continue.

As the proposed revisions to the VSMP Permit regulations undergo further evaluation and public comment, please consider VACo as a resource for communicating with, and drawing ideas from, local officials. Many county officials in Virginia care passionately about the quality of water in Virginia. They are eager to work as partners with DCR and the Virginia Soil and Water Control Board to improve the effectiveness and efficiency of state and local stormwater management programs.

Thank you very much for your consideration of the comments and concerns raised in this letter. Please do not hesitate to contact VACo to discuss all matters pertinent to the proposed VSMP Permit regulations. VACo's staff contact on this issue is Larry Land who can be reached at 343-2504, or via email at Lland@vaco.org.

Sincerely,

James D. Campbell, CAE
Executive Director

JDC/cic