

STORMWATER MANAGEMENT ORDINANCE: HIGHLIGHTS

VIRGINIA ASSOCIATION OF COUNTIES
79TH ANNUAL CONFERENCE
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VSMP PROGRAM OVERVIEW

- Local VSMP established to administer and enforce Construction General Permit requirements:
 - DEQ still approves Construction General Permit
 - But intended to allow “one stop shop” for developers
- Local Program will grant local VSMP permit, if General Permit requirements are met.



TIMELINE: VSMP ADOPTION SCHEDULE

December 15, 2013:

Localities submit preliminary local VSMP application packages for final review by DEQ

April 1, 2014:

Final VSMP application packages submitted for review by DEQ

May 13, 2014:

Deadline for DEQ to either approve or not approve application packages

June 13, 2014: Deadline for local adoption of Final VSMPs

July 1, 2014: Deadline for implementation of Final VSMPs



PRELIMINARY PROGRAM COMPONENTS SUBMITTED TO DEQ

- Funding and Staffing Plan
- Policies and Procedures
- Local VSMP Ordinance



LOCAL ORDINANCE REQUIREMENTS

- Identification of the authorit(ies) accepting registrations, completing plan review, plan approval, inspections and enforcement
- Submission and approval of an E&S Plan and Stormwater Management Plan (SWMP)
- Provisions to ensure all necessary plans meet necessary state requirements (for SWPPPs, SWMPs and PPPs)
- Inspections and Monitoring of Construction Activities
- Long-term inspections and maintenance
- Enforcement procedures and penalties



PROGRAM APPLICABILITY

- VSMP Permit required for most land disturbing activities over one acre.
- Currently includes single family residences and land disturbing of less than an acre if part of a “common plan of development or sale.”



OPPORTUNITY TO COMMENT

- Proposed amendment to VSMP regulations
 - “Individual lots or parcels in a residential, commercial, or individual common plan of development or sale shall not be considered to be separate land-disturbing activities. Instead, the common plan, as a whole, shall be considered to be a single land-disturbing activity.”



LOCAL PERMIT REQUIREMENTS

- Submission and approval requirements for local VSMP permit:
 - General Permit registration statement
 - Required Plans
 - Other control measures
 - Fees
 - Proof of off-site mitigation measures
 - Bond



PLAN OVERVIEW



MAINTENANCE REQUIREMENTS

- Applicant must provide for the long-term maintenance of installed stormwater management facilities
- Ordinance must require (at minimum) recordation of instrument which:
 - i) identifies the facilities
 - ii) identifies the necessary maintenance and inspection requirements of the facilities, and
 - iii) provides for all necessary easements and access to allow required inspections and maintenance of the facilities to occur.



INSPECTION REQUIREMENTS

- Inspections required during construction
- Post-construction inspections of stormwater maintenance facilities must be conducted pursuant to the Locality's adopted inspection program, and shall occur, at minimum, at least once every five (5) years.
- Third-party inspections permitted.
- Not included in Fee Schedule.



HEARING REQUIREMENT

- Ordinance must provide for formal hearings.
 - State law requires that any permit applicant or permittee aggrieved by any action or inaction of the VSMP Authority taken without a formal hearing, may demand in writing a formal hearing by the VSMP Authority.
 - Must be filed within 30 days.
 - Formal hearings must be held consistent with state administrative processes.
 - Problematic for Local Governments
 - Va. Code § 62.1-44.15:45



APPEALS

- Appeals to be conducted “in accordance with local appeal procedures.”
- No specific authority given to appeal to the Circuit Court.
- Va. Code § 62.1-44.15:46



ENFORCEMENT PROVISIONS

- Enforcement provisions must incorporate:
 - Informal and formal administrative enforcement procedures
 - and
 - Civil and criminal judicial enforcement procedures
 - Currently 4 VAC 50-60-116, to be recodified as 9 VAC 25-870-116
 - Based on Administrative Process Act (not applicable to local governments)



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