



Kerr Environmental Services Corp.

New Virginia Stormwater Regulations Finalized

On August 29, 2011 the Virginia Soil and Water Conservation Board published in the Virginia Register the Final Virginia Stormwater Management Program (VSMP) Permit Regulations. These regulations become effective on September 13, 2011, marking the end of a nearly six year process since the Board issued its original Notice of Intended Regulatory Action on November 15, 2005. The following is an abbreviated summary of the regulations. The regulations cover many topics, and unfortunately could not all be addressed below.

Schedule for Implementation at the Local Level

While the regulations become effective September 13, 2011, it will be some time before they are implemented by localities. For those localities located within Tidewater Virginia as defined by the Chesapeake Bay Preservation Act, they have no less than 15 months and no more than 21 months following the effective date to adopt ordinances implementing these regulations, with an allowance for an additional 12 month extension. Consequently local ordinances will likely not become effective sooner than December 2012 and would have to be effective between June 2013 and June 2014. Between now and then the DCR is establishing committees with local governments and crafting a model ordinance for consideration by localities among other activities.

Grandfathering

As a member of the Grandfathering Subcommittee, I feel a very fair and balanced grandfathering procedure was achieved that will be of benefit to the homebuilding industry. For those projects that have already secured VSMP coverage under the July 1, 2009 VSMP General Permit, existing stormwater criteria will be grandfathered for the duration of that permit (June 30, 2014), and for two additional permit cycles. As the permits are valid for five years each, the two additional cycles would grandfather stormwater designs until June 30, 2024 as long as the coverage is maintained.

Grandfathering is also available until June 30, 2019 for projects that have not yet secured VSMP coverage but which have achieved one of the following: currently valid proffered or conditional zoning plan, preliminary or final subdivision plat, preliminary or final site plan or zoning with a plan of development or "any document determined by the locality as being equivalent thereto" and was approved prior to July 1, 2012. This grandfathering is conditioned on two criteria: 1) the approvals noted above were accompanied by a "layout" (defined in the regulation), and 2) the resulting development will comply with the stormwater regulations in place at the time of the approved project. This grandfathering even allows for modifications or amendments to such previously approved projects based on the committee's awareness that projects rarely are built without some modification. Other forms of grandfathering are available for public projects and those involving governmental bonding or public debt financing.

VSMP Exemption within Chesapeake Bay Act Jurisdictions

Land disturbing activities equal to or greater than 2,500 square feet, and less than one acre in all jurisdictions subject to the Chesapeake Bay Act will not require a VSMP Registration Statement or a Stormwater Pollution Prevention Act but are required to meet all other criteria.

Runoff Reduction Method and Treatment Trains

The new stormwater quality requirements will result in more treatment practices and targeting runoff at its source. The loading limit of 0.41 pounds per acre per year for new development may not look much differ-



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ent than the 0.45 lb/ac/yr standard used in the outgoing Chesapeake Bay Preservation Act procedures, but the methods used in calculating the loading have changed significantly. Compliance will be evaluated through the use of the Virginia Runoff Reduction Method, a series of spreadsheets for new development and redevelopment. Benefits to this new approach is that reduction in runoff will equate to reduction in pollutant loading, and that Best Management Practices (BMPs) will now be given additional benefit when used in series (treatment trains). A detriment is that turf is now considered as a source of runoff whereas previously runoff was only computed for impervious areas. The old manner of achieving stormwater quality and quantity requirements with a single wet pond is, for most cases, no longer sufficient.

Redevelopment

For redevelopment greater than or equal to one acre (and no net increase in impervious cover), total phosphorus reduction shall be 20% below predevelopment loading. Redevelopment of less than one acre, with no net increase in impervious cover, must reduce the existing phosphorus load by 10%. Redevelopment involving a net increase in impervious area must use the new development standard for the increased impervious area and use the appropriate redevelopment standard for the balance of the site.

Offsite Compliance and Nutrient Exchanges

There are a number of off-site compliance options including: those on other property owned by the operator, controls established in response to a watershed plan, locality pro rata share program, non-point nutrient offset program, and any other option approved by the applicable state agency or board. Off-site allocations can only be used when in the same HUC code, which are smaller HUC codes than those used by wetland/stream mitigation banks. These options can only be utilized under the following conditions: projects involving less than five acres of disturbance, the post-construction phosphorus control requirement is less than 10 lbs/yr, or at least 75% of the required load is achieved on site. Should less than 75% of the loading be met on site, and the proponent can secure an exception from the local program administrator if they meet four criteria.

Maintenance

Long term maintenance is required for all facilities except for stormwater management facilities treating runoff "primarily from an individual residential lot", which is left to the discretion of the administrative authority.

Summary

Clients will need to coordinate with their environmental consultants and/or engineers regarding the particular applicability of the regulations to a specific project due to the specifics of grandfathering, exemptions available and the sensitivity of computations to terrain, soil type, water table depths, as well as existing and proposed land uses.

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