

### 13. VIRGINIA STORMWATER MANAGEMENT PROGRAM CONSIDERATION IN OPTING-IN

During its 2014 session, the General Assembly reversed course and adopted amendments to the Stormwater Management Act that only requires localities that operate a regulated Municipal Separate Storm Sewer System (“MS4”) to administer a Virginia Stormwater Management Program and permits all other localities to “opt-in” to the program in their sole discretion.

Southampton County is not a MS4 community, and accordingly, is no longer required to administer the VSMP. HOWEVER, if the County elects not to “opt-in” and administer the VSMP, DEQ will assume administration of the program within Southampton County beginning July 1, 2014.

Attached herewith, please find a memorandum from Mrs. Lewis articulating clear and compelling reasons why the County may wish to consider administering the VSMP, even though it’s no longer mandated to do so:

- The Department of Community Development already performs plan reviews, issues permits and performs inspections in administering Erosion and Sediment Control regulations – allowing them to perform the same functions for Stormwater Management creates a one-stop shop for property owners, contractors and developers;
- Allowing DEQ to administer the program represents a serious loss of local control in the permitting process – under the regulations, DEQ could take up to 120 days just to review plans – it would also likely require property owners, contractors and developers to travel to the regional DEQ office in Virginia Beach to submit their plans and apply for permits; and
- The fees that have already been adopted by the City and County help finance the cost of administering stormwater regulations locally, and Southampton County, through its shared services agreement with the City, has committed to the program by hiring and training the staff to administer it.

The City of Franklin has already expressed its intention to opt-in and administer the program locally.

**MOTION REQUIRED:** If the Board is so inclined, a motion is required directing the County Administrator to opt-in to the Virginia Stormwater Management Program.



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## COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

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Director

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April 8, 2014

Mr. Michael Johnson  
Southampton County Administrator  
P.O. Box 400  
Courtland, VA 23837

Subject: Amended Stormwater Management Act  
Formal Notification of VSMP Adoption "Opt In"

Dear Chief Administrative Officer:

As you may be aware, during its 2014 session, the General Assembly adopted amendments to the Stormwater Management Act (Act) (Chapter 303 of the 2014 Acts of Assembly). As revised, the Act now only requires localities that operate a regulated Municipal Separate Storm Sewer System ("MS4") to adopt a Virginia Stormwater Management Program (VSMP) and allows all other localities to "opt in" to the program if so desired. You are receiving this correspondence because your locality is not a regulated MS4 and therefore you are no longer required to adopt a VSMP. The purpose of this letter is to communicate information about the legislation, identify next steps and to seek your locality's decision as to whether or not you intend to opt in to the program.

### **Information about the Amended Stormwater Management Act**

As set forth in the amended Act, if your locality does not elect to "opt in" and adopt a VSMP, DEQ will operate the program within your locality and address post-construction stormwater runoff for land disturbing activities beginning July 1, 2014. The Act also now allows towns to be subject to the county's VSMP, establish a town VSMP or have DEQ operate the VSMP. The attached table describes the legislative timelines for the localities that are required to adopt a VSMP and adoption options for those who may opt in. The table further identifies DEQ's role should your locality choose not to adopt a program.

DEQ understands that the needed changes to your ordinance based on the recent legislation may affect your locality's ability to meet the current VSMP adoption schedule. Accordingly, we are

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providing flexibility to allow provisional approval of programs and more time for localities to incorporate these recent changes.

I would also like to make you aware of additional program considerations.

1. Localities deciding not to adopt a VSMP are still required to satisfy the new post development stormwater management quantity requirements (effective July 1, 2014) contained in the VESC law. Your locality will need to ensure that your erosion and sediment control ordinance includes this requirement.
2. Non-MS4 localities that are subject to the Chesapeake Bay Preservation Act do not have to adopt a VSMP, but must adopt requirements to regulate Chesapeake Bay Land Disturbing activities (between 2,500 ft<sup>2</sup> and an acre) consistent with the VSMP regulations. DEQ will assist such localities in incorporating these requirements into their local ordinances.
3. Non-MS4 localities that adopted stormwater programs in accordance with an earlier version of the Stormwater Management Act (Act), may opt-in to the VSMP program and amend the existing ordinances to conform to the current version of the Act, or elect to have DEQ operate the program. A locality cannot maintain an existing stormwater program that is inconsistent with the current Act.

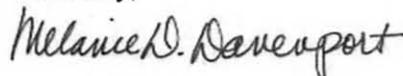
#### Next Steps

- DEQ has provided localities the amendments to the Stormwater Management Act that need to be reflected in the local VSMP ordinances as well as an updated schedule for adoption which allows for provisional approval - March 31, 2014.
- DEQ will issue guidance to address changes in the Act and the General Permit for Discharges of Stormwater from Construction Sites – April through June, 2014.
- DEQ will complete review of submitted final local VSMP application packages, so that localities can begin implementing VSMPs that are consistent with the Stormwater Management Act by July 1, 2014.

#### Opt in

If your locality intends to opt in and adopt a VSMP, please return the enclosed form to me as soon as possible but **no later than April 30, 2014**. We look forward in continuing to work with your locality to successfully implement these recent legislative changes. If you have any questions on this issue, please contact Joan Salvati (804-698-4230 / [joan.salvati@deq.virginia.gov](mailto:joan.salvati@deq.virginia.gov)) or myself at (804-698-4038 / [melanie.davenport@deq.virginia.gov](mailto:melanie.davenport@deq.virginia.gov)).

Sincerely,



Melanie D. Davenport,

Director, Water Division

**Locality VSMP OPT In Form**

\_\_\_\_\_ VSMP Adoption Opt In

If applicable, please list the Towns that are included in your VSMP:

\_\_\_\_\_  
Name of Locality (Print)

\_\_\_\_\_  
Name and Title of Chief Administrative Officer (Print)

\_\_\_\_\_  
Chief Administrative Officer (Signature)

\_\_\_\_\_  
Date

## Local VSMP Adoption Options in Accordance with House Bill 1173 and Senate Bill 423

| Categories of Localities  | Must Adopt VSMP? | Required VSMP Implementation Date | Local Options  | Role of DEQ as VSMP Authority  |
|---|------------------|-----------------------------------|--|--|
| 1. Existing MS4 Counties & Cities, & the New MS4 Cities as of Jan. 1, 2014 (Radford, Staunton & Waynesboro) | Yes              | July 1, 2014                      | Adopt a VSMP   | None   |
| 2. New MS4 Counties as of Jan. 1, 2014 (Augusta, Montgomery & Fauquier)                                     | Yes              | January 1, 2015                   | Adopt a VSMP, with an optional six- month delay until 1/1/15   | During the six-month deferral period, DEQ will operate the VSMP and address post-construction stormwater runoff and the required design criteria for stormwater runoff controls. |
| 3. MS4 Towns  | Yes              | July 1, 2014                      | <ol style="list-style-type: none"> <li>1. Adopt a VSMP; or</li> <li>2. Become subject to the VSMP of the County in which town lies, if the County operates one. <b>Note: Towns that become subject to the VSMP of a new MS4 county choosing to defer until January 1, 2015 will also be subject to the County's deferral schedule, with DEQ administering the program in the meantime.</b></li> </ol>  | None   |
| 4. Non-MS4 Localities   | No               | July 1, 2014                      | <ol style="list-style-type: none"> <li>1. Don't adopt a VSMP/Department will operate the VSMP; or</li> <li>2. Adopt a VSMP; or</li> <li>3. If a town, become subject to the County VSMP, if County operates one. <b>Note: Towns that become subject to the VSMP of a new MS4 county choosing to defer until January 1, 2015 will also be subject to the County's deferral schedule, with DEQ administering the program in the meantime.</b></li> </ol> | If option 1 is chosen, DEQ will operate the VSMP and address post-construction stormwater runoff and the required design criteria  |

**Note 1.** Counties electing to defer still are required to comply with the stormwater flow rate capacity and velocity requirements of the Erosion and Sediment Control Law for their E&SC program.

**Note 2.** All Bay Act localities, whether or not they adopt a VSMP, required to adopt requirements to regulate Chesapeake Bay Preservation Act Land Disturbing Activities.



**DEPARTMENT OF COMMUNITY DEVELOPMENT  
PLANNING - BUILDING INSPECTIONS – ZONING**

MEMORANDUM

TO: Randy Martin, Franklin City Manager  
Mike Johnson, Southampton County Administrator  
FROM: Beth Lewis, Community Development Deputy Director  
DATE: March 28, 2014  
RE: Changes to Virginia Stormwater Program

Recent changes to the Virginia Stormwater Management Program (VSMP), adopted as an emergency measure and recently signed by the governor, permit localities that are not bound by the Chesapeake Bay Preservation Act and do not operate a Municipal Separate Storm Sewer System Management (MS4) Program to be exempt from local operation of a stormwater management function, to wit:

*The Department shall operate a VSMP on behalf of any locality that does not operate a regulated MS4 and that does not notify the Department, according to a schedule set by the Department, of its decision to participate in the establishment of a VSMP. A locality that decides not to establish a VSMP shall still comply with the requirements set forth in this article and attendant regulations as required to satisfy the stormwater flow rate capacity and velocity requirements set forth in the Erosion and Sediment Control Law (§ 62.1-44.15:51 et seq.).*

Of the communities that are members of the Hampton Roads Planning District Commission, Franklin and Southampton County are the only two localities to which this change applies.

The revised VSMP regulations, adopted in 2011 and slated to become effective July 1, 2014, require communities to adopt revised stormwater regulations that are more stringent than many communities had in place. The County first adopted stormwater regulations in October of 2008 and Franklin adopted such regulations in 1989. Since that time, both communities have been responsible for reviewing stormwater management plans, issuing stormwater management permits, performing inspections, and making sure that erosion and sediment control measures were in place during construction and stormwater management measures were in place after construction was complete.

In response to the regulations adopted in 2011, Franklin and Southampton County began preparations for more stringent regulations that not only manage the amount and storage of stormwater, but reduce the pollution of local waters from stormwater. The City and County created a shared services Community Development Department to provide services to both the City and the County, in part to address the revised stormwater regulations. The shared department added an environmental specialist to review stormwater and erosion and sediment control plans, and an environmental inspector to oversee the installation and operation of erosion and sediment control measures during construction and stormwater management measures upon completion of construction.

HB 1173, adopted in an emergency measure, permits localities that do not operate a regulated MS4 to turn stormwater management regulation back to the Department of Environmental Quality (DEQ). The emergency measure requires the affected localities to adopt the stormwater regulations as outlined in the law, but permits the localities to notify DEQ of its decision not to participate in a VSMP and therefore to turn the plan review, inspection, and enforcement activities over to DEQ.

On its face, this may seem to be a money-saving decision for Franklin and Southampton County to make. The localities would adopt the required ordinances, but leave all plan review, inspections, record-keeping, and public contact to DEQ. Why would a locality perform a function it's not required to perform? To understand why Franklin and Southampton County would choose to retain control of the stormwater function, a review of the reasoning for the revised stormwater regulations is necessary:

FRANKLIN – SOUTHAMPTON  
DEPARTMENT OF COMMUNITY DEVELOPMENT  
207 WEST SECOND AVENUE, FRANKLIN VIRGINIA 23851  
OFFICE: 757-562-8580 FAX: 757-562-0870

- In the past, a developer would submit erosion and sediment control plans and stormwater plans to the locality as well as the Department of Conservation and Recreation (DCR), the entity that managed stormwater regulations prior to July 1, 2013. DCR would review the plans on their timetable and with little local knowledge. It was presumed that the localities and DCR worked in a cooperative manner, with the localities reporting on a monthly basis the inspections that were taking place.
- The revised stormwater regulations made the localities a one-stop shop for erosion and sediment control and stormwater review and inspections. The one-stop aspect of stormwater management was one of the over-riding decisions to turn the stormwater management functions over to the localities. Fees were to be collected to help finance the operation of the functions within the localities, with a portion of those fees being remitted to DEQ so as to help provide training and oversight of the localities. In fact, the City and County adopted the new fees a year early to facilitate the required upgrades to the department staffing. Under the stormwater regulations as adopted in 2011, property owners and local officials would work together to make sure projects met the requirements of the law but still were workable within the local environment. Plan review would be done by the locality, and inspections would be done by the locality. Local decisions based on the local environment would be made to protect local waterways. And local employees would be available to assist local property owners with day-to-day questions and issues. Per the Soil and Water Conservation Board, the VSMP regulations provide “innovative tools for local decisions, protection of local waterways, and consistent application of new state and federal requirements.”

In December 2011, the Commonwealth began a comprehensive outreach program to help the localities understand the benefits of a local program. Southampton County and Franklin began to prepare for the adoption and implementation of a local program by taking the following steps:

- In 2013, the shared department was awarded a grant to help with the start-up of a shared stormwater program for Franklin and Southampton County, including the addition of two staff members and training for the appropriate staff. The grant application showed that a portion of the funding for the enhanced service would be paid for by permit fees, with some supplementation shared between the two localities.
- Stormwater plan review in Franklin has been tasked to the Community Development department, rather than the Public Works department where it had been located.
- Staffing has taken place; training is underway.
- The required ordinances are undergoing local review by the Franklin and Southampton legal staffs, and adoption is planned for this spring, to become effective July 1, 2014. Much work has been done on the local level, and adoption of the local ordinances will be required whether the localities turn plan review and enforcement over to DEQ or it is retained locally.

The stormwater staff is not only preparing for the new stormwater regulations, they are performing erosion and sediment control and stormwater inspections on current projects. They resolve citizen complaints regarding stormwater issues, which have been prevalent during this overly-wet year. They are available and are scheduled to speak to civic organizations regarding stormwater and environmental protection issues. With the scale of on-going projects in the localities, such as the Enviva plant, the asphalt plant, and the Love’s site, local staff that is familiar with the sites and is accessible to the property owners is necessary to keep projects on schedule.

It should be noted that the opportunity to let DEQ implement the regulations in non-MS4 communities came about quickly, after several years of information from the Commonwealth that the revised regulations would become effective as adopted on July 1, 2014. The emergency order does not specify when/if it will end, so the localities are left to wonder if a year or two from now, the order would be reversed and the localities would be faced with a stringent timetable to take the enforcement back into local hands

A conversation with the local representative of DEQ has revealed that the local DEQ staff will be charged with reviewing the stormwater plans should our communities decide to turn that job over to them. A reading of the stormwater regulations shows that the staff has 15 days to review submitted plans for completeness. The staff then has 60 days to review the plans. Then if any comments require changes, the staff has 45 days to review any resubmittal. That is 120 days, four months. Since no land-disturbing permits can be issued until a stormwater plan is complete, nothing can be done on the site for that period. And since the civil plans for the site are dependent on approved stormwater plans, no plan review for the civil work can be done for four months as well. In effect, everything stops for four months with DEQ performing plan review. On the other hand, plans submitted to local staff are reviewed in days, comments worked out with the submitter, and re-reviewed in days, leading to permit approval in a matter of weeks, rather than a minimum of four months. Since the civil plans are reviewed by the same staff that is reviewing the stormwater plans, review can be concurrent. Four months of review time vs. a couple of weeks of review time could be the difference between a company choosing to develop here vs. their choice to go somewhere where the review is done in-house. This may become something potential developers look at in the due diligence stage, and we would most likely not want to be knocked out of contention for that reason.

In summary, an emergency order was adopted that permits localities without MS4 programs to turn enforcement of the revised stormwater regulations over to DEQ. However, since Franklin and Southampton County have had local stormwater ordinances for a number of years and have been preparing for the implementation of the revised regulations, it is recommended that the localities retain the implementation of the regulations and not turn them back to DEQ. It is recommended that local implementation by local staff taking into consideration local issues and providing local service to property owners stay on schedule for implementation July 1, 2014, as was the original schedule and intent of the VSMP as adopted.

April 9, 2014

Noah M. Hill, Regional Manager  
VA Department of Environmental Quality  
Tidewater Regional Office  
5636 Southern Boulevard  
Virginia Beach, VA 23462

RE: Southampton County to Establish Virginia Stormwater Management Program

Dear Mr. Hill:

Please accept this correspondence as official notice that pursuant to the requirement set forth in §62.1-44.15:27 of the Code of Virginia, Southampton County will participate in the establishment of a Virginia Stormwater Management Program for land-disturbing activities. We are updating our local ordinance per the revised statutory amendments provided by you in a March 27, 2014 email to the Department of Community Development. We anticipate adoption of our revised ordinance prior to June 30, 2014.

If we can provide any further information, please contact Beth Lewis, Community Development Deputy Director, at 757-562-1003.

Sincerely,

Michael W. Johnson  
County Administrator