



Virginia DEQ to Become Lead Stormwater Agency

07.12.2013

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Effective July 2, 2013, the Virginia Department of Environmental Quality (“DEQ”) will take over stormwater permitting responsibilities currently handled by the Virginia Department of Conservation and Recreation (“DCR”). Movement of the regulatory program and associated DCR stormwater personnel and program funding is a certainty; the implications of such a move for the regulated community remain to be seen. For sure, a new lead agency means new management, new staff, new implementation practices, new priorities, and likely some new rules – and such changes most certainly will have implications for those in construction and other regulated industries.

The Stormwater Management Program in Virginia includes both erosion and sediment control as well as stormwater management. Erosion and sediment control is handled primarily by localities, which issue land disturbance permits for construction activities. Stormwater is regulated by federally-approved programs at the state level. Virginia has had a bifurcated stormwater regulatory program since 2005, with the DEQ administering the Virginia Pollutant Discharge Elimination System (“VPDES”) industrial activity stormwater permitting, and the DCR handling construction stormwater permitting and municipal separate storm sewer system (“MS4”) permitting.

In 2011, the Governor’s Government Restructuring and Reform Commission recommended consolidation of certain aspects of Virginia’s stormwater program into a single DEQ-led program. As directed by the 2012 Acts of Assembly, the Virginia Secretary of Natural Resources office conducted a study on potential consolidation of the DCR and DEQ water quality programs and issued a report in November 2012. The Secretary’s report recommended, among other things, moving regulatory programs for stormwater to the DEQ, stating, “The advent of the Chesapeake Bay Total Maximum Daily Load [(“TMDL”)] and its related water quality issues has demonstrated the difficulty of having water quality permitting programs in two

separate agencies managing point and nonpoint pollution sources. It became apparent early in the development of Virginia's Chesapeake Bay TMDL Watershed Implementation Plan that even with significant consultation and collaboration between the DCR and the DEQ, the process was made more difficult because no one agency was given the responsibility and authority to look comprehensively at nutrient and sediment issues across the full spectrum of sources."

Legislation introduced in the 2013 General Assembly Session by Delegate Sherwood and Senator Hanger (H.B. 2048 and companion S.B. 1279, Acts of Assembly Chapters 756 and 793, respectively) directed moving Virginia's stormwater programs from the DCR to the DEQ. The move, effective July 2, 2013, will make DEQ the lead agency responsible for the Virginia Stormwater Management Act, Virginia Erosion and Sediment Control Act, and Chesapeake Bay Preservation Act. The 2013 legislation concerns only the movement of management responsibilities for nonpoint source pollution (e.g. stormwater) programs from the DCR to the DEQ; it makes no new express policies, regulations, or laws regarding stormwater.

The Secretary's 2012 report recommending consolidation of non-point source pollution programs was decidedly positive about the implications for the Commonwealth and the regulated community. It predicted such a move will result in several benefits, including: creating a single point of contact for the regulated community, making communications easier and less duplicative; creating a smoother working relationship with the United States Environmental Protection Agency ("EPA") because the DEQ handles numerous delegated programs already; improving strategic planning for stormwater and wastewater issues; improving data management; improving coordination between water quality permitting and TMDL requirements; and allowing for more comprehensive management of water quality improvement fund grants, cost-share program funding, and other nonpoint and point source financial assistance. Melanie Davenport, Water Division Director with the Virginia Department of Environmental Quality, likewise emphasized the benefits of DEQ becoming the lead stormwater agency, stating, "The suggestion for this consolidation came from Governor McDonnell's Commission on Government Reform and Restructuring. From an efficiency and effectiveness perspective it makes a lot of sense to merge the programs. There are many intersections among data, staff, and permitting expertise. DEQ will continue to work with the stormwater stakeholder community to understand their needs and balance them with the protection of our natural resources."

It is important to note, however, that the transition of regulatory responsibilities and associated resources from the DCR to the DEQ may not be an entirely easy one, particularly in the short-term. For one thing, the current budget authorizes almost 100 people to properly handle the program. Due to recent budget cuts and other factors, less than 50% of those positions are actually budgeted. While doing more with less is often a good thing, insufficient resources can lead to uncertainty and

delay. Although the DEQ, unlike the DCR, has an extensive history of administering water regulatory programs in Virginia and thus may be better equipped to handle comprehensive nonpoint source permitting, one can expect challenges associated with the move to last for a year or more, which could affect permitting time frames and agency accessibility and communication for permittees. In addition to transition concerns, budgetary implications beyond personnel costs of the DCR to DEQ consolidation could be significant. Finally, intangibles such as management and staff philosophies have very real impacts on regulatory programs and necessarily will change with the change in governing agencies. For example, the DEQ's extensive history working as a delegated agency for the EPA may result in the EPA having a more influential role over the aspects of the stormwater program formerly administered by the DCR.

While the exact benefits and difficulties associated with the DEQ becoming Virginia's lead stormwater agency remain to be seen, what is certain is that change is coming. It will be important in the coming months and beyond for the regulated community to remain informed about the pending consolidation of Virginia's nonpoint and point source regulatory programs and to take an active role in expressing concerns, priorities and needs to the DEQ as opportunities arise.

We view the transition of this important program as a potential opportunity for the Regulated Community whose business or industry is subject to stormwater regulation. It is an opportunity to influence the development of the program and its implementation for a more practical and user-friendly program.

To that end, we plan to form an ad hoc association of business and industry for whom we would provide periodic updates and input on transition activities. Dialogue with DEQ officials and state government leadership will be communicated to the group, along with proposed modification of agency proposals to formulate an improved stormwater program will be the cornerstone of the group effort.

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