

Joint Commission on Administrative Rules
Meeting Summary
January 12, 2010; 10:00 A.M.
Senate Room A, General Assembly Building
Richmond, Virginia

Members Present: Senator Frank Wagner (Chair), Delegate H. Morgan Griffith (Vice-Chair), Senator Stephen H. Martin, Senator John S. Edwards, Senator Ryan T. McDougle, Delegate Christopher B. Saxman, Delegate Robert D. Hull, Delegate R. Lee Ware, Jr., Delegate Robert W. Mathieson, Delegate Thomas D. Gear, Delegate Algie T. Howell, Jr.

Staff Present: Elizabeth Palen

I. Welcome and Call to Order-Senator Frank Wagner (Chair)

- Meeting was called to order by Senator Wagner at 10:00 A.M.

II. Joseph H. Maroon, Director, Virginia Department of Conservation & Recreation (DCR)

- Discussed the amendments to the Virginia Stormwater Management Program Regulations since the September JCAR meeting (see handout).
 - The Board adopted final regulations in December based on current water quality standards statewide.
 - The Board released more stringent Bay watershed numbers based upon the EPA's recently released new Bay model numbers for nutrient reductions.
 - The Board had directed DCR to establish a technical advisory committee in 2010 to review the sufficiency of the phosphorus standard based on the new Bay allocations.
 - The effective date of the regulations will be different than the on-the-ground implementation date (see page 3 of handout).
 - Actual implementation is estimated to occur through local ordinance 15-21 months after the July 1, 2010 effective date.
- Emphasized the importance of stormwater regulation (see slide 4).
 - The EPA has adopted new accountability measures and consequences for states that fail to meet the Chesapeake Bay pollution reduction milestones.
 - Explained the future administration of construction stormwater programs in Virginia (see slide 7).
 - MS-4 jurisdictions and localities within the CBPA Area *must adopt* a local stormwater management program.
 - The remaining localities *may elect to adopt* a local stormwater construction program, i.e. opt-in. Otherwise, DCR will operate a program within the locality.
 - Outlined the regulatory process (see slides 8-9).
 - Discussed how fees will be determined (see slide 12).
 - Pursuant to the Code of Virginia, the stormwater program must be funded by a statewide permit fee schedule that is "set at a level sufficient to carry out its responsibilities."

- Thus, the fees will be established at a level sufficient to support administration of local programs and DCR responsibilities.
 - The final regulations afford the locality greater flexibility in setting fees.
- Addressed cost considerations:
 - Costs will vary considerably due to site factors, i.e. soil and topography, and local provisions.
 - Offsite options will reduce the cost of compliance.
 - Recent Board actions will further reduce costs.
- Expressed his deepest gratitude to the members for playing an integral role in his many years of public service.

III. Barrett Hardiman, Vice President of Regulatory Affairs, Home Builders Association of Virginia

- Addressed the Home Builders Association of Virginia's (HBAV) concerns with the proposed regulations.
 - HBAV believes the EPA's preliminary numbers will change, and there will be an additional estimated cost of 3,600 per lot.
 - Brief discussion regarding fees ensued.
 - **Senator Frank Wagner**—*When the Clean Water Act initially passed, all localities, and it was jurisdictional by population, were required to treat stormwater as a point-source discharge. They were then required, because stormwater was a point-source discharge, to obtain a discharge permit. As part of that permit requirement, the locality had to establish the following: (1) a monetary criteria, and (2) a dedicated source of revenue. I believe it was 12 or 14 years ago that we passed enabling legislation to allow those localities that fell within those jurisdictions to then charge a stormwater fee. In order for Virginia Beach to comply with the Clean Water Act and treat stormwater as a point-source discharge, for example, it established a fee that is paid on commercial property based on an equivalent residential unit. If I go to redevelop that property, I'm going to have to meet the 20 percent reduction, plus pay the permitting fee upfront, plus pay a maintenance fee in addition to the old stormwater fee. Is this an accurate statement?*
 - Yes. We are still going to charge a stormwater utility fee because that is what we use in order to generate the income and maintain the stormwater system to meet the requirements under the Clean Water Act. However, there is only a single fee that will be paid under these proposed regulations. Whatever the locality does in order to administer their own program associated with their own permit is separate from the aim of these regulations.

IV. Richard Batiuk, Associate Director for Science, U.S. Environmental Protection Agency, Chesapeake Bay Office Program

- Provided an update on the Environmental Protection Agency's (EPA) perspective regarding the proposed regulations.
 - The EPA believes that the existing programs, funding, regulations, and efforts cannot achieve the necessary water quality.

- The EPA has broken several promises over the last two decades regarding when the Bay will be cleaned.
- Thus, the EPA is committed to holding accountable those localities who fail to take the necessary actions for restoring water quality in the Bay and its tidal tributaries.
- Discussed the issue of equivalence.
 - The EPA has communicated its desire that states, particularly VA, MD, DE, as well as D.C., take action that will be enforceable or otherwise binding.
 - If a state takes the appropriate actions, e.g. follows the proposed stormwater regulations, and the EPA finds them equivalent to either existing federal regulations or future regulations, then the Federal regulations will not preempt the state's actions.
 - However, if the EPA concludes that the state's actions are not equivalent to either existing Federal regulations or future regulations, then the Federal regulations will take precedence.
 - The EPA wants to be clear: states must provide an amount of water quality protection that is equivalent to Federal regulations.
 - **Senator John S. Edwards**—*Can you clarify what the EPA means by equivalent?*
 - The EPA's primary concern is clean water. States can decide how to clean their waterways. The EPA would be looking at the state's current regulations, and how those would evolve over time. The EPA would then apply those regulations to determine if they would, in fact, meet required water quality standards.
 - **Senator Edwards**—*Has the EPA determined that Virginia's proposed regulations meet the required water quality standards?*
 - The EPA was more comfortable with Virginia's original set of regulations that were proposed this past summer. The EPA does have concerns with the changes described by Mr. Maroon.
 - **Senator Edwards**—*Can the EPA go on the record saying that by the time Virginia's regulations go into effect, they will be acceptable?*
 - At this time, the EPA cannot say whether the regulations will be acceptable. The EPA is aware that Virginia needs stability in a regulatory framework, but it cannot definitively state, at this time, whether the regulations will provide the full level of protection for the Bay.
 - **Senator Edwards**—*When will the EPA publish the TMDL implementation plan?*
 - The EPA will publish the TMDL implementation plan for the Chesapeake, which will cover six states and D.C., by this coming December.
 - **Senator Edwards**—*Does this mean that in December, Virginia will know whether its regulations are EPA-approved?*
 - The EPA informed the six states and D.C. in a November letter of its expectations. We described what we need to provide assurance to the public that these collective set of actions on waste water treatment plans, on air issues, on urban stormwater, etc. will improve water quality. The EPA will be examining a state's collective set of actions not only its

stormwater regulations. The EPA will consider a state's regulatory programs, funding streams, revenue, and the collective set of actions it has taken so far, and what the state is planning to endorse by 2025.

- **Senator Edwards**—*If I'm a developer, and I get my permit, six months later, is someone going to tell me my permit to change because there are new rules in place?*
 - The EPA cannot give a definitive answer to that question; however, the EPA believes that whatever rules govern the developer at that time will be the rules that apply.
 - These rules are effective for five years at a time. Thus, if you get your permit today, and our rules become effective in 2012, the developer will still be governed by the existing rules until 2014.
- Discussion regarding the cost of the EPA's plan ensued.
 - **Delegate Saxman**—*Overall, what will it cost to achieve the EPA's goals in the timeframe you are suggesting? What will the state have to pay? What will developers have to pay? What will it eventually cost the economy in Virginia?*
 - Virginia specific numbers are unavailable; the EPA has considered the cost across all six states and D.C., and some of the estimates include 15 to 20 billion dollars. This is the estimated cost over decades.
 - **Delegate Saxman**—*How much of that will the Federal government assume?*
 - Still remains a question; some would say the Federal government has contributed their fair share. There is much competition for Federal dollars, and the ultimate decision will be left to Congress.
 - **Delegate Saxman**—*It might help the EPA's cause to contribute Federal dollars to help states pay for these programs.*

V. Elizabeth Palen, Executive Director, Division of Legislative Services

- Explained the two pieces of legislation placed before the members.
 - First bill: JCAR's authority to suspend regulations.
 - This bill changes how and when a regulation can be suspended by JCAR.
 - The bill does not change the balance of power; any changes still need the concurrence of the governor.
 - The bill simply broadens JCAR's authority to suspend regulations that are not only in their proposed or final adoption phase, but also those that are already an effective regulation.
 - With the concurrence of the Governor, JCAR could suspend a regulation until the next legislative session. At that time, legislation can then be drafted and introduced to make the necessary changes.
 - Motion to endorse the legislation was seconded.
 - Motion granted.
 - Second bill: The effective date of the stormwater regulations.
 - The EPA mentioned today that it expects the TMDL plan will become effective in December.
 - This bill provides that once the TMDL plan becomes effective, then the stormwater management regulations will become effective.

- Senator Wagner chose not to entertain a motion on this particular piece of legislation. The bill will be part of the legislative session; however, perhaps it is currently a little broad and must be narrowed some before a motion to endorse will be granted.

VI. Public Comment

VII. Meeting was adjourned at 11:45 A.M.