

VNRC Comments on 9-15-2004 ANR Draft Stormwater Management Rule

Kim Kendall, VNRC's Staff Scientist, will be forwarding a sample Better Sign Design and Cold Climate Practices (Practices) checklist to ANR and SWAG later today. The sample will depict how the checklist would fit into the proposed rule and the Stormwater Manual. The checklist essentially mirrors the credits in Section 3 of the manual. VNRC proposes that applicants still be allowed to obtain credit for implementing the Section 3 Practices. However, VNRC recommends that a Section 3.9 be added to the Stormwater Manual that sets forth the questions that an applicant for a project that will cause or contribute to a violation of the VWQS must answer. In addition, VNRC recommends that the following language be added to the proposed rule under Section 18-306 (c)(8): "Applicants for discharges to impaired waters pursuant to this section must comply with Section 3.9 of the Stormwater Manual." Adding this language will direct applicants to the checklist in the Stormwater Manual that must be completed for discharges to impaired waters.

As we discussed at the meeting last week, if an applicant can persuade ANR that implementing the Practices is not feasible, then the Practice will not be required. Accordingly, if, for example, local zoning bylaws prohibit the implementation of the Practices they would not be required. The intent of the proposal is to get applicants for projects that will discharge to impaired waters to think about designing their project in accordance with these better site design and cold climate development principles and to implement the Practices, if feasible.

As stated at the meeting, VNRC would very much like feedback from the SWAG on its proposal and, in particular, the technical merits of implementing the Practices. We think the Practices represent a different approach to development that maximizes the natural capability of the land to reduce stormwater runoff. This is why we are very interested in taking this small step toward having these Practices considered by developers in impaired waters.

With regard to other comments, VNRC reiterates all of its previous comments in light of the fact that ANR did not incorporate any of VNRC's recommendations into its revised draft. However, in particular VNRC reiterates its concern that Section 18-308(c)(5) focuses on the scientific uncertainty in remediating impaired waters, the adaptive management approach to restoring waters, and the need to "move toward" attainment of the VWQS, and not on analyzing the

assimilative capacity of impaired waters and the requirement that load reduction targets be established. VNRC is aware that Section 18-308(c)(5)(D) requires that Stormwater General Permits contain conditions necessary to implement a TMDL or WQRP, and that TMDLs and WQRPs will include load reduction targets. Nevertheless in order to create a fair and balanced rule that is understood by the public it necessary to reference the targets that will be contained in TMDLs and/or WQRPs that must be met in impaired watersheds. Otherwise, the rule gives the impression that the permits are all about uncertainty and adaptive management and not about analyzing the assimilative capacity of these waters to absorb addition loads of sediment and water and setting targets for sediment and/or water volume that give some indication of what is necessary to comply with the VWQS. Such an impression is not accurate.

VNRC also reemphasizes our earlier comment that ANR should clarify in the rule that, in the absence of a TMDL or WQRP for a watershed or an offset that is consistent with the rule, a permit (general or individual) cannot be issued for a discharge that will cause or contribute to a violation of the VWQS. This bedrock principle of state and federal law has not been altered by the new stormwater law and should be reflected in this rule.

Thank you for your consideration

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VNRC