



## COMMONWEALTH of VIRGINIA

### DEPARTMENT OF ENVIRONMENTAL QUALITY

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March 30, 2015

Charles E. Van Allman Jr., City Engineer  
25 E. Main ST  
Salem, VA

Dear Mr. Van Allman:

The Department of Environmental Quality (DEQ) staff has reviewed Salem's VSMP ordinance adopted in May of 2014. Based on this review of Salem's VSMP ordinance and the changes to the Virginia Stormwater Management Program Regulations and Virginia Stormwater Management Act, DEQ staff recommends 2 revisions outlined below in order for the City of Salem's VSMP ordinance to be consistent with the VSMP regulations and Act. These two comments were also reflected in the VSMP Local Ordinance Checklist completed by DEQ staff on April 17, 2014.

1. DEQ staff recommends that Salem amend the grandfathering language in Section 30-145 C to be consistent with the language in Section 9VAC25-870-48 as follows:

#### ***9VAC25-870-48. Grandfathering.***

*A. Any land-disturbing activity shall be considered grandfathered by the City and shall be subject to the Part II C technical criteria of this chapter provided:*

*1. A proffered or conditional zoning plan, zoning with a plan of development, preliminary or final subdivision plat, preliminary or final site plan, or any document determined by the locality to be equivalent thereto (i) was approved by the City prior to July 1, 2012, (ii) provided a layout as defined in 9VAC25-870-10, (iii) will comply with the Part II C technical criteria of this chapter, and (iv) has not been subsequently modified or amended in a manner resulting in an increase in the amount of phosphorus leaving each point of discharge, and such that there is no increase in the volume or rate of runoff;*

*2. A state permit has not been issued prior to July 1, 2014; and*

*3. Land disturbance did not commence prior to July 1, 2014.*

*B. City, state, and federal projects shall be considered grandfathered by the VSMP authority and shall be subject to the Part II C technical criteria of this chapter provided:*

- 1. There has been an obligation of City, state, or federal funding, in whole or in part, prior to July 1, 2012, or the department has approved a stormwater management plan prior to July 1, 2012.*
  - 2. A state permit has not been issued prior to July 1, 2014; and*
  - 3. Land disturbance did not commence prior to July 1, 2014.*
- C. Land disturbing activities grandfathered under subsections A and B of this section shall remain subject to the Part II C technical criteria of this chapter for one additional state permit cycle. After such time, portions of the project not under construction shall become subject to any new technical criteria adopted by the board.*
- D. In cases where governmental bonding or public debt financing has been issued for a project prior to July 1, 2012, such project shall be subject to the technical criteria of Part II C.*
- E. Nothing in this section shall preclude an operator from constructing to a more stringent standard at his discretion.*

2. To address Section 62.1-44.15:28.7 of the revised Stormwater Management Act, DEQ staff recommends that Salem amend Section 30-141 A to add a phrase as follows:

*In section 30-141 A, line 3, after the word “developments,” add “including those developed under subsequent owners...” The new sentence would now read: Individual lots in new residential, commercial, or industrial developments, including those developed under subsequent owners, shall not be considered separate land-disturbing activities.*

Please note that this letter is not a case decision under the Virginia Administrative Process Act, Va. Code § 2.2-4000 *et seq.* If you have questions about these recommended amendments or wish to provide any additional information or to discuss this matter further, please feel free to contact Elizabeth Abe at [Elizabeth.abe@deq.virginia.gov](mailto:Elizabeth.abe@deq.virginia.gov) or myself, Joan Salvati at [Joan.Salvati@deq.virginia.gov](mailto:Joan.Salvati@deq.virginia.gov).

Sincerely,



Joan Salvati, Manager  
Office of Local Government Programs

C: Elizabeth Abe, DEQ Blue Ridge Regional Office  
Shawn Smith, DEQ Central Office

