

AGENDA NOTE – HRPDC QUARTERLY COMMISSION MEETING

ITEM #9G: REGIONAL STORMWATER PROGRAM MEMORANDUM OF AGREEMENT (MOA) – RENEWAL

SUBJECT:

Approve revisions to renew the Regional Stormwater Program MOA.

BACKGROUND:

Over the past decade, the region's localities through the Regional Stormwater Management Program have developed a comprehensive, cooperative approach to stormwater management and compliance with state and federal regulatory requirements. This program includes technical studies, participation in the state and federal regulatory processes and education and training. Many HRPDC projects are integral to local government compliance with Municipal Separate Storm Sewer System (MS4) Permits.

In September 2003, a MOA, establishing the Hampton Roads Regional Stormwater Management Program, was executed by the HRPDC and fifteen of the member localities. The agreement formalizes the current Regional Program and establishes the framework for future program development. It outlines the responsibilities of the HRPDC staff and the local governments and details the approach to funding the program. The MOA has a five year term and is currently scheduled to terminate on June 30, 2013.

As required, the HRPDC staff and local government stormwater staff have reevaluated the MOA. A number of minor modifications have been made to reflect experience, modifications to state legislative authority, and expectations about the HRPDC role under the new MS4 Permits.

A copy of the revised MOA establishing the Hampton Roads Regional Stormwater Management Program is attached.

Attachment 9-G

RECOMMENDED ACTION:

Authorize the Executive Director to submit the Regional Stormwater Management Program Memorandum of Agreement to the localities for approval and to execute the MOA upon approval by the participating localities.

**MEMORANDUM OF AGREEMENT
ESTABLISHING THE
HAMPTON ROADS REGIONAL STORMWATER MANAGEMENT PROGRAM**

WHEREAS, Section 15.2-4200 of the Code of Virginia enables local governments to establish Planning District Commissions; and

WHEREAS, the ~~sixteen~~ eighteen local governments that are signatories to this Agreement have acted, in accordance with Section 15.2-4200 of the Code of Virginia, to establish the Hampton Roads Planning District Commission (HRPDC); and

WHEREAS, the HRPDC has been requested and has undertaken various studies to support local government stormwater management programs, including compliance with Virginia Stormwater Management Program (VSMP) Municipal Separate Storm Sewer (MS4) Permits; and

WHEREAS, the signatory local governments have requested the HRPDC to administer and coordinate a regional stormwater management program ~~on their behalf~~; and

WHEREAS, pursuant to the Clean Water Act, the U.S. Environmental Protection Agency (EPA) has promulgated implementing regulations, 40 Code of Federal Regulations Part 122, which established the National Pollutant Discharge Elimination System (NPDES) Permits for Municipal Separate Storm Sewer System (MS4) Discharges; and

WHEREAS, pursuant to the Virginia Stormwater Management Act, 10.1-603.1, et. seq. of the Code of Virginia, 1950 As Amended, the Board of Soil and Water Conservation has promulgated implementing regulations 4 VAC 50-60, et. seq., which establish the Virginia Stormwater Management Permit Program (VSMP) requirements that localities obtain ~~VSMP~~ Ppermits for their ~~Municipal Separate Storm Sewer System (MS4)~~ discharges; and,

WHEREAS, the majority of the ~~_____~~ eighteen signatory local governments are required by their ~~VSMP~~ MS4 permits to conduct certain activities, including reporting on their discharges, conducting public information and education programs, and certain other activities; and

WHEREAS, the Water Quality Monitoring and Reporting Act and implementing regulations promulgated by the State Water Control Board establish requirements for the preparation of Total Maximum Daily Load (TMDL) Implementation Plans, which apply to activities conducted by localities in general as well as activities conducted in implementing ~~VSMP~~ MS4 permit requirements; and,

WHEREAS, the Chesapeake Bay Preservation Act and the Virginia Erosion and Sediment Control Law and implementing regulations also establish stormwater management requirements that govern one or more of the ~~sixteen~~ eighteen signatory local governments; and,

WHEREAS, ~~fifteen sixteen Cities and Counties~~local governments and the HRPDC executed the Memorandum of Agreement Establishing the Hampton Roads Regional Stormwater Management Program on September 5, 2003 and that Agreement expired on December 31, 2007; and,

WHEREAS, eighteen local governments and the HRPDC executed the Memorandum of Agreement Establishing the Hampton Roads Regional Stormwater Management Program on March 6, 2008 and that Agreement expires on June 30, 2013,

NOW THEREFORE, the signatory parties enter into the following Agreement.

This Memorandum of Agreement entered into this ~~first~~ day of July 2013, among and between the ~~TBD eighteen cities and counties~~local governments in Hampton Roads and the HRPDC, establishes and maintains the Hampton Roads Regional Stormwater Management Program.

BASIC PREMISES

All local governments in Hampton Roads operate stormwater management programs.

The Cities of Chesapeake, Hampton, Newport News, Norfolk, Portsmouth and Virginia Beach received VPDES Permits in 1996. Those permits, which were renewed in 2001, govern the discharges from their MS4s to waters of the state and impose certain operational and reporting requirements on those systems. In 2005, these permits were converted to VSMP permits. These permits must be renewed on a five (5) year basis and the localities applied for renewed permits in 2005. Localities continue to operate programs under administratively continued permits. Permit renewals are expected in 2014.

The Cities of Poquoson, Suffolk and Williamsburg and the Counties of Gloucester, Isle of Wight, James City, and York were all identified by the EPA as requiring VPDES permits under Phase II of the MS4 regulations. Those localities that operate MS4s obtained VPDES permits in March 2003. Those permits also imposed certain operational and reporting requirements on those systems. In 2005, these permits were converted to VSMP permits. These permits must be renewed on a five (5) year basis with the next renewal planned for ~~2007~~2013.

Although Gloucester County was initially identified by the EPA as requiring a Phase II MS4 permit, it was subsequently determined that permit coverage for Gloucester County was not required.

The City of Franklin, the Counties of Gloucester, Southampton and Surry and the Towns of Smithfield and Windsor are governed by stormwater management requirements established under the Virginia Stormwater Management Act and the Virginia Erosion and Sediment Control Law. The Chesapeake Bay Preservation Act also governs Gloucester and Surry Counties and the Towns of Smithfield and Windsor.

~~As of July 1, 2014, all localities must. The City of Franklin and Southampton County are the only Hampton Roads localities that are not required to~~ develop stormwater management programs that meet the minimum requirements established in the Virginia Stormwater Management Act. The Virginia Stormwater Management Act imposes operational and reporting requirements on all localities that are required to implement stormwater management programs.

The ~~above-mentioned~~ local governments are interested in managing stormwater in a manner which protects and does not degrade waters of the state and which meets locally established quality of life goals and objectives. The Clean Water Act and the VSMP ~~permits~~ require that stormwater quantity and quality be managed to the maximum extent practicable.

In carrying out their stormwater management responsibilities, the aforementioned local governments have developed a consensus on regional goals to guide the operation of their stormwater management programs. Initially, approved by the HRPDC at its Executive Committee Meeting of September 15, 1999, they are:

1. Manage stormwater quantity and quality to the maximum extent practicable (MEP)
 - Implement best management practices (BMP) and retrofit flood control projects to provide water quality benefits.
 - Support site planning and plan review activities.
 - Manage pesticide, herbicide and fertilizer applications.
2. Implement public information activities to increase citizen awareness and support for the program.
3. Meet the following needs of citizens:
 - Address flooding and drainage problems.
 - Maintain the stormwater infrastructure.
 - Protect waterways.
 - Provide the appropriate funding for the program.
4. Implement cost-effective and flexible program components.
5. Satisfy ~~VSMP-MS4~~ stormwater permit requirements:
 - Enhance erosion and sedimentation control.
 - Manage illicit discharges, spill response, and remediation.

This Agreement establishes the administrative framework, which will be used by the local governments in Hampton Roads to address certain stormwater management requirements under the above-cited state and federal laws and regulations.

EIGHTEEN local governments in the Hampton Roads Region will be participants in and signatories to the Agreement.

HRPDC RESPONSIBILITIES

~~The Hampton Roads Planning District Commission (HRPDC) will serve as the policy-making guiding body of the Hampton Roads Regional Stormwater Management Program with the concurrence of the signatory local governments to the extent allowed by applicable law.~~

Under the terms of this Agreement, the HRPDC staff is responsible for the following:

- ~~Establish and provide appropriate technical and logistical support and policy analysis related to stormwater and water quality issues to the Regional Stormwater Management Committee (RSMC), local government staff, which will be the technical decision-making body of the Hampton Roads Regional Stormwater Management Program. It will provide technical and policy advice to the HRPDC.~~
- Provide the necessary administrative, technical and clerical resources to support all program activities ~~directed by the RSMC~~ in order to ensure that the MS4 permit-holding cities and counties meet applicable stormwater management requirements, ~~including the agreed upon provisions of the VSMP permits.~~
- Prepare, ~~in cooperation with the RSMC,~~ an annual work program and budget for the Hampton Roads Regional Stormwater Management Program. The annual work program will be incorporated into the HRPDC Unified Planning Work Program and the annual budget will be incorporated into the HRPDC budget.
- Assist the signatories in coordinating reporting on stormwater related activities to other state and federal agencies to ensure that program requirements are met in a cost-effective manner, which minimizes duplicative reporting and the administrative burden on the signatories. ~~This assistance will may include management of the Permit Administration and Review System (PARS), developed on a cooperative, regional basis. Development of the PARS is scheduled to be completed in 2008.~~
- Conduct a regional stormwater education program. This will include public education activities and may include outreach to specific economic sectors and groups. The ~~Public Information and Education Subcommittee (HRSTORM)~~ stormwater education subcommittee of askHRGreen.org will be responsible for guiding the development of original materials, including publications, media advertising and promotional items. This may also include development of locality-specific materials or coordination of bulk purchases. The stormwater education subcommittee of askHRGreen.org ~~Public Information and Education Subcommittee~~ will advise coordinate with the RSMCHRPDC staff on the educational and outreach components of the Hampton Roads Regional

Stormwater Management Program.

- Develop and conduct a regional training program for municipal employees, contractors, civic leaders and other interested parties. The training program will emphasize stormwater management, pollution prevention and permit issues.
- Respond equitably and in a timely fashion to requests from all signatory local governments for technical assistance. The time frame for responses will be based on experience, the complexity of individual requests and the overall work load of program staff.
- Provide other technical support, as requested, to the signatory local governments.

~~Develop and maintain staff capability to conduct more comprehensive activities, including stormwater discharge impact analyses and modeling in support of local programs.~~

- Upon request from one or more participating localities, conduct technical studies to support compliance by the localities with ~~VSMP-MS4~~ permit requirements and VSMP program requirements.
- ~~Facilitate development of multi-jurisdictional management plans for shared watersheds, as necessary requested. This may include conducting necessary technical analyses.~~
- Take steps, in conjunction with the signatory local governments, to obtain financial support for program activities from outside sources, including state, federal and private grants, to the extent that this may be accomplished without creating a conflict of interest, as determined by the signatory local governments.
- RSMC membership.
- Contract with and manage consultants, including both private firms and academic institutions, to support the regional program, including provision of requested services to local governments in excess of the common program elements.
- Represent the Hampton Roads Regional Stormwater Management Program at federal, state, regional and local governmental, civic, professional and political organizations, agencies, and committees.
- Provide technical and administrative support, as appropriate, to those localities that are required to develop stormwater management programs to meet VSMP requirements, but that are not required to obtain ~~VSMP-MS4~~ permits for their stormwater discharges.
- ~~Prepare annual program reports, or components thereof, which comply with the provisions of the individual VSMPMS4 permits and stormwater management~~

programs of the signatory localities. ~~The basis for this reporting will be the Permit Administration and Reporting System (PARS), being developed cooperatively by the signatory localities and the HRPDC. Where appropriate, the Regional Indicators of Stormwater Management Program Effectiveness, developed through the HRPDC in 2000 will also be used.~~

- Facilitate ~~public outreach in support of~~local government involvement in TMDL studies being prepared through the Virginia Department of Environmental Quality and EPA and facilitate preparation of TMDL Implementation Plans for impaired waters ~~in all localities~~ in the Hampton Roads Region as requested.
- Prepare an annual report of activities undertaken through the Hampton Roads Stormwater Management Program. This report will include summaries of related activities undertaken on a cooperative basis by the signatories.
- Identify state and federal regulatory actions that may affect local government stormwater programs, serve on regulatory advisory panels (RAPs) as necessary, conduct policy analysis, and develop policy recommendations on behalf of the HRPDC.
- Coordinate the compilation of regional data for ~~the~~ MS4 permit annual reports to the ~~DGR~~appropriate regulatory authority.

Regional Phase II Program

~~The HRPDC will be responsible for undertaking certain activities to enable localities permitted under Phase II, and participating in the Regional Phase II Program, to comply with the terms of their MS4 Permits. These activities include:~~

~~Operate the regional stormwater management and pollution prevention training programs for local government employees. This program will be one element of the local programs to meet the Pollution Prevention/Good Housekeeping for Municipal Operations Minimum Management Measure and the education component of the Illicit Discharge Detection and Elimination Management Measure.~~

~~Operate the stormwater public information and education program. This program will be one element of the local programs to meet the Public Education and Outreach Minimum Management Measure and the education component of the Illicit Discharge Detection and Elimination Management Measure.~~

~~Maintain a Best Management Practices (BMP) Tracking System. This system will serve as one element of the local programs to meet the Construction Site Stormwater Runoff Control and Post-Construction Stormwater Management in new Development and Redevelopment Minimum Management Measures. The BMP Tracking System is a component of the Permit Administration and Reporting System.~~

~~Maintain an Illicit Discharge Tracking System. This system will serve as one element of~~

~~the local programs to meet the Illicit Discharge Detection and Elimination Minimum Management Measure. The Illicit Discharge Tracking System is a component of the Permit Administration and Reporting System.~~

~~Continue assisting the localities in the preparation of Annual Reports to DCR, using reporting protocols, developed through the Phase II Program and being developed through the Permit Administration and Reporting System. These reports are to be submitted annually to the Department of Conservation and Recreation to satisfy permit requirements.~~

~~Assist the localities with MS4 Permits issued under Phase II of the Program with ongoing program development and evaluation and preparation of applications for permit reissuance.~~

LOCAL GOVERNMENT RESPONSIBILITIES

Under the terms of the Agreement, the signatory local governments are responsible for the following:

- Appoint ~~a one voting representative member~~ and alternates, as appropriate, to the ~~Regional Stormwater Management Committee~~ RSMC Regional Environmental Advisory Committee to represent the local government stormwater and water quality related concerns. Generally, the voting representative should be the MS4 permit or program administrator.
- Appoint a representative and alternates, as appropriate, to the ~~Public Information and Education Subcommittee (HR STORM)~~ stormwater education subcommittee of askHRGreen.org.
- ~~Provide, in a timely fashion, all locally generated data required by their VSMP MS4 permits and such other data as may be necessary to accomplish locally requested services. This may include data necessary to meet the Annual Reporting requirements of other programs.~~
- Provide timely technical review of HRPDC analyses and conclusions.
- ~~Provide technical recommendations to local representatives on the HRPDC, the policy-making body of the Hampton Roads Regional Stormwater Management Program (HRPDC).~~
- Participate in regional efforts to conduct public outreach and education activities in ~~support of regard to~~ the state's TMDL study process and efforts to develop TMDL Implementation Plans for impaired waters lying within the locality or within watersheds that include the locality.
- Provide input on regulatory issues to HRPDC staff and serve on RAPs or provide input to the regional RAP representative as appropriate.

- Support HRPDC efforts to obtain additional funding to support the regional programs, to the extent that this may be accomplished without creating a conflict of interest, as determined by the signatory local governments.
- ~~Comply with all terms of their VSMP Ppermits and related program requirements.~~
- ~~In those cases where a locality is not required to obtain a VSMP pPermit, comply with all minimum requirements of the Virginia Stormwater Management Program.~~
- Provide annual funding to support the agreed-upon regional program.

~~ROLE OF THE REGIONAL STORMWATER MANAGEMENT COMMITTEE~~

~~The RSMC will consist of one voting representative of each signatory, appointed by the Chief Administrative Officer of the signatory local government. One or more alternates may be formally designated by the CAO. Generally, the voting representative of each locality will be the VSMP permit or program administrator.~~

~~The term of membership on the RSMC will be at the pleasure of the Chief Administrative Officer.~~

~~The RSMC may elect a Chairman and Vice-Chairman from among its membership. The HRPDC staff will serve as Secretary for the RSMC.~~

~~Ex officio members of the RSMC will include representatives of the Hampton Roads Sanitation District, U.S. Navy and the Virginia Departments of Environmental Quality, Conservation and Recreation, and Transportation. The RSMC may determine that representatives of other organizations should serve as ex officio members of the Committee.~~

~~Generally, the RSMC will operate on a consensus basis. All cConsideration of and recommendations concerning the Annual Work Program and Budget will require a majority vote of the RSMC membership. Each signatory is entitled to one (1) vote on the RSMC. Approval of the Aannual Wwork Pprogram and Bbudget may be accomplished through an electronic letter ballot. Following approval of an electronic letter ballot, the RSMC will ratify the letter ballot. A quorum constitutes a majority of the member locations. If a vote is requested by a member, and seconded, a quorum must be present, and a majority vote of those present shall constitute the determination of the group.~~

~~The RSMC will provide technical and policy recommendations to the HRPDC Joint Environmental Committee, which is the policy-making body of the Hampton Roads Regional Stormwater Management Program. It will provide day-to-day technical guidance on behalf of the signatory local governments to the HRPDC staff.~~

~~Various subcommittees may be established by the RSMC to facilitate operation of the Hampton Roads Regional Stormwater Management Program. The Public Information and Education Subcommittee (HR STORM) is a standing subcommittee of the RSMC. The Phase I Subcommittee and the Phase II Subcommittee are standing committees of the RSMC.~~

METHOD OF FINANCING

Program costs will be allocated on a pro-rata basis among the local governments. ~~There will be a base buy-in per participating local government with the balance of annual~~ Annual costs will be allocated according to a formula reflecting the local share of regional population. Costs for additional projects or services will be allocated based on a Formula ~~formula details will be~~ developed by the RSMC HRPDC staff and approved by the HRPDC with the concurrence of the signatory local governments. The most current estimate of population developed by the Weldon Cooper Center for Public Service/Virginia Employment Commission, will be used as the population base for allocating program costs. Local contributions may be adjusted on an annual basis to reflect program experience and projected program expenditures necessary to satisfy permit requirements and local needs. A locality will not be assessed for any services which it refuses in writing.

Individual local governments may request specific services from the HRPDC, which are in excess of the program elements common to all participants. The cost of such services will be borne by the requesting locality or localities.

Financial support from other entities, such as state and federal agencies, and the private sector, may be sought and obtained to support the activities of the Hampton Roads Regional Stormwater Management Program at the will of the RSMC, to the extent that this may be accomplished without creating a conflict of interest, as determined by the signatory local governments. ~~the RSMC membership.~~

AVAILABILITY OF FUNDS

Performance by the HRPDC of its responsibilities under this Agreement is subject to the availability of funding from the signatory local governments. Failure of the local governments to provide the necessary funding to support these activities will constitute a Notice to Modify or Terminate the Agreement.

MODIFICATIONS

Modifications to this Memorandum of Agreement must be submitted in writing, ~~recommended for approval by the Regional Stormwater Management Committee,~~ approved by the HRPDC, and accepted by all signatories.

DURATION AND TERMINATION

This Agreement will have a term of five ~~and one-half~~ years, extending from the date of full execution of the renewed Agreement by the signatories or ~~January 1~~ June 30,

| ~~2008~~2013, whichever occurs last through June 30, ~~2013~~2018. To conform to local government charter and Virginia Code requirements, the funding provisions of this Agreement will be subject to annual appropriations.

| No later than January 1, ~~2013~~2018, the signatories will institute a formal reevaluation of the Hampton Roads Regional Stormwater Management Program. This reevaluation will serve as the basis for appropriate modification of the Agreement and the Hampton Roads Regional Stormwater Management Program.

Any signatory may terminate its participation in the Hampton Roads Regional Stormwater Management Program by written Notice To Terminate to all other parties. Such termination will be effective with the start of the following Fiscal Year. Depending upon the terms of individual VSMP permits, termination of participation in the Hampton Roads Regional Stormwater Management Program in the middle of a permit term may result in changes to permit conditions and require renegotiation of the individual locality's VSMP permit from the state (Virginia Department of Conservation and Recreation).

OWNERSHIP OF PROPERTY

It is not the intent of the signatories that the Memorandum of Agreement will result in the purchase, ownership, leasing, holding or conveying of any real property.

INDEMNITY

It is the intent of the signatories that no signatory will be held liable for any damage or associated penalties caused by or associated with the failure of any other signatory to discharge its duties or to exercise due diligence in discharging its duties under this Agreement, and that no signatory, by entering this Agreement, waives any defenses or immunities available to it at law, including, but not limited to, those set forth in Section 15.2-970 of the Code of Virginia.

It is the intent of the signatories that no signatory will be held liable for any damage or associated penalties caused by or associated with the failure of any other signatory to comply with the terms and conditions of the signatory's VSMP permit.

LIST OF SIGNATORIES

Signature pages will be signed in counterparts.

CITY OF CHESAPEAKE

CITY OF FRANKLIN

GLOUCESTER COUNTY

CITY OF HAMPTON

ISLE OF WIGHT COUNTY

JAMES CITY COUNTY

CITY OF NEWPORT NEWS

CITY OF NORFOLK

CITY OF POQUOSON

CITY OF PORTSMOUTH

SOUTHAMPTON COUNTY

CITY OF SUFFOLK

SURRY COUNTY

CITY OF VIRGINIA BEACH

CITY OF WILLIAMSBURG

YORK COUNTY

TOWN OF SMITHFIELD

TOWN OF WINDSOR

HAMPTON ROADS PLANNING DISTRICT COMMISSION

This listing of participants will be followed by individual signature pages.

IN WITNESS THEREOF, the Chief Administrative Officer of the local governments and the Executive Director of the Hampton Roads Planning District Commission hereby execute this Agreement.

HAMPTON ROADS PLANNING
DISTRICT COMMISSION

By: _____

Date: _____

Date: _____

Attest: _____