

VIRGINIA DEPARTMENT OF TRANSPORTATION

LOCATION AND DESIGN DIVISION

INSTRUCTIONAL AND INFORMATIONAL MEMORANDUM

GENERAL SUBJECT: Virginia Stormwater Management Program	NUMBER: IIM-LD-195.9
SPECIFIC SUBJECT: Application of the VSMP Regulations as it relates to Development of Post-Construction Stormwater Management Plans	DATE: July 5, 2016
	SUPERSEDES: IIM-LD-195.8
APPROVAL:	B. A. Thrasher, P.E. State Location And Design Engineer Approved July 5, 2016

4.2 Grandfathering

Part II of the VSMP Regulations (9VAC 25-870-48) provides provisions for locality, state and federal projects to be grandfathered under Part IIC provided certain conditions are met. For the purposes of grandfathering VDOT projects, the project shall be considered grandfathered by the VSMP authority and shall be subjected to the Part IIC technical criteria provided the project that can demonstrate an obligation of local, 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 this date; a state VPDES permit has not been issued prior to July 1, 2014 and a land disturbance did not commence prior to July 1, 2014. In cases where governmental bonding or public debt financing has been issued for a project prior to July 1, 2012 such project shall be subjected to the Part IIC technical criteria.

Any project that is considering utilization of the grandfathering provision shall be evaluated and documented by the District Hydraulics Engineer. The documentation shall clearly demonstrate an obligation of funds or issuance of project specific bonds prior to July 1, 2012.

When evaluating a project for application of the Grandfathering provision, consideration should be given as to when the project will be advertised and when construction activities will begin. If the project will not begin construction activities prior to July 1, 2019, the project should be designed in accordance with the Part IIB (or the "new") technical criteria.

This written evaluation and determination shall be coordinated with the State MS4 Engineer and DEQ. Upon DEQ approval, the status of a project/activity with regards to the grandfathering provision shall be noted using the appropriate note(s) in Section IV of the SWPPP General Information Sheets. If multiple UPCs exist for the project, each UPC should be evaluated separately to determine the extents or segments of the project that qualify for grandfathering.

If it is anticipated that a project will be under construction prior to July 1, 2019 and it is grandfathered and the post-development SWM plan for the project is based on the Part IIC technical criteria, but for some reason the schedule “slips” and it is determined that the construction will not begin prior to the July 1, 2019 date, the post-development SWM plan for the project shall be revised to incorporate any additional BMPs or offsite drainage system improvements to satisfy the technical criteria of Part IIB (for both water quality and water quantity). Additional BMPs or offsite improvements necessary to satisfy the requirements of the Part IIB technical criteria may require the project/activity to revisit the public participation and/or the environmental review process.

Projects eligible for grandfathering may still use Part IIB of the technical criteria. However, in doing so, the design details and pollutant removal efficiency of the BMPs shall be in accordance with the information on DEQ’s BMP Clearinghouse website or identified on VDOT’s approved BMP Standards and Special Provisions.