TENTATIVE AGENDA AND MINIBOOK

STATE WATER CONTROL BOARD MEETING

MONDAY, SEPTEMBER 30, 2013

House Room C
General Assembly Building
9th and Broad Streets
Richmond, VA 23219

CONVENE – 9:30 A.M.

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I.	**Minutes (**June 17, 2013 and August 26-27, 2013)		A
II.	**Permits**		
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III.	**Final Regulations**		
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	Virginia Pollutant Discharge Elimination System (VPDES) Permit Program Regulation (9VAC25-31)	Graham	D
IV.	**Fast-Track Regulations**		
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V.	**Stormwater Program Transfer**		F
	Certification of Non-Point Source Nutrient Credits (9VAC25-900)		
	Procedures for Reviewing and Approving Design Specifications and Pollutant Removal Credits For BMPs		
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VI.	**Significant Noncompliers Report**	O'Connell	
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VIII.	**Other Business**		
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IX.	**Future Meetings** (Confirm December 9-10)		

ADJOURN

NOTE: The Board reserves the right to revise this agenda without notice unless prohibited by law. Revisions to the agenda include, but are not limited to, scheduling changes, additions or deletions. Questions arising as to the latest status of the agenda should be directed to the staff contact listed below.

PUBLIC COMMENTS AT STATE WATER CONTROL BOARD MEETINGS: The Board encourages public participation in the performance of its duties and responsibilities. To this end, the Board has adopted public participation procedures for regulatory action and for case decisions. These procedures establish the times for the public to provide appropriate comment to the Board for its consideration.

For REGULATORY ACTIONS (adoption, amendment or repeal of regulations), public participation is governed by the Administrative Process Act and the Board's Public Participation Guidelines. Public comment is accepted during the Notice of Intended Regulatory Action phase (minimum 30-day comment period) and during the Notice of Public Comment Period on Proposed Regulatory Action (minimum 60-day comment period). Notice of these comment periods is announced in the Virginia Register, by posting to the Department of Environmental Quality and Virginia Regulatory Town Hall web sites and by mail to those on the Regulatory Development Mailing List. The comments received during the announced public comment periods are summarized for the Board and considered by the Board when making a decision on the regulatory action.

For CASE DECISIONS (issuance and amendment of permits), the Board adopts public participation procedures in the individual regulations which establish the permit programs. As a general rule, public comment is accepted on a draft permit for a period of 30 days. If a public hearing is held, there is an additional comment period, usually 45 days, during which the public hearing is held.

In light of these established procedures, the Board accepts public comment on regulatory actions and case decisions, as well as general comments, at Board meetings in accordance with the following:

REGULATORY ACTIONS: Comments on regulatory actions are allowed only when the staff initially presents a regulatory action to the Board for final adoption. At that time, those persons who commented during the public comment period on the proposal are allowed up to 3 minutes to respond to the summary of the comments presented to the Board. Adoption of an emergency regulation is a final adoption for the purposes of this policy. Persons are allowed up to 3 minutes to address the Board on the emergency regulation under consideration.

CASE DECISIONS: Comments on pending case decisions at Board meetings are accepted only when the staff initially presents the pending case decision to the Board for final action. At that time the Board will allow up to 5 minutes for the applicant/owner to make his complete presentation on the pending decision, unless the applicant/owner objects to specific conditions of the decision. In that case, the applicant/owner will be allowed up to 15 minutes to make his complete presentation. The Board will then allow others who commented during the public comment period (i.e., those who commented at the public hearing or during the public comment period) up to 3 minutes to respond to the summary of the prior public comment period presented to the Board. No public comment is allowed on case decisions when a FORMAL HEARING is being held.

POOLING MINUTES: Those persons who commented during the public hearing or public comment period and attend the Board meeting may pool their minutes to allow for a single presentation to the Board that does not exceed the time limitation of 3 minutes times the number of persons pooling minutes, or 15 minutes, whichever is less.

NEW INFORMATION will not be accepted at the meeting. The Board expects comments and information on a regulatory action or pending case decision to be submitted during the established public comment periods. However, the Board recognizes that in rare instances, new information may become available after the close of the public comment period. To provide for consideration of and ensure the appropriate review of this new information, persons who commented during the prior public comment period shall submit the new information to the Department of Environmental Quality (Department) staff contact listed below at least 10 days prior to the Board meeting. The Board's decision will be based on the Department-developed official file and discussions at the Board meeting. In the case of a regulatory action, should the Board or Department decide that the new information was not reasonably available during the prior public comment period, is significant to the Board's decision and should be included in the official file, the Department may announce an additional public comment period in order for all interested persons to have an opportunity to participate.

PUBLIC FORUM: The Board schedules a public forum at each regular meeting to provide an opportunity for citizens to address the Board on matters other than those on the agenda, pending regulatory actions or pending case decisions. Those

wishing to address the Board during this time should indicate their desire on the sign-in cards/sheet and limit their presentations to 3 minutes or less.

The Board reserves the right to alter the time limitations set forth in this policy without notice and to ensure comments presented at the meeting conform to this policy.

Department of Environmental Quality Staff Contact: Cindy M. Berndt, Director, Regulatory Affairs, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, Virginia 23218, phone (804) 698-4378; fax (804) 698-4346; e-mail: cindy.berndt@deq.virginia.gov.

VPDES Permit No. VA0092274, Rohoic Creek WWTP, Dinwiddie County: BACKGROUND: On October 31, 2012, DEQ received an application from Dinwiddie County Water Authority (DCWA) for re-issuance of VPDES permit number VA0092274 for the Rohoic Creek Wastewater Treatment Plant (WWTP). This permit was originally issued for the first time on August 22, 2008 and expired on August 21, 2013. The permittee submitted a complete application more than 180 days prior to expiration of the permit; therefore, the permit has been administratively continued. During the original 2008 issuance process, notification was made to 5 riparian land owners downstream of the project. Staff received one phone call from a citizen as a result of the riparian land owner notification and provided the citizen with a copy of draft permit and fact sheet in 2008 during the public comment period. No public comments were received during the public notice phase of the original permit. The 2008 permit authorized the permittee to discharge treated municipal wastewater from a treatment facility with design capacity of 4.0 million gallons per day (MGD) into Hatcher Run in the Chowan River basin. The proposed outfall location is at the Route 1 bridge, directly downstream of the Jordan Lake dam. At the proposed outfall point, the receiving water body is a free-flowing stream. At the time of the 2008 permit issuance, the receiving waters were designated as Class III waters. Hatcher Run and its tributaries from its confluence with Rowanty Creek to river mile 19.27, excluding Picture Branch, have been reclassified as Class VII swamp waters, defined in the Virginia Water Quality Standards 9VAC 25-260-5 to be waters with naturally occurring low pH and low dissolved oxygen caused by (i) low flow velocity that prevents mixing and re-aeration of stagnant, shallow waters and (ii) decomposition of vegetation that lowers dissolved oxygen concentrations and causes tannic acids to color the water and lower the pH. This 2013 permit and fact sheet have been revised to reflect the change in classification.

As of the date of this memorandum the treatment facility has not been built, and no Certificate to Construct (CTC) has been issued to the facility. Currently DCWA owns 2.3 MGD of the 23 MGD wastewater treatment capacity at the South Central Wastewater Authority (VPDES permit number VA0025437). The current amount of the 2.3 MGD wastewater capacity being used by Dinwiddie County customers is approximately 0.9 MGD. DCWA is maintaining the Rohoic Creek WWTP VPDES permit to provide an additional 4.0 MGD of wastewater treatment capacity for future development in Dinwiddie County. This capacity will be used for residential, commercial and industrial development. The County has suggested that the WWTP may be built in stages as development warrants, in which case the permit would be modified to authorize alternative flow tiers less than 4.0 MGD.

The application for re-issuance of this VPDES discharge permit requested that the current permitted design capacity of 4.0 MGD be carried forward to the re-issued permit cycle. The proposed draft permit for re-issuance contains most of the same limitations and conditions of the existing permit, with minor exceptions added or removed to address new agency requirements and procedures promulgated since the initial issuance of this permit. These include a revision of the Total Residual Chlorine limitation in Part I.B. that is applicable if chlorination is used as an alternative form of disinfection and a revision to the Whole Effluent Monitoring condition to reflect swamp water discharge end points. In the 2008 permit, a monitoring frequency of once per day was used in the statistical analysis to derive the TRC limitation. Since then, agency guidance has been revised to recommend a monitoring frequency of 1 per 2 hours for facilities with a design capacity of greater than 2.0 MGD. Upon analysis with the revised monitoring frequency during this 2013 reissuance, a more stringent limitation is necessary to protect water quality.

The proposed draft permit for re-issuance will limit the following parameters:

Carbonaceous Biological Oxygen Demand ($cBOD_5$)	9 mg/l (140 kg/day) monthly average
Total Suspended Solids (TSS)	30 mg/l (450 kg/day) monthly average
Total Kjeldahl Nitrogen (TKN)	3.0 mg/l (45 kg/day) monthly average
Dissolved Oxygen	5.0 mg/l minimum
E. coli bacteria	126 N/100 ml monthly geometric mean

pH	6.0 S.U. minimum; 8.0 S.U. maximum
Total Residual Chlorine*	7.0 µg/l monthly average

*The permittee has proposed ultraviolet disinfection; however, a TRC limitation is included should the permittee choose to use chlorination and dechlorination.

Members of the State Water Control Board were notified and no meeting of the Board was requested to review the Director's decision to grant a hearing or to delegate the permit to the Director for his decision. Consequently, the Department proceeded with scheduling this hearing and notifying interested parties. Public notice of this hearing was published in the July 3 and 10, 2013 editions of the *Dinwiddie Monitor* newspaper. The comment period closed at 11:59 p.m. on August 22, 2013.

A Public Hearing was held at the Dinwiddie County Middle School in Dinwiddie County, Virginia on August 7, 2013 at 7:00 pm. Mr. Thomas Van Auken served as the Hearing Officer, and DEQ staff present included Michael Murphy, Kyle Winter, Emilee Adamson, and Jaime Bauer. Public attendance included 31 citizens, of whom 10 presented oral comments opposing the proposed permit re-issuance. One letter was received by email (with duplicate copies received via fax and US Postal Mail) during the comment period between July 3, 2013 and August 22, 2013. Summary of Comments Received at the August 7, 2013 Public Hearing for the Proposed Rohoic Creek Wastewater Treatment Plant Permit Reissuance (VA0092274) and in written form between July 3, 2013 and August 22, 2013

1) Issue: Impact of additional sediment and flow from treatment plant on Steers Millpond Dam

Comment: Steers Millpond and dam are located downstream of the proposed discharge location. The 1920 concrete dam cannot handle the stress from additional flow. The pond will see depths decrease due to increased sediment. The additional flow will flood people's land and contribute to soil erosion. Who will be responsible for periodic dredging activities?

Commenters: Donald Bishop, Evelyn Whitehead, Howard Somers, Addison Verner, Herbert Kirks.

Staff Response*: There are two issues with these questions; the first is whether the increased flow represents an additional flooding hazard or is capable of hydraulically overloading the Steers Millpond Dam; the second is whether the additional solids loading from the discharge will necessitate more frequent dredging of Steers Millpond.*

The Steers Millpond Dam is approximately 20' high and 220' in length, with a 20' section cut 2" below the height of the remaining length in order to direct flow to the mill wheel. The watershed draining to Steers Millpond covers over 21,000 acres; assuming a weighted runoff coefficient of 0.33 to account for the largely agricultural and silvicultural land uses in the watershed, and using an annual average rainfall of 42", the average daily flow over the dam should approximate 22 MGD. Under drought conditions, the 4.0 MGD might constitute the entire flow through that notch; under other than drought conditions, the 4.0 MGD should not impose any more hydraulic load on the dam than it was originally designed to receive. Please note that the 4.0 MGD is the ultimate design flow of the plant; this presumes that a) the plant is ever built; b) that the economy enables sufficient residential, commercial or industrial development to generate 4.0 MGD over the next 30 years, and c) other demands for water do not make reclamation and reuse of this flow a preferable alternative to discharge.

Steers Millpond consists of approximately 19 acres of open water and approximately 8 acres of marsh at the extent of backwater; during a 25-year, 24-hour storm (6"), approximately 4.4 million gallons of water will flow over the dam just from the rain falling directly on the pond, and the runoff from the entire watershed would cause over 1100 MG to flow over the dam during the several days following the storm. Under flood conditions, the 4.0 MGD from the proposed discharge would not increase the height of the water over the dam by more than 1/2". Photos of the dam show that the dam was designed for considerably higher water levels than are currently experienced.

DEQ staff reviewed stream data collected from the Hatcher Run watershed; 14 samples showed an average total solids concentration of 80 mg/l, of which approximately 29 mg/l were "volatile", or subject to decomposition, and 51 mg/l were "fixed", or more stable. By comparison, the proposed discharge is limited to 30 mg/l solids, of which approximately 10 mg/l will be "volatile" and 20 mg/l will be "fixed". A rough comparison of the proposed WWTP's 4.0 MGD at 20 mg/l to Hatcher Run's 22 MGD at 51 mg/l shows that at design flow and the current TSS limit of 30 mg/l, the proposed discharge would constitute roughly 7% of the annual sediment load flowing into Steers Millpond. In reality, facilities required to meet a $cBOD_5$ of 10 mg/l discharge TSS at levels substantially lower than 30 mg/l; were the TSS effluent limit reduced to 10 mg/l (and the permittee has not voiced opposition to this), the contribution to the sediment load entering Steers Millpond would be essentially eliminated since most of the solids remaining in the effluent would be "volatile".

DEQ staff recommends that no change to the proposed permit is necessary in response to this comment.

2) Issue: Riparian owners' property rights

Comment: Steers Millpond is privately owned and therefore, property owners remain in control of the riparian rights. Hatcher Run is not listed as a navigable creek or river by the EPA, Virginia Department of Inland Fisheries, or the US Army Corp of Engineers.

Commenters: Howard Somers, Addison Varner
Staff Response: *§ 62.1-44.3. of the Code of Virginia defines "State waters" as "..all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands." § 62.1-44.4.(1) of the Code of Virginia , while addressing the right to continue existing quality degradation in any state water, states "The right and control of the Commonwealth in and over all state waters is hereby expressly reserved and reaffirmed."*

Steers Millpond, and its tributaries, are considered "state waters"; unless the riparian owners can demonstrate that the proposed discharge impacts one or more of the beneficial uses of these waters, the proposed discharge does not constitute, prima facie, a violation of their property rights.

It should be noted that § 62.1-44.3. of the Code of Virginia also defines "beneficial use" as "both instream and offstream uses. Instream beneficial uses include, but are not limited to, the protection of fish and wildlife resources and habitat, maintenance of waste assimilation, recreation, navigation, and cultural and aesthetic values. The preservation of instream flows for purposes of the protection of navigation, maintenance of waste assimilation capacity, the protection of fish and wildlife resources and habitat, recreation, cultural and aesthetic values is an instream beneficial use of Virginia's waters. Offstream beneficial uses include, but are not limited to, domestic (including public water supply), agricultural uses, electric power generation, commercial, and industrial uses."

The draft permit is written in accordance with the Code of Virginia and Virginia Water Quality Standards contained in 9VAC 25-260 et seq. to protect the beneficial uses; therefore, DEQ staff recommends that no change to the proposed permit is necessary in response to these comments.

3) Issue: Increased flow from the treatment plant will flood properties
Comment: What is the flow rate of Hatcher Run? What will be the effect on Hatcher Run in the event of a hurricane? Some areas may be able to handle 4 MGD of water, but others will not. Roads and bridges flood during heavy rain events. The additional flow is going to flood people's property. Painted turtles migrate onto riparian properties each year to lays eggs and an increase in flow from the treatment plant will destroy the eggs or eliminate the habitat.
Commenters: Evelyn Whitehead, Howard Somers, Herbert Kirks, Claiborne Fisher
Staff Response: Using nearby stream gages, DEQ staff were unable to calculate an annual average flow at Steers Mill Pond Dam because of the multiple dams and periods of low flow in the watershed, but staff were able to calculate several other flows; during the months of January-April, the lowest flows over 30 consecutive days in a 10-year period should approximate 6.7 MGD, and it would be presumed that the stream channel more than accommodates this flow. During the months of May-December, the lowest flows over 30 consecutive days in a 10-year period approximate 0.1 MGD; the proposed discharge would actually ensure water in the creek during periods of low flow during these months. During periods of high flow, assuming a stream velocity of 1 ft/second, the 4.0 MGD proposed discharge would increase the depth within the channel by between 2.5" (where the creek is 30' wide) to 7" (where the creek is 10' wide). When precipitation is sufficient for the creek to breach the banks, the relative contribution of the discharge to water depth is negligible as the width of the flood plain may exceed 100'.

DEQ staff recommends that no change to the proposed permit is necessary in response to this comment.

4) Issue: Impact of the proposed discharge on water quality of Hatcher Run
Comment: The discharge of wastewater into Hatcher Run will increase bacteria levels and it will no longer be safe for swimming or fishing. The permit does not address cyanide, heavy metals, nutrients, or pharmaceuticals. If Hatcher Run is impaired for mercury due to atmospheric deposition, then Lake Chesdin, the water supply for Dinwiddie County should also be impaired. Therefore, if the water supply has a mercury problem, the mercury impairment of Hatcher Run will become worse. Would the proposed treatment plant impact existing fish or proposed aquaculture in Steers Mill Pond?
Commenters: James Cornett, Burton Davis, J.W. Crumpler, Howard Somers, Addison Verner
Staff Response: The Virginia Water Quality Standards (9VAC 25-260-5) define what is needed to maintain ambient water quality for fish and wildlife habitat, and primary and secondary contact recreational uses. The permit requires the disinfection of the wastewater to 126 n/Cml (geometric mean) for E. coli, which is acceptable for primary contact.

During permit development, a multistep process is conducted to determine if limitations are needed for parameters for which Water Quality Standards exist and which may have a reasonable potential to cause or contribute to an excursion of the water quality standards. The evaluation is performed using actual effluent monitoring data in most cases. For existing plants, this evaluation is performed prior to permit reissuance. Because the Rohoic Creek Wastewater Treatment Plant has not been built and no discharge yet exists, there is no evidence in the form of monitoring data to support including metals limitations in the permit. However, the permit requires the permittee to provide effluent monitoring data within 180 days of discharge commencing. Staff will use the actual effluent data to evaluate if the discharge will cause or contribute to a water quality standard excursion and modify the permit to include limitations if necessary. This process will be repeated at permit development every 5 years when the permit is reissued.

The proposed permit discharges to the Chowan River Basin and ultimately the Albemarle Sound in North Carolina. Nutrient standards, removal technology, and offsets similar to those required for discharges to the Chesapeake Bay have not been established for the Chowan River or Albemarle Sound watersheds; therefore, the permit does not contain limitations for total nitrogen or total phosphorus. If in the future nutrient standards, reduction and removal requirements or any other standards are promulgated by Virginia and/or North Carolina for free flowing streams or the Albemarle Sound, those requirements will be incorporated into the permit as applicable.

Contaminants of emerging concern such as pharmaceuticals, caffeine, and other chemicals have been found in a variety of water bodies throughout the world. Failing septic systems, illicit discharges of domestic wastewater, and illicit dumping of septage could contribute to the detection of these chemicals in water bodies not associated with permitted discharges. Various studies are being performed and reviewed to better understand the environmental occurrence and potential effects of contaminants of emerging concern. However, at this time, there are no federal or state Water Quality Standards associated with these chemicals and the Department does not have the regulatory authority to require limitations on these chemicals. If in the future, Water Quality Standards are developed for these chemicals, a reasonable potential analysis will be performed on the effluent monitoring data and limitations established if appropriate.

Additionally, the permit contains pretreatment program and Whole Effluent Toxicity monitoring requirements. The pretreatment program requires the permittee to have a thorough understanding of the types of wastewaters entering the treatment plant and concentration of pollutants in the incoming wastewater. If necessary to prevent pass through of pollutants, interference with the treatment process or violations of the Water Quality Standards, the permittee will be able to regulate the quantity and quality of influent wastewater received from industries and businesses that discharge to the collection system. The Whole Effluent Toxicity monitoring will test the effluent to determine if there are any adverse effects on test species at various strengths of the wastewater. If no adverse effect is noted, it can be reasonably determined that the wastewater supports the water quality standards and the intended uses of the receiving stream.

Hatcher Run was designated as impaired in the Virginia 2010 305(b)/303(d) Water Quality assessment due to a VDH issued Fish Consumption Advisory for mercury, not due to excursions of the Water Quality Standard for mercury. The advisory was based on high levels of mercury found in fish tissue. While the source of the mercury is unknown it is believed to be caused by atmospheric deposition. VDH has not issued a Fish Consumption Advisory for mercury for Lake Chesdin. It is likely that atmospheric deposition of mercury is occurring in the Lake Chesdin watershed, but the chemical reaction differs from that of Hatcher Run. The acidic (low pH) water of Hatcher Run reacts with the atmospherically deposited mercury causing a transformation of mercury into an organic form (known as mercury methylation) that is more likely to bioaccumulate in fish tissue. The pH of Lake Chesdin is more neutral, therefore, the reaction may not occur, and higher concentrations of mercury are not observed in tissue of fish from that water body.

In addition to various limitations, monitoring and other special condition requirements, the permit also contains several "reopeners" that authorize the Department to modify the permit, should new information become available that warrants new or more stringent water quality-based effluent limitations or to address impairments.

DEQ staff recommends that no change to the proposed permit is necessary in response to these comments.

5) Issue: Use of Hatcher Run as a Public Water Supply

Comment: Hatcher Run may be the last creek in Dinwiddie County that could be used for Public Water Supply.

Commenters: Burton Davis

Staff Response: At this time, Hatcher Run is not designated as a Public Water Supply in the Water Quality Standard regulation. If in the future it is re-designated as a Public Water Supply, the permit may be modified to impose more stringent requirements and limitations, depending on the distance from the discharge point to the water intake and the size of the water body affected.

DEQ staff recommends that no change to the proposed permit is necessary in response to this comment.

6) Issue: Impact of the proposed discharge on aquatic life and wildlife

Comment: 15-20 years ago there was a "round fish" in the creek that is no longer present.

Commenters: James Cornett, Evelyn Whitehead

Staff Response: Without additional information regarding the "round fish" as identified by the citizens, staff is unable to further investigate the disappearance of the "round fish". However, the permit has been written in accordance with the Virginia Water Quality Standards to protect the beneficial uses of the receiving water which includes aquatic life use.

DEQ staff recommends that no change to the proposed permit is necessary in response to these comments.

7) Issue: Various issues related to local government decisions

Comment: There are various projects, existing and proposed, that Dinwiddie County is getting that no one else wants, such as the high speed rail, rock quarry, and Route 460 extension. The wastewater treatment plant is just a stepping stone for future industry to come into the area. What will all of these projects do to the property values in the county?

Commenters: Addison Verner, Herbert Kirks

Staff Response: Local government issues such as zoning, land use, and project approvals are outside of the scope of DEQ's regulatory authority.

DEQ staff recommends that no change to the proposed permit is necessary in response to this comment.

8) Issue: Terminology of "sewage" versus "wastewater"

Comment: The permit says that "sewage" is going to be discharged to Hatcher Run. That needs to be changed in the permit to "wastewater."

Commenters: Charles Lowery

Staff Response: The public notice that appeared in the newspaper contained the statement that the permittee is proposing to release "treated sewage wastewaters" and "treated sewage" into the receiving water. The terms "sewage" and "wastewater" are often used interchangeably. The permit only authorizes the discharge of treated sewage or wastewater and the treatment plant must be designed and operated in accordance with the Sewage Collection and Treatment Regulations as contained in 9VAC 25-790 et seq.

DEQ staff recommends that no change to the proposed permit is necessary in response to this comment.

9) Issue: Soil and Water Conservation Board Involvement

Comment: What is the role of the Soil and Water Conservation Districts in reviewing the project? One of their board members said he didn't know anything about it.

Commenters: J.W. Crumpler

Staff Response: Soil and Water Conservation Districts are non-regulatory organizations that work to assist the citizens in their districts to control and prevent non-point source pollution.

DEQ staff recommends that no change to the proposed permit is necessary in response to this comment.

10) Issue: Designation of Hatcher Run as Swamp Waters

Comment: Hatcher Run should not be classified as Swamp Waters Designation.

Commenters: Addison Verner

Staff Response: The Swamp Waters designation of Hatcher Run is part of the Virginia Water Quality Standard regulation (9VAC 25-260-470). The classification is based on chemical characteristics of the water body and is not dependent on whether the waters are free-flowing or stagnant. It is applicable to waters as determined by DEQ with naturally occurring low pH and low dissolved oxygen caused by (i) low flow velocity that prevents mixing and re-aeration of stagnant, shallow waters and (ii) decomposition of vegetation that lowers dissolved oxygen concentrations and causes tannic acids to color the water and lower the pH.

DEQ staff recommends that no change to the proposed permit is necessary in response to this comment.

11) Issue: Chowan River Basin and North Carolina Standards

Comment: Since North Carolina has imposed a variety of requirements on facilities discharging to the Chowan Basin, why isn't this a concern for Virginia? The Chowan River is designated by North Carolina as one of the most scenic and clean rivers. North Carolina is tightening up on hog farms that discharge wastewaters with similar types of pollutants. If the Chesapeake Bay can't accept this discharge, why put it in Hatcher Run?

Commenters: J.W. Crumpler, Burton Davis

Staff Response: It is DEQ's obligation to evaluate permit applications it receives specific to the receiving stream as proposed by the permittee to determine the impact to State waters in accordance with the Virginia Water Quality Standards, and to assign effluent limitations to a facility in order to maintain these Standards. The permittee has proposed a discharge location of Hatcher Run in the Chowan River Basin and the draft permit has been developed in accordance with the Code of Virginia and Virginia Water Quality Standards applicable to Hatcher Run.

Several facilities in Virginia already discharge large volumes of wastewater to the Chowan River or its tributaries; to this point, North Carolina has not objected to those discharges as long as it can be demonstrated that Virginia's water quality standards have been supported in the affected receiving streams. If in the future any standards are promulgated by Virginia and/or North Carolina for the Chowan River, its tributaries, or the Albemarle Sound, those requirements will be incorporated into the permit as applicable.

DEQ staff recommends that no change to the proposed permit is necessary in response to this comment.

12) Issue: Environmental Impact Statement

Comment: Has an environmental impact statement had been conducted for the proposal like the one that was required for the high speed rail?

Commenters: J.W. Crumpler

Staff Response: Environmental Impact Reports are required for state owned projects for which the total cost of construction, expansion, or land acquisition is expected to exceed $500,000. The National Environmental Policy Act requires environmental impact statements or environmental assessments for certain classes of federal projects and actions. Other types of state reviews coordinated by the Office of Environmental Impact Review include permits for

operation or expansion of public airports or landing fields; exploration for and extraction of minerals on state-owned lands; and application for drilling permits in the Tidewater area. Similarly, the Office of Environmental Impact Review coordinates, at the request of the State Corporation Commission, environmental reports for proposed power plants and associated appurtenances. The proposed Rohoic Creek Wastewater Treatment Plant is not a federal or state project and does not fall into any of the categories that require an environmental impact report.

DEQ staff recommends that no change to the proposed permit is necessary in response to this comment.

LEGAL BASIS/RECOMMENDATION: The VPDES discharge permit for the Rohoic Creek WWTP (VA0092274) has been prepared in accordance with all applicable statutes, regulations and agency practices; the effluent limits and conditions in the permit have been established to protect instream beneficial uses and fish and wildlife resources and to maintain all applicable water quality standards; and all public comments relevant to the permit have been considered and therefore, staff recommends that the Board approve re-issuance of the permit.

Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Discharges Resulting from the Application of Pesticides to Surface Waters (9VAC25-800): This general permit regulation is being reissued to allow pesticide operators to continue permit coverage for application of chemical pesticides that leave a residue in water and all biological pesticide applications that are made to surface waters. This regulatory action is also needed to incorporate appropriate changes from the federal National Pollutant Discharge Elimination System Pesticide General Permit. The staff will ask the board to adopt the regulation reestablishing the General VPDES Permit for Discharges Resulting from the Application of Pesticides to Surface Waters. Background: On November 27, 2006, EPA issued a final regulation to codify its interpretation of the Clean Water Act as not requiring NPDES permits for application of pesticides to or over, including near, waters of the United States, if the applications were consistent with relevant Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) requirements. After the rule was published, petitions for review were filed in 11 Circuit Courts. On January 7, 2009, the Sixth Circuit Court of Appeals ruled in *National Cotton Council, et al. v. EPA* to vacate EPA's 2006 interpretation of the Clean Water Act. On June 8, 2009, the Court granted the Department of Justice's request for a stay of the decision to provide EPA and the States time to develop and issue NPDES permits. The State Water Control Board's VPDES permit was effective October 31, 2011 and expires December 30, 2013. The current Virginia pesticide permit was adopted as a two-year permit rather than a five year permit because at the time of adoption, EPA's pesticide permit had not finalized yet. The two-year permit allowed DEQ to evaluate EPA's final permit to include the parts of EPAs permit that could be useful to Virginia. Notice of Public Comment: The Board approved a Notice of Public Comment (NOPC) at their March 14, 2013 meeting. The NOPC was published for 60 days on April 8, 2013 and a public hearing was held on May 17, 2013 at the Piedmont Regional Office. One person attended the public hearing. Three entities commented during the NOPC (City of Suffolk, Northern Virginia Regional Commission and Dominion).

Commenter	Comment	Agency response
City of Suffolk L.J. Hansen, P.E., Dept. of Public Works	Although the definition of "Surface Waters" identifies wastewater ponds and lagoons as exempt, it does not clearly define whether or not BMP's utilized for storm water treatment would be included.	BMPs utilized for storm water may or may not be identified as wastewater ponds or lagoons. It depends on whether or not the BMP (storm water management structure) is permitted under a VPDES or VSMP permit. A storm water structure with a VPDES or VSMP permit is not surface water. All other storm water structures are surface waters. If unsure, we advise operators to count it in their acreage calculations. DEQ does not want to alter the definition of surface waters as it is based on the federal definition. However, additional guidance will be added to the fact sheet with examples.
Northern Virginia Regional Commission Aimee Vosper, Director, Environmental & Planning Services	The removal of *invasive* species as targets for pesticide application is not supported by NVRC. Invasive species pose significant threats and should be controlled.	DEQ revised the definitions to align with the EPA pesticide permit definition which eliminated the use of the words *invasive* and *nuisance* plants and replaced them with the phrase *weeds, algae and pathogens that are pests*. *Pests* are further defined as *deleterious organisms* and plants are specifically defined as *deleterious* if they are *growing where not wanted*. DEQ thinks and fully intends to cover pesticide applications to surface water for *invasive* and *nuisance* plants because they are *deleterious and growing where not wanted*.

Northern Virginia Regional Commission Aimee Vosper, Director, Environmental & Planning Services	IN the PDMP, NVRC recommends that in addition to *Problem Identification*, operators also include an *Area Descriptions*, as previously required. An *Area Description* contains relevant information about surrounding vegetation and environmental factors which could inform the optimal pest control strategy while ensuring minimal environmental damage.	This section has been renamed from *Pest management area description* to *Problem identification* to better describe the purpose of this section which was to describe the problem, set action levels and have a general area (location) map. The purpose of the section has not changed. DEQ never intended this section to require relevant information about surrounding vegetation and environmental factors which could inform the optimal pest control strategy while ensuring minimal environmental damage. No change was made to the language, which DEQ thinks is much clearer and based on the EPA pesticide permit.
Northern Virginia Regional Commission Aimee Vosper, Director, Environmental & Planning Services	Require operators to review the PDMP at least once per year as per the previous permit to enforce documented review of changing factors such as the problem, local ecology and climate, technology and available products, and available information on environmental impacts.	The request is for an annual minimum review of the PDMP has been reinstated.
Northern Virginia Regional Commission Aimee Vosper, Director, Environmental & Planning Services	NVRC recommends the DEQ consider some restriction on mosquito control as it related to bee population health. Certain mosquito control measures cause significant harm to bee populations. Some measures to include could be restricting mosquito pesticide application to dawn and dusk, limiting application of toxic chemicals known to damage bee colonies, avoid pesticide application while target plants are in bloom and required advance notice to local beekeepers before mosquito pesticides are applied. References to this topic were included.	The purpose of this permit and the authority of the SWCB is to protect state water uses. Including these types of requirements exceeds the authority granted to the SWCB. However, the information and references provided will be added to the Fact Sheet.
Dominion Pamela F. Faggert	Supports the exemption for submission of a registration statement and allowing for automatic coverage.	Noted.
Dominion Pamela F. Faggert	A linear treatment threshold should be added for aerial pest control activities for vegetation control along transmission and distribution rights of way. Furthermore a fifth use pattern to include intrusive vegetation control for roads and utility rights of way where the pesticide will unavoidably be applied over and deposited into surface waters should be added.	DEQ agrees and has moved the utility transmission and distribution line pest control to the new use pattern of *Intrusive vegetation* control and 20 linear miles of treatment areas was added for this use pattern.

Significant Changes Since Proposed
The most significant change made in response to public comment was the addition of a fifth pesticide use category (intrusive vegetation pest control). After receiving public comment that the forestry pest control to include aerial utility pest control was not broad enough for utilities vegetative pest control, DEQ staff elected to add a fifth category to ensure coverage where intrusive vegetative pest control along roads, ditches, canals, waterways and utility rights of way would reach surface waters.

Final Exempt Action: Amendments to the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (9VAC25-31): This final exempt regulatory action is being taken to implement changes to federal regulations. This memo provides the Board with background information and the substance of the amendments to the regulations. These are final amendments to the existing regulation. Staff intends to ask the Board for adoption of the amendments to the VPDES permit regulation governing permit applications and special VPDES permit programs; specifically, concentrated animal feeding operations or CAFOs (9VAC25-31, Part II) with an effective date consistent with the Administrative Process Act. The substantive changes to the VPDES permit regulation required by 77 FR 44494, dated July 30, 2012 and implemented in these amendments include:
1. Removal of language referring to permit requirements for CAFO facilities that "propose to discharge."
2. A clarification that CAFO owners and operators are prohibited from discharging unless the discharge is authorized by a VPDES permit;
3. A clarification that CAFO owners or operators are required to apply for either an individual VPDES permit or a VPDES general permit to get that discharge authorization;
4. A clarification that CAFO owners or operators are required to have that permit discharge authorization at the time of any discharge;
5. Removal of the permit exclusion for CAFOs if the owner or operator certifies to the board that the CAFO does not discharge, and the removal of all of the no discharge certification option requirements;
6. Removal of separate CAFO VPDES discharge permit deadlines; and
7. Removal of separate continuing permit coverage requirements for CAFOs and exceptions to those requirements.

The VPDES permit regulation governs the authorization to manage pollutants from various sources, including concentrated animal feeding operations (CAFO). The State Water Control Board has the authority to administer the federal National Pollutant Discharge Elimination System (NPDES) program within the Commonwealth, and as such, the program is called the Virginia Pollutant Discharge Elimination System (VPDES). Operations that meet the federal definition of CAFO found in 40 CFR 122.23(b) must seek coverage under a NPDES permit if the operation discharges or proposes to discharge. Concentrated Animal Feeding Operations currently covered under these regulations are required to be covered under the VPDES permit regulation (9VAC25-31) or VPDES general permit regulation (9VAC25-191) if they discharge or propose to discharge.

The existing Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (9VAC25-31) has been amended, where applicable, to reflect changes to 40 CFR 122.23 published in the Federal Register in 77 FR 44494, dated July 30, 2012. These amendments remove the requirement to apply for and obtain a VPDES permit if the CAFO "proposes to discharge." Operations that meet the federal definition of CAFO are still required to obtain a permit prior to discharging.

Fast-Track Rulemaking Proposal – Water Quality Management Planning Regulation Amendments (9 VAC 25-720): Staff will ask the Board to approve recommended amendments to the Water Quality Management Planning Regulation (9 VAC 25-720), and authorize use of the Fast-Track process for this rulemaking. Justification for use of the Fast-Track process is that the amendments are either:

- expected to be noncontroversial, as provided under the Administrative Process Act (§2.2-4012.1), or
- exempt actions (TMDL-related) under the Administrative Process Act (§ 2.2-4006, 4.c.: "*Necessary to meet the requirements of federal law or regulations…*").

Under the Fast-Track procedure, if the Board approves the recommended amendments and authorization to proceed is granted by the Governor, the revisions will be public-noticed for 30 days and complete the Fast-Track process (becoming effective 15 days after close of the public comment period), unless:

- DEQ finds it necessary to make any changes to the proposal, or
- An objection is received from any member of the General Assembly, any member of the Joint Commission on Administrative Rules, or 10 or more members of the public.

If either occurs, then the Fast-Track publication will serve as the Notice of Intended Regulatory Action and the standard rulemaking process would be used for promulgation.

In late 2005 the Board adopted amendments to the Water Quality Management Planning (WQMP) Regulation that set annual total nitrogen (TN) and total phosphorus (TP) Waste Load Allocations (WLAs) for Significant Dischargers in the Chesapeake Bay watershed. Included in those amendments were numerous footnotes establishing a deadline for certain facilities to secure a Certificate to Operate for expanded design capacity, upon which their WLAs would be based if the deadline was met. Due to passing of the deadline for "footnoted" facilities, as well as several appeals and settlements under the WQMP Regulation, adoption of EPA's Chesapeake Bay Total Maximum Daily Load (TMDL; Dec. 2010) and reissuance in 2012 of the Chesapeake Bay Nutrient Discharge Watershed General Permit (9 VAC 25-820-10, et.seq.), there are several Significant Dischargers that must have their WLAs amended in 9 VAC 25-720.

Another revision affecting the Alexandria Sanitation Authority facility (doing business as "Alexandria Renew Enterprises") will make expression of their WLAs consistent with two other facilities that also have combined sewer systems.

Substance of Amendments: In the Water Quality Management Plan Regulation (9 VAC 25-720):

- Delete obsolete footnotes.
- Revise TN and/or TP Waste Load Allocations for several facilities as the result of:
    - WQMP Regulation appeals/settlements.
    - EPA adoption of the Chesapeake Bay TMDL. These are exempt actions (TMDL-related) under the Administrative Process Act (§ 2.2-4006, 4.c.: "Necessary to meet the requirements of federal law or regulations…").
- Make expression of WLAs consistent for all facilities served by combined sewer systems.
- Technical "housekeeping" revisions (e.g., changes to facility name, consolidation of dischargers into a regional system, revised discharge permit numbers).

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change(s), intent, rationale, and likely impact of proposed requirements
9VAC25-720-50.C		North Fork Regional WWTP (1) VPDES Permit #VA0090328 TN WLA = 9,137 lbs/yr TP WLA = 685 lbs/yr NOTE (1): Shenandoah Co. - North Fork Regional WWTP waste load allocations (WLAs) based on a design flow capacity of 0.75 million gallons per day (MGD). If plant is not certified to operate at 0.75 MGD design flow capacity by 12/31/10, the WLAs will be deleted and facility removed from Significant Discharger List.	Delete facility from Section listing. Plant not expanded; still 0.1 MGD design capacity and, therefore, does not meet the definition of Significant Discharger. WLAs become "Unallocated Reserve" in new table listing; no change to basin totals.
9VAC25-720-50.C		Note (2): Harrisonburg-Rockingham Regional S.A.-North River STP: waste load allocations (WLAs) based on a design flow capacity of 20.8 million gallons per day (MGD). If plant is not certified to operate at 20.8 MGD design flow capacity by 12/31/11, the WLAs will decrease to TN = 194,916	Delete note; Certificate to Operate for expanded design capacity issued 12/8/10.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change(s), intent, rationale, and likely impact of proposed requirements
		lbs/yr; TP = 14,619 lbs/yr, based on a design flow capacity of 16.0 MGD.	
9VAC25-720-50.C		Note (3): Mount Jackson STP: waste load allocations (WLAs) based on a design flow capacity of 0.7 million gallons per day (MGD). If plant is not certified to operate at 0.7 MGD design flow capacity by 12/31/10, the WLAs will decrease to TN = 7,309 lbs/yr; TP = 548 lbs/yr, based on a design flow capacity of 0.6 MGD.	Delete note; Certificate to Operate for expanded design capacity issued 4/13/09.
9VAC25-720-50.C		Note (4): Purcellville-Basham Simms STP: waste load allocations (WLAs) based on a design flow capacity of 1.5 million gallons per day (MGD). If plant is not certified to operate at 1.5 MGD design flow capacity by 12/31/10, the WLAs will decrease to TN = 12,182 lbs/yr; TP = 914lbs/yr, based on a design flow capacity of 1.0 MGD.	Delete note; Certificate to Operate for expanded design capacity issued 9/16/10.
9VAC25-720-50.C		Note (5): Loudoun Co. S.A.-Broad Run WRF: waste load allocations (WLAs) based on a design flow capacity of 11.0 million gallons per day (MGD). If plant is not certified to operate at 11.0 MGD design flow capacity by 12/31/10, the WLAs will decrease to TN = 121,822 lbs/yr; TP = 3,046 lbs/yr, based on a design flow capacity of 10.0 MGD.	Delete note; Certificate to Operate for expanded design capacity issued 5/26/10.
9VAC25-720-50.C		Note (6): Dale Service Corp.-Section 1 WWTF: waste load allocations (WLAs) based on a design flow capacity of 4.6 million gallons per day (MGD). If plant is not certified to operate at 4.6 MGD design flow capacity by 12/31/10, the WLAs will decrease to TN = 36,547 lbs/yr; TP = 2,193 lbs/yr, based on a design flow capacity of 4.0 MGD.	Delete note; Certificate to Operate for expanded design capacity issued 6/29/10.
9VAC25-720-50.C		Note (7): Dale Service Corp.-Section 8 WWTF: waste load allocations (WLAs) based on a design flow capacity of 4.6 million gallons per day (MGD). If plant is not certified to operate at 4.6 MGD	Delete note; Certificate to Operate for expanded design capacity issued 6/29/10.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change(s), intent, rationale, and likely impact of proposed requirements
		design flow capacity by 12/31/10, the WLAs will decrease to TN = 36,547 lbs/yr; TP = 2,193 lbs/yr, based on a design flow capacity of 4.0 MGD.	
9VAC25-720-50.C		Note (8): Frederick-Winchester Service Authority - Parkins Mill STP: waste load allocations (WLAs) based on a design flow capacity of 5.0 million gallons per day (MGD). If plant is not certified to operate at 5.0 MGD design flow capacity by 12/31/10, the WLAs will decrease to TN = 36,547 lbs/yr; TP = 2,741 lbs/yr, based on a design flow capacity of 3.0 MGD.	Delete note; Certificate to Operate for expanded design capacity issued 1/20/10.
9VAC25-720-50.C		North Fork (SIL) WWTF: VPDES Permit #VA0090263 TN WLA = 23,390 lbs/yr TP WLA = 1,754 lbs/yr	Rename facility Broadway Regional WWTF: Same VPDES Permit # TN WLA = 29,481 lbs/yr TP WLA = 2,211 lbs/yr Revised WLAs due to consolidation with New Market STP (now offline).
9VAC25-720-50.C		New Market STP: VPDES Permit #VA0022853 TN WLA = 6,091 lbs/yr TP WLA = 457 lbs/yr	Delete facility from Section listing. Flows have been diverted to Broadway Regional WWTF and plant is now offline.
9VAC25-720-50.C		Alexandria SA WWTF: VPDES Permit #VA0025160 TN WLA = 493,381 lbs/yr TP WLA = 29,603 lbs/yr	Rename facility Alexandria Renew Enterprises. WLAs remain unchanged. Add note: Waste load allocations for localities served by combined sewers are based on dry weather design flow capacity. During wet weather flow events the discharge shall achieve a TN concentration of 4.0 mg/l and a TP concentration of 0.18 mg/l.
9VAC25-720-50.C		Leesburg WPCF: Permit # MD0066184	Revise permit number to VPDES #VA0092282.
9VAC25-720-50.C		King George Co. Service Authority-Fairview Beach: Permit # MD0056464	Revise permit number to VPDES #VA0092134.
9VAC25-720-50.C			Insert new row in WLA Table above "TOTALS": Unallocated Reserve WLA: TN WLA = 9,137 lbs/yr

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change(s), intent, rationale, and likely impact of proposed requirements
			TP WLA = 685 lbs/yr
9VAC25-720-60.C		R. J. Reynolds: VPDES Permit #VA0002780	Rename facility The Sustainability Park, LLC
9VAC25-720-60.C		Clifton Forge STP: VPDES Permit #VA0022772 TN WLA = 36,547 lbs/yr TP WLA = 3,046 lbs/yr	Delete facility from Section listing. Flows have been diverted to Lower Jackson River STP and plant is now offline.
9VAC25-720-60.C		Lower Jackson River STP: VPDES Permit #VA0090671 TN WLA = 27,410 lbs/yr TP WLA = 2,284 lbs/yr	Revise WLAs to: TN WLA = 63,957 lbs/yr TP WLA = 5,330 lbs/yr Revised WLAs due to consolidation with Clifton Forge STP (now offline).
9VAC25-720-70.C		Note (1): Town of Culpeper WWTP waste load allocations (WLAs) based on a design flow capacity of 4.5 million gallons per day (MGD). If plant is not certified to operate at 4.5 MGD design flow capacity by 12/31/10, the WLAs will decrease to TN = 36,547 lbs/yr; TP = 2,741 lbs/yr, based on a design flow capacity of 3.0 MGD.	Delete note; Certificate to Operate for expanded design capacity of 6.0 MGD issued 4/22/10. Revise WLAs to: TN WLA = 73,093 lbs/yr TP WLA = 5,483 lbs/yr Revised WLAs due to consolidation with a portion of WLAs assigned to Culpeper Co.-Mountain Run STP, which will not be constructed. Mountain Run was to be a 2.5 MGD facility; 1.5 MGD of this capacity has been consolidated into Culpeper STP.
9VAC25-720-70.C		Note (2): Culpeper Co.-Mountain Run STP: waste load allocations (WLAs) based on a design flow capacity of 2.5 million gallons per day (MGD). If plant is not certified to operate at 2.5 MGD design flow capacity by 12/31/10, the WLAs will decrease to TN = 18,273 lbs/yr; TP = 1,371 lbs/yr, based on a design flow capacity of 1.5 MGD.	Delete facility from Section listing. Facility will not be built and a portion of the WLAs assigned to this discharge (based on 1.5 MGD of a total 2.5 MGD design capacity) have been consolidated into the Town of Culpeper STP. Balance of WLAs (1.0 MGD of unbuilt capacity) becomes part of "Unallocated Reserve" in new table listing; no change to basin totals.
9VAC25-720-70.C		Note (3): Fauquier Co. W&SA-Remington STP: waste load allocations (WLAs) based on a design flow capacity of 2.5 million gallons per day (MGD). If plant is not certified to operate at 2.5 MGD design flow capacity by 12/31/10, the WLAs will decrease to TN =	Delete note; facility not expanded. Revise WLAs to: TN WLA = 24,364 lbs/yr TP WLA = 1,827 lbs/yr Balance of WLAs (0.5 MGD of unbuilt capacity) becomes part of

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change(s), intent, rationale, and likely impact of proposed requirements
		24,364 lbs/yr; TP = 1,827 lbs/yr, based on a design flow capacity of 2.0 MGD.	"Unallocated Reserve" in new table listing; no change to basin totals.
9VAC25-720-70.C		Note (4): Culpeper Co.-Clevengers Corner STP: waste load allocations (WLAs) based on a design flow capacity of 0.9 million gallons per day (MGD). If plant is not certified to operate at 0.9 MGD design flow capacity by December 31, 2010, the WLAs will decrease to TN = 7,309 lbs/yr; TP = 548 lbs/yr, based on a design flow capacity of 0.6 MGD.	Delete note; Certificate to Operate for expanded design capacity issued 8/26/10. Rename facility Clevengers Village WWTP
9VAC25-720-70.C		Note (5): Haymount STP: waste load allocations (WLAs) based on a design flow capacity of 0.96 million gallons per day (MGD). If plant is not certified to operate at 0.96 MGD design flow capacity by 12/31/10, the WLAs will decrease to TN = 7,066 lbs/yr; TP = 530 lbs/yr, based on a design flow capacity of 0.58 MGD.	Delete note; 0.96 MGD design capacity not constructed. Revise WLAs to minimum allowance: TN WLA = 7,066 lbs/yr TP WLA = 530 lbs/yr Balance of WLAs (0.38 MGD of unbuilt capacity) becomes part of "Unallocated Reserve" in new table listing; no change to basin totals.
9VAC25-720-70.C		Spotsylvania Co.-Massaponax STP: VPDES Permit #VA0025658 TN WLA = 97,458 lbs/yr TP WLA = 7,309 lbs/yr	TN WLA = 114,505 lbs/yr TP WLA = 8,405 lbs/yr Revised WLAs due to consolidation with a portion of WLAs assigned to Spotsylvania Co.-FMC STP, which was not expanded. FMC STP was to be a 5.4 MGD facility (up from 4.0 MGD). The proposed 1.4 MGD expansion has been consolidated into Massaponax STP, instead.
9VAC25-720-70.C		Spotsylvania Co.-FMC STP: VPDES Permit #VA0068110 TN WLA = 65,784 lbs/yr TP WLA = 4,934 lbs/yr	TN WLA = 48,737 lbs/yr TP WLA = 3,655 lbs/yr Figures revised due to consolidation of a portion of WLAs with Spotsylvania Co.-Massaponax STP. FMC STP was not expanded from 4.0 to 5.4 MGD as proposed; the 1.4 MGD expansion has been constructed at Massaponax STP.
9VAC25-720-70.C			Insert new row in WLA Table above "TOTALS": Unallocated Reserve WLA: TN WLA = 22,904 lbs/yr

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change(s), intent, rationale, and likely impact of proposed requirements
			TP WLA = 1,900 lbs/yr
9VAC25-720-110.C		Note (1): Cape Charles STP: waste load allocations (WLAs) based on a design flow capacity of 0.5 million gallons per day (MGD). If plant is not certified to operate at 0.5 MGD design flow capacity by 12/31/10, the WLAs will decrease to TN = 3,046 lbs/yr; TP = 228 lbs/yr, based on a design flow capacity of 0.25 MGD.	Delete note; facility not expanded. Revise WLAs to: TN WLA = 3,046 lbs/yr TP WLA = 228 lbs/yr Balance of WLAs (0.25 MGD of unbuilt capacity) becomes "Unallocated Reserve" in new table listing; no change to basin totals.
9VAC25-720-110.C		Note (2): Onancock STP: waste load allocations (WLAs) based on a design flow capacity of 0.75 million gallons per day (MGD). If plant is not certified to operate at 0.75 MGD design flow capacity by 12/31/11, the WLAs will decrease to TN = 3,046 lbs/yr; TP = 228 lbs/yr, based on a design flow capacity of 0.25 MGD.	Delete note; Certificate to Operate for expanded design capacity issued 8/23/11.
9VAC25-720-110.C			Insert new row in WLA Table above "TOTALS": Unallocated Reserve WLA: TN WLA = 3,045 lbs/yr TP WLA = 229 lbs/yr
9VAC25-720-120.C		Caroline Co. STP: TP WLA = 1,066 lbs/yr	Revise TP WLA to 609 lbs/yr in accordance with EPA Chesapeake Bay TMDL. Action exempt from Administrative Process Act - necessary to meet the requirements of federal law or regulations.
9VAC25-720-120.C		Gordonsville STP: TP WLA = 2,004 lbs/yr	Revise TP WLA to 1,145 lbs/yr in accordance with EPA Chesapeake Bay TMDL. Action exempt from Administrative Process Act – necessary to meet the requirements of federal law or regulations.
9VAC25-720-120.C		Ashland WWTP: TP WLA = 4,264 lbs/yr	Revise TP WLA to 2,436 lbs/yr in accordance with EPA Chesapeake Bay TMDL. Action exempt from Administrative Process Act – necessary to meet the requirements of federal law or regulations.
9VAC25-720-120.C		Doswell WWTP: TP WLA = 2,132 lbs/yr	Revise TP WLA to 1,218 lbs/yr in accordance with EPA

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change(s), intent, rationale, and likely impact of proposed requirements
			Chesapeake Bay TMDL. Action exempt from Administrative Process Act – necessary to meet the requirements of federal law or regulations.
9VAC25-720-120.C		Bear Island Paper Co.: TP WLA = 12,791 lbs/yr	Revise TP WLA to 10,233 lbs/yr in accordance with EPA Chesapeake Bay TMDL. Action exempt from Administrative Process Act – necessary to meet the requirements of federal law or regulations.
9VAC25-720-120.C		Giant Yorktown Refinery: TP WLA = 22,111 lbs/yr	Rename facility Plains Marketing, L.P. – Yorktown Revise TP WLA to 17,689 lbs/yr in accordance with EPA Chesapeake Bay TMDL. Action exempt from Administrative Process Act – necessary to meet the requirements of federal law or regulations.
9VAC25-720-120.C		HRSD-York STP: VPDES Permit #VA0081311 TN WLA = 274,100 lbs/yr TP WLA = 31,978 lbs/yr	TN WLA = 275,927 lbs/yr TP WLA = 18,395 lbs/yr Revised TN WLA due to consolidation with HRSD-Mathews Courthouse STP (now offline). Revised TP WLA due to consolidation with HRSD-Mathews Courthouse STP (now offline), then further revised to 18,395 lbs/yr in accordance with EPA Chesapeake Bay TMDL. Action exempt from Administrative Process Act - necessary to meet the requirements of federal law or regulations.
9VAC25-720-120.C		Parham Landing WWTP: TP WLA = 4,264 lbs/yr Note (1): Parham Landing WWTP: waste load allocations (WLAs) based on a design flow capacity of 2.0 million gallons per day (MGD). If plant is not certified to operate at 2.0 MGD design flow capacity by	Revise TP WLA to 2,436 lbs/yr in accordance with EPA Chesapeake Bay TMDL. Action exempt from Administrative Process Act - necessary to meet the requirements of federal law or regulations. Delete note; Certificate to

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change(s), intent, rationale, and likely impact of proposed requirements
		12/31/10, the WLAs will decrease to TN = 10,416 lbs/yr; TP = 1,215 lbs/yr, based on a design flow capacity of 0.57 MGD.	Operate for expanded design capacity issued 12/20/10.
9VAC25-720-120.C		Smurfit Stone – West Point: TP WLA = 70,048 lbs/yr	Rename facility RockTenn CP LLC – West Point Revise TP WLA to 56,038 lbs/yr in accordance with EPA Chesapeake Bay TMDL. Action exempt from Administrative Process Act – necessary to meet the requirements of federal law or regulations.
9VAC25-720-120.C		Totopotomoy WWTP: TP WLA = 21,319 lbs/yr	Revise TP WLA to 12,182 lbs/yr in accordance with EPA Chesapeake Bay TMDL. Action exempt from Administrative Process Act – necessary to meet the requirements of federal law or regulations.
9VAC25-720-120.C		West Point STP: TP WLA = 1,279/yr	Revise TP WLA to 731 lbs/yr in accordance with EPA Chesapeake Bay TMDL. Action exempt from Administrative Process Act – necessary to meet the requirements of federal law or regulations. Rename facility HRSD-West Point STP
9VAC25-720-120.C		HRSD-Mathews Courthouse STP: VPDES Permit #VA0028819 TN WLA = 1,827 lbs/yr TP WLA = 213 lbs/yr	Delete facility from Section listing. Flows have been diverted to HRSD-York STP and plant is now offline.
9VAC25-720-120.C		TOTALS: TN WLA = 1,060,939 lbs/yr TP WLA = 173,469 lbs/yr	No change to TN WLA Total. To conform with EPA-approved Chesapeake Bay TMDL, revise TP WLA Total to: TP WLA = 123,112 lbs/yr

Transfer of Stormwater Regulations - Additional Matters: Purpose: The purpose of this agenda item is to address remaining regulatory actions initiated by the Soil and Water Conservation Board before July 1, 2013. Background: At the Board's August 26-27, 2013, meeting, the Board took several actions to implement transfer of certain stormwater management programs from the Soil and Water Conservation Board to the State Water Control Board. During the meeting staff also advised the Board that other regulatory actions were underway and additional actions may be necessary. Discussion: At this Board meeting the following matters will be presented:
Certification of Non-Point Source Nutrient Credits: This rulemaking is for the adoption of a regulation to establish statewide standards and procedures for the certification of nonpoint nutrient credits. This rulemaking was initiated by the Soil and Water Conservation Board. Staff is currently working with a Regulatory Advisory Panel (RAP) to develop a

proposal for the Board's consideration and will propose this as a separate regulation - 9VAC25-900. Staff believes this rulemaking should proceed and we expect to bring a proposal to the Board for authorization to proceed to public comment at the Board's December meeting.

Procedures for Reviewing and Approving Design Specifications and Pollutant Removal Credits for Best Management Practices (BMPs): This rulemaking is a Fast-Track amendment to the Virginia Stormwater Management Regulations that was adopted by the Virginia Soil and Water Conservation Board. The regulation establishes fees and procedures for reviewing and approving BMPs, and incorporates a testing protocol for proprietary BMPs. While staff recognizes the need for a mechanism to review and approve new BMPs and a testing protocol, additional time to consider this regulation to ensure that the procedures are appropriate, efficient and cost effective is necessary. Staff believes that establishing interim procedures in guidance while initiating a separate regulatory process to establish a long-term mechanism is the best course of action at this time. Proceeding in this manner will allow for the approval of new BMPs and for further discussions with interested stakeholders on the appropriate long-term process.

General Permit for Discharges of Stormwater from Construction Activities: At the last meeting, the Board authorized the rulemaking initiated by the Virginia Soil and Water Conservation Board to reissue the General Permit for Discharges of Stormwater from Construction Activities to proceed. This was necessary in order to have a general permit available on July 1, 2014. The public comment period on the proposed regulation has closed and staff has been reviewing the proposal and the public comments received. Staff is considering recommending additional amendments to the regulation when presented to the Board for final adoption. However, staff intends to announce a public comment period on the additional amendments prior to presentation to the Board for final adoption. Staff expects to announce the comment period in the near future and present final amendments for the Board's consideration at the December meeting. More information on the additional amendments will be provided at this meeting.

Staff will recommend that the Board authorize the regulatory action to adopt a new regulation on the Certification of Non-Point Source Nutrient Credits to proceed and withdraw the Soil and Water Conservation Board's Fast-Track action for 4VAC50-60 – Procedures for Reviewing and Approving Design Specifications and Pollutant Removal Credits for Best Management Practices.

Development of Virginia's FY 2014 Clean Water Revolving Loan Funding List: Title VI of the Clean Water Act requires the yearly submission of a Project Priority List and an Intended Use Plan in conjunction with Virginia's Clean Water Revolving Loan Fund (VCWRLF) Federal Capitalization Grant application. Section 62.1-229 of Chapter 22, Code of Virginia, authorizes the Board to establish to whom loans are made, loan amounts, and repayment terms. In order to begin the process, the Board needs to consider its FY 2014 loan requests, tentatively adopt a FY 2014 Project Priority List based on anticipated funding, and authorize the staff to receive public comments.

On May 31, 2013 the staff solicited applications from the Commonwealth's localities and wastewater authorities as well as potential land conservation applicants and Brownfield remediation clientele. July 19, 2013 was established as the deadline for receiving applications. Based on this solicitation, DEQ received eighteen (18) wastewater improvement applications requesting $127,244,588, two (2) applications for land conservation projects (totaling $10,449,000), and one (1) stormwater management application for an additional $1,664,750, bringing the total amount requested to $139,358,338.

Due to the very low interest rate environment that has existed over this past year, a number of VCWRLF borrowers have refinanced loans and exercised their option to prepay their outstanding balances. This results in a significant amount of funding available for new loans. In addition, last year's FY 2013 Project Priority List was an unusually low dollar amount, allowing more of the Fund's balances to carry forward into this fiscal year. Therefore, even with the likely reduction in federal appropriations expected this year, the accumulation of monies that have and will occur in the Fund through loan prepayments, loan repayments, interest earnings, and de-allocations from leverage accounts should result in enough funding being available during the FY 2014 funding cycle to fund all the applications received.

The staff believes it is prudent to move forward with the initial targeting of Virginia's proposed FY 2014 clean water revolving loan funding list for public review based on this projected availability. Final Board approval of the list will not be requested until the December meeting.

All 18 wastewater applications were evaluated in accordance with the program's Funding Distribution Criteria. In keeping with the program objectives and funding prioritization criteria, the staff reviewed project type and impact on state waters, the locality's compliance history and fiscal stress, and the projects' readiness-to-proceed. The two land conservation applications were reviewed using the Board's evaluation criteria and the staff also received input from the Department of Conservation and Recreation in accordance with the Board guidelines and state law. Based on this review and input, the staff believes that both projects would provide for the protection of land that is valuable from a water quality perspective and should be funded. The one stormwater application was reviewed in accordance with the Board's

Priority Ranking Criteria for Stormwater projects. All applications are considered to be of good quality and should provide significant water quality and environmental improvement. The recommended project funding list shown below provides funding for all the applications received. It is based on the best information and assumptions currently available to staff from the applications received, existing Fund balances, federal budget projections, and discussions between DEQ and the Virginia Resources Authority. Several activities will be occurring over the next few months to help clarify these factors and provide additional input to the process including the following: (1) DEQ will hold individual meetings with targeted recipients to verify the information in the applications, especially schedules; (2) finalization of the federal budget for 2014 should determine the federal appropriation for the Clean Water SRF, and (3) staff will provide public notification of the proposed project list and hold a public meeting.

The staff is recommending that the list be tentatively adopted, subject to the verification of information in the loan applications and public review and comment. The final list will be brought back to the Board in December.

Conclusion: The VCWRLF program solicited applications for FY 2014 funding assistance and evaluated the 21 requests received totaling $139,358,338. After an evaluation of funding availability, priority consideration, and review of anticipated construction schedules, Virginia's FY 2014 Project Priority List includes all 21 projects totaling $139,358,338. Based on current and projected cash resources, the Board should have sufficient funds available to honor these requests at the amounts shown.

	Applicant	Project Type	Requested Amount
1	Town of Front Royal	Wastewater	$50,000,000
2	Town of Clifton Forge	Wastewater	$750,000
3	City of Norfolk	Wastewater	$10,000,000
4	Town of Saltville	Wastewater	$971,290
5	Rivanna WSA	Wastewater	$37,262,000
6	City of Waynesboro	Wastewater	$1,658,989
7	Dickenson County PSA	Wastewater	$499,400
8	Wise County PSA	Wastewater	$1,038,234
9	Castlewood WSA	Wastewater	$4,682,800
10	Washington County SA	Wastewater	$884,895
11	Town of Stuart	Wastewater	$1,280,600
12	Town of Boones Mill	Wastewater	$856,295
13	Town of Independence	Wastewater	$470,500
14	Town of Hillsville	Wastewater	$149,000
15	Henry County PSA	Wastewater	$1,773,200
16	Lee County PSA	Wastewater	$1,032,785
17	Wythe County	Wastewater	$2,103,600
18	Blacksburg-VPI SA	Wastewater	$11,833,000
19	City of Waynesboro	Stormwater	$1,664,750
20	The Trust for Public Land	Land Conservation	$10,000,000
21	Meadowview Bio Res Station	Land Conservation	$449,000
		Total =	**$139,358,338**

Notification to the Board — Submission to EPA for No Discharge Zone Designations: Staff will present No Discharge Zone (NDZ) proposals to designate NDZs for 38 water bodies in Richmond, Lancaster, Northumberland, and Westmoreland counties. The designation of an NDZ requires written application to EPA and, if approved, prohibits the discharge of all vessel sewage, whether treated or not, into the designated NDZ. Any citizen can request consideration of an NDZ for a designated area, but the final application to EPA must be submitted from the state's governor or chief environmental official. Four applications, one corresponding to each county in the Northern Neck of Virginia, will be presented to the Virginia Secretary of Natural Resources for transmittal to EPA. The water bodies subject to the proposed NDZs include 75 Total Maximum Daily Load (TMDL) watersheds where the TMDL report prescribed reductions in human waste.

Federal law prohibits the discharge of untreated sewage from all vessels into navigable waters of the U.S. Federal standards for vessel discharge of treated sewage were established by EPA regulations at 40 CFR Part 140

that were promulgated pursuant to the Clean Water Act §312. Further, these regulations provide that a state can completely prohibit the discharge of all vessel sewage, whether treated or not, into specified water bodies by establishing NDZs. A state can only enforce vessel sewage regulations that are more stringent than federal regulations upon approval of an NDZ from the EPA Administrator. DEQ is the coordinator of NDZ designation requests in Virginia and has developed a procedure that includes public involvement, coordination with other state agencies, consultation with EPA, and development and transmittal of an application for Executive signature.

The Code of Virginia at § 62.1-44.33 establishes all tidal creeks within the Commonwealth as NDZs and states that criteria for such establishment shall be premised on the improvement of impaired tidal creeks. Additionally, it directs the State Water Control Board ("the Board") to adopt regulations regarding NDZs, and defines an NDZ as an area approved by EPA where EPA makes an affirmative determination that adequate pump-out facilities exist. The Board has adopted a regulation that lists existing NDZs and applicable requirements within them at 9VAC25-71 et seq., *Regulations Governing the Discharge of Sewage and Other Wastes from Boats.*

DEQ Guidance Memo 08-2003 (Procedure for Designation of Vessel No Discharge Zones) issued February, 2008, describes the process for submitting an NDZ application to EPA. According to this guidance, the finalized proposal for an NDZ application and a summary of public comments is to be provided to the Board for informational purposes prior to submitting these documents to the Virginia Secretary of Natural Resources for transmittal to EPA. If EPA approves the applications, DEQ will then ask the Board to amend 9VAC25-71-70 to add the newly designated NDZs.

Applications for the proposed NDZs were developed in accordance with EPA Guidance 842-B-94-004 (Protecting Coastal Waters from Vessel and Marina Discharges: a Guide for State and Local Officials). The applications were subject to the public participation process contained in DEQ's Guidance Memo 08-2003. Written comments provided by stakeholders as well as the Commonwealth's responses will be submitted to EPA together with the NDZ applications. Comments as well as the NDZ applications are made available to the public on DEQ's web site under
http://www.deq.virginia.gov/Programs/Water/WaterQualitylnformationTMDLs/TMDL/NoDischargeZoneDesignations.aspx

The proposed NDZs were published in the Virginia Register, presented during public meetings in each county, and opened to public comment periods subsequent to each public meeting.

As described in DEQ Guidance Memo 08-2003, staff is notifying the Board of upcoming actions by the DEQ Director wherein the NDZ applications will be presented to the Virginia Secretary of Natural Resources for transmittal to EPA.

DEQ received 60 public comments (8 from Richmond County, 31 from Lancaster County, 13 from Northumberland County, and 8 from Westmoreland County) pertaining to NDZ applications for the following 38 water bodies in these four counties:

Richmond County

Farnham Creek, Lancaster Creek*/Morattico Creek

* Lancaster Creek is in both Richmond and Lancaster counties.

Lancaster County

Mulberry, Deep, Greenvale, Whitehouse, Town, Myer, Moran, Taylor, Carter, Mosquito, Oyster, Windmill Point Resort Boat Basin, Antipoison, Tabbs, Dymer, and Indian* Creeks; and both East and West Branches of the Corrotoman River

* Indian Creek is in both Lancaster and Northumberland counties.

Northumberland County

Jarvis Creek, Prentice Creek, Dividing Creek, Cloverdale Creek, Great Wicomico River and Ingram Bay, Little Wicomico River, Cod Creek, Coan River and the Glebe, Judith Sound, Yeocomico River*

* The Yeocomico River is in both Northumberland and Westmoreland counties.

Westmoreland County

Bonum Creek, Jackson Creek, Gardner Creek, Ragged Point, Lower Machodoc Creek, Nomini Creek and Currioman Bay, Mattox Creek and Monroe Bay, and Rosier Creek*

*Rosier Creek is in both Westmoreland and King George counties.

Summary of Comments for No Discharge Zone Applications in Lancaster, Northumberland, Richmond, and Westmoreland counties:

Comments Against

The most common comments against the designation of NDZs in these counties included the following:

- Additional regulation, beyond the Clean Water Act prohibition on discharge of untreated sewage, is not needed.
- Better enforcement of the Clean Water Act is all that is needed.

- NDZs cause more pollution, not less. This is due to pumpout system malfunction and illegal dumping by boaters who are unable to find a working pumpout.
- There are an inadequate number of pumpout facilities, especially due to accessibility (e.g. shallow approach depths) and seasonal marina closures (e.g. winter).
- Certain Marine Sanitation Devices (MSDs), such as the Electro Scan, release very clean effluent.
- Based on the Statute, NDZs should be designated in impaired tidal creeks only.

Pertinent DEQ responses include the following:

While it is illegal to discharge raw waste per the Clean Water Act, NDZs elevate the message to the public that dumping is illegal. NDZs are more enforceable, because there must be a physical barrier to the y-valve or toilet. This will be visibly apparent to enforcement officers.

The Clean Water Act does not exempt MSDs that perform better than the standard. Because NDZs are only applicable in limited areas, usage of MSD technology is supported by DEQ and may be used in all non-NDZ waters.

EPA guidance is used along with best professional judgment to make the determination on adequate availability of pumpout and dump stations. The low mean depth of waters around pumpout/dump stations will determine whether or not exclusions are necessary for boats with greater draught requirements. Draught exclusions for larger craft will allow MSD discharge within NDZs for those craft.

Certain facilities with shallow approach depths exhibit depths comparable to the surrounding water body. Therefore, larger vessels will not use the waters surrounding these marinas. Larger vessels will be in the mainstem rivers or in deeper water bodies.

DEQ is directed by the Code of Virginia to premise NDZ designations on improvement of impaired tidal creeks. DEQ's program is primarily premised on addressing tidally influenced areas where water quality is impaired. However, NDZs are not limited to the boundaries of the impairment by the Code of Virginia or Section 312 of the Clean Water Act. Federal guidelines also allow States to designate NDZs under the Clean Water if any State determines that the protection and enhancement of the quality of some or all of the waters within such State require greater environmental protection.

Comments in Support

The most common or significant comments supporting the designation of NDZs in these counties included the following:

- MSDs do not sufficiently treat the nutrient load in the waste stream, and they macerate solids to eventually produce a sediment load.
- The problem of incompletely processed sewage by onboard systems is multiplied significantly in the locations where boats are used.
- Boat discharges represent a pollution source that is readily identifiable, undisputable, and solvable at minimal cost relative to other sources.
- The proper management of boat waste is an integral part of protecting these small, shallow tidal coves and the shellfish habitat they provide.
- NDZs must be designated to restore valuable spawning grounds for Perch and Rockfish, as well as shedding grounds for Blue Crabs.
- The proposed boundaries for the Yeocomico River, the Lower Machodoc and the Nomini should be expanded to include existing shellfish beds.
- The proposed boundaries of the NDZs should be to the state line. This will eliminate uncertainty, because the state line is a currently-existing boundary.

Pertinent DEQ responses include the following:

While NDZs have historically been used to reduce the bacteria concentrations of shellfish growing waters for protection of human health, DEQ agrees with the rationale that they will also be beneficial by reducing the nutrients and suspended solids which result from MSD Type I/II use.

DEQ agrees that limiting treated vessel sewage can only benefit aquatic life and it is especially important for species consumed by humans.

Due to some comments against NDZ designations in general, DEQ will extend boundaries to the state line only where the extension will specifically extend protection over current or proposed shellfish beds.