Virginia Soil and Water Conservation Board
September 27-28, 2012
Richmond, Virginia

Thursday, September 27, 2012 – 1:00 p.m.

Senate Room 1, State Capitol Building
Training on the Chesapeake Bay Preservation Act

Virginia Soil and Water Conservation Board Members Present

Susan Taylor Hansen, Chair
Joan DuBois
Gary Hornbaker
Daphne W. Jamison
Richard A. Street
John A. Bricker, NRCS Ex Officio
Raymond L. Simms, Vice Chair
Herbert L. Dunford
Jerry L. Ingle
Stephen Lohr

DCR Staff Present

Michael R. Fletcher
Daniel Moore
Ginny Snead
John McCutcheon
Joan Salvati
Michelle Vucci

Chesapeake Bay Preservation Act materials presented at this meeting are available from DCR. No Board business was transacted during this training.

Friday, September 28, 2012 – 9:30 a.m.
Senate Room A, General Assembly Building, Senate Room A

Virginia Soil and Water Conservation Board Members Present

Susan Taylor Hansen, Chair
Joan DuBois
Gary Hornbaker
Daphne W. Jamison
Richard A. Street
David A. Johnson, DCR Director, Ex Officio
Raymond L. Simms, Vice Chair
Herbert L. Dunford
Jerry L. Ingle
Stephen Lohr

Virginia Soil and Water Conservation Board Members Not Present

C. Frank Brickhouse, Jr.
John A. Bricker, NRCS, Ex Officio
Wanda J. Thornton

DCR Staff Present

Jeb Wilkinson
Anne Crosier
Michael R. Fletcher
Ken Harper
John McCutcheon
Ginny Snead
Robert Bennett
James Davis-Martin
Roberta Gargiulo
Stephanie Martin
Joan Salvati
Michelle Vucci
Matthew Gooch, Office of the Attorney General

Others Present

Joel Baker, Roanoke County
Josh Bateman, GKY
Connie Bennett, York County
Joe Brogan, York County
Brenda Garton, Gloucester County
Fran Geissler, James City County
John Fowler, Chesapeake Bay Foundation
L.J. Hansen, City of Suffolk
Neil Holthouser, Franklin County
Adrienne Kotula, James River Association
Roy Mills, VDOT
Lisa Ochsenhirt, Aqualaw/VAMSA
Ed Overdon, VASWCD
Stacy Porter, City of Portsmouth
Morgan Quicke, Richmond County
Scott Rae, Gloucester County
Peggy Sanner, Chesapeake Bay Foundation
Bill Street, James River Association
Jenny Tribo, Hampton Roads PDC
Kendall Tyree, VASWCD
Chris Whitlow, Franklin County

Call to Order

Chairman Hansen called the meeting to order and declared a quorum present

Approval of Minutes from June 28, 2012

MOTION: Mr. Lohr moved that the minutes of the June 28, 2012 meeting of the Virginia Soil and Water Conservation Board be approved as submitted by staff.

SECOND: Mr. Dunford

DISCUSION: None

VOTE: Motion carried with Ms. DuBois abstaining

Regulatory Actions

Ms. Vucci introduced herself as the new Assistant Director of Policy and Planning. She said that she had worked with Mr. Dowling to prepare the presentation on regulatory actions.

Introduction and Regulatory Overview

It is a pleasure to have an opportunity to be before you this morning. I am Michelle Vucci, DCR's Assistant Director for Policy and Planning. I have been in this position for just shy of two months now and will be presenting the regulatory actions to you this morning with the assistance of our technical experts in the Division of Stormwater Management. For the last 8 years, I served as the Policy Director for the Department of Education and am pleased to now have the opportunity to work at DCR and with this Board. I also want to take this opportunity to thank Ginny Snead, Doug Fritz, John McCutcheon, Kenny Harper, Larry Gavin, Joan Salvati, Shawn Smith, and Robert Bennett from our Stormwater Management Division for their hard work on assembling and advancing these regulatory actions.

Before we begin taking a look at each of the specific regulations before you for consideration this morning, I would like to provide a quick overview of the regulatory items we wish to present to you.

The first action involves consideration of proposed amendments to the Virginia Stormwater Management Program (VSMP) Permit Regulations (4VAC50-60): Part XV General Permit for Discharges from Small Municipal Separate Storm Sewer Systems. These regulations are developed under the federal Clean Water Act and the Virginia Stormwater Management Act that require that state permits be effective for a fixed term not to exceed five years. The existing 5-year General Permit approved by this Board and the EPA became effective on July 9, 2008; thus necessitating the regulatory promulgation of a new General Permit before the July 8, 2013 expiration date.

Following staff's presentation of this regulatory action, there will be an opportunity provided for public comment prior to the Board taking any action. Again, this is a proposed regulation that we are looking to advance in order to secure additional public input during a 60-day public comment period and the Environmental Protection Agency's required review prior to formulating a final regulation for the Board's consideration at a presentation likely next March.

The next block of five actions we will bring before you are considered exempt regulations. The five actions include the following:

1) Virginia Stormwater Management Program (VSMP) Permit Regulations (4VAC50-60) - Amendments
2) Erosion and Sediment Control Regulations (4VAC50-30) - Amendments
3) Erosion and Sediment Control Certification Regulations (4VAC50-50) - Amendments
4) Chesapeake Bay Preservation Area Designation and Management Regulations (from CBLAB) (9VAC10-20) (transfer to VSWCB) (4VAC50-90 – new chapter) – Transfer and Amendments
5) Public Participation Guidelines (from CBLAB) (9VAC10-11) - Repeal

As we explained to the Board in our transmittal letter, this group of actions involves making non-discretionary amendments to the regulations noted above. These actions are exempt in that the recommended amendments are in reaction to changes in federal or state law for which the Board has no discretion. The amendments before

you are largely in response to the Erosion and Sediment Control, Stormwater Management, and Chesapeake Bay Preservation Acts, integration of programs bill [HB1065 (Sherwood) and SB407 (Hanger)] and revisions to federal regulations. These will be final exempt actions taken by the Board that will become effective 30-days after publication. As these actions are non-discretionary, no public comment on these actions at today's meeting will be necessary.

Finally, once we have addressed the regulatory actions for this meeting, we would like to take a minute and provide you with a quick overview of the regulatory actions likely coming before the Board for consideration at the December meeting.

With that overview, let's begin with the action that amends the General Permit for Stormwater Discharges from Small Municipal Separate Storm Sewer Systems.

General Permit for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems (MS4s) Action

Action to Advance a Set of Proposed Regulations for Public Comment

Virginia Soil and Water Conservation Board
September 28, 2012 Meeting
Senate Room A, General Assembly Building
Richmond, Virginia

Introductory remarks and overview

Before you today for consideration and action is a proposed stage regulatory action that advances for the Board's consideration amendments to the General Permit for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems or MS4s as they will be characterized throughout this presentation. The regulation version before you for consideration and that is also in your packets, is dated September 28, 2012 and is the revised version that was e-mailed to you on Tuesday following a review and comments by Counsel in the Attorney General's Office with just a handful of additional updates that were brought to our attention over the last several days. We will specifically bring these minor updates directly to your attention as we proceed with this discussion.

Again, the purpose of this action is to promulgate a new MS4 General Permit. Regulations developed under the federal Clean Water Act (33 USC §1251 et seq.) and the Stormwater Management Act (§10.1-603.2 et seq. of the Code of Virginia) require that state permits be effective for a fixed term not to exceed five years. The existing 5-year General Permit became effective on July 9, 2008; thus necessitating the regulatory promulgation of a new General Permit before the July 8, 2013 expiration date.

I want to assure you that DCR has worked very hard to develop the best possible updated permit for the Board's consideration. We greatly appreciated the assistance and dedication of the Regulatory Advisory Panel (RAP) that worked with the Department to craft the regulation before you today. A list of the RAP members is provided within this presentation. We also want to thank the Institute of Environmental Negotiation that

facilitated the RAP meetings and helped the members and technical staff work towards consensus on this proposed regulatory action.

Through the RAP, we have tried to balance impacts on the regulated community and the public in general with the important water quality issues that require our attention. I believe that we have truly walked that fine line very closely.

The regulations that we present to you today include a number of technical issues. Where you have questions, please do not hesitate to ask us for additional clarification. We have a number of technical experts with us to assist in explaining these issues.

Framework of Stormwater Regulations

This regulatory action amends Part I and Part XV of the body of stormwater regulations as well as updates associated forms (highlighted items).

VIRGINIA STORMWATER MANAGEMENT PROGRAM (VSMP) PERMIT REGULATIONS [4 VAC 50-60-10 et seq.] (prior to 09-28-12 amendments)

Part I: Definitions, Purpose, and Applicability
Part II: Administrative and Technical Criteria for Land-Disturbing Activities
- Part II A: General Administrative Criteria for Regulated Land-Disturbing Activities
- Part II B: Technical Criteria for Regulated Land-Disturbing Activities
- Part II C: Technical Criteria for Regulated Land-Disturbing Activities: Grandfathered Projects and Projects Subject to the Provisions of 4VAC50-60-47.1

Part III: General Provisions Applicable to Stormwater Program Administrative Authorities and to Local Stormwater Management Programs
- Part III A: Programs Operated by a Stormwater Program Administrative Authority
- Part III B: Department of Conservation and Recreation Procedures for Review of Local Stormwater Management Programs
- Part III C: Virginia Soil and Water Conservation Board Authorization Procedures for Local Stormwater Management Programs

Part IV: Technical Criteria and Permit Application Requirements for State Projects
Part V: Reporting
Part VI: VSMP General Program Requirements Related to MS4s and Land-Disturbing Activities
Part VII: VSMP Permit Applications
Part VIII: VSMP Permit Conditions
Part IX: Public Involvement
Part X: Transfer, Modification, Revocation and Reissuance, and Termination of VSMP Permits
Part XI: Enforcement of VSMP Permits
Part XII: Miscellaneous
Part XIII: Fees
Part XIV: General Virginia Stormwater Management Program (VSMP) Permit for Discharges of Stormwater from Construction Activities – Effective July 1, 2009
Part XV: General Virginia Stormwater Management Program (VSMP) Permit for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems – Effective July 9, 2008

FORMS

- Department of Conservation and Recreation Permit Fee Form, DCR 199-145 (10/09).
- VSMP General Permit Registration Statement for Stormwater Discharges From Small Municipal Separate Storm Sewer Systems (VAR04), DCR 199-148 (07/08).

Before we get started with my explanation of the MS4 regulation and its key elements, we thought we would have Ginny Snead, our Office of Regulatory Programs Manager in our Stormwater Management Division provide you with additional background on the Municipal Separate Storm Sewer Systems Program and key issues associated with this action.

Ms. Snead gave the following presentation. A full copy of Ms. Snead's presentation is available from DCR.

Small (Phase II) MS4 General Permit Proposed Regulations

MS4 Definition

- "Municipal separate storm sewer" means a conveyance or system of conveyances otherwise known as a municipal separate storm sewer system, including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains:
    1. Owned or operated by a federal, state, city, town, county, district, association, or other public body, created by or pursuant to state law, having jurisdiction or delegated authority for erosion and sediment control and stormwater management, or a designated and approved management agency under §2-9 pf the CWA that discharges to surface waters;
    2. Designed or used for collecting or conveying stormwater;
    3. That is not a combined sewer; and
    4. That is not part of a publicly owned treatment works.
        - 4VAC50-60-10

The Clean Water Act Does Not Treat the MS4 the same as Other Point Sources

Sec. 402 Federal Water Pollution Control Act
(B) MUNICIPAL DISCHARGE – Permits for discharges from municipal storm sewers – (i) may be issued on a system or jurisdiction-wide basis; (ii) shall include a requirement to effectively prohibit non-stormwater discharges into the storm sewers; and (iii) shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants.

Defenders of Wildlife v. Browner, 191 F ed. 1159, 1162 (9th Cir. 1999)
Found that MS4s are not required to meet applicable water quality standards but are required to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system design and engineering methods, and such other provisions as the Administrator…determines appropriate for the control of such pollutants. However, EPA may choose to require strict compliance with water quality standards.

WQBEL Relevance

- WQBELs Application to MS4s not supported by Clean Water Act
    - Standard is Maximum Extent Practicable
    - WQBELs not a control
- WQBELs Not Relevant for MS4s
    - Monitoring Variability
        - Flow
        - Pollutant Concentration
    - Low Flow Conditions
    - Discharge Control

The "Target" is Water Quality Standards

EPA has used *Defenders of Wildlife v. Browner* to decide that discharges from MS4s must meet water quality standards through an iterative permitting process.

- This iterative approach uses best management practices in stormwater permits and expanded or better-tailored BMPs in subsequent permits where necessary to provide for the attainment of water quality standard.

- The iterative permitting process does not set a timeline by when water quality standards must be met.

- EPA's decision to require MS4s to meet water quality standards and the recent "push" to speed up getting there is extremely controversial and is being legally challenged across the nation as MS4 permits come up for renewal.

Consideration: Regulatory Authority

- Federal MS4 regulations are vaguely written to provide maximum flexibility in individual MS4 program development. The regulations were written to describe how to apply for an MS4 permit. Virginia previously adopted these with minimal alteration.

- As part of the application stage, MS4 operators were required to develop programs to meet a set of required element, which were used to establish permit conditions.

- This permit cycle represents the next step in the evolution of MS4 Programs: more definition and measurable goals. Greater expectations for MS4s.

Municipal Separate Storm Sewer System (MS4s) in Virginia

- **Phase I MS4s**
    - Served populations greater than 100,000 as of the 1990 Census
    - Arlington, Chesapeake, Chesterfield, Fairfax County, Hampton, Henrico, Newport News, Norfolk, Portsmouth, Prince William County, Virginia Beach

    - Regulated by individual permits beginning in the 1990s. Permits issued during the cycle will be the third round of 5-year permits.
    - No changes have been made in the federal regulations since initial passage. State regulations mimic the federal regulations.
- **Phase II MS4s**
    - Located in Urbanized Areas as determined by the latest decennial US Census
    - Regulated under the General Permit for Discharges from Small MS4s
    - Reissued July, 2008.

Current MS4 Program

- Multiple Ongoing Efforts
    - Phase I Individual Permits Reissuance
    - Phase II GP Reissuance
- Program Goals
    - Phase I and II Consistency
    - Program Consistency
    - Measurable Goals
        - Clarify How to Comply
        - Flexibility & "Implementable"

Phase II MS4 GP Reissuance

- March 2011 – NOIRA
- Regulatory Advisory Panel
    - 5 RAP Meetings, June, July, August, September
    - Stakeholders: MS4s, VAMSA, VML, CBF, JRA
    - http://www.dcr.virginia.gov/lr3.shmtl
- Changes in MS4 Phase II Permit
    - Special Condition for TMDLs other than Chesapeake Bay
    - Special Condition for Chesapeake Bay TMDL
        - WIP: 5% Total Reduction Goals this Permit Cycle
        - 2017 and Bay Program Evolution
    - Measurable Goals

Mr. Dunford asked why the data used was from the 2000 census.

Ms. Snead said that the current permit was based on the 2000 census but the new permit would be based on data from the 2010 census. She said that MS4s where the area has increased will not be expected to be in full compliance until the end of the next cycle.

Ms. Jamison asked the length of the permit cycle.

Ms. Snead said the permit cycle is five years.

Ms. Hansen asked which areas were added as MS4s as a result of the census.

Ms. Snead said that several areas increased in size but the new area was in the Staunton/Waynesboro area.

Ms. Vucci returned to her prepared remarks.

With that programmatic overview, I now wish to take a minute and outline the process that guides the promulgation of this regulation.

Process (Modified Administrative Process Act Procedures)

The regulatory action before you today uses a modified Administrative Process Act (APA) process set out in §2.2-4006 subsection A8 of the Code of Virginia. Regulatory actions are typically comprised of three primary steps: the Notice of Intended Regulatory Action, the Proposed Regulations, and the Final Regulations. Routinely under the Administrative Process Act (APA) this takes about 2 years.

However, amendments to this General Permit are exempt from the full APA (§2.2-4006 subsection A8 of the Code of Virginia). As such, an abbreviated APA process is required. We still go through the NOIRA, Proposed, and Final regulatory steps, **public input processes remain**; however, the administrative review process is reduced.

> § 2.2-4006. Exemptions from requirements of this article.
>
> A. The following agency actions otherwise subject to this chapter and § 2.2-4103 of the Virginia Register Act shall be exempted from the operation of this article:
>
> 8. General permits issued by the (a) State Air Pollution Control Board pursuant to Chapter 13 (§ 10.1-1300 et seq.) of Title 10.1 or (b) State Water Control Board pursuant to the State Water Control Law (§ 62.1-44.2 et seq.), Chapter 24 (§ 62.1-242 et seq.) of Title 62.1 and Chapter 25 (§ 62.1-254 et seq.) of Title 62.1, **(c) Virginia Soil and Water Conservation Board pursuant to the Virginia Stormwater Management Act (§ 10.1-603.1 et seq.) of Title 10.1,** and (d) the development and issuance of general wetlands permits by the Marine Resources Commission pursuant to subsection B of § 28.2-1307, if the respective Board or Commission (i) **provides a Notice of Intended Regulatory Action in conformance with the provisions of § 2.2-4007.01, (ii) following the passage of 30 days from the publication of the Notice of Intended Regulatory Action forms a technical advisory committee composed of relevant stakeholders, including potentially affected citizens groups, to assist in the development of the general permit, (iii) provides notice and receives oral and written comment as provided in § 2.2-4007.03, and (iv) conducts at least one public hearing on the proposed general permit.**

Accordingly the General Permit shall be exempt from portions of the APA if the Board:

- Provides a Notice of Intended Regulatory Action (NOIRA).
- Forms a regulatory advisory panel composed of relevant stakeholders to assist in the development of the General Permit (following the passage of 30-days from the publication of the NOIRA)
- Provides notice in the Virginia Register of Regulations and receives oral and written comment.
- Conducts at least one public hearing on the proposed General Permit.

- Publishes in the Register both the proposed and final regulations.
- At least two days in advance of the Board meeting where the regulation will be considered, a copy of the regulation shall be provided to members of the public that request a copy.
- A copy of that regulation shall be made available to the public attending the Board meeting.

The permits are also subject to additional federal NPDES requirements relevant to the promulgation of general permits. These include:

- Development of a fact sheet.
- EPA formal 90-day review of the proposed General Permit regulation and fact sheet.
- Mailing of the draft permit, public notice document describing commenting procedures and hearings, and fact sheet to:
  1. Members of the RAP
  2. All current general permit coverage holders
  3. Neighboring states
  4. State and federal agencies (incl. DEQ, VDH, DHR, VIMS, DGIF, Corps, USFWS)
  5. All individuals and entities requesting to be placed on a list to be notified
  6. All localities that contain an MS4
- Publishing a public notice twice in newspapers with statewide coverage more than 30-days in advance of the close of the public comment period
- EPA concurrence with the final General Permit regulation.

A summary of the actions taken relative to this regulatory process to date are as follows:

Key Actions to Date

- Board Motion: May 24, 2011

- Filed NOIRA: March 26, 2012; published in Volume 28: Issue 15 of the Virginia Register of Regulations

- The 30-day public comment period opened on March 26, 2012 and closed on April 25, 2012.

- We received a total of 26 official comments/ requests to be placed on the Regulatory Advisory Panel (RAP) during the NOIRA comment period. Of these, five contained substantive comments regarding the potential regulatory action. A copy of the five substantive comments received was e-mailed to each Board member and a copy is available in your Board handouts today. These comments were also provided to the RAP for consideration and discussion as the proposed regulation was developed.

- The MS4 RAP that was assembled was composed of 22 members (plus DCR and DEQ technical staff) including those representing: local governments (12); conservation organizations (2); state agencies (1); federal agencies (1); colleges and universities (2); planning district commission (1); consulting firms (3).

- The RAP meetings were facilitated by the Institute for Environmental Negotiation.

RAP Membership

Ms. Shelley Bains, VCCO
Virginia Community College System

Mr. William Bullard
Department of Navy

Ms. Aislinn Creel, PE, LEED AP
Timmons Group

Mr. Michael D. Crocker Jr.
City of Waynesboro Public Works

Ms. Tabitha H. Crowder, P.E.
City of Bristol Public Works

Ms. Thanh H. Dang
City of Harrisonburg Public Works

Mr. Dan Frisbee
City of Charlottesville Public Works

Mr. Normand Goulet
Northern Virginia Regional Commission

Mr. Leroy J Hansen, P.E.
City of Suffolk Public Works

Mr. Steven L. Hubble
County of Stafford Public Works

Mr. Joe Lerch
Virginia Municipal League

Mr. Jesse Maines
City of Alexandria Office of Environmental Quality

Mr. Roy Mills
Virginia Department of Transportation

Mr. Timothy A. Mitchell, P.E.
City of Lynchburg Water Resources

Mr. Chris Moore
Chesapeake Bay Foundation

Mr. Douglas H. Moseley III, AICP CFM
GKY & Associates, Inc.

Ms. Lisa Ochsenhirt, Esq.,
AquaLaw, PLC,

Mr. Steve Plante, P.E.
Loudoun County General Services

Mr. David B. Powers, PE, PH, D.WRE
Williamsburg Environmental Group, Inc.

Mr. Jeffrey A. Sitler, CPG
University of Virginia

Mr. William H. Street
James River Association

Ms. Michelle Virts, P.E.
City of Richmond Public Utilities

RAP Meetings

- The 1st meeting of the TAC: June 20, 2012
- The 2nd meeting of the TAC: July 25, 2012
- The 3rd meeting of the TAC: August 7, 2012
- The 4th meeting of the TAC: August 22, 2012
- The 5th meeting of the TAC: September 6, 2012
- Additional stakeholder discussions were held to work on specific issues for the RAPs consideration

Remaining Timeline (Tentative – May be subject to change)

- September 28, 2012, Take proposed regulations to the Board.
  - October 17, 2012, file by noon with the Registrar's Office.
  - November 5, 2012, publish in the Virginia Register of Regulations.
  - November 5, 2012 to January 4, 2013, 60-day public comment period.
  - EPA official review during this time period
  - Publish a notice twice in 10 newspapers (federal requirement) 30 days in advance of the close of the public comment period.
  - December 4, 2012 and December 6, 2012 (target dates only), hold at least two public hearings early December 2012.
- December 2012 and January 2013, review comments and develop final regulation and package.
- February 1, 2013 and March 2013, coordinate with EPA on final general permit development
- March 28, 2013 (potential target date for Board meeting), take final regulation to Board.
  - April 3, 2013, file on the Town Hall and with Registrar.
  - April 22, 2013, published in the Virginia Register of Regulations.
  - May 22, 2013, public comment period ends and regulations are final.
  - July 1, 2013, effective date.

Attorney General's Office

I have reviewed the above-referenced proposed regulations regarding amending and reissuing the General Virginia Stormwater Management Program (VSMP) Permit for Discharges of Stormwater from Small MS4 Systems. It is my opinion that the Virginia Soil and Water Conservation Board has authority to approve these proposed regulations based upon applicable law, including Article 1.1 of Chapter 6 of Title 10.1 of the Code of Virginia. Based upon your agency's representations, it is my view that these regulations are exempt as a General Permit under Article 2 of the Administrative Process Act, Virginia Code § 2.2-4006(A)(8)(c).

Regulation Summary

First, I want to bring to your attention that a few additional changes were made between the draft you were e-mailed Tuesday night (the September 25, 2012 version) and the one in your packets today (September 28, 2012 version). All were non-substantive and most reflected incorrect table references, typos, and a form name change. In the definition for "best management practice" we have removed the reference to land-disturbing activities as BMPs are needed to serve a broader suite of issues when we are discussing MS4s. In four places in Section II of 4VAC50-60-1240, references to Table 4 needed to be changed to Table 1. In Table 1 we omitted the word "coverage" in the timeline element under SWPPP Implementation and have now added it. In the FORMS section on the last page we also changed the name of the fee form and split the MS4 information out from the Construction Permit information that was moved to a new fee form included in the Stormwater Final Exempt regulatory action. The revised MS4 fee form is attached as the last page of your regulatory handout.

With that, the key elements of the permit amendments included:

1) Updating definitions for "Best management practice", "Hydrologic Unit Code", "Illicit discharge", and "Stormwater Pollution Prevention Plan" and adding a new definition for "Total maximum daily load Action Plan" in (lines 8-762) in PART I [section 10] and updating the definition for "Physically connected" and adding new definitions for "Municipality", "Operator", and "Public" in PART XV [section 1200]. This also includes global changes in terminology used throughout the permit such as "regulated small MS4s" becoming "small MS4s" for brevity.

2) Updating TMDL language that currently refers to "a State Water Control Board established and EPA approved" TMDL to "an approved" TMDL (lines 531-532) in PART I [section 10] and in lines 769-770 and lines 778-779 in PART XV [section 1210].

3) Clarifying that the general permit governs discharges to surface waters and not state waters as is the case for federal National Pollutant Discharge Elimination System (NPDES) permits for MS4's (lines 801 and 811) in PART XV [section 1220].

4) Insertion of a Table 1 into the regulation that clarifies the timing for various required elements of Program Plan updates and helps to differentiate the staged timing for operators that previously held a VSMP General Permit from those operators that are applying for initial coverage (lines 887-893 in PART XV [section 1220] and (lines 959-965) and (Table 1-beginning line 967) in PART XV [section 1240].

5) Rewriting the Special Conditions in Section I of the General Permit to stipulate detailed strategies and processes to address approved TMDLs other than the Chesapeake Bay TMDL (lines 1078-1152) and for the Chesapeake Bay TMDL to

account for implementation of the required reductions (lines 1153-1295). This revision also includes the addition of calculation sheets for estimating existing source loads for pollutants of concern in each of the major river basins in the Chesapeake Bay Watershed of Virginia (Tables 2a-d) and then estimating the total reduction required during this permit cycle (Tables 3a-d). TMDL action plans that identify the best management practices and other steps to be implemented are required to be developed for all TMDLs. PART XV [section 1240].

6) Clarifying and expanding minimum criteria within the General Permit associated with the six minimum control measures which are in PART XV [section 1240, SECTION II B]). This has resulted in complete rewrites of each of the minimum control measures that now contain much more specific, and where possible, quantitative strategies that must be addressed in the operator's MS4 Program Plan and progress to be reported in their annual reports:
    a. Public education and outreach on stormwater impacts (lines 1346 – 1405);
        - The strategies within the Program Plan now need to be designed with consideration of three key goals:
            1. Increasing target audience knowledge about the steps that can be taken to reduce stormwater pollution, placing priority on reducing impacts to impaired waters and other local water pollution concerns;
            2. Increasing target audience knowledge of hazards associated with illegal discharges and improper disposal of waste, including pertinent legal implications; and
            3. Implementing a diverse program with strategies that are targeted towards audiences most likely to have significant stormwater impacts.
    b. Public involvement (lines 1423 – 1451);
        - Requires the operator to provide public access to the MS4 Program Plan and annual reports on the operator's webpage, provide public notice and public comment opportunities on the proposed MS4 Program Plan, and to provide a minimum of four local activities annually that the public may participate in aimed at reducing stormwater pollutant loads and improving water quality.
    c. Illicit discharge detection and elimination (lines 1500 – 1603);
        - Requires the operator to maintain an accurate and complete storm sewer system map and information table; effectively prohibit nonstormwater discharges into the storm sewer system; develop and implement written procedures to detect, identify, and address nonstormwater discharges including developing field screening methodologies and prioritized schedules; and conducting public reporting of illicit discharges into or from the MS4s.

d. Construction site stormwater runoff control (lines 1648 – 1750);
    - Requires a MS4 to use its powers to address discharges entering the MS4 from specified land-disturbing activities and requires program compliance with the Erosion and Sediment Control Law and attendant regulations including implementation of appropriate compliance and enforcement strategies.

e. Post-construction stormwater management in new development and development on prior developed lands (lines 1804 – 1915); and
    - Requires a MS4 to use its powers to address post-construction stormwater runoff that enters the MS4 from specified land-disturbing activities and requires program compliance with the Virginia Stormwater Management Act and attendant regulations including implementation of water quality and quantity design criteria; inspection, operation and maintenance verification strategies for stormwater management facilities; and stormwater management facility tracking and reporting mechanisms.

f. Pollution prevention/ good housekeeping for municipal operations (lines 1947 – 2100).
    - Requires the operator to develop and implement written procedures designed to minimize or prevent pollutant discharge from: (i) daily operations such as road, street, and parking lot maintenance; (ii) equipment maintenance; and (iii) the application, storage, transport, and disposal of pesticides, herbicides, and fertilizers.
    - It further requires the operator to identify all municipal high-priority facilities and to develop and implement specific stormwater pollution prevention plans for all high-priority facilities identified as having a high potential for the discharge of chemicals and other materials in stormwater.
    - Additionally, the operator shall identify all applicable lands where nutrients are applied to a contiguous area of more than one acre and within 60 months of state permit coverage, the operator shall implement nutrient management plans on all lands where nutrients are applied to a contiguous area of more than one acre.
    - Also, the operator shall develop an annual written training plan including a schedule of training events that ensures implementation of the specified training requirements.

7) Providing additional clarity on what is not considered an MS4 Program modification that would require a permit modification as well as a discussion of how modifications may be requested by the Department (lines 2193-2244); PART XV [section 1240, SECTION II F].

8) Updating in FORMS the incorporated General Permit Registration Statement Form to track the amended regulation as well as advancing a revised Department

of Conservation and Recreation MS4 Operator Permit Fee Form that has been split from the Construction Operator fees that have been moved to a new form (lines 2574-2585).

9) Striking in the DOCUMENTS INCORPORATED BY REFERENCE section three documents previously referenced in the MS4 regulations (lines 2588-2604).

Mr. Hornbaker asked if there was a possibility of making a change to the section that said the information would be provided two days in advance of a board meeting. He asked if that could be changed to two weeks.

Ms. Vucci said that the language included was part of the Administrative Process Act. However, she acknowledged that the two week time frame was a reasonable request.

Public Comment

Ms. Hansen called for public comment on the proposed regulations.

William Street, James River Association

My name is Bill Street, I'm the Executive Director of the James River Association and I was a member of the RAP. Thank you for the opportunity to provide comments.

James River Association supports moving these regulations forward. We think they bring key improvements to the existing general permit, particularly to increase the measurable and enforceable elements related to the Chesapeake Bay effort. Virginia's Watershed Implementation Plan addresses stormwater as one of the major sources of pollution to the Chesapeake Bay and our rivers, including the James River and identifies MS4 permits as a key implementation measure.

So certainly, this general permit that covers small MS4 areas is a key element of that effort going forward. Inclusion of those specific Chesapeake Bay provisions throughout provides a strong frame work to move forward. So we support that and believe it will provide clarify and assurance and accountability for those pollution reductions but also clarity for the permittees to know what is expected of them as well.

Another important element is that provides is the framework. The reporting system as well as the starting with five percent we think is a very reasonable expectations and with setting our sights forward to reaching the goals over the years in permit cycles to come. Also increasing public involvement is another improvement.

We do see some areas that we'd like to improve. Some of the requirements I think are too long in the time frame.

Not including the new urban areas that are going to be identified by the census in this permit round could put some of those communities that are going to see substantial increases behind the curve in going into the next permit cycle.

We understand that those maps are going to be available when this permit becomes effective and would encourage that those are included. As well mapping of the outfalls is not required until four years into the five year permit. Again that could put communities behind the curve to address those issues. We would also encourage acceleration of that.

These permits in the past have been very difficult for the public to really see what is going on. We want to make sure the information going to the public is very clear and transparent. We would encourage public involvement as well in those elements.

Thank you very much for the opportunity to comment.

Fran Geisler, James City County

Madame Chairman, members of the Board, my name is Fran Geisler. I'm from James City County. I appreciate this opportunity for public comment. I would like to congratulate the DCR staff and members of the Regulatory Advisory Panel for their hard work that they put into develop this very workable permit language.

Unfortunately the workability does not extend as much as we would hope to the Chesapeake Bay TMDL special conditions. This is of particular concern to James City County, since we have put a premium on environmental stewardship and we have substantial investments in water quality.

As the first local government in Virginia to adopt the Chesapeake Bay Preservation Program, James City County has been requiring post construction stormwater management countywide since 1990. Because of that we can boast over 600 BMPs in place. We have 4,000 acres of forested buffer and conservation easements. And we have almost a mile of natural channel streams in place. We provided this information to Mr. Johnson in January.

The draft regulation uses basin wide averages to establish the base line for load reductions. The use of averages across the entire James River basin for example lowers the starting point for each of Virginia's communities, those under the Chesapeake Bay Preservation Act, and elevates the same for those communities in the western part of the state.

Under this scenario James City County will not get full credit for the investment that its citizens and developers have made in stormwater management.

We understand that significant effort has to go forth to meet our Chesapeake Bay obligation statewide. But our citizens also expect to be given credit for stormwater BMPs they installed and maintain at no small cost as part of this effor.

Respectfully request that the Chesapeake Bay TMDL special conditions be revised to allow the regulated community to calculate our base line load and pollution reduction using loading as if no BMPs were in place. Furthermore progress should be tracked on the full range of installed BMPs based on real, not estimated local data. Particularly from the period from 2006 to 2013.

As the draft is written today, the permit does not allow reporting of BMPs installed in that period between 2009 and 2013. We put a mile of stream restoration on the ground in that period. We're not going to get credit for that. That's a substantial amount of money invested in our community.

Since this involves substantial dollars, we would really like to see this corrected. I appreciate your patience this morning and your time and interest.

Ms. Hansen said those were interesting comments and they were appreciated. She asked staff to respond.

Ms Snead said that she appreciated Ms. Geisler's concerns. She said that she asked the Office of the Attorney General to verify that the 2009-2013 BMPs could not be accounted. She said that would be something that could be changed. 2009 and previous years cannot be counted, but 2009-2013 certainly can be counted. If the wording is to the contrary, staff can make those edits.

Mr. Johnson said that DCR would agree that from 2009 to 2013 there is ability under the WIP to count those BMPs. He said that DCR would modify that if that is an issue. He said that the practices prior to 2009 were not allowed by the EPA.

Ms. Jamison asked when the regulations would come back to the Board. She asked when between this meeting and the effective date of July 2013 that the Board would have the opportunity to make amendments.

Ms. Vucci noted that the timeline indicates that the final action on the regulation would be in March following the public comment period and the public hearings. She noted that the public comments would be provided to the Board.

Ms. Jamison said that Ms. Geisler had referred to localities that might come under the regulation because of the 2012 census. She asked that staff make as special effort to get the information to those localities.

Ms. Vucci said that the information would be published in newspapers, on the DCR website and that RAP members would also have the opportunity to make comments. She said that there would be an extensive public comment period.

Ms. Jamison asked that the public hearings not be held in Richmond.

Mr. Johnson said that the public hearings would be held in the MS4 areas.

Ms. Snead said that DCR has had discussion with the localities that will be affected by the change. She said that several MS4s will have expanded boundaries but that the new MS4 would be in the Staunton/Waynesboro area.

Jenny Tribo, Hampton Roads PDC

Good morning, I'm Jenny Tribo, Senior Water Resources Planner with the Hampton Roads Planning District Commission. Thank you for the opportunity to comment this morning. My comments largely expand on Ms. Geisler's comments.

The localities within in the Hampton Roads Planning District Commission continue to have serious concerns with the content of Section 1C, Special conditions for the Chesapeake Bay TMDL. Our major concerns are the use of the basin wide loading rates from the 2009 Progress Run. The use of the basin wide loading rates from the 2009 Progress Run presents three major problems for localities.

Problem number 1, there are basin wide averages. Because the loading rates being used are an average of the entire basin, they most represent the impact of stormwater BMPs installed and penalize the localities subject to the Chesapeake Bay Preservation Act. Due to the implementation of the CBPA the 38 localities in the tidal portion of the Chesapeake Bay Watershed, including 14 with the Hampton Roads PDC, have been requiring developers to offset nutrient sediment loads by installing BMPs since 1990. This should result in lower nutrient rates in the tidal portion of each river basin. Using the same loading rates in the entire basin dilutes the water quality of the BMPs implemented by a few localities and gives credit to other localities who have not implemented any BMPs.

The second problem is that these are state derived numbers. The BMPs included in the 2009 Progress Run do not accurately reflect locally documented implementation levels. During the Phase II Watershed Implementation Plan process local government staff spent considerable time and effort collecting data on local BMP implementation in order to ground truth Virginia's BMP inventory. Localities found significant discrepancies between local and state BMP data and reported this information to DCR in February 2012. There for the use of the 2009 Progress Run loading ratesdoes not accurately reflect BMPs on the ground. For example, one Hampton Roads locality contains 3,000 acres of developed land. According to the DCR 2009 Progress Run BMPs treat 300 acres, but locality data indicates BMPs treat 900 acres.

A third problem is the 2009 Progress Run only counted BMPs implemented as far as 2009. Because the 2009 Progress Run only includes BMPs implemented prior to 2009, localities are not receiving credit for all BMPs implemented prior to the commencement

of the permit. The currently language within the within the special conditions for the Chesapeake Bay TMDL section does not include an opportunity for localities to report BMPs implemented between 2009 and the start date of this general permit, July 1, 2013. If this is not corrected localities could be required to implement more extensive stormwater BMPs that should be required to reduce their pollutant loads. Localities understand that significant efforts from all sectors are needed in order to meet the Chesapeake Bay TMDL. But they also expect to be given credit for all stormwater BMPs that have been installed to improve water quality. Localities cannot continue to expend taxpayer dollars on BMP implementation that they cannot be assured will be counted towards the Bay TMDL implementation.

We request that Section 1C be edited to instruct localities to calculate their baseline loads and pollution reduction targets using loading rates from the 2010 Model Run. Localities would also submit data on BMPS installed and the resulting pollutant load reductions from 2006 through 2013 and receive credit for these reductions beyond the baseline levels.

Thank you.

Ms. Hansen expressed concern about the discrepancy in counting BMPs on the local vs. state level.

Ms. Snead said regarding the basin wide numbers, DCR's commitment is based on the 2009 model and how Virginia and other states are required to meet the TMDL as based on the Bay model. She said there were a number of issues with the Bay model. Primarily when the model is taken to the local level, the accuracy suffers. It is much more accurate at the basin level. She said that it is important to note that the Bay program is iterative and hopefully there will be the option to take the numbers to the local level in the future. She said that what was submitted to DCR and what went into the Phase II of the WIP was submitted to EPA and contained local strategies.

Ms. Snead said that as a part of the 2017 model this is being addressed with the evolution of the Bay model. She said that the numbers were not there yet, and that is why the five percent number is being used. She said that localities can use BMPs installed from 2009 through 2018 to meet the 5% requirement.

Ms. Snead said that the EPA is expecting Virginia to start showing progress. She said that Virginia had reached agreement with the EPA outside the requirements of this document. She said that the discrepancy is really in the Bay model.

Lisa Ochsenhirt, VAMSA

Good morning, my name is Lisa Ochsenhirt and I'm here representing the Virginia Municipal Stormwater Association or VAMSA. As some of you know, VAMSA is a statewide organization of local governments that supports stormwater related policies based on sound science and good public policy. Many of our members are actually

regulated small MS4s that will be directly impacted by the regulations that are before you today. We are planning on filing detailed public comments during the public comment period, so I will be brief this morning and very general.

If the general permit is issued as proposed it will be the most significant regulatory mandate ever imposed on the state small MS4 stormwater systems. One that will have major budget and tax implications for every locality that owns or operates a regulated small MS4. Of course this is due in large part, as you heard this morning, to a new part of the permit that is mean to address the Chesapeake Bay TMDL and specifically those small MS4s in the Bay Watershed that are going to have to develop and implement an approach to reduce nutrient and sediment loadings to the Chesapeake Bay over the next five years. This is going to be a major undertaking. In addition, all of the MS4s in the state are going to have to make considerable investments to comply with enhanced minimum control measures in the permit.

We recognize that this major regulatory shift is driven by EPA and the Bay TMDL as well as their continued focus on stormwater. We acknowledge that small MS4s need to move forward during this permit cycle to improve our programs and to positively impact water quality based on the knowledge gained over time as local stormwater managers. However, as local governments, VAMSA asks the Board to carefully consider how to balance regulatory mandates with the realities of limited local budgets and financially strapped citizens. At the end of the process VAMSA members need a permit that is reasonable and achievable.

Before I conclude, I would actually like to take a moment as well to acknowledge the extraordinary efforts of the DCR staff who worked tirelessly throughout the general permit on a tight time frame, and did so with professionalism, fairness to all participants and patience. We also commend staff for trying to work with the Bay model at the local level. This is a very complicated, complex and difficult endeavor to try and tackle the ins and outs of that model.

Thank you for allowing me to comment today on behalf of VAMSA. I'm here to answer any questions.

Thank you.

L.J. Hansen, City of Suffolk

Good morning, my name is L.J. Hansen, representing the City of Suffolk.
I don't want to repeat everything said, but I would echo sentiments regarding the distributed wasteload in the Chesapeake Bay TMDL. We are definitely concerned about that.

One of the issues I would like to express frustration about is the speed of which this regulation has moved forward. We had about four months to put together this regulation.

I would like to stay that with a little more time we could have resolved some of these issues, specifically the Chesapeake Bay TMDL special conditions. That's not to say DCR and Ginny's team haven't done a wonderful job. They've been very accommodating with us. I also was a member of the RAP. I appreciate all the effort that they've given. I'm just frustrated by the process. I feel it's in our interest to express that.

Not to belabor the point but I would like to make two specific points with this distributed wasteload concept.

One is the unfairness of it. The City of Suffolk has invested millions of dollars. Between taxpayers and developers we spent millions of dollars in developing the BMPs that are currently on the ground. Those dollars were spent with the intent of the City of Suffolk meeting requirements to the Chesapeake Bay Preservation Act and state stormwater requirements. For those dollars to be spread basin wide is simply an unfair practices.

But secondly, and something not to be overlooked is that it provides an actual physical problem for us. If we have BMPs on the ground that are treating a certain area of land, how are we then to treat that land again? We have to find new land to treat. That's not always possible especially when you're talking about land that is privately owned. How are we to make private businesses develop the treatment that they need to do or are we to start condemning land so that we can treat right of way or some other nature of treatment to accomplish what we need to do. The point being is that, in order for this to be a fair process, you have to account for what we actually have done.

Thank you.

Ms. Hansen said that no one else from the public had signed up to comment. She asked if Board members had questions.

Mr. Brannin asked about the timeline to have this resolved.

Ms. Snead said that this was a five year permit, set to begin in July, 2013. She said that should the Board approve the regulations would go to the registrar's office and be published for a 60 day review period. EPA will also have the opportunity to review in this time. She said there would be public hearings in December and that the final version would come to the Board in March.

Mr. Brannin asked what would happen if the process was delayed?

Ms. Snead said that while DCR would hope that would not happen consideration would have to be given to administratively extending the permit.

Mr. Dunford asked if proceedings from public hearings could be distributed to the Board members.

Ms. Vucci said that staff would provide public comments received, the information from the public meetings and comments received from EPA to the Board.

MOTION: Mr. Dunford moved the following:

Motion to approve, authorize and direct the filing of proposed regulations related to Part XV of the Board's Virginia Stormwater Management Program (VSMP) Permit Regulations and other related sections:

The Board approves these proposed regulations and incorporated forms and authorizes the Director of the Department of Conservation and Recreation and the Departmental Regulatory Coordinator to submit the proposed amendments to Part XV of the Board's Virginia Stormwater Management Program Permit Regulations **[entitled "General Virginia Stormwater Management Program (VSMP) Permit for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems"]** and other approved sections, including but not limited to, Part I definitions, and the General Permit Registration Statement form and the Department of Conservation and Recreation MS4 Operator Permit Fee form which are incorporated by reference, and any other required documents or document deletions to the Virginia Regulatory Town Hall, the Virginia Registrar's Office, and the U.S. Environmental Protection Agency.

In accordance with the Administrative Process Act exemption requirements specified in § 2.2-4006 A8 and other public participatory rules, the Board further authorizes at least one public hearing to be held by the Department with notice of the public hearing(s) posted on the Town Hall at least seven working days prior to the date of the hearing and that the Department make provisions to receive public comment concerning the proposed regulations. Upon closing of the public comment period, the Department is authorized to make revisions to the proposed regulations in response to comments received and to hold additional stakeholder meetings as it deems necessary.

In implementing this authorization, the Department shall follow and conduct actions in accordance with the Administrative Process Act exemption requirements specified in § 2.2-4006 A8, the Virginia Register Act, and other technical rulemaking protocols that may be applicable. The Department shall also implement all necessary public notification and review procedures specified by Federal Regulation regarding General Permit reissuance.

This authorization extends to, but is not limited to, the posting of the approved action to the Virginia Regulatory Town Hall and the filing of the proposed regulations and incorporated forms with the Virginia Registrar's Office and the U.S. Environmental Protection Agency, the holding of at least one public hearing, as well as the coordination necessary to gain approvals from the Office of the Attorney General, the Virginia Registrar of Regulations, and the U.S. Environmental Protection Agency.

The Board requests that the Director or the Regulatory Coordinator report to the Board on these actions at subsequent Board meetings.

SECOND: Mr. Lohr

DISCUSSION: It was noted that staff would clarify the section with regard to BMPs installed after 2009.

VOTE: Motion carried.

Ms. Vucci moved onto the exempt regulatory actions.

FINAL EXEMPT ACTIONS FOR:

1) **Virginia Stormwater Management Program (VSMP) Permit Regulations (4VAC50-60) - Amendments**
2) **Erosion and Sediment Control Regulations (4VAC50-30) - Amendments**
3) **Erosion and Sediment Control Certification Regulations (4VAC50-50) - Amendments**
4) **Chesapeake Bay Preservation Area Designation and Management Regulations (from CBLAB) (9VAC10-20) (transfer to VSWCB) (4VAC50-90 – new chapter) – Transfer and Amendments**
5) **Public Participation Guidelines (from CBLAB) (9VAC10-11) - Repeal**

Virginia Soil and Water Conservation Board
September 28, 2012 Meeting
Senate Room A, General Assembly Building
Richmond, Virginia

Introductory remarks and overview

Before you today for consideration and action are five exempt final regulatory actions. The regulation version for the Virginia Stormwater Management Program (VSMP) Permit Regulations (4VAC50-60) before you for consideration, and that is also in your packets, is dated September 28, 2012 and is based on the revised version that was e-mailed to you on Tuesday following a review and comments by Counsel in the Attorney General's Office with just a handful of additional updates that were brought to our attention the last several days. We will specifically bring these minor updates directly to your attention as we proceed with this discussion. For the remaining four actions, the drafts are the same as those mailed to you and are dated as September 19, 2012 version. Copies of these are also provided in your packets.

As noted previously, this group of actions involves making non-discretionary amendments to the five sets of regulations presented for the Board's consideration. These actions are exempt in that the recommended amendments are in reaction to changes in federal or state law for which the Board has no discretion. The actions have been reviewed and found to be exempt by our Counsel in the Attorney General's Office, Matt Gooch. The amendments before you are largely in response to the Erosion and Sediment Control, Stormwater Management, and Chesapeake Bay Preservation Acts, integration of programs bill [HB1065 (Sherwood) and SB407 (Hanger)] and revisions to federal regulations. These will be final exempt actions taken by the Board that will

become effective 30-days after publication. As these actions are non-discretionary, no public comment on these actions at today's meeting will be necessary.

Process (Modified Administrative Process Act Procedures)

The regulatory actions before the Board are exempt from the Administrative Process Act (APA) in accordance with exemptions available under § 2.2-4006 A of the Code of Virginia.

> § 2.2-4006. Exemptions from requirements of this article.
> A. The following agency actions otherwise subject to this chapter and § 2.2-4103 of the Virginia Register Act shall be exempted from the operation of this article:
> 1. Agency orders or regulations fixing rates or prices.
> **2. Regulations that establish or prescribe agency organization, internal practice or procedures,** including delegations of authority.
> **3. Regulations that consist only of changes in style or form or corrections of technical errors.** Each promulgating agency shall review all references to sections of the Code of Virginia within their regulations each time a new supplement or replacement volume to the Code of Virginia is published to ensure the accuracy of each section or section subdivision identification listed.
> **4. Regulations that are:**
> **a. Necessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved.** However, such regulations shall be filed with the Registrar within 90 days of the law's effective date;
> b. Required by order of any state or federal court of competent jurisdiction where no agency discretion is involved; or
> **c. Necessary to meet the requirements of federal law or regulations,** provided such regulations do not differ materially from those required by federal law or regulation, and the Registrar has so determined in writing. Notice of the proposed adoption of these regulations and the Registrar's determination shall be published in the Virginia Register not less than 30 days prior to the effective date of the regulation.

Attorney General's Office

I have also reviewed the above-referenced final exempt regulations. It is my opinion that the Virginia Soil and Water Conservation Board has authority to adopt these final regulations based upon applicable law, including Article 1.1 of Chapter 6 of Title 10.1 of the Code of Virginia. It is my view that these regulations are exempt under Article 2 of the Administrative Process Act, Virginia Code § 2.2-4006, as necessary to conform to changes in Virginia statutory law or the Appropriation Act where no agency discretion is involved, § 2.2-4006(A)(4)(a), as prescribing agency organization, internal practice or procedures, § 2.2-4006(A)(2), as consisting only of changes in style or form or correction of technical errors, § 2.2-4006(A)(3), and as necessary to meet the requirements of federal law or regulations. § 2.2-4006(A)(4)(c).

Remaining Timeline (Tentative – May be subject to change)

- September 28, 2012, Take exempt final regulations to the Board.
  - October 3, 2012, file by noon with the Registrar's Office.
  - October 22, 2012, publish in the Virginia Register of Regulations.
  - November 21, 2012, effective date.

Regulation Summary (for each set of regulations)

A. Virginia Stormwater Management Program (VSMP) Permit Regulations (4VAC50-60) – Amendments

For this action, I want to first bring to your attention that a few additional changes were made between the draft you were e-mailed Tuesday night (the September 25, 2012 version) and the one in your packets today (September 28, 2012 version). In the construction general permit language (section 1170) in two areas we removed TMDL language that had been changed and was then found not to be exempt. The two items will be addressed in the on-going construction general permit regulatory action. Two additional areas in section 400 related to TMDLs were also changed back. In section 4VAC50-60-144 D we changed the 90 days to 120 days for the Department to bring program corrective action agreements and associated results and compliance recommendations to the Board (this is in reaction to the Board changing its procedures and meeting every three months instead of two). In a couple of places in the document we inappropriately utilized the term VSMP and as such have removed the use and in several places we fixed language relating to who has the authority to issue state permits. In the FORMS section on the last page which we added into the action, we modified the existing permit form to reflect the revised Construction Permit fee information and provided the form with a new number.

With that, the key elements of this action included:

1) Global updates made throughout the regulation generally include (this represents the majority of changes in the document):
   - Inserting "state" before "permit" to differentiate it from a locality's VSMP permit;
   - Changing "permit issuing authority" to "VSMP authority", "Department" or "Board" or a combination of these selections as may be applicable;
   - Changing "local stormwater management program" or "local program" to "VSMP"
   - Changing "plan approval authority" to "VSMP authority";
   - "Qualifying local stormwater management program" or "qualifying local program" to "VSMP authority";

- Changing "Stormwater program administrative authority" to “VSMP authority”, “Department” or “Board” or a combination or derivation of these selections as may be applicable;
- Changing “local erosion and sediment control program” to “VESCP”; and
- Clarifying where necessary different requirements between a locality’s VSMP authority and other VSMP authorities (example: a Virginia Power or a VDOT if they wish to pursue Board approval of a program).

2) Definitional changes made included:
    - Updating definitions for "Chesapeake Bay Preservation Act land-disturbing activity" (to reflect new regulatory numbers), "Co-operator", "Draft state permit", "Environmental Protection Agency", "Existing state permit", "General permit", "Illicit discharge", "Inspection", "Land disturbance", "Major modification" "Minor modification" "Municipal Separate Storm Sewer System Management Program" or "MS4 Program", "New discharger", "New permit", "Nonpoint source pollution", "Operator", "Permit" or “VSMP authority permit”, "Permittee", "Person", "Predevelopment", "Proposed state permit", "Qualified personnel", "Revoked state permit", "Schedule of compliance”, "Stormwater management plan", "Upset", "Virginia Stormwater Management Program" or "VSMP", and "VSMP application" or "application".
    - Striking definitions for "Local stormwater management program" or "local program", "Permit-issuing authority", "Qualifying local stormwater management program" or "qualifying local program", "Stormwater management program", "Stormwater program administrative authority", and "Virginia Stormwater Management Program permit" or "VSMP permit".
    - Adding new definitions for “State permit”, "Virginia Erosion and Sediment Control Program" or "VESCP", "Virginia Erosion and Sediment Control Program authority" or "VESCP authority", and "Virginia Stormwater Management Program authority" or "VSMP authority".
    - (lines 10-751) PART I [section 10]:

3) In order to remain compliant with federal regulations, added a missing Effluent Limit Guideline to state regulations that reads “[u]tilize outlet structures that withdraw water from the surface, unless infeasible, when discharging from basins and impoundments”. (lines 939-940) PART II [section 54 F]

4) Clarified that linear projects are no longer exempt and must now control postdevelopment stormwater runoff in accordance with a site-specific stormwater management plan or a comprehensive watershed stormwater management plan. This exemption was removed as it is not in compliance with federal regulations. (line 1293) PART II B [section 76]

5) Stipulated under the hearings section that "[t]he provisions of the Administrative Process Act (§ 2.2-4000 et seq.) shall not apply to decisions rendered by localities but appeals shall be conducted in accordance with local appeal procedures". (lines 1804-1806) PART III A [section 118]

6) Clarified the review procedure for a Virginia Stormwater Management Program by the department. Introduces the term "corrective action agreements" that are already utilized in the Erosion and Sediment Control Program. Also stipulates that the Department shall provide results and compliance recommendations to the Board in the form of a corrective action agreement if deficiencies are found within 120 days (formerly 90 days) of the completion of a review otherwise the Board may find the program compliant. (lines 1859-1907) PART III B [section 144]

7) Updated the application process and adoption timelines that all localities must follow that are required to adopt a VSMP or towns electing to adopt a VSMP. Struck language that required the department under certain circumstances to operate a local VSMP in accordance with changes in the law. (lines 1945-2006) PART III C [section 150]

8) Clarified annual standards and specifications and state permit coverage requirements for state agency projects. (lines 2038-2075) PART IV [section 170]

9) Clarified state and local authorities regarding the establishment of fees to support program activities under the Stormwater Management Act and this chapter including a VSMP authorities ability to raise or lower fees set out in the statewide fee schedule. (lines 4967-5010) PART XIII [section 700]

10) Stipulated the Department's authority to:
    - Assess re-inspection fees to recoup the costs associated with each visit to a land-disturbing project site that was necessary to check on the status of project site items noted to be in noncompliance and documented as such on a prior project inspection.
    - Assess business transaction costs associated with the processing of credit card payments.
    - (lines 5029-5034) PART XIII [section 730]

11) Clarified procedural items in the section on fees for an individual permit or coverage under the General Permit for Discharges of Stormwater from Construction Activities as follows:
    - That the Department will charge $750 for large construction activities and $450 for small construction activities upon the effective date of the regulations.
    - How much the 28% payable to the Department of the applicant fee is.

- What the fees are for a Chesapeake Bay Preservation Act Land-Disturbing Activity.
- Removed fees associated with Small Construction Activity/Land Clearing of sites within designated areas of Chesapeake Bay Act localities.
- (lines 5173-5200) PART XIII [section 820]
- Made parallel changes where applicable in section 825 on permit modification fees and in section 830 on maintenance fees.

Chairman Hansen called on Peggy Sanner of the Chesapeake Bay Foundation.

Ms. Sanner thanked the Board for the opportunity to speak. She said that she appreciated the huge amount of work the Department has undertaken. She noted that she had already expressed concerns to the Department but that the CBF has concerns regarding the timing.

Ms. Sanner said that previously CBF had worked with the Department regarding the Integration Bill. She said that CBF worked with DCR and the General Assembly to get the measure passed. She said that it was very important to the Foundation and their members.

Ms. Sanner expressed concern that this regulatory process was not being consistent with the Administrative Process Act. She said that it was important to make the changes in a deliberative manner. She said that while the Department has concluded that these regulations were exempt under the Administrative Process Act but that she did not believe that was following the intent of the General Assembly.

Ms. Sanner said that she did not believe the regulations to be exempt actions that could be undertaken without the full long public review and comment period. She said that stakeholders were not provided with the regulations in time to conduct the timely review the statue requires.

Ms. Sanner said that her request was that the Board defer a decision until the next meeting to allow the public and members of the Board time to review the regulations in detail.

Ms. Hansen thanked Ms. Sanner for the comment and said that the decision regarding whether to delay action on the regulations would be determined by the Board.

Mr. Johnson said that, while he understood the perspective, he noted that the Integration Bill was an extensive work with some 30 pages of legislation. He said that working with staff and members of the legislature the bill was introduced and passed without substantive amendments being offered.

Mr. Johnson said that the bill was drafted by the Department and that the Department included the language and the understanding of the Administrative Process Act requirements. He said that it was not done carelessly or without forethought.

Mr. Johnson said that the law was clear that there were a number of regulatory changes that needed to be made. He said that the Department would like to move forward with implementing the fee changes. He said that, should the Board wish for further review he would suggest that another Board meeting be established so that the regulations can move forward in a timely manner.

Ms. Jamison said that the fee section was complicated and that she would welcome more time to review.

Mr. Brannin said that DCR staff worked diligently to bring this information forward to the Board. He said that there are timelines from the EPA and from the General Assembly. He said that he did not see a benefit in further delay.

Ms. Hansen said that Ms. Jamison's point was that the Board was not familiar with what they were being asked to pass. She said that the Board would have to rely on staff and and assume staff was acting in accordance with both the Administrative Process Act and the instructions of the General Assembly.

Mr. Ingle asked Mr. Gooch to comment.

Mr. Gooch said that 98% of the changes tracked directly with the language in the Integration bill. He said that the changes were to make the regulations conform to statutory law. He noted that the effective date of the law was July 1 and that from that point there was a 90-day window to make the necessary regulatory changes.

Mr. Johnson said that the reason for not delaying action was that DCR was in a tight timeline to have the regulations in place by July, 2014. He noted that localites would have to adopt model ordinances and that if the exempt deadline was missed the would not be able to do that within the time frame.

Mr. Ingle said that he would recommend that the regulations move forward.

Ms. Hansen noted that there were four additional actions to review.

Ms. Vucci continued.

B. Erosion and Sediment Control Regulations (4VAC50-30) – Amendments

The key elements of this action included:

1) Global updates made throughout the regulation generally include (this represents the majority of changes in the document):

- Changing “erosion and sediment control program” to “VESCP”; and
- Changing “plan approval authority” to “VESCP authority”.

2) Definitional changes made included:
   - Updating definitions for "Agreement in lieu of a plan", “Person”, “Program administrator”, “Pre-development”, and “Stormwater detention”.
   - Striking definitions for "Plan approving authority" and “Program authority”.
   - Adding new definitions for "Virginia Erosion and Sediment Control Program" or "VESCP" and "Virginia Erosion and Sediment Control Program authority" or "VESCP authority”.
   - (lines 10-134) [section 10]

3) Updated the list of entities that may submit annual general erosion and sediment control standards and specifications and clarified that such standards and specifications or erosion and sediment control plans are submitted to the Department for approval. (lines 141-156) [section 30]

4) Included Appropriation Act authorities (Item 360 I1 of Chapter 3 of the 2012 Virginia Acts of Assembly, Special Session 1) in the regulation stipulating that public institutions of higher education, including community colleges, colleges, and universities, shall be subject to project review and compliance for state erosion and sediment control requirements by the VESCP authority of the locality within which the land-disturbing activity is located, unless such institution submits annual specifications to the Department of Conservation and Recreation, in accordance with § 10.1-564 A (i), Code of Virginia. This action is authorized to be exempt in the Appropriation Act. (lines 157-164) [section 30]

5) Specified that any VESCP authority which administers a VESCP may charge applicants a reasonable fee to defray the costs of program administration. Clarified that such fee may be in addition to any fee charged for administration of a Virginia stormwater management program, although payment of fees may be consolidated in order to provide greater convenience and efficiency for those responsible for compliance with the programs. Stipulated that a VESCP authority shall hold a public hearing prior to establishing a schedule of fees and that the fees shall not exceed an amount commensurate with the services rendered, taking into consideration the time, skill, and the VESCP authority's expense involved. (lines 165-172) [section 30]

6) Stipulated that in accordance with federal regulations and to eliminate conflicts with the Stormwater Management Regulations that temporary soil stabilization shall be applied within seven days to denuded areas that may not be at final grade but will remain dormant for longer than 14 days rather than the 30 days currently noted. (line 180) [section 40]

7) Modified Minimum standard 19 to specify that:
    - Stream restoration and relocation projects that incorporate natural channel design concepts are not man-made channels and shall be exempt from any flow rate capacity and velocity requirements for natural or man-made channels.
    - Any plan approved prior to July 1, 2014, that provides for stormwater management that addresses any flow rate capacity and velocity requirements for natural or man-made channels shall satisfy the flow rate capacity and velocity requirements for natural or man-made channels if the practices are designed as specified.
    - For plans approved on and after July 1, 2014, the flow rate capacity and velocity requirements of § 10.1-561 A of the Code of Virginia and subsection 19 of 4VAC50-30-40 shall be satisfied by compliance with water quantity requirements in the Stormwater Management Act (§ 10.1-603.2 et seq.) and attendant regulations, unless such land-disturbing activities are in accordance with 4 VAC 50-60-48 of the Virginia Stormwater Management Program (VSMP) Permit Regulations.
    - Compliance with the water quantity minimum standards set out in 4VAC50-60-66 of the Virginia Stormwater Management Program (VSMP) Permit Regulations shall be deemed to satisfy the requirements of minimum standard 19.
    - (lines 317-339) [section 40]

8) Established a new section on reporting that stipulates that each VESCP authority shall report to the department, in a method such as an online reporting system and on a time schedule established by the department, a listing of each land-disturbing activity for which a plan has been approved by the VESCP authority under the Erosion and Sediment Control Act and associated regulations. (lines 380-384) [section 65]

9) Clarified that in all area of jurisdictions designated as subject to the Chesapeake Bay Preservation Area Designation and Management Regulations that erosion and sediment control shall be addressed for projects disturbing 2,500 square feet or more unless otherwise exempted. (lines 386-391) [section 80]

10) Stipulated that each VESCP operated by a county, city, or town shall include provisions for the integration of the VESCP with Virginia stormwater management, flood insurance, flood plain management, and other programs requiring compliance prior to authorizing a land-disturbing activity in order to make the submission and approval of plans, issuance of permits, payment of fees, and coordination of inspection and enforcement activities more convenient and efficient both for the local governments and those responsible for compliance with the programs. This embraces the one-stop-shopping concept of the Erosion and Sediment Control, Stormwater Management, and Chesapeake Bay

Preservation Acts, integration of programs bill [HB1065 (Sherwood) and SB407 (Hanger)]. (lines 433-439) [section 90]

11) Stipulated that the Department is also authorized to conduct a partial program compliance reviews of a VSMP authority. (lines 448-449) [section 90]

12) Clarified the review procedure for a Virginia Stormwater Management Program by the department and the corrective action agreement process. (lines 453-468) [section 90]

13) Clarified that all state agency land-disturbing activities that are not exempt and that have commenced without an approved erosion and sediment control plan shall immediately cease until the state agency has submitted annual standards and specifications for its conduct of land-disturbing activities which has been reviewed and approved by the department as being consistent with the Act and this chapter, or an erosion and sediment control plan has been submitted to and approved by the department. (lines 472-480) [section 100]

14) Eliminated section 4VAC50-30-110 that specified that to carry out its duties under § 10.1-562 of the Code of Virginia, the board shall develop, adopt, and administer an appropriate local erosion and sediment control program for the locality under consideration. In fulfilling these duties, the board shall assume the full powers of the local erosion and sediment control program granted by law. The process has changed and the Board will not be assuming power over programs. (lines 501-516) [section 110]

C. Erosion and Sediment Control Certification Regulations (4VAC50-50) – Amendments

The primary changes within this regulatory action are to address the concept embodied in both the Erosion and Sediment Control Act and the Stormwater Management Act that the certification process already in place for erosion and sediment control needs to be expanded to include stormwater training and certification as well. Much of the changes revolve around definitional changes and their usage throughout the regulation to capture the expanded scope of the program and having to differentiate between erosion and sediment control and stormwater classifications.

The key elements of this action included:

1) Changed the name of the regulations to Erosion and Sediment Control and Stormwater Management Certification Regulations to recognize the broadened scope of the certification program to include stormwater training and certification.

2) Definitional changes made included:
    - Updating definitions for "Certification", "Certified combined administrator for ESC", "Certified project inspector for ESC", "Certified

plan reviewer for ESC", "Certified program administrator for ESC", "Classification", "Combined administrator for ESC", "Erosion and Sediment Control Plan"-or "ESC plan", "Plan reviewer", and "Program administrator".

- Striking definitions for "Act", "Inspector", "Program authority", and "State erosion and sediment control program" or "state program".
- Adding new definitions for "Certified combined administrator for SWM", "Certified project inspector for SWM", "Certified plan reviewer for SWM", "Certified program administrator for SWM", "Combined administrator for SWM", “ESC”, "ESC Act", “Project Inspector”, “Stormwater management plan” or “SWM plan”, “SWM”, "SWM Act", "Virginia Erosion and Sediment Control Program" or "VESCP", "Virginia Erosion and Sediment Control Program authority" or "VESCP authority", "Virginia Stormwater Management Program " or "VSMP", and "Virginia Stormwater Management Program authority" or "VSMP authority"
- (lines 10-132) [section 10]

3) Expanded the series of classifications currently available in the certification program for erosion and sediment control to include a parallel track in stormwater that includes Program administrator for SWM, Plan reviewer for SWM, Project inspector for SWM, and Combined administrator for SWM. (lines 151-172) [section 40]

4) Recognized that a professional soil scientist as defined in § 54.1-2200 et seq. shall qualify as a certified plan reviewer for ESC and will not require a certificate of competence from the board. (lines 173-178) [section 40]

5) Established a dual certificate upon request for an individual who holds a valid and unexpired certificate of competence issued by the Board in the classification of ESC or SWM, or who obtains such a certificate, and who later successfully obtains an additional certificate of competence from the Board in the parallel ESC or SWM classification. (lines 179-191) [section 40]

6) Within the eligibility requirements in 4VAC50-50-50 the amendments:
    - Established the availability of stormwater training programs for project inspectors for SWM, plan reviewers for SWM, administrators for SWM, and combined administrators for SWM and stipulated which programs must be taken for each of these classifications.
    - Clarified that both certifications and recertifications are valid for a period of three years.
    - Expanded the subsection on recertifications to clarify the recertification process and those professional entity’s that may be fully or partially exempt from recertification requirements should they hold an appropriate and valid professional license.
    - (lines 193-247) [section 50]

7) Clarifies that for the purposes of VESCP or VSMP compliance reviews and evaluations, the certification requirements of § 10.1-561.1 and § 10.1-603.4:2 shall be deemed to have been met if the VESCP or the VSMP authority has a person or persons **enrolled** in the board's ESC or SWM training programs for the necessary classifications and such person or persons obtains certification within one year of completing the necessary training programs. (lines 249-255) [section 55]

D. Chesapeake Bay Preservation Area Designation and Management Regulations (from CBLAB) (9VAC10-20) (transfer to VSWCB) (4VAC50-90 – new chapter) – Transfer and Amendments

In accordance with the Erosion and Sediment Control, Stormwater Management, and Chesapeake Bay Preservation Acts, integration of programs bill [HB1065 (Sherwood) and SB407 (Hanger)], the purpose of this exempt regulatory action is to renumber and move this set of regulations to the Virginia Soil and Water Conservation Board from the Chesapeake Bay Local Assistance Board and to conform the regulations to the technical aspects of the integration bill including removing direct oversight for stormwater requirements and erosion and sediment control requirements from the Bay provisions. Authority for compliance is already embodied within the Erosion and Sediment Control Act and the Stormwater Management Act.

The key elements of this action included:

1) Renumbered the body of the regulations and updated regulatory citations throughout the regulation to accommodate the transfer of the regulations from the Chesapeake Bay Local Assistance Board to the Virginia Soil and Water Conservation Board and commensurate change from Title 9 of the Virginia Administrative Code (VAC) to 4VAC.

2) Definitional changes made (aside from those that just had citation changes) included updating definitions for "Board", "Department", and "Director". (lines 42-140) [section 40]

3) Modified the general performance criteria to:
    - Remove requirements for best management practice maintenance to be ensured by the local government through a maintenance agreement with the owner or developer or some other mechanism that achieves an equivalent objective. This requirement is duplicative of requirements already embodied under the Stormwater Management Act.
    - Stipulate that enforcement for noncompliance with the erosion and sediment control requirements referenced in 4VAC50-90-130 (5) shall be conducted under the provisions of the Erosion and Sediment Control Act (§ 10.1-560 et seq.) and attendant regulations.

- Remove requirements associated with stormwater management criteria. These requirements are duplicative of requirements already embodied under the Stormwater Management Act.
- (lines 345-511) [section 130]

4) Clarified that any stormwater management facilities constructed in a Resource Protection Area shall constructed in accordance with the Stormwater Management Act (§ 10.1-603.2 et seq. of the Code of Virginia) and its attendant regulations and clarified that the facility must be consistent with a comprehensive stormwater management plan developed and approved in accordance with 4VAC50-60-92 of the Virginia Stormwater Management Program (VSMP) Permit regulations. (lines 557-578) [section 140]

5) Stipulated the details of a compliance review process to be conducted under these regulations including the use of corrective action agreements. (lines 1032-1074) [section 260]

E. Public Participation Guidelines (from CBLAB) (9VAC10-11) – Repeal

The key element of this action included:

1) As the Chesapeake Bay Local Assistance Board was abolished and their powers and duties transferred to the Virginia Soil and Water Conservation Board in accordance with the Erosion and Sediment Control, Stormwater Management, and Chesapeake Bay Preservation Acts, integration of programs bill [HB1065 (Sherwood) and SB407 (Hanger)], there is no longer a need for the public participation guidelines under CBLAB and as such they are being repealed through this action.

MOTION: Mr. Ingle moved the following:

Motion to approve, authorize and direct the filing of five final exempt regulations

The Board approves these final exempt regulations and authorizes the Director of the Department of Conservation and Recreation and the Departmental Regulatory Coordinator to submit the following five final exempt regulations and any other required documents to the Virginia Town Hall and to the Registrar of Virginia.

1) **Virginia Stormwater Management Program (VSMP) Permit Regulations (4VAC50-60) - Amendments**
2) **Erosion and Sediment Control Regulations (4VAC50-30) - Amendments**
3) **Erosion and Sediment Control Certification Regulations (4VAC50-50) - Amendments**

4) **Chesapeake Bay Preservation Area Designation and Management Regulations (from CBLAB) (9VAC10-20) (transfer to VSWCB) (4VAC50-90 – new chapter) – Transfer and Amendments**
5) **Public Participation Guidelines (from CBLAB) (9VAC10-11) - Repeal**

This authorization is related to those changes that are exempt from the Administrative Process Act pursuant to § 2.2-4006 (2), (3), (4)(a) and (4)(c) of the Code of Virginia.

The Department shall follow and conduct actions in accordance with the exemption processes within the Administrative Process Act, the Virginia Register Act, the Board's Regulatory Public Participation Procedures, and the Governor's Executive Order 14 (2010) on the "Development and Review of Regulations Proposed by State Agencies".

This authorization extends to, but is not limited to, the drafting of the documents and documentation as well as the coordination necessary to gain approvals from the Virginia Registrar of Regulations for these final regulatory action publications.

The Board requests that the Director or the Regulatory Coordinator report to the Board on these actions at subsequent Board meetings.

SECOND: Mr. Lohr

DISCUSSION: None

VOTE: Motion carried unanimously

Ms. Jamison said that with the additional responsibilities now before the Board it might be appropriate to consider meeting more than the scheduled four times a year.

Ms. Hansen agreed that since the decision was made to move to quarterly meetings the responsibilities of the Board had greatly increased. She said that she would like to ask the Director and staff to reconsider the schedule and to return to six meetings a year.

Mr. Hornbaker said that his bigger concern remained his request that Board members be provided with materials for review at least 14 days prior to meetings.

MOTION: Mr. Dunford moved that the Virginia Soil and Water Conservation Board amend their meeting schedule from quarterly to six times annually.

SECOND: Mr. Simms

DISCUSSION: None

Ms. Vucci gave an overview of actions that would be brought before the Board at the December meeting.

December meeting info

Like this Board meeting, the December meeting will also include a discussion of several key regulatory actions. Our regulatory work plan indicates that it is our desire to bring the following actions before the Board for your consideration:

Board Meeting	Regulatory Action	Type of Action
December 11, 2012	Resource Management Plan Regulations (4VAC50-70 – new chapter)	Approve final regulations
December 11, 2012	Virginia Stormwater Management Program (VSMP) Permit Regulations (4VAC50-60): Part XIV General Permit for Discharges of Stormwater from Construction Activities	Approve proposed regulations
December 11, 2012	Nutrient Management Training and Certification Regulations (4VAC5-15)	Approve final fast-track
December 11, 2012	Virginia Technology Assessment Protocol (VTAP) Regulations (Under Consideration)	Approve final fast-track

Resource Management Plan Regulations (4VAC50-70 – new chapter):
The purpose of this regulatory action is to encourage farm owners and operators through a regulatory framework to voluntarily implement a high level of BMPs on their farmlands in order to be protective of water quality and for them to then benefit from the following legal provision stating that "notwithstanding any other provision of law, agricultural landowners or operators who fully implement and maintain the applicable components of their resource management plan, in accordance with the criteria for such plans set out in § 10.1-104.[8] and any regulations adopted thereunder, shall be deemed to be in full compliance with (i) any load allocation contained in a total maximum daily load (TMDL) established under § 303(d) of the federal Clean Water Act addressing benthic, bacteria, nutrient, or sediment impairments; (ii) any requirements of the Virginia Chesapeake Bay TMDL Watershed Implementation Plan; and (iii) applicable state water quality requirements for nutrients and sediment". The new regulations (4VAC50-70-10 et seq.) specify the criteria to be included in a resource management plan and the processes by which the RMPs are developed and approved, implementation verified and certification issued, and compliance maintained and where necessary corrected.

Virginia Stormwater Management Program (VSMP) Permit Regulations (4VAC50-60):
Part XIV General Permit for Discharges of Stormwater from Construction Activities:
The purpose of this action is to consider changes and solicit recommendations related to the Part XIV of the Board's Virginia Stormwater Management Program Permit Regulations **[entitled General Virginia Stormwater Management Program (VSMP) Permit for Discharges of Stormwater from Construction Activities]** and other necessary related sections, including but not limited to, Part I definitions, the General Permit Registration Statement – Construction Activity Stormwater Discharges (DCR-01) form, or other forms which are incorporated by reference. The changes may include, but not be limited to, compliance with water quality and quantity standards set out in Part II of these regulations, compliance with Part III local program technical criteria of these regulations, compliance with the technical and administrative requirements set out in Technical Criteria and Permit Application Requirements for State Projects [Part IV], compliance with the general requirements set out in General Program Requirements Related to MS4s and Land-Disturbing Activities [Part VI], compliance with the requirements set out in State Permit Applications [Part VII], compliance with the general permit conditions set out in State Permit Conditions [Part VIII], Stormwater Pollution Prevention Plan requirements including water quality and quantity standards, consistency requirements with other regulations such as for erosion and sediment control, incorporating water quality requirements for impaired waters and TMDLs including the Chesapeake Bay, timing of effective date of permit coverage, registration statement requirements, timing of registration submittal and other registration processes, procedures for permit termination and transfer, operation and maintenance of construction site controls and procedures, natural resource protection considerations, and monitoring processes.

Nutrient Management Training and Certification Regulations (4VAC5-15):
The purpose of this fast-track action is to amend the Virginia Nutrient Management Standards and Criteria in a document incorporated by reference in 4 VAC 5-15, Nutrient Management Training and Certification Regulations to better control the application of nitrogen from lawn fertilizer and lawn maintenance fertilizer through the implementation of recommended application rates for "Slow or Controlled Release Fertilizer," and for "Enhanced Efficiency" lawn maintenance fertilizer. The 2011 session of the Virginia General Assembly (Chapter 341 of the 2001 Virginia Acts of Assembly; Enactment Clause 3) tasked the Virginia Department of Agriculture and Consumer Services (VDACS), in consultation with the Department of Conservation and Recreation (DCR) and the Chesapeake Bay Commission (CBC), with the preparation of a report concerning the use of slowly available nitrogen in lawn fertilizer and lawn maintenance fertilizer. A Report on the Use of Slowly Available Nitrogen in Lawn Fertilizer and Lawn Maintenance Fertilizer (December 2011) resulted (Report Document No. 396). As a follow-up to the report, during the 2012 Legislative Session, HB1210 was advanced that creates a § 10.1-104.2:1 that specifies the following:

§ 10.1-104.2:1. Nitrogen application rates; regulations.

> A. The Department shall adopt regulations that amend the application rates in the Virginia Nutrient Management Standards and Criteria by incorporating into such regulations the recommended application rates for nitrogen in lawn fertilizer and lawn maintenance fertilizer and the recommended application rates for "slow or controlled release fertilizer" and "enhanced efficiency lawn fertilizer," as defined and adopted or proposed for adoption by the American Association of Plant Food Control Officials, as described in the Virginia Department of Agriculture and Consumer Services' "Report on the Use of Slowly Available Nitrogen in Lawn Fertilizer and Lawn Maintenance Fertilizer."
> B. Such regulations shall follow a fast-track regulatory process established pursuant to § 2.2-4012.1 of the Administrative Process Act and shall be adopted no later than July 1, 2014.

In accordance with §10.1-104.2 C, the Department shall, with the approval of the Virginia Soil and Water Conservation Board, adopt Nutrient Management Training and Certification Regulations.

Virginia Technology Assessment Protocol (VTAP) Regulations

The Virginia Stormwater BMP Clearinghouse Committee is expected to approve a final version of the Virginia Technology Assessment Protocol (VTAP), at its October 22nd meeting. The Clearinghouse Committee will then forward the document to the Department for consideration and Board approval at the December 2012 meeting. The VTAP is a scientifically defensible procedure for testing *manufactured* stormwater management treatment devices (MTDs) to verify their designs and determine the level of pollutant removal for Total Phosphorus they perform. Total Phosphorus is the target pollutant in the Virginia Stormwater Management Regulations. The VTAP comprises the set of procedures referred to in Section 4VAC50-60-65 C of the regulations, which states:

> *"BMPs differing from those listed above* [the list of non-proprietary stormwater BMPs already approved in Subsection B of that section of the regulation] *shall be reviewed and approved by the director in accordance with procedures established by the BMP Clearinghouse Committee and approved by the board."*

However, since the VTAP actually dictates procedures that *must* be used in order for a MTD manufacturer to verify a pollutant removal efficiency and achieve approval for use and sale in Virginia, the procedure meets the definition of a regulation. By the December Board meeting, this document will have been approved by the BMP Clearinghouse Committee, as specified in the regulation, and it will also reflect a consensus of the various stakeholders affected by the regulation (manufacturers themselves, local governments, state agencies, environmental organizations, etc.). Accordingly, the Department believes that the VTAP is eligible to go through a fast track regulatory process. It is still being considered whether the regulation will be ready for presentation to the Board in December.

Director's Report

Mr. Johnson gave the Director's report.

He noted that staff continues to be very busy with the regulatory actions. These take a tremendous amount of staff time. In addition the Construction General Permit is moving forward. There have been a number of regulatory advisory panels. There are compressed timelines in order to meet the requirements of the Integration Bill.

Mr. Johnson noted that Ms. Vucci came on Board in August and had come up to speed very quickly. He noted that Mr. Dowling was anticipated to be back full time within the next few weeks.

Mr. Johnson said that DCR had also been active at the direction of the General Assembly to review the funding levels for the Soil and Water Conservation Districts. He said that the report was due to the General Assembly on October 1. He noted that Mr. Davis-Martin would provide a briefing later in the meeting but that there was no Board action necessary.

Mr. Johnson said that there were ongoing discussions regarding the possibility of moving the Stormwater division and responsibilities from DCR to the Department of Environmental Quality. He said that it was very likely that there would be legislation in that regard during the next General Assembly.

Ms. Hansen asked about the functions of the Soil and Water Conservation Board.

Mr. Johnson said those functions were also likely to move to DEQ.

At this time the Board recessed for lunch.

Dam Safety and Flood Plain Management

Mr. Wilkinson gave the report for the Division of Dam Safety and Floodplain Management.

Mr. Wilkinson said that the Dam Safety Regulations were submitted to the Governor's office for review on September 4. They were published in the fast-track process on September 24. That began a 30 day public comment period which will end on October 24. He said that he did not anticipate comments since the regulations are providing regulatory relief. They should take effect on November 8, 2012.

Mr. Wilkinson said the Division held a dam owner's training in Salem. Thirty eight dam owners attended. More trainings are planned over the next several months. He said he would provide the dates of the trainings to Board members.

Mr. Wilkinson said that, as Mr. Bennett noted at the last meeting, the Dam First Aid program is moving forward. DCR has the trailers and about 30% of the equipment. Pilot sites are in Richmond and Poquoson.

Mr. Wilkinson said that a list of high hazard dams was provided to members. He said that staff will reformat the list to more readily identify new dams that are added to the list. He said that from the previous list about 8 dams were added.

Enforcement

Ms. Crosier noted that members had received the enforcement report. She said that DCR is making good progress toward bringing a number of high hazard dams into compliance.

Ms. Crosier noted that Rainbow Forest Dam had received their grant money and was in the process of making repairs.

Ms. Jamison said that it seemed to take a long time to get the money to Rainbow Forest.

Mr. Bennett said that it was actually short time as Rainbow Forest had received the funding within three weeks of the legislation taking effect.

Stormwater

Mr. Bennett noted that the Stormwater Division report was included in member packets. A copy is included as Attachment #1.

Mr. Bennett said that the Board had seen through the morning presentations how complex the regulatory process is.

Erosion and Sediment Control

Approval of the Westmoreland County Alternative Inspection Program

Mr. McCutcheon gave the background for Westmoreland County:

At the last SWCB meeting the Board accepted the proposed Alternative Inspection Program for Westmoreland County for consideration. Staff has reviewed the proposed Alternative Inspection Program and finds it to be within the recommended guidelines, therefore staff recommends approval as submitted.

MOTION: Mr. Simms moved that the Virginia Soil and Water Conservation Board approve the proposed Alternative Inspection Program for Westmoreland County as being consistent with the requirements of the Erosion and Sediment Control Law and Regulations. The Board requests the Department of Conservation and Recreation staff to monitor the implementation of the alternative inspection program by the County to ensure compliance with the approved program.

SECOND: Mr. Street

DISCUSSION: None

VOTE: Motion carried unanimously

Local Programs recommended to be found consistent based on Program Reviews

Mr. McCutcheon presented the background information.

Halifax County

Staff conducted a program review of the Halifax County Erosion and Sediment Control Program on May 2, 2012 and conducted a close out meeting with the County. The scores for the individual program elements were as follows: Administration 90 – Plan Review 100 – Inspection 85 – Enforcement 100. All program elements received a score of 70 or higher. Therefore, staff recommends that the Virginia Soil & Water Conservation Board find the Halifax County Erosion and Sediment Control Program consistent with the Virginia Erosion and Sediment Control Law and Regulations.

City of Hampton

Staff conducted a program review of the City of Hampton's Erosion and Sediment Control Program on March 19, 2012 and conducted a close out meeting with the City. The sores for the individual program elements were as follows: Administration 80 – Plan Review 80 – Inspection 75 – Enforcement 70. All program elements received a score of 70 or higher. Therefore, staff recommends that the Virginia Soil and Water Conservation Board find the City of Hampton's Erosion and Sediment Control Program consistent with the Virginia Erosion and Sediment Control Law and Regulations.

MOTION: Mr. Dunford moved that the Virginia Soil and Water Conservation Board commend Halifax County and the City of Hampton for successfully implementing their respective Erosion and Sediment Control Programs to be fully consistent with the requirements of the Virginia Erosion and Sediment Control Law and Regulations, thereby providing better protection for Virginia's soil and water resources.

SECOND: Ms. Jamison

DISCUSSION: None

VOTE: Motion carried unanimously

Local Program recommended to be found consistent following completion of Corrective Action Agreement (CAA)

Mr. McCutcheon gave the background for Fauquier County.

At the request of County, staff conducted a CAA review of the Fauquier Count Erosion and Sediment Control Program on August 17, 2012 to determine if the CAA item regarding Certified Program Administrator was complete. As a result of the CAA review, staff determined that the CAA had been successfully completed. Therefore, staff recommends that the Virginia Soil & Water Conservation Board find the Fauquier County Erosion and Sediment Control Program consistent with the Virginia Erosion and Sediment Control Law and Regulations.

MOTION: Mr. Ingle moved that the Virginia Soil and Water Conservation Board commend Fauquier County for successfully implementing the County's Erosion and Sediment Control Program to be fully consistent with the requirements of the Virginia Erosion and Sediment Control Law and Regulations, thereby providing better projection for Virginia's soil and water resources.

SECOND: Mr. Dunford

DISCUSSION: None

VOTE: Motion carried unanimously

Local Programs recommended to be found inconsistent based on Initial Reviews and request for Board approval of Corrective Action Agreement (CAA)

<u>York County</u>

Mr. McCutcheon presented the background for York County.

Staff completed a program review of the York County Erosion and Sediment Control Program on August 24, 2012 and conducted a close out meeting with the County. The scores for the individual program elements were as follows: Administration 95 – Plan Review 60 – Inspection 65 – Enforcement 80. All program elements did not receive a score of 70 or greater. Therefore, staff recommends that the Virginia Soil and Water Conservation Board find the York County Erosion and Sediment Control Program inconsistent with the Virginia Erosion and Sediment Control Law and Regulations and approve the draft CAA for the County.

Mr. Joe Broggan, Program Administrator for York County, asked that the Board consider not approving the motion before them and instead to find the County consistent. He said that the County only failed the plan review because of MS19. He said that the County lost points due to the application of MS19 and had partial credit been allowed the County would not have failed. He said that he did not believe anyone at DCR would say that York County had a bad program. He said that the form could use improvements and that there should be an allowance for partial credits for slight variations in implementation.

Ms. Hansen said that it would be difficult for staff to adjust numbers subjectively. She said that she looked forward to seeing the County in full compliance.

Ms. Connie Bennett, Stormwater Division Chief for York County said that the portion of the plan for which York County was cited was MS19. She said that she would argue that the County was meeting the intent of the MS19 in requiring all developers to show adequacy of downstream channels. She said that after the program review in 2005 the County believed the would meet the requirements.

Mr. McCutcheon said that he appreciated the County's position. He said that MS19 has been a difficult standard to meet. He said that DCR had taken a strict stand on MS19 in requiring that an adequate channel be provided and an analysis be done of the channel.

Mr. McCutcheon said that the DCR position was that since the channels are not being analyzed there is no verification of the channels the program does not meet the minimum standard.

Mr. McCutcheon said that as the stormwater regulations are implemented MS19 will be superceded by the water quantity requirements. He said that staff did review the concerns and would still recommend that the County program be found inconsistent.

Mr. McCutcheon said that if the County has made adjustments, staff could review at any time and the Board could deem the program consistent at the December meeting.

Mr. Street said that this was not the first time he had hear this issue. He said there were several localities in a similar situation. He said that he would reluctantly agree with the CAA so that he locality may request DCR to again review the program prior to the next meeting.

MOTION: Mr. Street moved that the Virginia Soil and Water Conservation Board accept staff recommendations to find the York County Erosion and Sediment Control Program inconsistent with the Virginia Erosion Control Law and Regulations and approves the CAA as drafted for the County. Further the Board directs DCR staff to monitor the implementation of the CAA by York County to ensure compliance and encourages the County to review the program again prior to the next Board meeting so that the County program may be found consistent.

SECOND: Mr. Dunford

DISCUSSION: None

VOTE: Motion carried unanimously

Roanoke County

Mr. McCutcheon gave the background for Roanoke County.

Staff conducted a program review of the Roanoke County Erosion and Sediment Control Program on March 28, 2012 and conducted a close out meeting with the County. The scores for the individual program elements were as follows: Administration 95 – Plan Review 75 – Inspection 55 – Enforcement 80. All program elements did not receive a score of 70 or greater. Therefore, staff recommends that the Virginia Soil and Water Conservation Board find the Roanoke County Erosion and Sediment Control Program inconsistent with the Virginia Erosion and Sediment Control Law and Regulations and approve the draft CAA for the County.

Mr. Joel Baker, Business Commissioner for Roanoke County said that the issue with the County inspections was in the residential construction section. He said that most of the time these are smaller projects and that it was a challenge for localities to apply very complicated regulatory matters when people don't understand the process. He said the County tried to come up with a good program to make it simpler for residents to comply. The County process was not to submit an alternative program, but that is on its way. He said the hope is that the alternative program would address these issues. He said that the County believed their program to be well implemented and to meet the Board's mission of protecting the waters of the state.

MOTION: Ms. Jamison moved that the Virginia Soil and Water Conservation Board accept staff recommendations to find the Roanoke County Erosion and Sediment Control Program inconsistent with the Virginia Erosion and Sediment Control Law and Regulations and approve the CAA as drafted for the County. The Board directs DCR staff to monitor the implementation of the CAA by the County to ensure compliance.

SECOND: Mr. Street

DICSUSION: None

VOTE: Motion carried unanimously

Franklin County

Mr. McCutcheon gave the background for Franklin County.

Staff conducted a program review of the Franklin County Erosion and Sediment Control Program on March 19-23, 2012 and conducted a close out meeting with the County. The scores for the individual program elements were as follows: Administration 45 – Plan

Review 80 – Inspection 90 – Enforcement 100. All program elements did not receive a score of 70 or greater. Therefore, staff recommends that the Virginia Soil and Water Conservation Board find the Franklin County Erosion and Sediment Control Program inconsistent with the Virginia Erosion and Sediment Control Law and Regulations and approve the draft CAA for the County.

Neil Holthouser, Director of the Department of Planning and Community Development for Franklin County distributed a letter to Board members. A copy of that letter is available from DCR.

Neil Holthouser

Good afternoon, Madame Chairman, members of the Board. My name is Neil Holthouser. I'm here today with Mr. Chris Whitlow, who is the Assistant County Administrator. We're here today to ask you to consider adjusting the scoring on our draft compliance review.

We're generally pleased with our reviews. I think you just heard we scored 100 for enforcement, 90 on inspections, 80 on plan review, but a woeful 45 on plan administration. That doesn't seem to be the norm. Other communities seem to ace program plan administration.

In this case I'm going to suggest to you that we have a valid point made by DCR staff who are terrific to work with. However, I would suggest that it's a miscommunication and a misplaced comment within the scoring.

You'll note in the scoring system, the very first question asks, the very first criteria under program administration is "is the program administered by a certified program administrator." We have three. We have three people who are combined administrators with certification. On that score on that point it's worth 35 points. We received zero out of 35.

I reminded Mr. Johnson when we were speaking earlier about if you have four wires that keep the cows in the pasture you get full credit if you have three wires you get none. We have three wires. We have three combined administrators.

I would argue that the law doesn't require that we have a singular individual named as program administrator. I think you hear the term program administrator and you tend to think "an administrator" is "an administrator." But throughout the law and throughout the administrative regulations there are references to person or persons, individual or individuals. In fact I would argue that the combined administrative certification recognizes the fact that in a small shop like mine, staff have to wear multiple hats. You can more than one thing. You can be a program administrator and a plan reviewer and an inspector and be in charge of the program.

In this case DCR did find, I think, an inconsistency within our ordinance that's a valid concern. Our ordinance seems to speak out of both sides of its mouth. On one side our ordinance talks about a program administrator language saying representative, agent, making it sound like it could be interpreted as an individual. But clearly elsewhere in our ordinance we talk about the plan approving authority being a department which in fact it is. It's the planning department of the director's department. With my staff I have a very small department. I have three people who are intimately involved with erosion and sediment control that do all the work. They do the program administration. And they really work together as a team in enforcement.

That's how we function. Our department used to have more staffing. We have found that we went from a team of eleven people to eight. We lost the position of deputy director. We lost an inspector position. We lost a planner position. Several members of our building department. Throughout all of this contraction in our government., we've maintained three people with combined administrative certification. These are people who, when they started doing these jobs may have only been doing inspection or plan review. Through their own volition and willingness to do this went for certification so that they could do a little bit of everything.

I think in Mr. Whitlow's shoes as an assistant county administrator it is very gratifying to him to know that in the face of staff cutbacks and frankly a lot of turnover. I think I'm the longest of the planning director in some time and I've been there four years. The planning director wasn't really a good place to put a program administrator because the position wasn't very stable. I have a very stable staff now, and again three people have their certification.

What I would argue with today is that we should be clear in saying that we either have an individual or a department. And in fact what we're probably going to be doing as we adopt a new local stormwater program pursuant to the new regulations effective July 1, 2014. We're probably going to have to look at our staff and budgetary levels and perhaps even name a person or a team of people as our stormwater team. But for now I would suggest that to the extent we need to clarify our ordinance we need to update a valid comment on the scoring checklist. But when placed where it's placed it's for 35 points which puts us in a failing category.

We think the evidence speaks for itself in that these people scored 100 for enforcement. Surely they know what they're doing. We submit that to you today.

Ms. Hansen asked that, with three people, what prevented them from feeling like the other two were responsible for the program.

Mr. Holthouser said that the county was lucky to have three seasoned employees. He said they have certain geographies within the county. The three conference during plan review and work together well as a team.

Chris Whitlow said that Mr. Holthouser's comments reflected the opinion of the County. He said that Franklin County takes great pride in the natural environment. He said that the County believes they have gone above and beyond the program requirements.

Mr. McCutcheon said that he could not take exception to anything the County said. He said that he would agree there might be a misplaced comment in the report. He suggested that the Board consider deferring action on the program until staff had time to review and see if the comment is not better placed under the section regarding the ordinance. He said that one of the corrective action items was to revise the ordinance, but noted that on the program review the ordinance was not checked as being deficient. He said that moving that comment from the administration section to the ordinance section would significantly change the result of the review.

Mr. Street asked if, as the program was set up for the County, if there was a hierarchy or supervisory role in the event a program goes to an appeal.

Mr. Holthouser said there was no hierarchy among the three. He said that in his reading, the County was complying but having three combined administrators as opposed to one.

Mr. Street said that there were several aspects of a program where there was a need for internal appeal. There needs to be a hierarchy or one person should be designated as a lead.

Mr. Holthouser said that would probably be the model moving forward. He said that the difficulty of doing this had been budgetary. He said that in terms of staff parity was key.

Ms. Hansen asked what staff would recommend.

Mr. McCutcheon said that he would prefer to defer action on the Franklin County Program Review until the December meeting. He said that would allow DCR staff and County staff to review and determine if the finding of inconsistency would be a heavy burden. He said the problem was not that people are not certified, but that there was no clear hierarchy in terms of who is ultimately responsible. He said there were specific requirements set forth in the regulations and that local programs must be consistent.

MOTION: Mr. Street moved that the Virginia Soil and Water Conservation Board defer action regarding the Franklin County Erosion and Sediment Control Program until the December 11, 2012 meeting to allow time for DCR staff to meet with County staff to further review the program and the County's division of responsibilities among County staff.

SECOND: Mr. Simms

DISCUSSION: None

VOTE: Motion carried unanimously

Chesapeake Bay Preservation Act Compliance Evaluations

Ms. Salvati presented the recommended actions for the Chesapeake Bay Preservation Act program. The recommendation was that the Board take action on all Chesapeake Bay items in one Board action with the exception of the recommendation for Gloucester County.

Recognition of the Town of Windsor Chesapeake Bay Preservation Act Program

Ms. Salvati presented the background for the Town of Windsor.

The Chesapeake Bay Local Assistance Board reviewed implementation of the Town of Windsor's Chesapeake Bay Preservation Act program on March 19, 2012. At that time, the Board found that a certain aspect of the implementation of the Town's Chesapeake Bay Preservation Act program did not fully comply and established March 31, 2013 as the compliance deadline for the Town to address the single compliance condition, which related to the five-year septic pump-out requirement.

Recognition of the City of Portsmouth Chesapeake Bay Preservation Act Program

Ms. Salvati gave the background for the City of Portsmouth.

The Chesapeake Bay Local Assistance Board reviewed implementation of the City's Chesapeake Bay Preservation Act program on December 12, 2011. At that time the Board found that a certain aspect of the implementation of the City's Chesapeake Bay Preservation Act program did not fully comply and established December 31, 2012 as the compliance deadline for the City of address the single compliance condition.

Since the December 12, 2011 Board meeting, City staff contacted Department staff requesting review of the single condition at the Board's June 2012 meeting. City staff provided examples of water quality impact assessments to show that the City is now regularly meeting Water Quality Impact Assessment (WQIA) documents as necessary.

Town of Onancock Chesapeake Bay Preservation Act Program

On June 21, 2010, the Chesapeake Bay Local Assistance Board (CBLAB) approved a list of 31 compliance evaluation review elements. Pursuant to the Regulations, local compliance reviews are conducted every five years, with the Board making a determination on whether the implementation of the local government's program is in compliance with the Act and Regulations.

DCR staff initiated the compliance evaluation for the Town of Onancock by sending a notification letter to the Town Manager on February 24, 2012.

The Town of Onancock relies heavily on Accomack County for implementation of its Bay Act program. The Town adopted a resolution on October 6, 1998, accepting Accomack County's offer of technical assistance in implementing the Town's Bay Act program, specifically in assisting in the onsite delineation of the Resource Protection Area (RPA) boundaries on properties in the Town. The County provides the following services outlined below.

1. Erosion and Sediment Control requirements – The Town does not have a separate erosion and sediment control ordinance, therefore, under the state law, the County's erosion and sediment control ordinance is in effect in the Town, and the County reviews all development plans for compliance with their erosion and sediment control ordinance and also undertakes all required erosion and sediment control site inspections.
2. Building Permits – the County issues building permits for the Town.
3. Stormwater management requirements – County staff reviews development plans for Bay Act stormwater management requirements, if necessary, and inspects the installation of any required BMPs.
4. Onsite RPA delineations – the Town provided County staff with the authority to perform onsite RPA delineations through an adopted motion of June 8, 1998.

Northumberland County's Chesapeake Bay Preservation Act Program

Pursuant to § 10.1-2103 10 of the Chesapeake Bay Preservation Act and § 9 VAC 10-20-250 of the Chesapeake Bay Preservation Area Designation & Management Regulations, Department of Conservation and Recreation staff initiated the compliance evaluation for Northumberland County by sending a notification letter to the County on March 1, 2012. Department staff met with Northumberland staff on May 3, 2012, to discuss the compliance evaluation process and the local program and review additional information needed. Additional meetings to review plan files and to carry out field investigations took place on May 8, 2012, and May 10, 2012. Follow-up email exchanges were held with Northumberland County throughout the process to discuss the site plan review process and ordinance implementation policies. Copies of field notes, photographs, materials provided by the Northumberland County and copies of the completed *Consolidated Checklist for Local Program Compliance Evaluation* and the *Site Plan File* and *Field Review Checklists* are included in the file.

Recognition of Richmond County's Chesapeake Bay Preservation Act Program

The Chesapeake Bay Local Assistance Board (CBLAB) reviewed implementation of the County's Chesapeake Bay Preservation Act programs on June 20, 2011. At that time, the CBLAB found that certain aspects of the implementation of the County's Chesapeake Bay Preservation Act program did not fully comply and established June 30, 2012 as the compliance deadline for the County to address the compliance conditions. Since the June 20, 2011 Board meeting, the County has provided information that demonstrates it has addressed the two compliance conditions.

BOARD ACTIONS:

Mr. Ingle moved that the Board take the following actions as recommended by staff:

MOTION: The Virginia Soil and Water Conservation Board commends the Town of Windsor for successfully implementing the Town's Chesapeake Bay Preservation Act program and finds that the Town of Windsor's Chesapeake Bay Preservation Act program complies with §§ 10.1-2109 and 211 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations.

MOTION: The Virginia Soil and Water Conservation Board commends the City of Portsmouth for successfully implementing the City's Chesapeake Bay Preservation Act program and finds that the City's program has addressed the one condition from the December 12, 2011 resolution and that the implementation of the City of Portsmouth's Chesapeake Bay Preservation act program complies with §§ 10.1-2109 and 2111 of the Chesapeake Bay Preservation Act and §§ 9 VAC 10-20-231 and 250 of the Chesapeake Bay Preservation Area Designation and Management Regulations.

MOTION: Based on staff's compliance evaluation, the Virginia Soil and Water Conservation board accepts staff's recommendations to find that Onancock's Chesapeake Bay Preservation Act Program is not fully compliant with the Chesapeake Act and § 9 VAC 10-20-250 of the Chesapeake Bay Preservation Act Designation & Maintenance Regulations approves a Corrective Action Agreement for the Town of Onancock which requires the Town to address one condition for compliance no later than June 30, 2013. The Board directs DCR staff to monitor the implementation of the CAA by the Town of Onancock to ensure compliance.

MOTION: Based on staff's compliance evaluation, the Virginia Soil and Water Conservation Board accepts staff's recommendations to find that Northumberland County's Chesapeake Bay Preservation Act Program is not fully compliant with the Chesapeake Bay Preservation Act and § 9 VAC 10-20-250 of the Chesapeake Bay Preservation Area Designation & Management Regulations and approves a Corrective Action Agreement for the County which requires the Town to address one condition for compliance no later than June 30, 2013. The Board directs DCR staff to monitor the implementation of the CAA by Northumberland County ensure compliance.

MOTION: The Virginia Soil and Water Conservation Board commends Richmond Country for successfully implementing the County's Chesapeake Bay Preservation Act finds that the County has addressed the two conditions from the June 20, 2011 Resolution and that the implementation of Richmond County's Chesapeake Bay Preservation Act program complies with §§ 10.1-2109 and 2111 of the Chesapeake Bay Preservation Act and §§ 9 VAC 10-20-231 and 250 of the Chesapeake Bay Preservation Area Designation and & Management Regulations.

SECOND: Mr. Simms

DISCUSSION: None

VOTE: Motion carried unanimously

Gloucester County's Chesapeake Bay Preservation Act Program

Ms. Salvati gave the background for Gloucester County.

On June 20, 2011 the Chesapeake Bay Local Assistance Board reviewed Gloucester County's local Bay Act program for compliance with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations. The Board determined that certain aspects of Gloucester County's implementation of its program did not fully comply with the Act and the Regulations and established June 30, 2012 as the compliance date for the County to address one condition.

Ms. Salvati said that the County had approached staff and requested that the deadline be extended until December 31, 2012. She said that staff was supportive of that request.

Brenda Garton from Gloucester County said that the circumstances were accurate as described by Ms. Salvati. She said that the County was not comfortable with being out of compliance with any state regulation.

Ms. Garton said that the County had requested the extension in order to make other necessary changes in addition to the ones outlined in the staff report. She said that there had been staff turnover and other issues that contributed to the delay. She said that the County had requested an extension until December 31, 2012, but would be very appreciative if the date could be extended until March 31, 2013.

MOTION: Mr. Dunford moved that the Virginia Soil and Water Conservation Board accept the request of Gloucester County to extend the deadline for compliance until March 31, 2013 in order to allow the County time to complete the amendments to its local ordinances, including the requirements outlined under § 9 VAC 10-20-191 A 4 of the Regulations.

SECOND: Ms. DuBois

DISCUSSION: None

VOTE: Motion carried unanimously

SWCD Summer Study

Mr. Davis-Martin gave an update concerning the SWCD Summer Study.

Mr. Davis-Martin said that the Summer Study process was a great success. He said that the the 2012 Budget Bill called on the Secretary of Natural Resources to convene a Stakeholder Advisory Group to review funding for Soil and Water Conservation Districdts.

Mr. Davis-Martin said the SAG met five times. He said the deadline for submitting the report was October 1. He said that a copy of the report would be provided to Board members.

Mr. Davis-Martin said the report recommends budgets for 2014 using two scenarios, one of which meets established goals for 2017 while one does not. He said that it was acknowledged that it takes districts up to two years to hire and provide necessary employee training so the recommendation was made to address the need for appropriate funding two years in advance.

Mr. Davis-Martin said the report recommended that the efforts and discussions of the committee be continued.

Ms. Jamison noted that funding for Districts had been previously determined by this Board. She asked if those responsibilities would be taken from the Board.

Mr. Davis-Martin said that he did not see a conflict with these efforts. He said the recommendations would go to the Governor and General Assembly to determine the amount of funding which would then be provided to the Board to determine the method of distribution.

SWCD Resignations and Appointments

Ms. Martin presented the following resignations and appointments.

<u>Colonial</u>

Resignation of Leslie Bowie, City of Williamsburg, effective 7/24/12, elected director position (term of office expires 1/1/16).

Headwaters

Resignation of Jason Carter, Augusta County, effective 7/1/12, appointed Extension Agent director position (term of office expires 1/1/13).

Recommendation of Matt Booher, Shenandoah County, to fill unexpired Extension Agent term of Jason Carter (term of office to begin 10/28/12 – 1/1/13).

MOTION: Mr. Lohr moved that the list of Soil and Water Conservation District Directors be approved as submitted by staff.

SECOND: Mr. Hornbaker

DISCUSSION: None

VOTE: Motion carried unanimously

Partner Reports

Natural Resources Conservation Service

The Natural Resources Conservation Service report is included as Attachment #2.

Virginia Association of Soil and Water Conservation Districts

Mr. Overton gave an update from the Virginia Association of Soil and Water Conservation Districts.

The Association Annual Meeting will be held December 2-4 at the Hotel Roanoke. Mr. Overton invited all Board members to attend the meeting.

Mr. Overton said that the students from Fort Defiance High School placed first in the 2012 Dominion Envirothon and moved on to compete in the North American competition where they placed 8th overall and placed 1st at the Aquatic Ecology station.

The Summer Youth Conservation Camp at Virginia Tech had 56 campers, the largest group in a number of years.

Mr. Overton said that the Association was very involved with the State Fair which was opening that same day.

With regard to the RMP regulations, Mr. Overton noted that the Districts will be responsible for helping to implement that program.

Mr. Overton said that Mr. Davis-Martin gave an excellent summary of the District summer study. He congratulated Mr. Davis-Martin and DCR staff for this project that was no small task.

Mr. Overton said that he would hope that the Districts have a say in whether or not stormwater programs and district operations were moved from DCR to DEQ.

Mr. Overton noted that this would be his last meeting to address the Board as President of the Association. He said that it had been an honor and that the Board was exceedingly important to the work of Soil and Water Conservation Districts.

Election of Officers

MOTION: Mr. Lohr moved that the names of Mr. Dunford and Ms. Jamison be placed in nomination for the positions of Chair and Vice Chair, respectively.

SECOND: Mr. Simms

DISCUSSSION: Mr. Simms moved that the nominations be closed and accepted by acclamation.

VOTE: The motion carried unanimously

Public Comment

There was no further public comment.

New Business

Mr. Hornbaker expressed concern regarding information provided to Board members in advance of meetings. He said that he had a great level of frustration for some time. He said that it had only been in the last 10 days that he had heard of a possible reorganization and the possibility that the Board and responsibilities might be moved to DEQ.

Mr. Hornbaker expressed concern that the Board was being asked to approve regulatory actions without having sufficient time to review. He requested that the Director advise staff that information be provided to Board members at least fourteen days prior to meetings.

Ms. Hansen said that the Board would do a better job if information was received in a more-timely manner.

Mr. Dunford said that Board members should have received a copy of a letter from the Monacan Soil and Water Conservation District. Powhatan County has withdrawn

$80,000 from previously allotted funds to the district. The district was requesting $50,000 from the DCR special fund.

Ms. Gargiulo said there was $1.9 million in the special fund for technical assistance. $1.6 million has been disbursed to districts. An additional $300,000 is used for bond insurance, audits, the Association contract and dam repairs.

Ms. Gargiulo said that DCR Director of Finance John Moore is reviewing the request and that he will be meeting with District staff.

Next Meeting

The next meeting of the Soil and Water Conservation Board will be December 11, 2012 in Richmond.

Adjourn

There was no further business and the meeting was adjourned.

Respectfully submitted,

Herbert L. Dunford, Jr.
Chair

David A. Johnson
Director

Attachment #1

Department of Conservation and Recreation
Division of Stormwater Management

Report to Virginia Soil and Water Conservation Board
September 28, 2014

VA Agricultural BMP Cost Share (VACS) Program

The VA Agricultural BMP Cost Share Program Technical Advisory Committee (TAC) held its first meeting of the 2013 program year on August 16th, 2012 at the Dept of Forestry training room in Charlottesville. This meeting focuses on developing a Program of Work (POW) based upon suggestions gathered from field staff. The TAC reviewed and consolidated submitted suggestions and assigned each suggestion to a subcommittee. Existing subcommittees are currently focused on nutrient management, cover crops, stream exclusion, forestry and wildlife BMPs.

The subcommittees will examine the suggested changes and bring recommendations back to the full TAC for discussions and actions. The TAC develops a matrix of TAC recommendations that is presented to the DCR Director for approval before the changes can be incorporated into the program. The next meeting of the TAC will be October 25, 2012 at the DOF training room in Charlottesville, VA.

First quarter cost-share disbursement letters from Conservation District Coordinators are being received and processed in Richmond.

District Operational and Technical Assistance payments have been sent to district. A reconciliation of all payments is being conducted to ensure all districts have received their payments for the FY13 first quarter.

<u>CREP:</u> Signup continues statewide with projects completing each month. Slightly less than 900 acres are available in the Southern Rivers drainage and just over 9,000 acres of CREP remain available for enrollment in the Chesapeake Bay drainage basin. FSA is working with its national office on authorization of additional CREP acres in the Southern Rivers drainage basin.

SWCD Summer Study Stakeholder Group

Pursuant to the 2012 Budget Bill enacted by the General Assembly of Virginia, the Secretary of Natural Resources convened a stakeholder advisory group (SAG) to examine funding needs for administration and operation of the soil and water conservation districts and the technical assistance they provide for implementation of agricultural best management practices needed to meet Virginia's Watershed Implementation Plan as well as the Southern Rivers Total Maximum Daily Load limits. The full SAG met five times and used ad hoc workgroups to focus discussion in specific project areas. Workgroups focused on finance, development of a budget reporting template for district operating needs based on other state agency budget reporting templates, and on developing an agricultural needs assessment pursuant to the requirements of §10.1-2128.1 of the Water Quality Improvement Act. Workgroup recommendations were presented to the full SAG for discussion and consensus. The Department of Conservation and Recreation provided staff coordination for the SAG and the workgroup process. The study report is scheduled for submission to the Governor and the Chairmen of the Senate Finance and the House.

Conservation Partner Employee Development

The conservation partners continue to work through the Joint Employee Development (JED) system which relies on four regional teams (coordinated through a separate state level JED team) to address training and development of SWCD and other partner agency field staff.

The state level JED team continues to focus on the delivery of three core courses. The short course "Conservation Selling Skills" on the even years and the delivery of the EP&I ("Effective Presentation and Instruction") short course will be offered on the odd years. The third core course – "Conservation Orientation for New Employees" - is now available at a regional scale. In addition, a one week long "State Boot Camp" training program is being considered. The state level JED team will revisit a discussion about delivery of this course in 2012-2013. The State JED is scheduling a conference call for early November 2012 to address future employee development and training initiatives. The 2013 schedule is listed below:

New JED Schedule for 2013:

- Harrisonburg – 2nd Tuesday of each month
- Smithfield – 2nd Thursday of each month
- Farmville – 3rd Tuesday of each month
- Christiansburg – 3rd Thursday of each month

State Resource Conservationist – January, April, October
Engineering – Aug
Program Updates – June (DCR), November (NRCS)
Area Office selects program – February, March, May, July, September, December

Chesapeake Bay TMDL

Virginia's Phase II WIP was reviewed by a Stakeholder Advisory Group March 15, and submitted by the Secretary of Natural Resources to EPA on March 30. A public comment period on the document was opened from April 1 through May 31. The comment period included 9 public meetings around the watershed and resulted in submission of nearly 500 comments. EPA's review of the WIP II document and model inputs resulted in no Federal backstops or consequences. All source sectors received EPAs highest rating of "Continuing Oversight" with the exception of the urban stormwater sector that continues at the "Enhanced Oversight" level that was established following their Phase I WIP review. Changes to the WIP II document based on the public comments and EPA review are anticipated for release soon. Staff continues to work on developing the 2012 annual implementation progress report which is due to EPA December 31. To learn more about EPAs expectations of the Bay states, visit the official EPA website for Bay TMDL information at: www.epa.gov/chesapeakebaytmdl/ . Details of the Phase II WIP can be found on DCR's website for the Bay TMDL at: http://www.dcr.virginia.gov/vabaytmdl

Stormwater Management Program

Stormwater Management Regulatory Roll Out Activities

I. Regional Outreach Meetings

Phase I

Regulatory program staff has completed Phase I of a comprehensive outreach program to local governments regarding the revised Virginia stormwater regulations became effective September 13, 2011. From April through July, the Regulatory Programs Manager and the Program & Guidance Development Manager attended meetings of regional Planning District Commissions and briefed the member elected officials on the key components of the revised stormwater management regulations. Beginning in May, staff conducted a series of regional outreach meetings aimed at local government staff. During these meetings DCR staff provided detailed information on various regulatory initiatives, the changes in the revised regulations, what the localities had to incorporate into their local programs and ordinances to comply with the regulations and on Virginia's E-permitting system currently under development. The meetings were well attended and staff received feedback that the information provided was beneficial. Roughly 140 local governments attended the meetings.

Phase II

Regulatory Program staff is in the process of setting the dates and locations for the second phase of the regional outreach training which will involve a one-day General Stormwater training class to be given in various locations round the state in October and November. A panel of subject matter experts from the SWM field is being set up to assist in determining the tasks that a stormwater administrator, plan reviewer and inspector must perform in their roles in a program. From that task list staff will identify the necessary knowledge and skills necessary for those tasks and develop training materials on that basis. The panel will also be used to create a base of test questions to create the certification examination. The target date for launching the SWM Certification program is spring 2013.

II. Regional Office Training

Regulatory Programs and Regional Operations staff has combined efforts to provide training to the regional office staff on local stormwater program development. The regional office staff members were provided with information on the core requirements of local stormwater programs and ordinances, a local program development timeline, the draft model ordinance and a checklist of items that local governments have to develop in order to be deemed to be showing substantive progress in developing their programs and eligible for

to receive a 1-year extension of the June 2013 deadline to adopt a local stormwater program. These meetings took place from August 28 through September 26.

III. Stormwater Local Government Advisory Committee (SLGAC) meeting

The seventh meeting of the SLGAC was held on September 13. Staff presented updates on the MS4 and Construction General Permit regulatory actions; the stormwater Training & Certification program; the revised model ordinance; the local stormwater program development survey, the Virginia e-permitting site and the local program development FAQ document. Comments and recommendations were made on both the model ordinance and the FAQ. The final meeting of the SLGAC will take place in October at which point the committee will have completed its charge of assisting with the development of stormwater program development tools.

IV. Local Program Development Survey

On August 10, 2012, The Department of Conservation and Recreation sent out a Local Stormwater Program Development Survey to local government officials across the State. The purpose of the survey is to determine local government funding and other resource needs for the development of local stormwater programs in accordance with the revised Virginia Stormwater Management Regulations that became effective on September 13, 2011. Although many localities responded to the survey, there are many more localities that have not. Therefore, the survey was resent on September 10 and localities have been given until today, September 28 to respond. This will allow more localities to let us know what kind of stormwater program development needs they have.

V. Local Program Development Request for Proposals

On July 30, staff released a request for proposals to solicit proposals to establish grant agreements to provide assistance to localities in developing their local stormwater management programs. A minimum requirement for the RFP is the development of a draft package to be submitted for review by DCR by April 1, 2013 that includes a local stormwater management contact, a draft ordinance and draft funding plan. The deadline for proposals was September 10. A total of 59 proposals were received representing 100 localities. The total amount requested was $3.697, 279. The total amount available is $2,087,000. A selection committee of DCR and non-DCR representatives will meet on Monday September 24th to discuss the proposals and make recommendations for allocation.

Virginia Stormwater Management Permits (VSMP)

DCR staff issued coverage to 473 projects qualifying for the General Permit for Discharges of Stormwater from Construction Activities for the period of July 1, 2012 through September 20, 2012.

Erosion & Sediment Control

The Board's work with local erosion and sediment control programs continues with three program recommended to be found consistent with the E&S law and regulations. Halifax

County and the City of Hampton are recommended to be found consistent from the results of program reviews and Fauquier County for successfully completed its CAA. Based in the results of their program reviews, three programs, Franklin, Roanoke and York Counties are recommended to be found inconsistent and CAAs approved. Approval of annual standards and specifications for wetland and stream restoration banks is recommended for Foggy Bottom L.L.C. and for Wetland Studies and Solutions Inc. An alternative inspection program for Westmoreland County that was submitted to the Board for acceptance and review at its last meeting is recommended for approval.

Chesapeake Bay Preservation Act Compliance Evaluations

Since the Chesapeake Bay Local Assistance Board has been eliminated, Regulatory Program staff will now bring Bay Act program Compliance Evaluations to the Soil & Water Conservation Board. A total of 6 programs will be presented to the Board. In accordance with the Integration Bill, the compliance evaluation resolutions have been reformatted into Corrective Action agreements. A total of 6 program reviews will be presented to the Board.

A summary of the actions staff is recommending is as follows:

- Town of Onancock – recommend not fully compliant
- Town of Windsor – recommend fully compliant
- City of Portsmouth – recommend fully compliant
- Richmond County – recommend fully compliant
- Northumberland County – recommend not fully compliant
- Gloucester County – recommend approval of extension request

Pilot Concurrent E & S and Bay Act reviews

Two concurrent Bay Act and E & S program reviews for Stafford and Accomack Counties have been completed. The results of the Stafford review were presented to the former CBLAB at its March meeting. The results of the combined E & S and Bay Act review for Accomack will be presented to the Soil & Water Conservation Board at its December meeting. Two additional pilot concurrent reviews will be completed by the end of this calendar year. A concurrent review has been initiated for Hanover County and such a review will begin in October for Northampton County.

Municipal Separate Storm Sewer System (MS4) Permits

In September 2011, EPA conducted a review of Virginia's urban stormwater programs. At this same time, the organizational management of the programs was undergoing an internal restructuring. EPA's draft assessment of Virginia's urban stormwater programs as presented in December 2011 failed to capture the changes in program management and resulting progress made in program implementation as a result of the restructuring. After discussion with EPA, Virginia submitted comments on the draft assessment in December 2011 and currently awaits a final assessment. As a result of the EPA discussions and upon receipt of a final assessment from EPA, Virginia expects to work with EPA on a Memorandum of Understanding (MOU) regarding the current status and future

expectations of Virginia's urban stormwater programs. These discussions have continued to date.

DCR submitted a draft Arlington MS4 permit to EPA for their review on July 31, 2012 with the notification that DCR will move forward with permit issuance if EPA has not commented within 30-days. On September 5, 2012, DCR received notice from EPA that they will utilize the additional review time as agreed to in the DCR/EPA MOA. DCR expects EPA comments regarding this permit before November 1, 2012.

DCR coordinated with RAP members through a series of meetings in the development of the Virginia General Permit for the Discharge of Stormwater from Small MS4s. The draft regulations developed as a result of these meetings are being discussed at today's Board meeting.

Attachment #2

EQIP, CBWI, CSP, and WHIP Programs

Status of Program Funds:

- FY2012 Active Contracts: 948
- All other FYs Active Contracts: 1820
- Total Active Contracts: 2768

Obligation of Funds:

- CSP: 133 contracts on 71,900 acres for $1,230,081 acres
- Seasonal High Tunnel: 81 contracts for $541,699
- Organic Initiative: 2 Certified Organic contracts for $60,983 and 11 Transition Organic Contracts for $216,925

Rolled out Golden-Winged Warbler Initiative and funded 10 contracts for $48,183.

Cultural Resource Reviews completed at state level increased significantly – from 114 in 2010 to 155 in 2011 to 245 in 2012.

Historically Underserved Clients – 14% increase in the number of contracts (253 versus 221) and 23% increase in funds obligated ($7,123,559 versus $5,773,265) to HU clients in FY12. Obligated 30.7% of our funds in FY12 to HU clients as compared to 19.5% in FY11.

Conservation Initiative Grants

NRCS is developing agreements on the top three CIG proposals for a total of $164,415 with the following entities:

- Virginia No-Till Alliance – Diverse Cover Crop = $39,515
- Virginia Tech – Managed Grazing Project = $75,000
- Hanover-Caroline SWCD – Multispecies Cover Crop Project = $49,900

Dam Rehabilitation

- South River 10A – Construction is on-going
- Upper North River Site 10 – Plan is ready for authorization
- Pohick 8 – Final designs complete; waiting on sponsor submittal
- Town of Culpeper – Coordinating with town for applications
- UNR77 – Sediment survey completed

Easements

Closed 13 easements in FY12 (3 FRPP, 4 WRP, and 6 GRP). Signed new agreements to purchase 19 new easements (9WRP, 1 GRP, and 9 FRPP).

National Water Quality Initiative

Allocated $456,776 equally to Wolf Creek, Molly's Creek, and Somerton Creek.

Watershed Programs

Final Plan/EA for Upper North River 10, Todd Lake, in Augusta County has been signed by Sponsors and State Conservationist and was sent to NHQ for Chief's authorization.

Developed close-out supplements for the following two land treatment watershed projects:

- Copper Creek in Russell and Scott Counties
- Cripple Creek in Smith and Wythe Counties

Soils/NRI/GIS

Soil Work Planning Conference was held in Richmond August 28-29 with 23 participants from five states. The focus of this year's conference was on the changing structure of the Soil Science Division and how this change will affect services in Virginia.

Department of Forestry

NRCS signed a new agreement with DOF to continue the shared liaison position with DOF/NRCS to expand our technical assistance in forestry.

Smith Creek Initiatives

A Cover Crop Field Day was held in Smith Creek at Valley View Farms to look at a variety of cover crop mixes with an emphasis on how to grow your own nitrogen and improve soil quality. Some of our Shenandoah Valley NRCS staff presented their "favorite" mixes. On farm research and demonstration is one of the strongest ways to reach out to farmers regarding conservation practices.

Mike Phillips, owner of Valley View Farms near Mauzy, Virginia, has given NRCS and VCE agronomists access to a ten acre field to plant and demonstrate a wide variety of cover crops. Information has been collected for more than two years with the primary goal to evaluate which plant species work well in this area of the state.

USA/NRCS is promoting crop biodiversity both in a sequence or planted as mixed species. There is great interest in cover crop mixes by local farmers.

Hispanic and Women Farmer Claims

NRCS Public Affairs coordinated with FSA and RD to produce the Virginia plan, which identifies special efforts in 24 select counties where National Agricultural Statistics Service data estimates that there are more than 100 female and Hispanic operators who may be eligible to apply for compensation. Pat Paul, NRCS, and Linda Cronin, FSA, made a presentation to VSU 2501 agents on September 11 and provided them with outreach materials. The period to receive claims opened September 24 and will remain open for 180 days.

Field Office of the Future

An analysis and plan for the Field Office of the Future was completed in August using findings from landowner, partner, and employee questionnaires and facilitated discussions. Findings include:

- NRCS is looked upon to provide technical assistance
- The three top services that NRCS provides are conservation planning, soils, and engineering
- The priority resource concerns identified are water quality, soil erosion, and water quality degradation.
- It is important for NRCS to be co-located with FSA and the SWCDs
- Services that could be better coordinated between NRCS and the districts are conservation planning, the state cost-share program, and conservation implementation and certification.
- The primary recommendation to increase field office efficiency is reduce the amount of paperwork.

NRCS has increased our technical assistance by 17% through the use of agreements with partner agencies and contracts to hire ACES employees. Our office consolidation from 2007 to 2011 has resulted in a 21% reduction in service centers. The recommendations provided will be used by management as NRCS adjusts our services to better serve the needs of our customers.

Chesapeake Bay Coordinator

Nona McCoy is the new NRCS employee serving as the Chesapeake Bay Coordinator. Her position has been moved from Annapolis, MD to Washington DC. Her previous work experience includes staff positions on Capitol Hill and assisting with drafting Farm Bill legislation. Her current role is to help coordinate activities among the Bay states.