

**Virginia Soil and Water Conservation Board  
July 23, 2009  
Association of Electric Cooperatives  
Glen Allen, Virginia**

**Virginia Soil and Water Conservation Board Members Present**

Linda S. Campbell, Chair  
Joseph H. Maroon, Director  
Gary Hornbaker  
Michael J. Russell

Granville M. Maitland, Vice Chair  
Darlene Dalbec  
Jean R. Packard  
John A. Bricker, NRCS, Ex Officio

**Virginia Soil and Water Conservation Board Members Not Present**

Susan Taylor Hansen

Raymond L. Simms

**DCR Staff**

Russell W. Baxter  
William G. Browning  
David C. Dowling  
Jack E. Frye  
John McCutcheon  
Jim Robinson  
Elizabeth Andrews, Office of the Attorney General

Robert Bennett  
Nissa Dean  
Michael R. Fletcher  
Lee Hill  
Mark B. Meador

**Others Present**

Virgil Allen, Floyd County  
Melvin Bennett, Spotsylvania County  
Johnnie Butler, City of Hopewell  
Tim Carpenter, Carroll County  
Alwyn W. Davis, Jr. Essex County  
Brent Fults, CBNLT  
Mike Gerel, Chesapeake Bay Foundation  
Barrett Hardiman, Home Builders Association of Virginia  
Donna Johnson, Virginia Agribusiness Council  
Gary Larrow, Carroll County  
David Nunnally, Caroline County  
Lisa M. Ochsenhirt, VAMSA  
Jeff Perry, Henrico County  
David Phemister, The Nature Conservancy  
Scott Reed, CBNLT  
Greg Sides, Pittsylvania County  
Andy Sorrell, Cumberland County  
Bill Street, James River Association

Richard Street, Spotsylvania County  
Tom Swartzwelder, King and Queen County  
James W. Sydnor, Town of Tappahannock  
James Taylor, Floyd County  
Philip Thompson, King and Queen County  
Troy Tigner, Spotsylvania County  
Jennifer Tribo, HRPDC  
Shannon Varner, Troutman Sanders  
Richard Woody, Cumberland County

### **Call to Order and Introductions**

Chairman Campbell called the meeting to order and declared a quorum present. She welcomed members and guests.

Ms. Campbell noted an agenda change and said that the Election of Officers would be postponed until the September meeting to allow for action concerning Board appointments.

### **Approval of Minutes from May 28, 2009**

Mr. Dowling noted that technical changes regarding Dam Safety issues had been made to the minutes since they were mailed to member. A revised draft was included in member packets.

MOTION: Ms. Packard moved that the Virginia Soil and Water Conservation Board approve the DRAFT minutes of the May 28, 2009 meeting as submitted by staff and as amended.

SECOND: Mr. Hornbaker.

DISCUSSION: None

VOTE: Motion carried unanimously

### **Director's Report**

Mr. Maroon gave the Director's Report.

Mr. Maroon said that the Bay program was developing the Bay TMDL and the states are implementing milestones associated with the 2025 Bay clean-up goal. He noted that the previous day senior government members from the region met in Washington, DC. He said the efforts are moving forward and that he would provide a more detailed briefing at

a future meeting regarding the work of the Bay program. Mr. Maroon said that there had been discussions with the agriculture community regarding the first set of milestones.

Mr. Maroon said an amendment to the law now required a report on the amount of agriculture cost share money that is needed to meet the Bay goals and the statewide water quality goals. One meeting has been held with stakeholders. Staff will further brief the Board on this subject at future meetings.

Mr. Maroon said that Mr. Dowling would provide an overview of what was happening with stormwater. But he noted that five public hearings had been held and that efforts to further amend the regulations based on the comments received were moving in a positive direction.

Mr. Maroon said that regarding MS4 permits staff has been having ongoing meetings and has met with the EPA.

Mr. Maroon said that the Dam Safety Loan and Grant program has a grants and loan round open that closes on August 14<sup>th</sup>.

Mr. Maroon said that the Governor had ordered another round of agency budget reductions. Agencies were required to submit plans for budget reductions of 5, 10 or 15%. He said that based on the history of cuts, Districts would also be facing budget reductions.

Mr. Maroon said that he was happy to welcome Mr. Hill back from medical leave.

### **Update of Regulatory Actions**

Mr. Dowling gave an update of regulatory actions. He noted that members were provided two packets of information. Copies of this information are available from DCR.

Mr. Dowling referenced the first document:

#### **Stormwater Regulatory Status as of July 23, 2009**

##### **Construction General Permit (Parts I and XIV) [Modified AP process - §2.2-4006 A9]**

- Final regulation was adopted by the Board at the March 19, 2009 meeting.
- Final regulation was published with a Permit effective date of July 1, 2009.
- Although EPA has strong expectations for this permit program as we move forward; after a series of conference calls, EPA did not issue an objection to the General Permit.
- Issuance of coverages began after July 10<sup>th</sup>.

- As previously reported, an appeal of Virginia's construction general permit was filed but not served by the Potomac Riverkeeper, Inc. and associated parties. There has been no further action on this appeal as of this date.

Ms. Packard asked why there had been no further action.

Mr. Dowling said that it would be speculation, but he did know that the Riverkeepers had been watching the other stormwater actions and they wished for those to succeed.

Mr. Dowling moved to the discussion of stormwater issues and gave the following update:

Local program and Water Quality Criteria (Parts I, II and III)

- Proposed regulations approved by the Board at the September 24, 2009 meeting.
- DCR submitted the proposed regulations for review to the Administration on March 26, 2009; review completed on May 28, 2009.
- 60-day public comment period began on June 22, 2009 and will close on August 21, 2009
- Public Hearings/informational meetings were held as follows:

June 30 <sup>th</sup>	Hungry Mother State park	8 in attendance, 3 spoke
July 1 <sup>st</sup>	Augusta County Government Center	48 in attendance, 22 spoke
July 7 <sup>th</sup>	City of Manassas	59 in attendance, 28 spoke
July 9 <sup>th</sup>	City of Hampton	62 in attendance, 22 spoke
July 14 <sup>th</sup>	Virginia General Assembly Bldg.	~165 in attendance, 60 spoke
- Based on comments received to date, we are currently beginning to work on regulation refinements to key issues raised such as grandfathering, avoidance of creating sprawl, offsets, etc.
- DCR is considering processes to accommodate public discussion of the changes.
- Plan to take final regulation to the Board at an October 2009 meeting.
- File the final regulation by November 1, 2009 for review by the Administration.
- File with Registrar and publish for 30 days upon Administration approval.
- Per HB1991 (2009 Session), the regulation shall not become effective prior to July 1, 2010

Additional significant actions include:

- BMP Clearinghouse TAC meetings are continuing; website pages have been updated with the new detailed BMP specifications; protocols for reviewing new innovative strategies have been drafted.
- Components of the new Stormwater Management Handbook have been circulated to the Handbook TAC and have been posted to DCR's website.
- Updated versions of the Runoff Reduction Method spreadsheet and explanatory documents were completed by the Center for Watershed Protection and posted to

- DCR's website for public review. Discussions have been held on possible necessary refinements.
- A third series of charettes on the Runoff Reduction Method and stormwater regulations were held in February, March and April.
  - DCR has continued to meet with interested parties to discuss their concerns and recommendations.

Permit Fees (Part XIII) [On same schedule as above]

Mr. Dowling noted that the Permit Fees were a separate action but are on the same schedule as Parts I, II and III.

MS4 Individual Permits

Discussions are continuing with localities and EPA to negotiate the MS4 individual permits for the 11 required localities. A meeting was held with representatives from the EPA, the 11 localities, and DCR on May 6<sup>th</sup> to discuss permit issues and to develop a path forward so that the proposed permits might be released for public comment. A second meeting of all parties was held on July 21<sup>st</sup> to review and discuss revised drafts. Based on these discussions an updated draft is under development.

Other Stormwater Regulatory Issues

Mr. Maroon reminded the Board that there had been discussions of a special Board meeting in October. He said that the September meeting might provide an opportunity to present the Board with public comments received regarding changes made to the final regulations. That would offer the public the opportunity to speak to the Board. The final regulations would then be presented at the October meeting.

Mr. Dowling said that DCR needed to file final regulations with the Administration by November 1. Should the Governor authorize the regulations, they will not become effective prior to July 1, 2010 based on legislation from the 2009 General Assembly session.

Mr. Dowling noted that the Board was provided with two additional handouts. A document being used by DCR's communications office for interested parties and a power point presentation that was used at the public hearings and other outreach meetings.

Ms. Campbell thanked Mr. Dowling for the overview. She said in regard to the September meeting that it would be helpful for the Board to see all of the comments that have been presented.

Mr. Dowling said that DCR had received comments from both the environmental and development communities and that DCR expects to receive hundreds of comments before the public comment period closes.

### **Guidance Document on Stormwater Nonpoint Nutrient Offsets**

Mr. Dowling gave the report on the Guidance Document on Stormwater Nutrient Offsets. He referenced the packet of information provided to members. A copy of this information is available from DCR.

Mr. Dowling said that at the March 19, 2009 Board meeting DCR provided a presentation on HB2168 that was passed during the 2009 General Assembly session. The legislation established the framework for approving stormwater nonpoint nutrient offsets in the Chesapeake Bay Watershed from development projects. It granted the Virginia Soil and Water Conservation Board the necessary authority to develop a program in the remainder of the state.

At the March meeting, the Board authorized the Department to develop the necessary implementation guidance for the Board's consideration and to promulgate regulations associated with the stormwater nutrient offsets as may be determined to be necessary.

The Director appointed a work group to assist the Board and Department in developing implementation guidance. A copy of the Work Group membership was included in member packets. The Work Group has developed guidance outlining the process for the implementation of the stormwater offset program.

The Work Group met on June 3<sup>rd</sup> and June 25<sup>th</sup> and was charged with assisting the Department of Conservation and Recreation and the Virginia Soil and Water Conservation Board in the development of formal guidance related to offsets that will provide the Board, DCR staff, localities, and regulated entities with the general legal and technical framework through which HB2168 will be implemented come July 1, 2009.

Mr. Dowling said that by law, offsets could begin on July 1, 2009 thus the importance of ensuring that sufficient rules are in place. However, he said that does not mean that everything is exactly perfect in the guidance. He said in the future the intent is to make the document more user friendly.

Mr. Dowling said that the draft guidance document was developed based on the Work Group meetings. He said that he would review the legislation, discuss the layout, and review the substance of the document. He also noted that the agenda allows for public comment prior to the Board taking action.

Mr. Dowling said that the document had been drafted utilizing the format that has been utilized for past guidance before the Board. He reminded the Board that guidance helps explain to the public how the Board implements certain aspects of the program. Guidance is not regulations and not law. Guidance can be updated much easier than laws and regulations as necessary.

Mr. Dowling said that although the proposed stormwater regulations already contain offsite compliance opportunities, the offset bill provides additional structure to achieve compliance with both the existing stormwater management and the proposed stormwater management regulations.

Mr. Dowling reviewed the legislation.

Following that review, Mr. Dowling walked the Board section by section through the recommended guidance document language. Several minor grammatical fixes were brought to the Board's attention during the presentation.

At the conclusion of the review, he said that the staff recommendation was for the Board to adopt the guidance as presented with necessary technical amendments as discussed.

Ms. Campbell thanked Mr. Dowling for the presentation.

Mr. Russell asked on Page 4, line 163 what was meant by the term "licensed professional." He asked if the term could also be "certified."

Mr. Dowling said that the document could include the definition of "licensed professional" as used in the proposed stormwater regulations. He said the term "professional" could be appropriate and the definition could be included. He said that he would clarify that term as it is used in other regulations.

Mr. Maitland clarified that the offset program would take effect whether or not the Board took action.

Mr. Dowling confirmed that was correct but noted that if a developer wanted to pursue an offset absent this guidance, there would be questions of how.

Mr. Maitland said that he saw how this would help developers. He noted that he had spoken with county planners who shared a concern about the term perpetuity. He said that with technology changing a lot of offsets might not be needed. He said that he would like to see the reference to be life of the practice so that as it changes it remains in effect. But if new technology is available the offsets may not continue to be needed.

Mr. Dowling said that the General Assembly considered this. He said that the perpetuity requirement is a Code provision that DCR and the Board do not have the latitude to change.

Mr. Maroon said that with regard to the wetland banking and credit system, in advance of a credit being available, the offsite wetland has to have been established and protected in order for credits to be sold. He said the intention of the stormwater offset program is similar, a long-term permanent fix.

Chairman Campbell opened the meeting for public comment regarding the Stormwater Nonpoint Nutrient Offsets.

Public Comment on Stormwater Nonpoint Nutrient Offsets

*Bill Street*

Good morning, my name is Bill Street. I'm the Executive Director of the James River Association.

I have been involved with the Stormwater TAC and in the Work Group to develop the guidance. First I'd like to say thank you and commend the staff of DCR, they have done a tremendous job. As you are aware, this is one part of a broad effort on stormwater. I really appreciate all the work that has gone into this whole issue. Stormwater issues and how we manage them in the future will be the single greatest factor affecting the health of our waters.

The work is very important. I am here to express my support for the guidance. We were very supportive of the legislation when it came through. It is an important tool for us to have in order to meet our water quality goals and at the same time have a cost effective mechanism to encourage future growth.

So we encourage you to adopt this and appreciate the opportunity to speak.

Thank you.

*Shannon Varner*

I am Shannon Varner with Troutman Sanders and I am here on behalf of the Chesapeake Bay Nutrient Land Trust. David did a great job of summarizing the legislation and guidance.

We are supportive and appreciate what the staff has put together.

We urge your adoption of the guidance.

Mr. Maroon noted that Mr. Varner was instrumental in the development of the legislation and the guidance.

*David Phemister, The Nature Conservancy*

I'm David Phemister, I'm Director of Government Relations for The Nature Conservancy in Virginia. My comments echo those of Bill Street and Shannon Varner.

I served on the Work Group that helped put this together. I speak in support and urge the Board to adopt the guidance today.

I want to echo the praise of DCR staff. They made our work easier.

I reiterate the importance of the offsets program especially in addressing some of the coastal concerns. Thanks to the legislation that was passed, we have a framework in place for an offsets program.

Thank you again for your time and attention.

Ms. Packard said that it was nice to have a public hearing where everyone is complimentary.

*Barrett Hardiman*

Good morning, I'm Barrett Hardiman with the Home Builders Association of Virginia. First I want to say that I'm happy to see Lee Hill back.

I apologize for missing the last stakeholder meeting. As I've been reading through the draft with our members some other concerns have come up and I would like to take the chance to share them with you today.

First, and I'll try to go from the simplest to the most complicated, is the buyer certification of nutrient availability. The concern our members have is that there may be a creation of an unnecessary liability on the purchaser of nutrients that they are actually certified. We understand there needs to be some protection for the selling of nutrients.

To be able to certify that they're actually available with a letter in the package, we're a little concerned that creates a liability for us, if for some reason we are contractually mislead. There is the potential that could happen. It is analogous to when you buy a car if someone had stolen the car and then sold it to you.

Having the developer certify that the offsets are actually available we think may create some complications. We think the letter should come from the seller, not the buyer.

Our second concern is there is no specific reduced standard. For onsite phosphorus management you may have a site that you can design with the current regulations and let's say you can get to .42 lbs of phosphorus per acre per year. That might not be financially feasible for a seller. So you may have credits that are available and under a strict interpretation you wouldn't be able to have a waiver because the credits are available but you don't have a willing seller. It may be more economically feasible for them to preserve those credits or sell them to someone else.

It may create a situation where you have the site design, but you don't know where the breaking point is. I can design to 0.42 but it makes more sense to design to 0.5 and then purchase the credits rather than design to 0.42.

Our third concern is with the definition of Maximum Extent Practicable. This term was heavily negotiated during the legislative process. The reason it was heavily negotiated is because there are other terms that were suggested. This term is something that has been used in our field for a long time. And when you say MEP you are relying on a good basis of knowledge of the people you are employing to make sure they have done everything they possibly can within the parameters to comply with the law. We are concerned that the definitions that are presented here could possibly undermine the professionalism and the certification of the engineers. Engineers don't design to fail. You're not going to find someone who presents you with a project for a bridge and says that the bridge will fall down. You're not going to have someone who creates alternatives. So to have multiple site designs that have to be submitted to the permitting authority we think is bit of overkill.

When an engineer comes to us and they've presented their plan for us and said we just can't get there or we can get there and the cost is just unbelievable. That's why they're the licensed professionals. That's why they have the job.

So we think that having the multiple alternative site designs is unnecessary. And we think that allowing for the term Maximum Extent Practicable, which is a known term, in the law is sufficient.

If it is okay with the Chairman, I'd like to comment on the public hearings. Thank you for holding them across the state. We found on both sides a lot of information was presented. A lot of information we didn't have last September. I am concerned and I think that there was concern on both sides of the issue that weren't any members of the Board present at the actual hearings. A lot of people came to these meetings with the anticipation that there would be members of the Board there to hear their concerns. So in the future it is my hope that when there are public hearings dedicated to specific regulations that we could anticipate that Board members would be there.

*Mike Gerel*

Good morning. Thanks for the opportunity to speak. I am a staff scientist with the Chesapeake Bay Foundation. I'd like to add my name to the list in strong support of this guidance. I also served on the TAC that worked with DCR to develop this guidance.

One of my main concerns coming in was, are we going to be able to protect local water quality or are we going to offset ourselves into local water quality problems.

I feel strongly the answer is no. We have a very protected, very thoughtful very open process that was used to develop these local water quality protections. I feel very strongly about that.

Another issue is MEP. This is a challenging term to deal with. The idea of two alternative site plans seems to be a reasonable approach. It's something that's going to

help a local government and a developer and the people involved with this negotiation really have a real discussion about a project design.

I know there have been some issues in the past with the discussions over wetland programs and wetland mitigation. Taking time during this guidance to review that concept was very valuable.

I just wanted to note that the idea of offsets is consistent with the Virginia Tech economic study that was done to support these regulations and the work that the James River Association has done.

Offsets are absolutely essential, we have to have them. This is a very solid product. I want to echo what some of the other folks have said here today.

It is a challenging task to interpret a difficult piece of legislation and to turn it into guidance that one can actually use.

Thank you for the opportunity to speak.

Chairman Campbell said there were no other names on the list wishing to speak. She opened the floor for further comment.

Chairman Campbell asked for comment from staff.

Mr. Dowling said that on buyer certification, what the document was saying was that as a part of the package there is a letter from the offset broker saying offsets are available. He said that he did not see this as a legal binding issue associated with the developer.

Mr. Dowling said that personally he did not believe this to be an issue.

Mr. Dowling said that regarding the definition of MEP, from the perspective of alternative design. The legislation speaks to alternative site "designs".

Mr. Dowling said that DCR wanted to provide the permit issuing authority with alternatives. He said he thought that two designs was a reasonable number given the language of the legislation.

Mr. Dowling indicated that he did not fully follow the second point raised and indicated that he would need further clarification on this item.

Mr. Maitland asked about how the phosphorus or nitrogen offset provision worked.

Mr. Baxter said that if you could not get to 0.45 and you were able to get to 0.50, you would still have to find some measure of offset for the remaining 0.05. He noted that this was just with regard to phosphorus.

Mr. Russell said that when there is one specific design that during project negotiations it would be determined why the consultant selected that particular design. But to provide multiple designs of a particular project needs to be considered carefully. He said that a statement saying why the consultant went with a particular design should be sufficient.

Mr. Dowling said that it was addressed in line 437 where the language says that at least two alternative site designs shall be brought forward. That was suggested to be the minimum standard. He said what was driving that was in subsection D of the legislation and through discussions with the Work Group. It says alternative site “designs” have been considered.

Mr. Dowling said that the interpretation of that would prescribe more than one design being brought forward. He said these were preliminary designs/ concepts. They are not the final detailed plans. That’s why there was the distinction between the preliminary and the final designs in the guidance.

Mr. Maroon said that the extent to which the process was used is important. He said this should be something that folks involved in the process would see as beneficial. He said that, having said that, on line 437 there may be potential clarification that would help.

Mr. Maroon said it may be more clear to say the proposed site design and at least one alternative.

Mr. Maroon said that related to the buyer certification that the intent was not to put the liability on the developer.

Mr. Dowling said the reference was in line 484, where it refers to the offset availability letter. It simply states that a current offset availability letter from a certified offset provider should be included in the developers package that documents the availability of an offset credit. All the developer is doing is putting that letter in the package.

Mr. Maroon said that on line 319 which relates to the availability of offsets if it could be clarified that the buyer should provide documentation that verifies that offsets are available.

Mr. Hardiman said that was basically what he was saying that he would prefer the letter comes from a broker.

Mr. Varner noted that this was modeled after the wetland bank program.

Ms. Campbell asked if there were further comments from the public.

*Jeff Perry*

Madame Chair, Members of the Board, I am Jeff Perry with Henrico County. I just want to make sure I understood. When I look at the guidance and look at line 452, the permit issuing authority, after becoming a Board approved may define an alternative approach.

Mr. Perry stated that Henrico County does not plan to require two alternative site designs. The site engineer will have a check list and go over the site design. He said the County would take alternatives into consideration during their review but wanted to make sure that the County still had that authority to only require one design.

Ms. Campbell suggested the Board again look at the language in line 437.

Mr. Maroon reiterated that the language could read “preferred site design and at least one alternative.”

Mr. Varner noted that the language said that alternative site designs had been considered, not necessarily presented. He said that Mr. Perry was correct that this would involve a lot of back and forth between the developer and the locality. He said that it might be better just to parrot the language in the statute.

Mr. Russell noted that this was guidance not regulations.

Mr. Baxter said that based on the discussion that on line 437 the word “alternative” be stricken and that at the end of line 438 the phrase “have been considered” be added.

Mr. Hardiman said that would be more like what Mr. Perry described.

Chairman Campbell said that it appeared the Board was at the point of action.

MOTION: Ms. Packard moved that the Virginia Soil and Water Conservation Board adopt the guidance document as presented by staff and as amended by Board discussion.

SECOND: Ms. Dalbec

DISCUSSION: None

VOTE: Motion carried unanimously

At this time the Board recessed for lunch.

Following lunch the Board returned to the agenda.

### **Erosion and Sediment Control**

Mr. McCutcheon presented the Erosion and Sediment Control Issues.

*Final Approval of Alternative Inspection Program*

Mr. McCutcheon said that the Alternative Inspection Plans for Mathews County and Tazewell County had been presented at the last meeting.

MOTION: Ms. Packard moved that the Virginia Soil and Water Conservation Board approve the proposed Alternative Inspection Program for Mathews and Tazewell Counties as being consistent with the requirements of the Erosion and Sediment Control Law and Regulations and further that the Board direct DCR staff to monitor the implementation of the alternative inspection program by the County to ensure compliance with the approved program.

SECOND: Mr. Maitland

DISCUSSION: None

VOTE: Motion carried unanimously

*Initial Acceptance of Alternative Inspection Program*

Mr. McCutcheon presented the Alternative Inspection Program for Warren County.

MOTION: Mr. Hornbaker moved that the Virginia Soil and Water Conservation Board receive the staff update and recommendation regarding the proposed Alternative Inspection Program for Warren County and further that the Board concur with the staff recommendation and accept the County's proposed Alternative Inspection Program for review and future action at the next Board meeting.

SECOND: Mr. Maitland

DISCUSSION: None

VOTE: Motion carried unanimously

*Local Programs recommended to be found consistent based on Initial Review*

Mr. McCutcheon presented the background report for Amherst County.

DCR staff completed the initial review for Amherst County's Erosion and Sediment Control program and the scores for the individual program components were as follows: Administration – 75, Plan Review – 80, Inspection – 90, Enforcement - 100. As all program components received a score of 70 or better, staff recommended that the

Virginia Soil and Water Conservation Board find the County's Erosion and Sediment Control Program consistent with the Virginia Erosion and Sediment Control Law and Regulations.

Mr. McCutcheon presented the background report for the Town of Tappahannock.

DCR staff completed the initial review for the Town of Tappahannock's Erosion and Sediment Control Program and the scores for the individual program components were as follows: Administration – 91, Plan Review – 70, Inspection – 90, Enforcement – 100. As all program components received a score of 70 or better, staff recommended that the Virginia Soil and Water Conservation Board find the Town's Erosion and Sediment Control Program consistent with the Virginia Erosion and Sediment Control Law and Program.

MOTION: Ms. Packard moved that the Virginia Soil and Water Conservation Board commend Amherst County and the Town of Tappahannock 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. Dalbec

DISCUSSION: Mr. Russell said that he would abstain from the voting.

VOTE: Motion carried with Mr. Russell abstaining.

*Local Programs recommended to be found consistent following completion of Corrective Action Agreement.*

Mr. McCutcheon presented the background for the City of Harrisonburg and the Counties of Bedford, Carroll, Craig, Cumberland and Fluvanna.

MOTION: Ms. Dalbec moved that the Virginia Soil and Water Conservation Board commend the City of Harrisonburg and the Counties of Bedford, Carroll, Craig, Cumberland and Fluvanna for successfully improving their respective Erosion and Sediment Control Programs to become 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: Mr. Russell

DISCUSSION: Mr. Sorrell from Cumberland County said that he would like to thank DCR regional staff for helping the County to come into compliance.

Mr. Larrow, Carroll County Administrator said that the County had fought long and diligently toward the goal of compliance. He said that the County staff was now fully certified. He expressed appreciation for the staff from the Abingdon office. He said that the County hoped to be found in full compliance in the future.

VOTE: Motion carried unanimously

Mr. McCutcheon said that with these actions, reviews have been completed for 161 of 164 programs statewide. Of those, 143 programs have been found to be consistent for a consistency rate of 89%.

He said that staff was looking forward to the next Board meeting when the remaining programs would be brought for action.

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

*City of Hopewell*

Mr. McCutcheon gave the background for the City of Hopewell.

DCR staff completed the initial program review for the City of Hopewell's Erosion and Sediment Control Program and the scores for the individual components were as follows: Administration – 65; Plan Review – 70; Inspection – 35; and Enforcement – 90. As all program components did not receive a score of 70 or greater, staff recommendation was that the Virginia Soil and Water Conservation Board find the City's Erosion and Sediment Control Program inconsistent with the Virginia Erosion and Sediment Control Law and Regulations and approve the draft CAA for the City.

Mr. Butler from the City Department of Public Works said that the City had already implemented many of the changes. He said that he had only been with the City for about two years and that a number of concerns had been brought to his attention.

Mr. Butler said that he was working with DCR staff to improve the program. He said that staff had completed the certification courses and the City had addressed concerns with the inspection process including documentation and organization.

Mr. Butler noted that the City was experiencing a lot of development because of the expansion the military installation at Fort Lee.

Mr. Butler said that he believed the City would be found consistent with the next assessment.

**MOTION:** Mr. Russell moved that the Virginia Soil and Water Conservation Board accept the staff recommendation and find the City of Hopewell's Erosion and Sediment Control Program inconsistent with the Virginia Erosion and Sediment Control Law and Regulations and approve the City's CAA and further that the Board direct DCR staff to monitor the implementation of the CAA by the City to ensure compliance

**SECOND:** Ms. Dalbec

**DISCUSSION:** None

**VOTE:** Motion carried unanimously

*Floyd County*

Mr. McCutcheon presented the background report for Floyd County.

DCR staff completed the initial program review for Floyd County's Erosion and Sediment Control Program and the scores for the individual components were as follows: Administration – 61; Plan Review – 85; Inspection – 25; and Enforcement – 35. As all program components did not receive a score of 70 or greater, staff recommended that the Virginia Soil and Water Conservation Board find the County's 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. Taylor from Floyd County said that he was working to improve the program. He said that in March the County began using the form provided by the state. He said the County may consider an Alternative Inspection Program and will work to bring the program into compliance.

**MOTION:** Mr. Russell moved that the Virginia Soil and Water Conservation Board accept the staff recommendation and find Floyd County's Erosion and Sediment Control Program inconsistent with the Virginia Erosion and Sediment Control Law and Regulations and approve the County's CAA and further that the Board direct DCR staff to monitor the implementation of the CAA by the County to ensure compliance.

**SECOND:** Ms. Packard

DISCUSSION: None

VOTE: Motion carried unanimously

*King and Queen County*

Mr. McCutcheon presented the background report for King and Queen County.

DCR staff completed the initial program review for King and Queen County's Erosion and Sediment Control Program and the scores for the individual components were as follows: Administration – 50; Plan Review – 50; Inspection – 5; and Enforcement – 50. As all program components did not receive a score of 70 or greater, staff recommended that the Virginia Soil and Water Conservation Board find the County's 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. Swartzwelder, County Administrator said that the County was disappointed in the scores. He said that he was new to the County. He said that the County accepts the CAA and understands the program will have to be rebuilt from the ground up. He said the County intended to reach compliance within 30 days.

Mr. Swartzwelder said that he did have some concerns regarding the scoring process. He said that some of the areas where the County received a low score were inaccurate and noted that the score was downgraded for a VDOT project with which the County was not involved.

Mr. Russell said the comments regarding the scoring process would be taken into consideration as the new process is developed.

MOTION: Mr. Russell moved that the Virginia Soil and Water Conservation Board accept the staff recommendation and find King and Queen County's Erosion and Sediment Control Program inconsistent with the Virginia Erosion and Sediment Control Law and Regulations and approve the County's CAA and further that the Board direct DCR staff to monitor the implementation of the CAA by the County to ensure compliance.

SECOND: Ms. Packard

DISCUSSION: None

VOTE: Motion carried unanimously

*Local Programs previously found inconsistent and request for Board to extend Corrective Action Agreement (CAA).*

Mr. McCutcheon gave the background for the City of Petersburg and the Counties of Henrico and Pittsylvania.

*City of Petersburg*

The City of Petersburg signed a Corrective Action Agreement (CAA) on June 22, 2007 with a completion date of December 31, 2007. At the direction provided by the Board, Department of Conservation and Recreation (DCR) staff reviewed Petersburg's progress on implementing the CAA on April 28, 2008. At its July 2008 meeting, the Board approved an extension of the CAA completion time to September 17, 2008 and at its October 2008 meeting, another extension was approved with a new completion date of May 21, 2009. Progress was reviewed on June 25, 2009 and based on the results of the review staff determined that the City has not achieved compliance with the CAA. DCR staff recommended that the City be given until January 21, 2010 to comply with the outstanding CAA.

*Henrico County*

The Virginia Soil and Water Conservation Board approved Henrico County's Corrective Action Agreement (CAA) with a completion date of May 20, 2009. At the direction provided by the Board, DCR staff reviewed Henrico County's progress on implementing the CAA. Based on the results of the review, staff determined that the County has not achieved compliance with the CAA. DCR staff recommended that the County be given until January 21, 2010 to comply with the outstanding CAA.

*Pittsylvania County*

The Virginia Soil and Water Conservation Board approved Pittsylvania County's Corrective Action Agreement (CAA) with a completion date of May 20, 2009. At the direction provided by the Board, Department of Conservation and Recreation (DCR) staff reviewed Pittsylvania County's progress on implementing the CAA. Based on the results of the review, staff determined that the County has not achieved compliance with the CAA. DCR staff recommended that the County be given until January 21, 2010 to comply with the outstanding CAA.

MOTION: Ms. Packard moved that the Virginia Soil and Water Conservation Board accept the staff recommendations and grant the City of Petersburg, Henrico County, and Pittsylvania County an extension until January 21, 2010 to fully comply with their outstanding CAAs and further that the Board request that the Director of DCR and his staff evaluate the localities' compliance with the outstanding CAAs and provide follow up reports at the March 2010 Board meeting.

SECOND: Ms. Dalbec

DISCUSSION: Ms. Campbell said that Mr. Hatch from the City of Petersburg spoke with her during the break. He had to leave for another commitment but indicated that the City looked forward to working with DCR to bring the program into compliance.

Mr. Perry from Henrico County thanked DCR staff for working with the County. He said that it is the County's intent to become consistent. He said he had previously shared concerns regarding the scoring system.

Mr. McCutcheon said that the process was at the end of the five year review period and that DCR staff would be reviewing the scoring mechanisms and making adjustments.

Mr. Sides from Pittsylvania County said that the County had made a number of improvements. He said that the County was requesting that the CAA be amended to show the progress they were making.

Mr. Maroon said that following this meeting the County would receive a letter with notification of the extension. He said that previously the letters had been more formal but recent letters have been revised to acknowledge progress by the locality.

Regarding Henrico, Mr. Maitland asked if the County did not have enough plans to be reviewed why that would be held against them.

Mr. Hill said that was why staff was recommending an extension. He said that the County was not in violation, but could not be tested.

### **Other Program Actions**

#### *Caroline County*

Mr. McCutcheon noted that at the May meeting Caroline County had presented materials concerning their program and the Board had directed staff to reevaluate the plan review section of their program review.

Caroline County's program review had been first presented to the Board at the January 2009 meeting. At the request of the County's representative, the Board directed the Central Office staff to re-evaluate the Plan Review component of the program review. Central Office staff met with the County's representative in Caroline and examined the

documents that the Regional Office staff used in the original review. Central Office staff found the conclusions and recommendations made by the Regional Office staff to be consistent with program review documents and did not recommend that the score be revised.

At its March 2009 meeting, the Board directed the Central and Regional Office staff to re-evaluate the Plan Review component in light of additional information presented by the County. Central and Regional Office staff met with County representatives in Caroline and examined the Plan Review documents with the County representatives. Central and Regional Office staff found some of the conclusions made in the original program review warranted revision, but these revisions did not change the numerical score found in the original review so they did not recommend that the score be revised.

At the May 2009 Board meeting, representatives from Caroline County addressed the Board and provided written materials saying that the DCR program review did not give an accurate report of the County's program and that the deficiency cited in the program review to require downstream channel and pipe adequacy verification during plan review is not required by the Erosion and Sediment Control Law or Regulations. The Board directed DCR staff to reevaluate Caroline County's program review results in consultation with the Office of the Attorney General and that staff bring a recommendation based on that review to the Board at a future meeting.

DCR staff and the Attorney General's representative met with representatives of Caroline County on June 8, 2009 to discuss the issues raised by the County at the May Board meeting. As a result DCR revised Caroline County's Corrective Action Agreement to describe in more detail the specific actions required of the County's program and forwarded that revised CAA in draft to the County. DCR and the County's representatives have agreed on the revised language in the CAA is staff presenting to the Board.

At this time, Ms. Campbell noted that the representatives from Caroline County had not yet returned to the meeting from lunch.

Ms. Andrews said that the motion should read that the approval is subject to the approval of the CAA by the County Board of Supervisors.

Ms. Campbell asked what would happen if the Board of Supervisors does not approve the plan.

Ms. Andrews said that would mean the County had rejected the CAA.

Ms. Campbell noted that would then require the Board to take different action.

Upon Caroline County staff's return to the meeting, Mr. Nunnally provided a letter to the Board that outlined the County's position. He said that the County had been trying to get an accurate report representing the program.

Mr. Nunnally said that County staff was prepared to present the CAA to the Board of Supervisors and recommend adoption, but noted that the County does not agree with the outcome of the report. He said that at the last Board meeting he provided a package which addressed a number of concerns with the program review. He said that the County would also like to submit for the record documentation of inspections and programs that show that the County does adequately address concerns.

Mr. Nunnally said that the County did not see a resolution to this matter and was agreeable with accepting the report and the CAA and moving forward.

Mr. Maitland asked for additional information concerning channel adequacy and the regulatory requirements.

Mr. McCutcheon said the issue was plan review. He said that when the plan review was done the reviewer needs to see that there is a determination of adequacy of the downstream channel in the plan review process. He said this was a requirement but was not always done in the plans that were approved by the County.

Mr. McCutcheon said that staff was looking at the plan review process. He said that even if staff reviewed the program again and found that everything was adequate now, that would not negate the fact that the verification was not being required.

Mr. Maitland asked how the County passed in each of the areas in 2001 but not with the current review.

Mr. Nunnally said that he was not with the County in 2001 but noted the County was found to be fully consistent. He said that in the County's view there had been a reinterpretation of MS19 by the DCR staff.

Mr. Maroon said that there was a marked difference between previous reviews and the current cycle. He noted that previously a locality had to have a score 100% in each of the areas in order to pass. He said that standard was not achievable in most cases so the Board reduced the passing score to 70. He said that the MS19 issue will be resolved within the proposed new stormwater management regulations and that DCR will begin work on new programming guidelines for the next local program review cycle.

Mr. Maitland said that before the new program evaluation guidelines go into effect, notice should be sent ahead of time so that localities can be prepared.

Mr. Hill said that MS19 is an issue that has been sitting around for years and years. MS19 originally started out as a general criteria back in 1977, 78, 79. DCR developed the general criteria to help protect downstream properties. The interpretation was that you had to have an adequate channel or you had to have a variance that you could show that you weren't making things worse. That general criteria was blended and changed into MS19 as it stands now. Yes, staff interpretation over the years has changed. Staff

interpretation now is based on the original intent of the general criteria, that downstream properties will be protected and you have to have an adequate channel. So yes, between that time and MS19 it changed. It's back now to the original intent. As Mr. Maroon says, when the new stormwater regulations are passed, this Board will be amending MS19, and will be amending some other minimum standards that we have to address too. The other one that's a big issue is the inspection schedule so the next alternative inspection program, you can either do the alternative inspection program or you can do this. There are some changes needed.

Mr. Maroon said that DCR had acknowledged that Caroline County had a good program. He said that he hoped that staff would be able to recommend a finding of consistent soon.

Ms. Andrews said that, not being a member of the DCR staff she could not speak to intent at the time the regulations were adopted, but that the discussion with Caroline County had been about the determination of adequacy of the channel downstream. She said that the CAA speaks to what is required to be done by MS19 or a variance must be granted.

Mr. Nunnally said that he did not wish to belabor the point but noted that MS19 was written in the 1970s. With the passing of the Virginia Stormwater Management Act and the Chesapeake Bay Preservation Act in 1989, the purpose changed. He said that stormwater management discussions indicated that you must specifically discharge into an adequate channel. He said there had been significant changes in the development of programs that did not exist at the time the regulations were promulgated.

Mr. Nunnally said that with regard to the runoff criteria, the standard practice in Caroline County is generally more stringent than what is required under MS19.

Mr. Nunnally said that one of the sites reviewed had a reduction in runoff. He said that if the post development discharge was compared to the predevelopment discharge, from the two year storm all the way to the 100-year storm there was a significant reduction which is very similar to the language in the proposed stormwater management regulations. He said that the County is currently addressing the issue but is still being penalized.

Mr. Nunnally noted that the original regulations had a checklist for locality use.

Ms. Campbell thanked Mr. Nunnally for his comments and constructive criticism.

Mr. Russell asked if Mr. Nunnally agreed that the MS19 issue would be addressed by the revised stormwater regulations.

Mr. Nunnally said yes, but that it would also have to be addressed directly with MS19.

Mr. Russell said that the intent is to work toward a seamless process for Erosion and Sediment Control and Stormwater Management. He said there would be growing pains with the process.

Mr. Hill again stated that after the five years of program reviews are completed, DCR would again look at the review process.

**MOTION:** Mr. Russell moved that the Virginia Soil and Water Conservation Board accept the staff recommendation and find Caroline County's Erosion and Sediment Control Program inconsistent with the Virginia Erosion and Sediment Control Law and Regulations and approve the County's CAA with the understanding that the County acceptance requires action at the upcoming Board of Supervisors meeting and further moved that the Board direct DCR staff to monitor the implementation of the CAA by the County to ensure compliance.

**SECOND:** Ms. Packard

**DISCUSSION:** Mr. Maroon clarified that the language being added was that this was subject to the approval of the County Board of Supervisors and that the County had not taken official action with regard to accepting the CAA.

Ms. Andrews said that in the event the Board of Supervisors does not accept the CAA that DCR and the Board would be in a different posture with the County.

**VOTE:** Motion carried with Mr. Maitland voting no.

Mr. McCutcheon said that in a related matter, the Board directed staff to meet with Spotsylvania County. He said that staff met with the County on June 8 and was currently waiting for additional information from the County. He noted that the County has indicated they are developing an Alternative Inspection Program. He said that staff was making no recommendation at this time.

### **Dam Safety Certificates and Permits**

Mr. Browning told members that the sample letter provided in their packets was sent to 329 dam owners to apprise them of the changes to spillway design flood requirements for dams in the September 26, 2008 revised Regulations. These letters were mailed on July 10. A copy of the sample letter is available from DCR.

Mr. Browning presented the Dam Safety Certificates and Permit recommendations.

Mr. Browning provided an update on the Enforcement Actions. He said that DCR had been to court twice regarding Mellott Dam. He said that at the last court date the owners

indicated that they wanted to decommission the dam by May 15, 2009. However, he noted that as of this date, staff had received no further information.

*Conditional Certificate Recommendations*

3	Hollymead Dam	00353	Albemarle	1 Year Conditional
4	Blue Ridge Forest Dam	00371	Albemarle	1 Year Conditional
5	Southern Regional Park Dam	00374	Albemarle	1 Year Conditional
6	South River Dam #3	01510	Augusta	1 Year Conditional
7	Brookneal Dam	03106	Campbell	1 Year Conditional
8	Wildwood Dam #1	03108	Campbell	1 Year Conditional
9	Mountain Run Dam #8A	04701	Culpeper	1 Year Conditional
10	Mountain Run Dam #13	04705	Culpeper	1 Year Conditional
11	Troiano Dam	04724	Culpeper	1 Year Conditional
12	Licking Run Dam	06144	Fauquier	1 Year Conditional
13	Willow Pond Dam	06146	Fauquier	1 Year Conditional
14	Lake Frederick Dam	06913	Frederick	2 Year Conditional
15	Izaak Walton League Dam	10704	Loudoun	1 Year Conditional
16	Gore Dam	10714	Loudoun	1 Year Conditional
17	J.T. Hirst Dam	10719	Loudoun	1 Year Conditional
18	Lake Monacan Dam	12502	Nelson	1 Year Conditional
19	Briery Creek Dam	14737	Prince Edward	1 Year Conditional
20	Lower North River Dam #80	16501	Rockingham	1 Year Conditional
21	Lower North River Dam #78	16502	Rockingham	1 Year Conditional
22	Shoemaker River Dam #1A	16509	Rockingham	1 Year Conditional
23	Shoemaker River Dam #4C	16510	Rockingham	1 Year Conditional
24	Shoemaker River Dam #3B	16511	Rockingham	1 Year Conditional
25	Ni River Dam #1	17701	Spotsylvania	1 Year Conditional
26	Lake Pocahontas Dam	17718	Spotsylvania	1 Year Conditional
27	Lake Curtis Dam	17912	Stafford	2 Year Conditional
28	Lake John Dam	18702	Warren	1 Year Conditional
29	Toms Creek Dam	19510	Wise	1 Year Conditional
30	Skiffes Creek Dam	70003	Newport News	2 Year Conditional

Mr. Browning noted that on several of the dams, no fees had been submitted. He said staff was asking that the Board take action contingent upon the receipt of the appropriate fees.

**MOTION:** Mr. Hornbaker moved that the Virginia Soil and Water Conservation Board approve the Conditional Operation and Maintenance Certificates listed above in rows 6, 7, 14, 18, 19, 26 & 28 contingent upon the receipt of the appropriate fees and the remainder of the dams listed as noted and that staff be directed to communicate the Board actions to the affected dam owners.

SECOND: Ms. Dalbec

DISCUSSION: Mr. Russell asked if staff would contact those owners who have not paid.

Mr. Browning said that staff is still developing new procedures but that the owners would be advised of the Board action. He said that the finance office was tracking the payments.

VOTE: Motion carried with Ms. Campbell abstaining.

Mr. Browning said there were no Regular Operation and Maintenance Certificate recommendations at this time.

Mr. Browning presented the Permit Recommendations.

Mill Place Commerce Park Dam BMP #4	01532	Augusta	1 Year Alteration
Ivy Hill Dam	01922	Bedford	1 Year Alteration
Kenneth Dam	06716	Franklin	1 Year Alteration
Rocky Pen Run Reservoir Dam	17926	Stafford	2 Year Construction
Lee Hall Reservoir Dam	70001	Newport News	1 Year Alteration

MOTION: Mr. Russell moved that the Virginia Soil and Water Conservation Board approve the Permit Recommendations as presented by DCR staff and that staff be directed to communicate the Board actions to the affected dam owners.

SECOND: Ms. Packard

DISCUSSION: None

VOTE: Motion carried unanimously

### *Extensions*

Mr. Browning referenced a handout concerning Mill Place Commerce Park Dam #4, Inventory 01532. He said that the Board had issued an extension in March 2009. Because there was some question regarding whether or not the dam was of size to be regulated. Mr. Browning directed Mr. Robinson to visit the dam site and it was determined that the dam did need to be regulated.

Mr. Browning said that approximately 10 days following the site visit, the dam failed. He said staff was asking the Board to rescind the extension and to direct the owners to indicate their intent regarding the dam.

**MOTION:** Ms. Packard moved that the Virginia Soil and Water Conservation Board rescind the 2 Year Extension to the 2 Year Conditional Operation and Maintenance Certificate (03/15/07 – 03/31/09) for Mill Place Commerce Park Dam BMP #4, Inventory #01532 issued by the Board on March 19, 2009 and request staff to direct Augusta County to send the Dam Safety Director a letter by August 21, 2009 of Augusta County's intentions to repair and/or breach the above referenced dam that failed in May 2009.

**SECOND:** Mr. Hornbaker

**DISCUSSION:** Mr. Maroon asked what posture the Board would be if the dam did not have any kind of certificate.

Ms. Andrews noted that the Board had approved an Alteration Permit.

Mr. Maroon said that procedurally the Board could direct staff to send the County the option to declare whether they intend to repair or breach the dam. He suggested an alternative to the motion on the table that would ask the Board to address a letter in that regard requesting a written response from the County.

Ms. Packard withdrew her original motion and Mr. Hornbaker concurred.

**MOTION:** Ms. Packard moved that the Virginia Soil and Water Conservation Board ask DCR staff to write a letter to Augusta County regarding Mill Place Commerce Park Dam BMP #4, Inventory #01532 and request that the County notify the Division Director of Dam Safety in writing regarding their intent to repair or breach the dam.

**SECOND:** Mr. Maitland

**DISCUSSION:** None

**VOTE:** Motion carried unanimously

Mr. Browning presented the remaining list of Extensions.

4	Staunton Dam	01518	Augusta	1 Year Extension
5	Bath Alum Farm Dam	01703	Bath	1 Year Extension
6	Springhill Lake Dam	01906	Bedford	1 Year Extension

7	Spring Lake Dam	01908	Bedford	1 Year Extension
8	Olde Mill Golf Club Dam	03504	Carroll	1 Year Extension
9	West Ox BMP Dam	05938	Fairfax	1 Year Extension
10	Kings Park West Section 18 Dam	05939	Fairfax	1 Year Extension
11	Burke Center Section 11B Dam	05940	Fairfax	1 Year Extension
12	Lower Warrenton Lake Dam	06143	Fauquier	1 Year Extension
13	Greene Acres Dam	07903	Greene	1 Year Extension
14	Tiller Lake Dam	08583	Hanover	1 Year Extension
15	Elkhorne Dam	14319	Pittsylvania	1 Year Extension
16	Cold Sulphur Springs Dam	16307	Rockbridge	1 Year Extension
17	Lower North River Dam #22B	16504	Rockingham	1 Year Extension

MOTION: Mr. Maitland moved that the Virginia Soil and Water Conservation Board approve the items on rows 4, 6, 7, 13, 14 & 15 listed above contingent upon receipt of the fee and the remaining Extension Recommendations as presented by DCR staff and that staff be directed to communicate the Board actions to the affected dam owners.

SECOND: Mr. Hornbaker

DISCUSSION: None

VOTE: Motion carried with the Chairman abstaining and the Director out of the room.

### **Local Soil and Water Conservation District Operations**

#### *DRAFT Evaluation Guidance for DCR/SWCD FY2009-2010 Grant Agreement Deliverables*

Mr. Meador referenced a copy of the Evaluation Guidance for DCR/SWCD FY2009-2010 Grant Agreement Deliverables provided to members. He said that staff had no recommendations for change to the performance deliverables and would ask the Board approve them as presented.

MOTION: Mr. Hornbaker moved that the Virginia Soil and Water Conservation Board approve the Evaluation Guidance for DCR/SWCD FY2009-2010 Grant Agreement Deliverables as presented by staff.

SECOND: Mr. Maitland

DISCUSSION: Mr. Russell said he thought this had been addressed at the May Meeting.

Mr. Meador said that the deliverables had been addressed but not the evaluation guidance.

Mr. Russell asked if it was too late to add another deliverable to require Districts to register with eVA.

Consensus was to not add the requirement at this time.

VOTE: Motion carried with Mr. Russell voting no.

MOTION: Mr. Russell moved that effective in 2010 the Board consider making it a part of the deliverables that Districts register with eVA.

SECOND: Ms. Dalbec

DISCUSSION: None

VOTE: Motion carried unanimously

Mr. Meador asked for clarification of the motion.

Ms. Campbell said that it is the intent of the Board to notify Districts that this item may be a part of next years' deliverables.

*Recommended Procedure for Filling Soil and Water Conservation District Director Vacancies on District Boards*

Mr. Meador said that for a number of years DCR staff had utilized an internal document for assisting CDCs in working with District staff to fill vacancies. He provided a draft document outlining that policy. A copy of that document is available from DCR.

MOTION: Mr. Hornbaker moved that the Virginia Soil and Water Conservation Board accept the referenced document for review and forward it to the Association of Soil and Water Conservation District Directors for review and comment.

SECOND: Mr. Maitland

DISCUSSION: None

VOTE: Motion carried unanimously

**District Director Resignations and Appointments**

Mr. Meador presented the Soil and Water Conservation District Director Resignations and Appointments.

*Colonial*

Resignation of Gregory S. Hancock, City of Williamsburg, effective 3/24/09, elected director position (term of office expires 1/1/12).

Recommendation of Jordan R. Anglin, City of Williamsburg, to fill unexpired elected term of Gregory S. Hancock (term of office to begin on or before 8/22/09 – 1/1/12).

*Piedmont*

Resignation of Brent Clayton, Prince Edward County, effective 7/1/09, appointed Extension Agent director position (term of office expires 1/1/13).

MOTION: Ms. Packard moved that the list of District Director Resignations and Appointments be approved as submitted by staff.

SECOND: Mr. Hornbaker

DISCUSSION: None

VOTE: Motion carried unanimously

At this point Chairman Campbell recessed the Board Meeting for the purpose of convening a joint meeting with the Virginia Association of Soil and Water Conservation District Board of Directors.

**Joint Session: Virginia Soil and Water Conservation Board and Virginia Association of Soil and Water Conservation Districts Board of Directors**

Chairman Campbell called on Mr. Chaffin for a presentation.

Mr. Chaffin presented the following recommendations for appointments to the Virginia Soil and Water Conservation Board:

Area IV Representatives

Carolyn Baker  
Jerry Ingle

Lonesome Pine SWCD  
Daniel Boone SWCD

Area V Representatives

Daphne Jamison  
Jack Hodges

Blue Ridge SWCD  
Blue Ridge SWCD

Area VI Representatives

Keith Seward  
Frank Brickhouse

Peanut SWCD  
Virginia Dare SWCD

MOTION: Mr. Maitland moved that the Virginia Soil and Water Conservation Board accept the six recommendations from the Virginia Association of Soil and Water Conservation District Directors to be forward to the Governor for consideration.

SECOND: Ms. Packard

DISCUSSION: None

VOTE: Motion carried unanimously

Turning to fiscal issues, Mr. Chaffin said that in July the Association had sent a letter requesting that an additional \$7,000 be added to the funding provided to the Association from Board funds. He said that it had been the Association's understanding that the increase in the previous year had been a permanent increase.

Ms. Campbell said that at the time it was the Board's understanding that this was a temporary pool of money.

Mr. Maroon noted that the request had been for a permanent change, but that the action had indicated a temporary addition of the funds.

Mr. Maroon said that, while he had a great deal of respect for the Association that the state was again looking at a round of budget reductions. He said that agencies had been told that everything was on the table. He said that if the change was made that it again be made on a one-year basis.

Mr. Frye said that this would need to be considered each year based on available funding.

Mr. Meador noted that the cost of the surety bond coverage remained an unknown.

At this time Chairman Campbell adjourned the joint meeting and reconvened the Board meeting.

Chairman Campbell opened the floor for comments regarding the Association funding request.

**MOTION:** Mr. Maitland moved that the Virginia Soil and Water Conservation Board agree to provide an additional \$7,000 in funding to the Virginia Association of Soil and Water Conservation Districts for a total funding of \$32,000 for the coming year as a one-time action to be reconsidered on an annual basis.

**SECOND:** Ms. Packard

**DISCUSSION:** None

**VOTE:** Motion carried with Mr. Maroon abstaining.

### **Partner Reports**

#### *Department of Conservation and Recreation*

Mr. Frye gave the report for the Department of Conservation and Recreation. A copy is included as Attachment #1.

#### *Natural Resources Conservation Service*

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

#### *Virginia Association of Soil and Water Conservation Districts*

Mr. Chaffin said that the Association is in the midst of strategic planning. The Association is also in discussions regarding scholarships that the Foundation provides.

Mr. Chaffin said that the Association would like to offer assistance to DCR with regard to preparing a formal request for cost share funding.

Mr. Chaffin said that 60 students participated in the Youth Conservation Camp at Virginia Tech.

The next Board meeting for the Virginia Association of Soil and Water Conservation District Directors is September 28, 2009.

### **Public Comment**

There was no additional public comment.

**New Business**

There was no new business.

**Upcoming Meetings**

Upcoming meetings are as follows:

Thursday, September 17, 2009

Senate Room 3

The State Capital

Richmond, Virginia

[NOTE: The location of this meeting has since been changed.]

Tuesday, October 6, 2009 (for the purposes of addressing Stormwater Management Regulations)

East Reading Room

The Patrick Henry Building

Richmond, Virginia

Thursday, November 19, 2009

Location TBA

**Adjourn**

There was no further business and the meeting was adjourned.

Respectfully submitted,

Linda S. Campbell  
Chair

Joseph H. Maroon  
Director

Attachment #1

**Department of Conservation and Recreation**  
Report to the Virginia Soil and Water Conservation Board  
May 28, 2009

**1. DCR/SWCD Operational Funding:**

All 47 SWCDs were issued a grant agreement with DCR in May, 2008 for Operational funding this fiscal year (FY09). Each returned a fully endorsed agreement to their CDC. Districts were issued an initial quarterly disbursement of funds by August; second quarter disbursements were issued by December and third quarter disbursements were issued during March, 2009. Final disbursements for FY09 were issued by mid-May, 2009.

At the outset of this fiscal year (FY09), operational funding for all districts totaled \$3,943,790. During October, 2008 a reduction of \$203,697 was imposed making a revised total funding amount of \$3,740,093. This amount reflects a decrease below FY08 operational funding and below the peak funding level experienced by districts in FY01 (\$4,301,000). However, over two thirds of the 47 districts are also receiving this fiscal year, funds that total \$1,800,000 to employ conservation specialists for the implementation of agricultural BMPs. Further funding for staff is provided by the provision in state law that enables 5% of the amount deposited in the Virginia Natural Resources Commitment Fund (for FY09, \$20 million was deposited) to support technical staff of SWCDs that are performing assistance with implementation of agricultural BMPs. These additional funds for FY09 total \$1million.

**2. Conservation Partner Employee Development**

The conservation partners continue to work through the “JED” –Joint Employee Development system which relies on 4 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 meets no less than quarterly through face to face meetings or through conference calls. The last meeting of the group was held face to face on May 6, 2009 in Charlottesville. The next JED State Team meeting will be held as a conference call on August 12<sup>th</sup>, 2009.

The state level JED team is focusing on the delivery of 3 “core courses”. The short course “Conservation Selling Skills” was held last fall and the expectation is to offer the course again during the fall of 2009. NRCS is supporting delivery of the EP&I (Effective Presentation and Instruction) short course. Teams of trainers to deliver the course have been established with 4 newly trained teams, each consisting of 3 individuals. The teams are scheduling delivery of the course within their 4 regions of the state based upon the needs and collective resources within each region. The third “core course” –Conservation Orientation for New Employees is delivered regionally when sufficient need exists to justify the sessions. Broader training needs of the staff of the conservation partners are being addressed regionally through the 4 regional JED teams.

**3. SWCD Dams:**

The SWCD dam owner work group comprised of representatives from the 12 SWCDs that own dams, DCR, NRCS and others continue to meet approximately every 3 months (a quarterly annual schedule). Of the roughly 4 meetings per year, one session is focused on Emergency Action Plans (EAPs), another addresses routine annual maintenance of district dams and the remaining two meetings address the priority topics identified by the group. The group last met on April 23rd, 2009 and focused on fulfilling the new Dam Safety regulations that pertain to EAPs. Concerns were

expressed by SWCDs about their interest in having a more direct, active role in the development of Break Inundation Studies and Mapping that is being performed through DCR's Design and Construction staff. The group will revisit these topics and the topic of annual dam maintenance when they hold their next quarterly meeting on July 23rd, 2009 in Charlottesville.

#### **4. Agricultural BMP Cost-Share Program:**

The Cost Share Program Technical Advisory Committee (TAC) held its last meeting on March 19<sup>th</sup>, 2009 and brought forward recommendations for changes to the 2010 Agricultural BMP Cost Share Program. Program changes resolved by the DCR Director are summarized within a 3 page table and will take effect when the new program begins on July 1, 2009. SWCDs and partner agencies and organizations are receiving news of these program changes through 4 regional training sessions that are being held during May, 2009.

DCR staff in partnership with representatives from SWCDs, the VASWCD and NRCS continue to advance work towards "modernizing" the automated Ag BMP Tracking Program. A contract to perform the development of a new web based system has been awarded to CACI/WorldView. Development of the data collection and entry system is proceeding with a goal of a more efficient and effective tracking program for SWCDs and DCR. Six regional training programs are scheduled during the first 2 weeks in June to train SWCD users in the new program. The sessions will be held in computer labs of certain Community Colleges. The first phase of the enhanced program will be available for data entry by early September, 2009. Discussion has begun to resolve priorities for use of an additional \$500,000 that will be available July 1<sup>st</sup>, 2009 for the second phase of the modernized program.

#### **5. Conservation Reserve Enhancement Program (CREP):**

SWCDs in the Chesapeake Bay basin will have a new Agricultural BMP Cost Share Program practice available on July 1<sup>st</sup>, 2009 with the requirement that the new practice may only be implemented in conjunction with a CREP Riparian Forest Buffer practices. The new SL-7 Cost Share Program practice will complement CREP and advance remaining acreage in the Bay basin towards achieving the 25,000 acre goal of riparian buffers. The BMP provides a means for extending a livestock watering systems installed through CREP, into non- eligible CREP fields. Of the 25,000 acre goal authorized for the Chesapeake Bay basin in Virginia, approximately 10,200 acres remain to be enrolled.

#### **6. Total Maximum Daily Load (TMDL):**

DCR is updating a list of target watersheds in which to consider the development of TMDL implementation plans. Areas selected need to be: (1) in watersheds where DEQ has already completed TMDL studies; (2) where improving water quality enough for future delisting of the impairment is achievable; and (3) where there is evidence of locality support. The following areas are being considered: Slate River in Buckingham, Hays Creek and Moffats Creek in Augusta/Rockbridge, Robinson River and Little Dark Run in Madison, Craig, Marsh, and Browns Runs in Fauquier, Lewis Creek in Russell, Flat Creek and Great Creek in Mecklenburg/South Hill, Cripple Creek in Wythe, Cherrystone Inlet and Kings Creek in Northampton, Goldmine Creek and Plentiful Creek in Louisa/Spottsylvania, and Birch Creek in Pittsylvania/Halifax. Locations of future TMDL implementation projects will likely be comprised of a subset of this list following the development of the implementation plans.

#### **7. Nutrient Management Related Issues:**

(A) The State Water Control Board approved proposed poultry end user regulations in their April meeting. Although not yet posted, the public comment period for the proposed regulations should

begin shortly. The proposed regulations would require: increased tracking and accounting of poultry litter when it leaves the farm where generated; proper storage of poultry litter by end users; and use of litter as prescribed by a fact sheet or a site-specific NMP. (B) DCR is developing a new category for nutrient management certification to address Turf and Landscape nutrient usage to compliment the current certification that has focused on agricultural nutrient use. A pilot training session was held on June 10 & 11, followed by an exam. The training was conducted in cooperation with Virginia Turfgrass specialists and DCR specialists. This program will assist Virginia in accomplishing goals for non-agricultural nutrient management and nutrient reduction for the Chesapeake Bay Initiative and was requested by the Virginia Turfgrass Council. (C) Work continues with the poultry integrators to reduce phosphorous in poultry litter by the induction of Phytase in feeds. The goal is to reduce overall Phosphorus content by 30% by December 2010 from pre-phytase levels. DCR entered into agreements with the six major poultry integrators in late 2007 and is in the process of meeting with individual companies to determine progress to date. The companies are generally making good progress in moving toward the goal.

Attachment #2

**NRCS REPORT**  
**VA Soil & Water Conservation Board Meeting**  
**July 29, 2009**  
**Association of Electric Cooperatives**  
**Richmond, VA**

**FARM BILL PROGRAMS**

**Financial Assistance Programs:** NRCS has received its final allocation for the fiscal year, with slight increases in the Environmental Quality Incentive Program (EQIP) and Wildlife Habitat Incentive Program (WHIP) over earlier reported amounts. Virginia received \$ 881,982 in WHIP funding and \$10,608,175 in EQIP. The new Chesapeake Bay Watershed Initiative received the maximum allowed (\$5,676,472) under the Farm Bill and funding formulas used during the first allocation process earlier in the year.

Approximately 85% of our total EQIP budget is now targeted toward national objectives.

**Organic Agriculture:** NRCS national headquarters, announced an EQIP effort to support organic, and transitioning to organic, agriculture. Approximately \$790,308 of our budget is targeted to this initiative in special funding pools for these producers and a special sign up was announced just for this effort which will run until June 30, 2009 in Virginia.

Continuous sign up is being taken in all programs except the Organic Initiative.

**Stewardship Program:** NRCS will be conducting an audit of all Conservation Security Program (CSP) contracts in Virginia. This will be in addition to the ROOT audit performed during the first quarter and will look at additional items specific to CSP program administration. This audit is being preformed by Area and State Office staff to minimize impact on field operations.

The Office of Management and Budget (OMB) has not allocated funding to the new Conservation Stewardship Program (CStP). It is uncertain at this time if CStP sign up will occur during FY 2009.

**Easement Programs:** Continuous sign up is underway in all of the easement programs: Wetland Reserve Program (WRP), Grassland Reserve Program (GRP) and Farm and Ranchland Protection Program (FRPP). Staff will rank and approve GRP applications by July 1, 2009. Work is underway to complete all prior year easement requests by the close of this fiscal year.

**DAM REHABILITATION**

**Pohick Creek Site 4 (Royal Lake) in Fairfax County** – Construction is complete. Fairfax County is working with NRCS to close the project out.

**Pohick Creek Site 3 (Woodglen Lake) in Fairfax County** – NRCS is assisting Fairfax County with the design of this project. Funding from the American Recovery and Reinvestment Act (ARRA) for the construction of this project has been received. Preliminary designs are underway. Construction is expected to start early next calendar year.

**Pohick Creek Site 2 (Lake Barton) in Fairfax County** – A draft plan is currently out for interagency and public review with comments due by June 22, 2009. ARRA funding for the completion of the plan, design and construction has been received.

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**South River Site 10A (Mills Creek) in Augusta County** – NRCS has received funding to assist Augusta County to initiate development of a dam rehabilitation plan.

**Assessments for High Hazard Dams** – NRCS has received funding to conduct an assessment of Upper North River Watershed Site 10 - Todd Lake in Augusta County.

### **WATERSHED OPERATIONS**

**Buena Vista Flood Control Project** – NRCS is assisting the City of Buena Vista with the acquisition of environmental permits for the channel modification of Chalk Mine Run. The proposed mitigation is to establish a riparian buffer along the Calfpasture River and to acquire a perpetual easement on that riparian zone. NRCS has received funding for design of the channel modification project.

NRCS and the City of Buena Vista have signed a cooperative agreement for \$42,000 to acquire and demolish one home that is located in the floodplain on the Chalk Mine Run tributary in Buena Vista. The City is completing the legal work necessary to complete this project.

**North Fork Powell River Watershed** – ARRA funding has been received to design and construct two sites in this watershed. This project will address water quality problems from abandoned mines in this watershed. The project is sponsored by the Lee County Board of Supervisors, the Daniel Boone SWCD and the Virginia Department of Mines, Minerals and Energy.

**Chestnut Creek Watershed** - ARRA funding has been received to develop new long term contracts with landowners in this watershed in Carroll and Grayson Counties. This project will address water quality problems caused by grazing in the watershed.

**Little Reed Island Creek Watershed** - ARRA funding has been received for new long term contracts with landowners in this watershed in Carroll, Pulaski and Wythe Counties. This project will address water quality problems caused by grazing in the watershed.

**Watershed Dam O&M Workshop** – The National Watershed Coalition will conduct a workshop on the operation and maintenance of watershed dams on July 14-15, 2009 in Staunton, Virginia. The workshop will include one day in the classroom and one day in the field. The workshop will be an excellent opportunity to hear knowledgeable speakers, learn new skills, and interact with others who have similar responsibilities or duties. Topics will include the following:

- Improving Structure O&M
- Watershed Project Sponsor Responsibilities
- Emergency Action Plans
- Rehabilitation of Aging Dams
- Tour of Local Watershed Projects
- O&M Demonstration Field Day
- Products, Tools and Techniques for O&M

For more information, contact the National Watershed Coalition at [www.watershedcoalition.org](http://www.watershedcoalition.org).

**Lower Shenandoah River** – NRCS staff in Virginia and West Virginia have been funded to conduct a watershed assessment of the Lower Shenandoah River Watershed. The assessment will be completed by September 2009.