TENTATIVE AGENDA AND MINIBOOK
STATE WATER CONTROL BOARD MEETING
THURSDAY, JUNE 25, 2015

House Room D
General Assembly Building
9th & Broad Streets,
Richmond, VA 23219

9:30 A.M.

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I.	**Minutes (**March 30, 2015)		A
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III.	**Final Exempt**		
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ADJOURN

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

PUBLIC COMMENTS AT STATE WATER CONTROL BOARD MEETINGS: The Board encourages public participation in the performance of its duties and responsibilities. To this end, the Board has adopted public participation procedures for regulatory action and for case decisions. These procedures establish the times for the public to provide appropriate comment to the Board for its consideration.
For REGULATORY ACTIONS (adoption, amendment or repeal of regulations), public participation is governed by the Administrative Process Act and the Board's Public Participation Guidelines. Public comment is accepted during the Notice of Intended Regulatory Action phase (minimum 30-day comment period) and during the Notice of Public

Comment Period on Proposed Regulatory Action (minimum 60-day comment period). Notice of these comment periods is announced in the Virginia Register, by posting to the Department of Environmental Quality and Virginia Regulatory Town Hall web sites and by mail to those on the Regulatory Development Mailing List. The comments received during the announced public comment periods are summarized for the Board and considered by the Board when making a decision on the regulatory action.
For CASE DECISIONS (issuance and amendment of permits), the Board adopts public participation procedures in the individual regulations which establish the permit programs. As a general rule, public comment is accepted on a draft permit for a period of 30 days. If a public hearing is held, there is an additional comment period, usually 45 days, during which the public hearing is held.

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

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

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

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

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

PUBLIC FORUM: The Board schedules a public forum at each regular meeting to provide an opportunity for citizens to address the Board on matters other than those on the agenda, pending regulatory actions or pending case decisions. Those wishing to address the Board during this time should indicate their desire on the sign-in cards/sheet and limit their presentations to 3 minutes or less.

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

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

Issuance of VPDES Permit No. VA0092720, Ryder Enterprises WWTP, Albemarle County

Background:
On November 14, 2012, DEQ received an application from Ryder Enterprises, LLC for the issuance of VPDES Permit No. VA0092720 for Ryder Enterprises WWTP. The applicant proposes to discharge treated wastewater from a new sewage treatment facility serving retail stores, business offices, and medical offices. The proposed effluent flow will be 0.015 MGD, discharging to an unnamed tributary of Barn Branch in Albemarle County. The applicant was required to develop a nutrient offset plan to offset all nutrients discharged from the facility. Processing of the draft permit was delayed while the nutrient offset plan was being developed and subsequently accepted by DEQ - Central Office staff.

In accordance with the State Water Control Law, DEQ notified the Albermarle County Executive, Chairman of the Albemarle County Board of Supervisors, and Thomas Jefferson Planning District Commission on March 22, 2013 that an application for a new permit had been received for Ryder Enterprises WWTP. The same notification was provided on March 22, 2013, to riparian property owners to a distance one half mile downstream from the proposed discharge point. The notice to property owners was based on names taken from local tax rolls.

Public notice for this proposed permit action was published in the Daily Progress on December 13, 2014 and December 20, 2014. DEQ notified the Albemarle County Executive, Chairman of the Board of Supervisors, and Thomas Jefferson Planning District Commission of the public notice on December 10, 2014.

In addition to the regulatory requirements for notifying localities and adjacent property owners, DEQ staff also participated in an informational meeting for the community on February 25, 2015, organized by the Albemarle County Director of Community Development to discuss all aspects of the proposed project.

During the 30-day public comment period of the draft permit which ended on January 12, 2015, DEQ received 78 comments by email or letter. All of the comments objected to the draft permit, and 75 of the comments included a request for a public hearing.

Public Hearing:
Based on a review of the requests for public hearing received during the public comment period, a decision to hold a public hearing was approved on February 6, 2015 in accordance with the State Water Control Law. The public notice for the hearing was published in the Daily Progress on March 6 and March 13, 2015.

DEQ held the public hearing at 7:00 p.m. on April 9, 2015, at the Albemarle County Office Building, Lane Auditorium. Mr. Robert Dunn served as the hearing officer. DEQ also provided an informational session prior to the hearing so that questions could be asked and answered prior to the hearing. Eleven people attended the public hearing including the applicant's attorney and consultant. Three citizens provided oral comments during the public hearing.
The additional public comment period associated with the hearing was open from March 6, 2015, through April 24, 2015. No comments other than the oral comments presented at the public hearing were received during this comment period.

Summary of Public Comments and DEQ Responses

During the public comment period of the draft permit, DEQ received 78 citizen comments.

During the public hearing DEQ received 3 oral comments.

The public comments received regarding the issuance of VPDES Permit No. VA0092720 for Ryder Enterprises WWTP are summarized and are followed by the DEQ staff response.

1. Comment: There will be negative impacts to the Monticello Historic District and one of Albemarle County's Entrance Corridors.

Staff Response: Zoning, planning, and land use issues are not within the purview of DEQ, but are issues to be addressed by Albermarle County. The property immediately across Route 250 from the proposed Ryder Enterprises WWTP is in the Monticello Historic District. The Albermarle County Code includes provisions for regulating uses and activities within

the Monticello Historic District. The Ryder Enterprises, LLC property is in the Monticello Viewshed, which is an element of Albemarle County's Comprehensive Plan. The County notifies the Thomas Jefferson Foundation of projects in the Monticello Viewshed and asks the applicant to contact the Foundation to discuss any potential issues. While this is not a regulatory restriction with by-right development, the County encourages applicants to work out potential issues with the Foundation. The Ryder Enterprises, LLC property is also within the Albemarle County Entrance Corridor along Route 250. A Certificate of Appropriateness issued by the County's Architectural Review Board consistent with applicable design guidelines for the Entrance Corridor is required by Albemarle County for a site plan and/or a building permit in the Entrance Corridor.

§62.1-44.15:3 of the Code of Virginia requires an application to include notification from the locality in which the discharge is to take place that the location and operation of the discharging facility are consistent with applicable ordinances adopted pursuant to Chapter 22 (§15.2-2200 et seq.) of Title 15.2. The required notification from Albemarle County was provided with the application.

2. Comment: There will be infringement on property rights unless easements are obtained to reach the receiving stream because the effluent will not enter state waters at the outfall.

Staff Response: §62.1-44.3 of the Code of Virginia defines "State waters" as "all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands." §62.1-44.4.(1) of the Code of Virginia , states "The right and control of the Commonwealth in and over all state waters is hereby expressly reserved and reaffirmed."

Respecting impacts to property rights generally, §62.1-44.22 of the Code of Virginia provides that "The fact that any owner holds or has held a certificate issued under [the State Water Control Law] shall not constitute a defense in any civil action involving private rights." Additionally, both the VPDES Permit Regulation (9VAC25-31) and Part II.N of the draft permit specifically state that the permit does not convey any property rights of any sort, or any exclusive privilege.

3. Comment: The discharge should be piped underground and along the north side of US Route 250 to Barn Branch.

Staff Response: Discharge locations are indicated by applicants in their permit applications. If a permit application is submitted and the proposal would be in compliance with local zoning ordinances, then DEQ has a legal obligation to prepare a draft permit for the proposed discharge that is protective of water quality and meets all applicable state laws and regulations.

4. Comment: There will be negative impacts to the Thomas Jefferson Foundation's Shadwell Farm which is in a conservation easement and which is adjacent to the proposed facility. Also, the discharge will be to a small stream that has a protected stream buffer where the Thomas Jefferson Foundation has invested in restorative plantings.

Staff Response: The draft permit is written in accordance with the Code of Virginia and Virginia Water Quality Standards (9VAC25-260) to protect the beneficial uses of the unnamed tributary to Barn Branch, including the conservation efforts and restorative plantings that have taken place on the property owned by the Thomas Jefferson Foundation.

5. Comment: The discharge is proposed to flow through what may be an inadequately-sized VDOT culvert, and therefore flooding issues downstream of the discharge may occur.

Staff Response: On February 23, 2015, the VDOT District Environmental Manager indicated that VDOT does not have any concerns regarding the sizing of the culvert under US Route 250 and the proposed discharge volume of 0.015 MGD.

6. Comment: The discharge will cause serious pollution problems for the Rivanna River and its tributaries.

Staff Response: The draft permit is written in accordance with the Code of Virginia and Virginia Water Quality Standards to protect the beneficial uses of the Rivanna River and its tributaries. If a VPDES permit is issued, the owner of Ryder Enterprises WWTP must comply with the permit's conditions and with the Sewage Collection and Treatment Regulations (9VAC25-790). These regulations ensure that the design, construction, and operation of sewage collection systems and treatment works are consistent with the public health and water quality objectives of the Commonwealth of Virginia.

Noncompliance with a VPDES permit is addressed by the DEQ's compliance and enforcement staff to remedy the permit noncompliance. This process can include Warning Letters, Notices of Violation, and significant penalties for serious violations. The goal of our compliance and enforcement actions is to provide effective disincentives for non-compliance and to encourage a prompt return to full permit compliance.

7. Comment: Allowing nutrient trading in the permit would undercut the nutrient removal efforts by the Rivanna Water and Sewer Authority and the localities.

Staff Response: §62.1-44.19:12-19 of the Code of Virginia requires owners of new facilities to obtain offsets for the nutrients discharged to state waters and to register for coverage under the General Permit for Total Nitrogen and Total Phosphorus Discharges and Nutrient Trading in the Chesapeake Watershed in Virginia (9VAC25-820-70). The applicant has entered into a nutrient offset agreement with the Rivanna Water and Sewer Authority and has submitted a registration statement for coverage under the General Permit for Total Nitrogen and Total Phosphorus Discharges and Nutrient Trading in the Chesapeake Watershed in Virginia. As a requirement of the nutrient general permit, the applicant will be required to obtain offsets for all nutrients discharged from Ryder Enterprises WWTP.

8. Comment: The nutrient credit exchange program allows the purchase of credits in a broad area. The nutrient credits should be purchased close to or contiguous to the area affected.

Staff Response: Nutrient credits and offsets are handled in accordance with the General VPDES Watershed Permit Regulation for Total Nitrogen and Total Phosphorus Discharges and Nutrient Trading in the Chesapeake Bay in Virginia (9VAC25-820), and not under the VPDES Permit Regulation. In order to register the proposed discharge under the nutrient general permit, the applicant has obtained nutrient credits from the closest facility eligible under the trading program (Rivanna Water and Sewer Authority's Moores Creek Regional STP). Although the permittee would be allowed to acquire additional nutrient credits in the case of noncompliance with the nutrient general permit, the individual VPDES permit includes annual average concentration effluent limits for Total Nitrogen and Total Phosphorus that will ensure compliance with the nutrient general permit. No trading is allowed to comply with the annual average concentration effluent limits for Total Nitrogen and Total Phosphorus contained in the individual VPDES permit.

9. Comment: The permit allows the discharge of nitrogen and phosphorus into a stream with critical flows of zero; therefore, the facility should be required to meet limits of technology for Total Nitrogen and Total Phosphorus.

Staff Response: At the discharge point, the receiving stream is not shown as perennial on the USGS Quadrangle topographic map. The low flow conditions for streams that are not perennial are set at 0.0 cfs. Since the receiving stream has critical flows of 0.0 cfs, the permit is written to require that the discharge meet Virginia Water Quality Standards at the discharge pipe, not allowing for a mixing zone. The State of Virginia does not currently have Water Quality Standards for nitrogen and phosphorus; therefore, the nutrient requirements in the draft permit are not based on nutrient considerations for the unnamed tributary to Barn Branch, Barn Branch, or the Rivanna River. The permit nutrient requirements are instead based on regulations designed to restore or protect the water quality and beneficial uses of the Chesapeake Bay and its tidal tributaries. As discussed previously, the applicant will be required to obtain offsets for all nutrients discharged from Ryder Enterprises WWTP. As part of the nutrient offset agreement with the Rivanna Water and Sewer Authority, the applicant has indicated that the facility will achieve an annual average Total Nitrogen concentration of 5.0 mg/L and an annual average Total Phosphorus concentration of 1.8 mg/L. In accordance with 9VAC25-40-70.A, which requires concentration limits for any facility that has installed technology for the control of nitrogen and phosphorus, the draft permit includes an annual average Total Nitrogen concentration limit of 5.0 mg/L and an annual average Total Phosphorus limit of 1.0 mg/L.
DEQ believes these proposed permit limits and requirements will provide appropriate nutrient controls for this discharge. There are no regulatory requirements for a facility of this size to meet limits of technology for Total Nitrogen or Total Phosphorus.

10. Comment: The draft permit does not have specific language that requires the discharger to meet all water quality criteria at 100% whole effluent. For example, lead copper, zinc, and other metals are not mentioned in the permit.

Staff Response: The water quality criteria for surface waters stipulated in the Virginia Water Quality Standards apply to all surface waters and this permit does not authorize infringement of any federal, state, or local law or regulation. That this permit requires monitoring for some, but not all, parameters listed in the regulation in no way implies that only some criteria apply. The permit requires monitoring of selected parameters, depending on the type and size of the discharge as outlined in DEQ Guidance Memorandum No. 14-2003 and Guidance Memorandum No. 00-2011. If any other pollutants are reasonably expected to be present in concentrations that could violate the water quality criteria, then monitoring will be imposed to obtain additional data as necessary.

11. Comment: The pH of Barn Branch may not have been considered in the development of Ammonia-N limits in this permit.

Staff Response: At the discharge point, the receiving stream is not shown as perennial on the USGS Quadrangle topographic map. The low flow conditions for streams that are not perennial are set at 0.0 cfs. Since the receiving stream has critical flows of 0.0 cfs, the permit is written to require that the discharge meet Water Quality Standards at the discharge pipe, not allowing for a mixing zone. Because the Water Quality Standards must be met at the discharge pipe, the pH of the unnamed tributary of Barn Branch and the pH of Barn Branch were not utilized in the calculation of Ammonia-N limits.

12. Comment: The permit requires a Reliability Class II rather than Reliability Class I for the wastewater treatment plant, potentially leading to adverse impacts to neighboring properties, the VDOT right of way, Route 250, or receiving waters during periods of short term operational interruptions. The receiving stream does not provide a minimal dilution of 10 to 1. An extended failure of the wastewater treatment plant could result in the discharge of partially treated, or even untreated, sewage.

Staff Response: Reliability is defined in the Sewage Collection and Treatment Regulations as a measurement of the ability of a component or system to perform its designated function without failure or interruption of service. The treatment works design shall provide for satisfactory operation during power failures, flooding, peak loads, equipment failure, and maintenance shut-down. Guidelines for determining reliability class are specified in the Sewage Collection and Treatment Regulations and are included below:

a. Reliability Class I. Sewerage systems or treatment works whose location, or discharge, or potential discharge
(i) is sufficiently close to residences, public water supply, shellfish, or recreation waters;
(ii) has a volume or character; or
(iii) for which minimal dilution of 10 to 1, receiving water volume to discharge volume, based on permit flow values is not provided year round,
such that permanent or unacceptable damage could occur to the receiving waters or public health and welfare if normal operations were interrupted.
b. Reliability Class II. Sewerage systems or treatment works whose location or discharge, or potential discharge, due to its volume or character, would not permanently or unacceptably damage or affect the receiving waters or public health and welfare during periods of short-term operations interruptions, but could be damaging if continued interruption of normal operation were to exceed 24 hours.

The applicant has indicated that Albemarle County has not allowed Ryder Enterprises, LLC to connect to the public water supply system. The water supply for the property served by the Ryder Enterprises WWTP will be on-site wells; therefore, when the property experiences a power outage the water supply to the property will be inoperable and there will not be sustained flow to the WWTP. In addition, the nature of the establishments (retails stores, business offices, and medical offices) generating wastewater are such that they can be closed during periods when power is interrupted or the WWTP is otherwise not operational thus eliminating the influent flow to the WWTP. Based on these factors, a Reliability Class II requirement was determined to be appropriate for this WWTP. In addition, in a memorandum dated July 16, 2013, the Virginia Department of Health identified the raw water intake for Lake Monticello as being 8.9 miles downstream of the discharge, stated that this should be a sufficient distance to minimize the impacts of the discharge, and recommended a minimum Reliability Class of II for this facility. Because the owner is not prohibited from installing a generator or other equipment that would allow the water supply to the property to be operable during a power outage, the draft permit has been revised to require the treatment works to meet Reliability Class I prior to the installation of a generator or other equipment that would allow the water supply to the property to be operable during a power outage.

In addressing reliability protection, 9VAC25-790-490.F requires that an audiovisual alarm system to monitor the condition of equipment whose failure could result in a bypass or a violation of effluent limitations shall be provided for all treatment works. Alarms shall also be provided to monitor conditions which could result in damage to vital components. Treatment works not continuously manned shall have, in addition to a local audiovisual alarm, provisions for transmitting an audible alarm to a central location where personnel competent to receive the alarm and initiate corrective action are available 24 hours per day or during the period of time that the treatment works receives influent flow.

The proposed permit requires Ryder Enterprises, LLC to meet certain effluent limitations and to operate the facility in accordance with an Operations & Maintenance (O&M) Manual that will be developed for the facility. Owners of facilities that experience noncompliance with their VPDES permits must promptly remedy the problem since persistent or serious instances of noncompliance warrant enforcement action.

13. Comment: The Lake Monticello drinking water intake is on the Rivanna River downstream of the discharge.

Staff Response: In a memorandum dated July 16, 2013, the Virginia Department of Health identified the raw water intake for Lake Monticello as being 8.9 miles downstream of the discharge, stated that this should be a sufficient distance to minimize the impacts of the discharge, and recommended a minimum Reliability Class of II for this facility. The Rivanna River and its tributaries from the raw water intake for Lake Monticello to points 5 miles upstream are designated as a public water supply in the Virginia Water Quality Standards. Because the proposed discharge is not directly into a section classified as a public water supply, the additional criteria that are applicable to public water supplies were not considered in the draft permit development.

14. Comment: The Rivanna River is designated as a Virginia Scenic River.

Staff Response: The Virginia Scenic Rivers Program is a program that is administered by the Department of Conservation and Recreation whose intent is to identify, designate, and help protect rivers and streams that possess outstanding scenic, recreational, historic, and natural characteristics of statewide significance for future generations. State and federal agencies must consider how projects and programs affect state scenic rivers. The draft permit is written in accordance with the Code of Virginia and Virginia Water Quality Standards to protect the beneficial uses of the Rivanna River. DEQ does not consider the draft permit to be contrary to the Rivanna River's designation as a Virginia Scenic River, nor have we received any objections from DCR to this proposed permit.

15. Comment: DEQ's inspection process to ensure proper functioning of such a small wastewater treatment plant is not known.

Staff Response: The inspection frequency for a facility of this size would be a minimum of once every 5 years; however, DEQ inspectors have the authority to inspect a facility whenever they choose, within reasonable working hours. In addition, DEQ is committed to following up on any inquiries or complaints we receive regarding the facility's operation.

16. Comment: How the effluent from the wastewater treatment plant and the downstream waters will be monitored is not known.

Staff Response: The VPDES program is a self-monitoring program under the Clean Water Act. The DEQ performs inspections of facilities and collects samples from the facility as necessary. VPDES permittees are also required to submit monthly Discharge Monitoring Reports to DEQ. These monitoring reports contain summaries of the facility's self-monitoring results, and are reviewed by the DEQ's compliance staff. In addition, DEQ is committed to following up on any inquiries or complaints we receive regarding the facility's operation. Monitoring the receiving stream downstream of the discharge is not required by the permit and is not typically performed by DEQ. DEQ maintains hundreds of stream monitoring locations to assess water quality and trends throughout the State. The locations of these monitoring sites are available at http://www.deq.virginia.gov/mapper_ext/default.aspx?service=public/wimby.

17. Comment: Other alternatives should be considered including consolidating this small wastewater treatment plant with a larger facility that is operated with trained staff and that is more cost-effective.

Staff Response: There is no prohibition in state law or regulation against anyone applying for an individual wastewater discharge permit, even if public sewer service is reasonably available. If an application for a permit is submitted and the proposal would be in compliance with local zoning ordinances, then DEQ has a legal responsibility to prepare a draft permit that would be protective of water quality.

18. Comment: The building facilities that will be connected to the wastewater treatment plant and the basis for the design flow are not identified. The application states that the plant will serve 125 persons. Using a flow of 15 gallons per day per person for an office, results in a design flow of 1,875 gallons per day. The plant is significantly oversized.

Staff Response: Although not required as part of the VPDES permitting process, it is our understanding that the proposed retail, business offices, and medical offices will be housed in the structures already in place at the location. The applicant has indicated that the design flow is based on the following:

Office Space – 175 employees at 20 GPD/employee = 3,500 GPD
Doctor Offices – 20,000 sq. ft. at 5000 GPD/1000 sq. ft. = 10,000 GPD
Total = 13,500 GPD

19. Comment: A Rotating Biological Contactor with a secondary clarifier is not tertiary treatment as described in the application and may not achieve Water Quality Standards at the discharge location.

Staff Response: The application provided preliminary information regarding the proposed treatment units; however, it is the permittee's responsibility to design a treatment plant capable of meeting the effluent limits specified in the permit. The design of the treatment plant cannot be finalized or approved before a VPDES permit authorizing the discharge is issued. The applicant will be required to obtain a Certificate to Construct, as well as a Certificate to Operate, prior to constructing and operating any treatment units at the site. The treatment facility must be designed in accordance with the Sewage Collection and Treatment Regulations and to achieve the limits required in the permit.

20. Comment: A 200' buffer zone for the wastewater treatment plant is not required in the permit as specified in 9VAC25-790.

Staff Response: The proposed permit issuance does not specify where the wastewater treatment plant will be built, only where the outfall is to be located; however, the construction of this facility will be required to comply with all the relevant laws and regulations administered by DEQ. The Sewage Collection and Treatment Regulations are very prescriptive regarding the siting and design of the wastewater treatment facilities. The Certificate to Construct and Certificate to Operate that a permittee is required to obtain are only granted once the permittee has certified that that the requirements of the Sewage Collection and Treatment Regulations are met. The Sewage Collection and Treatment Regulations require a buffer zone of 200 feet for unit operations using low intensity mixing or quiescent system; however, a buffer zone of only 50 feet is required if the unit operations are totally enclosed.

21. Comment: DEQ does not have a technical review process to ensure that the wastewater treatment plant will meet permit standards.

Staff Response: If a VPDES permit is issued, the owner of Ryder Enterprises WWTP must comply with the permit's conditions and the Sewage Collection and Treatment Regulations (9VAC25-790). These regulations ensure that the design, construction, and operation of sewage collection systems and treatment works are consistent with the public health and water quality objectives of the Commonwealth of Virginia. Projects such as this wastewater treatment facility are not reviewed by DEQ for compliance with the design requirements of the Sewage Collection and Treatment Regulations. It is the responsibility of a licensed professional engineer in the Commonwealth of Virginia to certify that the project design adheres to the design requirements of the Sewage Collection and Treatment Regulations. This is done through the submission of an application for a Certificate to Construct. Following construction, submission of an application for a Certificate to Operate is required. On this application, a licensed professional engineer in the Commonwealth of Virginia must certify that all components have been installed in accordance with the approved plans and specifications. Upon commencing operation of the wastewater plant, wastewater quality is monitored as required by the permit to ensure

protection of the stream quality, and the wastewater facilities are inspected by DEQ staff to ensure compliance with all permit requirements, including proper operation and maintenance.

22. Comment: There has not been adequate time to allow stakeholders to consider the proposal and implications for the community. DEQ should re-notify property owners if an application is delayed more than a year before a draft permit is developed and public noticed.

Staff Response: In accordance with §62.1-44.15:4.D of the Code of Virginia, DEQ notified the Albermarle County Executive, Chairman of the Albemarle County Board of Supervisors, and Thomas Jefferson Planning District Commission on March 22, 2013 that an application for a new permit had been received for Ryder Enterprises WWTP. The same notification was provided on March 22, 2013, to riparian property owners to a distance one half mile downstream from the proposed discharge point. The notice to property owners was based on names taken from local tax rolls.

In accordance with §62.1-44.15:01 of the Code of Virginia, notice of the draft permit for Ryder Enterprises was sent to the Albermarle County Executive, Chairman of the Albemarle County Board of Supervisors, and Thomas Jefferson Planning District Commission on December 10, 2014 and was also published in the Daily Progress on December 13 and December 20, 2014. The public comment period on the draft permit closed on January 12, 2015.

All notifications and notices have been provided in accordance with applicable state laws and regulations.

Draft Permit Changes in Response to Public Comments:
Based on public comments received, the reliability class special condition has been revised to require the treatment works to meet Reliability Class I prior to the installation of a generator or other equipment that would allow the water supply to the property to be operable during a power outage.

During the public comment period, the applicant indicated that UV disinfection would be the primary means of disinfection utilized instead of chlorination. As a result, the disinfection language in the draft permit and fact sheet has been revised to reflect that change.

Part II.A and Part II.C of the boilerplate language have been revised to reflect the current boilerplate language utilized for VPDES permits.

Issuance of VPA Permit No. VPA00059 – Synagro Central, LLC. – Spotsylvania County Summary of Public Comments:
Background

Synagro Central, LLC. submitted a Virginia Pollution Abatement (VPA) permit application for the land application of biosolids. The draft permit, if issued as drafted, would authorize Synagro to land apply biosolids to 13 sites comprised of 143 fields, totaling approximately 6,452 acres in Spotsylvania County. Of the 13 sites proposed, 8 are currently permitted under an administratively continued Virginia Department of Health (VDH) Biosolids Use Regulation (BUR) permit and are currently eligible for land application by Synagro.

Public Notice and Public Hearing

Notice for this proposed permit issuance was published in the Free lance Star on January 29, February 5, and February 12, 2015. The 30-day public notice comment period ended on March 2, 2015. NRO received 46 comments, 45 of which requested a public hearing. A public hearing was authorized on March 18, 2015.

The public hearing was held at 7:00 p.m. on May 7, 2015, at the Marshall Center Community Room in Spotsylvania County. Mr. Joe Nash served as hearing officer. An interactive informational session preceded the hearing.

- 23 people provided oral comments during the public hearing
- One written comment was received prior to the hearing
- 81 written comments were received after the hearing

- 7 provided specific comments via email
- 35 people submitted by mail a form letter requesting denial of the permit, 25 of which did not include specific comments
- 27 form letters with no specific comments submitted via email
- 9 form letters with no specific comments received via fax
- 3 Letters were received in support of the permit

Summary of Public Comments and Staff's Responses

1. Protection of Surface Waters and Impaired Streams

Comments were received related to concerns regarding adverse impacts to surface water quality:

- Potential for contamination from runoff into surface waters;
- Contaminants found in biosolids on the list of non-point source contaminants for streams on the impaired waters list;
- Adverse effects on fish and other marine life in the Chesapeake Bay Watershed as a result of run-off; and
- Potential for contamination of Lake Anna and the Chesapeake Bay Watershed as a result of runoff.

Staff Response:
The conditions in the draft permit were written in accordance with Virginia Pollution Abatement (VPA) regulation (9VAC25-32-30.A.) to prohibit point source discharges of pollutants to surface waters, including wetlands, except in the case of a storm event greater than the 25-year, 24-hour storm.

The regulation (9VAC25-32-560) requires the implementation of agricultural best management practices (BMPs) to reduce nonpoint source pollution from farmland. This includes restrictions on application timing, application rate, slope, and in particular setback distances from sensitive environmental features, they are designed to control and restrict the movement of biosolids after application.

2. Protection of Groundwater

Comments were received related to groundwater:

- Groundwater is a source of drinking water supply for many in the county; and
- Excess nutrients and contaminants migrating into ground water and drinking water wells.

Staff Response:
The conditions in the draft permit are based on requirements in the VPA regulations which were developed to ensure that neither infiltration nor runoff have an effect on aquifers. Infiltration is addressed through the restriction of land application on areas where groundwater is within 18 inches from the surface. Additionally, planting and harvesting requirements are designed such that the plant root systems uptake nutrients. Runoff is addressed through the assessment of field conditions, such as crop conditions, soil type, and topography, that could potentially affect runoff, and the VPA regulation requires a 100' setback distance from all wells located near land application sites.

Virginia Department of Health (VDH) regulations, (12VAC5-630-380,) require a minimum 100' distance between new well construction and a "Sewage Disposal System or other contaminant source" including drainfields, underground storage tanks, barnyards and hog lots. The VPA permit requirement for a 100' setback from biosolids land application is a conservative application of this established standard, as agricultural fertilization of crops is not included in the VDH regulations as a contaminant source in this context and is not an activity that would require a mandatory setback for newly constructed wells. For wells that do not meet the VDH safe construction standards, the impact risk to a well is greater from more frequent and common activities surrounding the well than from land application activities undertaken observing appropriate regulatory setbacks, BMPs and other required protections.

The VPA regulation also requires that a Nutrient Management Plan (NMP) be written by a Virginia Department of Conservation and Recreation (DCR) certified NMP writer, and that land application be conducted in accordance with the NMP. The NMP dictates rate and timing of application. The VPA Regulation places limitations on land application to sites with >15% slope and sites characterized by the US Department of Agriculture Soil Survey as "Frequently Flooded".

NMPs are written to ensure that biosolids are land applied at a rate which is agronomically appropriate, and to prevent application of excess nutrients.

3. Biosolids Composition and Protection of Human Health and the Environment

Comments were received expressing concerns over the composition of biosolids as it relates to human health and the environment:

- Potential risks from unknown pathogens, metals and other contaminants;
- Lack of significant research to assess risks to human health and the environment;
- Long term effects;
- Effectiveness of the treatment process;
- Monitoring requirements for pre and post land application;
- Required research prior to land application;
- Large food companies not accepting products from land that has used biosolids;
- Excess nutrient and contaminants entering the food chain;
- Lack of research and studies pertaining to the accumulation of metals in livestock that have grazed pasture fields that have received biosolids applications; and
- Pollution sensitive sites and/or individuals having not been accounted for in studies.

Staff Response:

The U.S. Environmental Protection Agency's (EPA) Sewage Sludge Use or Disposal Regulation (40 CFR Part 503) establishes standards that apply to facilities that generate or treat sewage sludge, to become biosolids, as well as any person who uses biosolids or disposes of sewage sludge. The regulation establishes concentration limits for pathogens and elements commonly present in land applied biosolids, access restrictions for humans and animals, and harvest restrictions for crops, in order to reduce the risk of pathogen exposure to humans or animals. The regulation specifies that biosolids that are sold to the general public, known as Class A EQ biosolids, be treated to a higher pathogen reduction standard. When biosolids are not treated to Class A EQ standards, the additional site management requirements provide an equivalent level of human health protection.

Regarding additional pollutants that have been found in sewage sludge, the Clean Water Act requires EPA to review existing sewage sludge regulations at least every two years. The purpose of the review is to identify additional pollutants that may be present in sewage sludge, and if appropriate to develop regulations for those pollutants. At this time, EPA's review has not identified any additional pollutants for regulation.

The Virginia State Water Control Law requires permits for the application of Class B biosolids. These permits contain all of the criteria required by the federal regulation plus additional requirements such as setbacks from homes and environmentally sensitive features, NMPs, public notification (including signage), financial assurances, local authority, inspections, and training. The combined state and federal restrictions, such as the federal access and harvesting restrictions and the state requirement for signage, work in concert to mitigate risk. Any person who land applies Class B biosolids must obtain authorization to do so under a VPA permit and conduct all land application activity in conformance with that permit.

The 2007 Virginia General Assembly commissioned a group of experts to study the issues surrounding biosolids. The Biosolids Expert Panel (the Panel) published their final report in 2008. The Panel determined that as long as biosolids are applied in conformance with all state and federal laws and regulations, that there is no scientific evidence of any toxic effect to soil organisms, plants grown in treated soils, or to humans (via acute effects or bio-accumulation pathways) from inorganic trace elements (including heavy metals) found at the current concentrations in biosolids. DEQ and the SWCB considered the Panel's review and recommendations when the VPA regulations were amended in 2013. The Panel noted in its report that "while certain contaminants have been found in land-applied biosolids, mere presence will not in itself cause water quality impacts without a means to reach ground and surface waters. Additionally, presence does not indicate danger without a toxic concentration."

Research into the safety and use of biosolids as an agricultural soil amendment is ongoing. DEQ, along with VDH, monitor the progress of the research conducted by EPA in this regard, and if necessary, will respond to significant findings with recommendations to modify the VPA regulation. During the summer of 2014, VDH performed a follow-up review of the VPA regulations in light of research that had been conducted since 2008. Consistent with earlier reviews,

VDH's recent literature review did not find any contributory associations between biosolids exposure and adverse health effects. Until there is new relevant research to conclude otherwise, DEQ is confident that VPA regulations and permits are protective of human health and the environment.

4. Medically Sensitive Individuals

Comments were received questioning studies that had been conducted to protect individuals who are highly susceptible to respiratory illnesses.

Staff Response:
DEQ has developed a procedure for working with VDH to consider extended setbacks for citizens with specific health conditions. When a citizen attests that standard setbacks from homes and property lines should be extended based on medical reasons, DEQ will double the setback distance upon written request from the citizen's physician. Setback distances may be extended beyond the doubled setback where an evaluation by VDH determines that an additional setback is necessary to prevent adverse effects to the health of an individual.

5. Airborne Particulates and Nanoparticles

Comments were received expressing concern for the potential for particulates and nanoparticles to become airborne and travel from the site and the potential health risks of this.

Staff Response:
This is an example of an emerging contaminant that is not identified as a concern and for which the scientific community has yet to reach consensus regarding environmental and human health effects. For this reason, DEQ nor EPA have regulatory standards for the content of these materials in biosolids.

6. Wildlife

Comments were received concerning how wildlife moving through land application sites may be affected, in contrast to livestock that are required to be excluded from land application sites for specified periods of time.

Staff Response:
This matter was also considered by the Biosolids Expert Panel and no additional requirements were included in the VPA Regulation, as it was found that the limited exposure to wildlife poses no greater threat than normal agricultural activity. Additionally, the federal risk assessment did not find that wildlife posed a significant risk of pathogen transmission.

7. Odor

Comments were received expressing concern in regard to the odor associated with biosolids.

Staff Response:
The regulations do not prohibit odors. Biosolids, at times, can and do have objectionable odors. The regulation does require the mitigation of odors [9VAC25-32-60.F.1.c.(3)] by both the wastewater plants generating biosolids and the land appliers. Accordingly, the draft permit requires an Odor Control Plan with the following:
(a) Methods used to minimize odor in producing biosolids;
(b) Methods used to identify malodorous biosolids before land application (at the generating facility);
(c) Methods used to identify and abate malodorous biosolids if delivered to the field, prior to land application; and
(d) Methods used to abate malodor from biosolids if land applied such as incorporation, if applicable.

8. Permit Applicant's Compliance History

Comments were received questioning the compliance history of the permit applicant, Synagro, and responsibility for any damages.

Staff Response:
Synagro currently land applies biosolids in Spotsylvania County under an administratively continued VDH-BUR permit and is currently in good standing with no compliance issues.

The proposed draft permit would allow Synagro to land apply biosolids in a manner that is protective of human health and the environment. Pursuant to Va. Code (§ 62.1-44.22), the fact that any owner holds or has held a permit issued by the

Board shall not constitute a defense in any civil action involving private rights of adjacent or nearby property owners. In addition, as required by the Va. Code (§ 62.1-44.19:3(H) and the VPA regulations, Synagro maintains an environmental liability policy applicable to all their land application activity in Virginia, to pay claims for cleanup costs, personal injury, and property damage resulting from the transportation, storage, or land application of biosolids.

If the permit is approved, DEQ will perform inspections to ensure compliance and will initiate enforcement action, if applicable. Any injunctive relief and civil charges sought in an enforcement proceeding will be consistent with applicable law as well as DEQ enforcement guidelines and appropriate for the severity of the violation.

9. Outdated Laws, Regulations, and Permits

Comments were received addressing VPA laws, regulations, and draft permits and the lack of confidence that the permits encompass or thoroughly regulate all potential situations:

- Responses to comments are outdated;
- Comment responses based on inconclusive research;
- Outdated laws and regulations that are not protective of human health and the environment;
- Emerging contaminants not adequately researched or regulated; and
- Don't trust agency findings and verbal assurances.

Staff Response:

DEQ has processed the permit application and prepared a draft permit in accordance with the law and regulation as they exist. It is not DEQ's role in this permit process to assess the adequacy of the regulations.

The proposed draft permit contains all of the criteria required by the state and federal regulations such as setbacks from homes and environmentally sensitive features, NMPs, public notification (including signage), financial assurances, local authority, inspections, training. Access and harvesting restrictions, and signage, work in concert to mitigate risk.

Research into the safety and use of biosolids as an agricultural soil amendment is ongoing. DEQ and VDH monitor the progress of the research conducted by EPA, and if necessary, will respond to significant findings with recommendations to modify the VPA regulation. During the summer of 2014, VDH performed a follow-up review of the VPA regulations in light of research that had been conducted since 2008. Consistent with earlier reviews, VDH's recent literature review did not find any contributory associations between biosolids exposure and adverse health effects. Until there is new relevant research to conclude otherwise, DEQ is confident that VPA regulations and permits are protective of human health and the environment.

10. Future Studies of Biosolids Will Determine it to be Unsafe

Comments were received suggesting that while it is considered safe today, further studies may reveal detrimental effects of biosolids:

- Described biosolids as "Toxic Trojan Horse" due to a lack of studies on some of the potential effects of substances and elements found to be in biosolids;
- Compared biosolids to asbestos and DDT; and
- Concern that biosolids could contain harmful substances or elements that the scientific community has not determined to be harmful.

Staff's Response:

Research into the safety and use of biosolids as an agricultural soil amendment is ongoing. Recognizing this, the Clean Water Act requires EPA to review existing sewage sludge regulations at least every two years. The purpose of the review is to identify additional toxic pollutants that may be present in sewage sludge, and if appropriate to develop regulations for those pollutants. At this time, EPA has not identified any additional toxic pollutants for regulation under federal law.

In preparing permits, DEQ also considers any additional directives from the EPA or Center for Disease Control (CDC) regarding emergent health threats that may be made concerning biosolids.

11. Modification of Permits Not Requiring Public Meeting or Notice

Comments were received pertaining to DEQ not conducting a public meeting or public notice for modifications to add land less than 50% of the original total acreage permitted.

Staff's Response:
The proposed draft permit is an original issuance of a VPA permit. As part of the issuance process, and in accordance with the VPA regulation, adjacent landowners were notified, a public meeting was held, and public notice of the draft permit was completed.

All VPA permits are drafted and modified in accordance with VPA regulation and State Water Control Law, with modification procedures for biosolids permits specifically outlined in § 62.1-44.19:3.C.10. and § 62.1-44.19:3.4. of the Code of Virginia. When DEQ receives a modification request for an existing permit that results in the addition of less than 50% of the originally permitted acreage of the permit, landowners adjacent to the land proposed to be added are notified; however, a public meeting or public notice in the newspaper are not required. Modifications are considered cumulative and once the addition of land exceeds 50% of that included in the original issuance, DEQ follows a modification process identical to that for the original permit issuance that includes a public meeting and newspaper public notice in addition to notification of adjacent landowners.

12. Property Values and Quality of Life in Spotsylvania County

DEQ received comments that alleged that there would be a decrease in property values and a negative effect on the quality of life as a result of land application of biosolids:

- Financial implications for the county due to decreased tourism; and
- Decreased property value as a result of odors and contaminated streams

Staff Response:
The impact of land application on property values was an inherent consideration during the development and adoption of the VPA regulation. The draft permit was prepared in accordance with the regulation.

In 2007, HJR 694 required the Biosolids Expert Panel to respond to the question of whether odors from biosolids could affect property values or impact human health and well-being. The Panel's final report recognized that odors from biosolids could potentially impact property values, but could not confirm such an impact or the extent of such an impact based on the current body of scientific literature and information presented directly to the Panel. The Panel recommended that DEQ consider requiring that municipal biosolids generators be required to have odor control plans to ensure that the generator is looking at critical control points to minimize odors, reducing the potential that odor would impact adjacent properties. The draft permit includes a requirement for odor control plans from both the generators of the biosolids land applied as well as the land applier.

Final Exempt Action: Amendments to the Fees for Permits and Certificates (Fee) regulation (9VAC25-20-10 et seq.) Regarding Land Application Fees for Exceptional Quality Biosolids Cake

Introduction

At the June 25, 2015 meeting, the staff intends to bring to the Board a request to amend regulations that pertain to the regulation of sewage sludge in the Commonwealth. These changes are being made solely as a result of the following legislative changes included in the Budget Bill – Chapter 665 of the 2015 General Assembly:

Item 361: E. Beginning October 1, 2015, there shall be a $3.75 fee imposed on each dry ton of exceptional quality biosolids cake sewage sludge that is land applied pursuant to § 62.1-44.19:3P, Code of Virginia, until such fee is altered, amended or rescinded by the State Water Control Board.

Background

In accordance with §62.1-44.19:3.P, the Department of Environmental Quality collects a fee for biosolids land applied in the Commonwealth of Virginia. However, 9VAC25-20-50.C exempts the land application of exceptional quality biosolids from this fee and DEQ collects the established fee of $7.50 per dry ton of biosolids land applied only for Class B biosolids. The exemption for the land application of exceptional quality biosolids was based on the premise that most exceptional quality biosolids were being produced in a granular or pelletized form to be marketed and distributed to the public, in a manner much like commercial fertilizer.

Recently, the Blue Plains Advanced Wastewater Treatment Facility completed an upgrade to the solids treatment at the facility which will produce 100% exceptional quality biosolids, but as a cake product that will be land applied on sites permitted for Class B biosolids until a blended product is developed for marketing and distribution. Cake biosolids contain approximately 30% solids, similar to many Class B biosolids, and are land applied in bulk using specialized equipment, as the material is not suitable for bagging. In addition, other wastewater treatment facilities in Virginia have proposed generating an exceptional quality biosolids cake for land application.

While the exceptional quality cake material is of a higher quality than Class B biosolids with respect to pathogen reduction, vector attraction reduction, and metals content, 9VAC25-32-570.B.2 of the Virginia Pollutant Abatement Regulation requires this type of exceptional quality biosolids to be land applied in accordance with a nutrient management plan. To ensure compliance, DEQ staff will perform routine inspections, review reports and investigate citizen complaints. Virginia Department of Conservation and Recreation staff will also review and, in some cases, approve nutrient management plans, and local monitors may conduct inspections and collect samples.

The 2015 General Assembly included in the 2015 Budget Bill a requirement to impose a fee of $3.75 per dry ton on the land application of exceptional quality biosolids land applied as a cake.

Regulatory Amendments

This is a request to amend the Fee regulation (9 VAC 25-20-10 et seq.) in order to reflect the effect of the budget amendment. The Fee regulation establishes a fee assessment and collection system to recover costs associated with State Water Control Board permitting programs. This regulatory action is exempt from Article 2 of the APA (§2.2-4006) regarding public participation, as the changes being sought are pursuant only to those changes required by modifications to the 2015 Budget Item 361.

The proposed revisions include the following:

- Section 40. Removed a reference to the language in Section 50 that exempts exceptional quality biosolids from land application fees.
- Section 50. Removed the language exempting exceptional quality biosolids from land application fees.
- Section 146. Replaced the term “biosolids” with “Class B biosolids and exceptional quality biosolids cake” in sentences referring specifically to the land application fees. Added language prescribing the fee of $3.75 per dry ton of exceptional quality biosolids land applied as a cake in Virginia.
- Section 147. Amended recordkeeping requirements to include documentation of class of biosolids land applied, i.e. Class B biosolids or exceptional quality biosolids cake. Amended reporting requirements to include biosolids class in order to determine the appropriate fee.

Final Exempt Action: Amendments to the Chesapeake Bay Preservation Area Designation and Management Regulation (9VAC25-830-10 et seq.) Regarding Daylighted Streams

Introduction

At the June 25, 2015 meeting, the staff intends to bring to the Board a request to amend the regulation pertaining to the Chesapeake Bay Preservation Act. These changes are being made solely as a result of legislation (HB2067) passed during the 2015 General Assembly session and signed by the Governor to amend and reenact §§ 62.1-44.15:68 and 62.1-44.15:72 of the Code of Virginia, relating to daylighted streams.

Background

In accordance with §62.1-44.68 et seq., the Chesapeake Bay Preservation Act, localities in the Tidewater region of Virginia are required to ensure that land use ordinances and comprehensive plans contain specific requirements to reduce the amount of pollutants from land use activities entering the waters of the state. These localities are also required to designate and manage Resource Protection Areas (RPAs). RPAs are comprised of tidal wetlands, certain non-tidal

wetlands, and tidal shores and include a 100-foot buffer to minimize the adverse effects of human activities on these features as well as water bodies with perennial flow.

These provisions have been administered by localities through their local ordinances since 1991. However, neither the Chesapeake Bay Preservation Act nor the Bay Act regulation addresses whether or not land adjacent to streams that had been previously piped to an underground system but then later "daylighted" by being redirected to an above ground channel should be part of the RPA.

At the request of several localities, legislation was presented and approved by the General Assembly to address daylighted streams. The legislation adds a definition of daylighted streams to the Bay Act and states sets forth that the Board shall not require the designation of an RPA adjacent to a daylighted stream. The legislation also sets forth that for localities electing to establish an RPA adjacent to a daylighted stream use a water quality impact assessment to ensure that practices are in place to prevent any degradation of the daylighted stream.

Regulatory Amendments

This is a request to amend the Chesapeake Bay Preservation Area Designation and Management regulation (9 VAC 830-20-10 et seq.) in order to reflect the effect of the approved legislation. This regulatory action is exempt from Article 2 of the APA (§2.2-4006) regarding public participation, as the changes being sought are pursuant only to those changes required by modifications to the Chesapeake Bay Preservation act resulting from HB2067.

The proposed revisions include the following:

- Section 40. Added a definition of daylighted streams that is the same as the definition in the legislation.
- Section 80. Added a provision that a locality is not required to designate a Resource Protection Area adjacent to a daylighted stream, but that those localities electing not to do so are required to use a water quality impact assessment to ensure that proposed development on properties adjacent to the daylighted stream do not result in the degradation of the stream and that the water quality assessment is consistent with the existing regulatory requirements for such assessments. Verbiage was also added stating that the objective of the water quality assessment is to ensure that practices on properties adjacent to daylighted streams are effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution.

Final Exempt Action: Amendments to the Virginia Erosion and Sediment Control Program to Address 2015 Legislation Related to Providing an Exemption for Routine Maintenance Projects

Introduction

At the June 25, 2015 meeting, the staff intends to bring to the Board a request to amend regulations that pertain to the Virginia Erosion and Sediment Control Program in the Commonwealth. The 2015 General Assembly passed legislation (HB1827) which was signed by the Governor to amend and reenact § 62.1-44.15:52 of the Code of Virginia, relating to an exemption from erosion and sediment control requirements for routine maintenance projects. The approved Acts of Assembly Chapter 497 exempts routine maintenance projects from the flow rate capacity and velocity requirements (i.e., the post-construction water quantity requirements) of the Erosion and Sediment Control Law. This exemption is consistent with the exemption for similar routine maintenance projects under the Virginia Stormwater Management Program.

Background

Prior to the passage of HB1827, the Virginia Erosion and Sediment Control Law and attendant regulations required routine maintenance projects to comply with the Commonwealth's post-construction water quantity requirements. These projects, however, are exempt from complying with the Commonwealth's post-construction water quantity requirements under the Virginia Stormwater Management Act and attendant regulations. The passed legislation (i.e., HB1827) served to align the Virginia Erosion and Sediment Control Law and the Virginia Stormwater Management Act with regard to routine maintenance projects. When routine maintenance is being performed, staff believes that the original construction project should have addressed all applicable post-construction water quantity requirements.

Regulatory Amendments

This is a request to amend the Erosion and Sediment Control Regulations (9VAC25-840-40) in order to reflect the effect of the amendment. This section of the regulations establishes the minimum standards that each Virginia Erosion and Sediment Control Plan must meet.

The proposed revision includes the insertion of a statement in 9VAC25-840-40 19 m that provides an exemption pursuant to C 7 of § 62.1-44.15:34 of the Stormwater Management Act.

VPDES General Permit for Domestic Sewage Discharges Less Than or Equal to 1,000 GPD, VAG40 - Amendments to 9VAC25-110 and Reissuance of the General Permit

The current VPDES General Permit for Domestic Sewage Discharges will expire on August 1, 2016, and the regulation establishing this general permit is being amended to reissue another five-year permit. The staff is bringing this proposed regulation amendment before the Board to request authorization to hold a public comment period and a public hearing. A Notice of Intended Regulatory Action (NOIRA) for the amendment was issued on October 20, 2014. The proposed regulation takes into consideration the recommendations of a technical advisory committee (TAC) formed for this regulatory action. The TAC consisted of three consultants (two of which represented the Virginia Society of Professional Engineers and the American Council of Engineering Companies of Virginia), the Chesapeake Bay Foundation, three Virginia Department of Health representatives, two private citizens (permittees), and DEQ staff. The changes proposed are:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
10		"7Q10" definition	Deleted "climatic" from the definition as this term is not needed.
		"Climatic year" definition	Deleted this definition as it is not needed.
			Added definitions of "Board", "combined application", "Department", "individual single family dwelling", and "receiving water" to clarify these terms for this permit regulation.
	15		Added "Applicability of incorporated references based on the dates that they became effective." This section was added to update all references to Title 40 Code of Federal Regulations (CFR) within the document to be those published as of July 1, 2014. This was a recommendation from the DEQ Office of Policy so that dates do not need to be added for each CFR reference.
20.C		Effective Date of Permit	Changed the effective (2016) and expiration (2021) dates to reflect the reissuance date of the permit.
60.A.1		Authorization to Discharge	Added: "For an individual single family dwelling the owner may submit a VDH combined application in place of a registration statement." This allows these owners to submit either form to apply for general permit coverage. Similar changes were made throughout the regulation.
60.B.6		A TMDL (board adopted, EPA approved, or EPA imposed) contains an	Reworded as follows to match the wording now being used in all general permits: "The discharge is not consistent with the assumptions and

		individual WLA for the facility, unless this general permit specifically addresses the TMDL pollutant of concern and the permit limits are at least as stringent as those required by the TMDL WLA.	requirements of an approved TMDL."
60.C		"Compliance with this general permit…"	Modified as follows to better mirror the language in the Permit Regulation at 9VAC25-31-60: "Compliance with this general permit constitutes compliance, for purposes of enforcement, with the federal Clean Water Act §§ 301, 302, 306, 307, 318, 403 and 405 (a) through (b), and the State Water Control Law, ~~and applicable regulations under either,~~ with the exceptions stated in 9VAC25-31-60 of the VPDES Permit Regulation. Approval for coverage under this general VPDES permit does not relieve any owner of the responsibility to comply with any other applicable federal, state or local statute, ordinance or regulation, including, for owners of sewage treatment works that serve individual single family dwellings, the Alternative Discharging Sewage Treatment Regulations for Individual Single Family Dwellings (12VAC5-640) of the Virginia Department of Health adopted pursuant to §§ 32.1-12, 32.1-163, and 32.1-164 of the Code of Virginia and, for owners of sewage treatment works that serve ~~nonsingle~~ buildings or dwellings other than individual single family dwellings, the Sewage Collection and Treatment Regulations (9VAC25-790) adopted by the State Water Control Board pursuant to § 62.1-44.~~18~~19 of the Code of Virginia."
60.D		Continuation of Permit Coverage	Updated the dates and made editorial changes as follows: "1. Any owner that was authorized to discharge under the domestic sewage discharges general permit issued in ~~2006~~ 2011, and who is required to and submits a complete registration statement (or for an individual single family dwelling a combined application) on or before August 1, ~~2011~~ 2016, is authorized to continue to discharge treated domestic sewage under the terms of the ~~2006~~ 2011 general permit until such time as the board either: a. Issues coverage to the owner under this general permit; or b. Notifies the owner that the discharge is not eligible for coverage under this general permit ~~is denied~~. 2. When the owner that was covered under the expiring or expired general permit has violated or is violating the conditions of that permit, the board

			may choose to do any or all of the following: a. Initiate enforcement action based upon the 2011 general permit ~~which has been continued~~; b. Issue a notice of intent to deny coverage under the ~~new~~ reissued general permit. If the general permit coverage is denied, the owner would then be required to cease the ~~activities~~ discharges authorized by the administratively continued coverage under the terms of the 2011 general permit or be subject to enforcement action for operating without a permit;" These dates are updated with each reissued general permit so permittees can discharge legally and safely if the permit reissuance process is delayed.
70.A		Registration Statement	Made editorial changes as follows: "Any owner seeking coverage under this general permit, and who is required to submit a registration statement, shall submit a complete ~~G~~general VPDES ~~P~~permit ~~R~~registration ~~S~~statement in accordance with this ~~chapter~~ section, which shall serve as a notice of intent ~~to be covered~~ for coverage under the ~~g~~General VPDES ~~p~~Permit for ~~d~~Domestic ~~s~~Sewage ~~d~~Discharges of ~~l~~Less ~~t~~Than or ~~e~~Equal to 1,000 ~~g~~Gallons ~~p~~Per ~~d~~Day. For an individual single family dwelling, the owner may submit a VDH combined application in place of the registration statement."
70.A.1&2			Updated the dates and made editorial changes as follows: "1. New ~~facilities~~ treatment works. Any owner proposing a new discharge shall submit a complete registration statement (or for an individual single family dwelling a combined application) to the department at least 60 days prior to the date planned for commencing operation of the treatment works. 2. Existing ~~facilities~~ treatment works. a. Any owner of an existing treatment works covered by an individual VPDES permit who is proposing to be covered by this general permit shall notify the department and submit a complete registration statement (or for an individual single family dwelling a combined application) at least 240 days prior to the expiration date of the individual VPDES permit. b. Any owner of a treatment works that was authorized to discharge under the general permit issued in ~~2006~~ 2011, and who intends to continue coverage under this general permit, is automatically covered by this general permit and is not required to submit a registration statement (or for an individual single family dwelling a combined application) if: (1) The ownership of the treatment works has not changed since the registration statement or

			combined application for coverage under the ~~2006~~ 2011 general permit was submitted, or, if the ownership has changed, a new registration statement (or combined application) or VPDES Change of Ownership form was submitted to the department by the new owner at the time of the title transfer; (2) There has been no change in the design or operation, or both, of the treatment works since the registration statement or combined application for coverage under the ~~2006~~ 2011 general permit was submitted; (3) For treatment works serving individual single family dwellings, the ~~Virginia Department of Health~~ VDH has no objection to the automatic permit coverage renewal for this treatment works based on system performance issues, enforcement issues, or other issues sufficient to the board. If the ~~Virginia Department of Health~~ VDH objects to the automatic renewal for this treatment works, the owner will be notified by the board in writing; and (4) For treatment works serving ~~nonsingle~~ buildings or dwellings other than individual single family dwellings, the board has no objection to the automatic permit coverage renewal for this treatment works based on system performance issues, ~~or~~ enforcement issues, or other issues sufficient to the board. If the board objects to the automatic renewal for this treatment works, the owner will be notified by the board in writing. c. Any owner ~~that~~ of a treatment works that was authorized to discharge under the general permit issued in 2011 who does not qualify for automatic permit coverage renewal shall submit a complete registration statement (or for an individual single family dwelling a combined application) to the department on or before June 2, ~~2011~~ 2016."
70.A.3		Late Notifications	Changed section to "Late Registration Statements" and clarified the text as follows: "~~Late r~~Registration statements ~~will be accepted by the board~~ (or for individual single family dwellings combined applications) for existing treatment works covered under subdivision 2 b of this subsection will be accepted after August 1, 2016, but authorization to discharge will not be retroactive. Owners described in subdivision 2 b of this subsection that submit registration statements (or combined applications) after June 2, 2016, are authorized to discharge under the provisions of 9VAC25-110-60 D (Continuation of permit coverage) if a complete registration statement (or combined application) is submitted before August 2, 2016."

			What this means is that an owner must apply for coverage before August 2, 2016 or they will be discharging without a permit and may be subject to enforcement action.
70.B		Registration Statement	Made editorial changes to B.1.a & b and B.2.a as follows: "1. a. Indicate if the ~~facility~~ building served by the treatment works is an individual single family dwelling. If the ~~facility~~ building is not an individual single family dwelling, describe the ~~facility's~~ use of the building or site served. b. Name and street address of the ~~facility~~ building or site served by the treatment works. 2. a. Name, mailing address, email address (where available), and ~~work and home~~ telephone number~~s~~ of the ~~facility~~ owner of the treatment works. ~~For a dwelling, i~~Indicate if the owner is or will be the occupant of the dwelling or facility served by the treatment works."
	70.B.2.b	Registration Statement	Added B.2.b to ask for a contact name if the owner will not be the occupant of the building or dwelling: " b. If the owner is not or will not be the occupant of the dwelling or facility, provide an alternate contact name, mailing address, email address (where available), and telephone number of the dwelling or facility, if available."
70.B		Registration Statement	Made editorial changes to B.4, 6, 7 & 8 as follows: "4. The amount of discharge from the treatment works, in gallons per day, on a monthly average, and the design flow of the treatment works, in gallons per day. 6. For a proposed treatment works, indicate if there are central sewage facilities available to serve the ~~facility~~ building or site. 7. If the ~~facility~~ treatment works currently has a VPDES permit, provide the permit number. Indicate if the ~~facility~~ treatment works has been built and begun discharging. 8. For the owner of any proposed treatment works or any treatment works that has not previously been issued a VPDES permit: a. A 7.5 minute U.S. Geological Survey (USGS) topographic map or equivalent (e.g., a computer generated map) that indicates the discharge point, the location of the property to be served by the treatment works, and the location of any wells, springs, other water bodies, and any residences within 1/2 mile downstream from the discharge point; b. A site diagram of the existing or proposed ~~sewage~~ treatment works; to include the property boundaries, the location of the ~~facility or dwelling~~

			building or site to be served, the individual sewage treatment units, the receiving water body, and the discharge line location; and…"
70.B.9		Maintenance Contract	Renamed the item to "Operation and Maintenance". In 9.a, removed the detail from the item and specified: "For the owner of a treatment works serving an individual single family dwelling, ~~indicate if a valid~~ operation and maintenance ~~contract has been obtained in accordance with the~~ requirements are specified in the VDH regulations at 12VAC5-640-500." In 9.b, removed the unnecessary detail from the item (it is specified in the permit itself) and clarified that this applies to: "the owner of a treatment works serving a ~~nonsingle~~ building or dwelling other than an individual single family dwelling"
70.B.10			Removed the unnecessary detail from the item (it is specified in the permit itself) and clarified that this applies to: "the owner of a treatment works serving a ~~nonsingle~~ building or dwelling other than an individual single family dwelling"
70.C		Signature Requirements	Clarified that: "The registration statement shall be signed in accordance with ~~the requirements of~~ 9VAC25-31-110 A of the VPDES Permit Regulation."
	70.D		Added an allowance for the Registration to be submitted electronically: "Where To Submit. The registration statement may be delivered to the department by either postal or electronic mail and shall be submitted to the DEQ regional office serving the area where the treatment works is located.
80 Part I		General Permit	Changed the effective and expiration dates to reflect the upcoming permit term.
80 Part I A.1		First Effluent Limits Table	Added footnote (6) to the TRC Final Effluent Instantaneous Maximum limit, and the D.O. Instantaneous Minimum limit. Footnote (6) states: "Does not apply when the receiving stream is an ephemeral stream. "Ephemeral streams" are drainage ways, ditches, hollows, or swales that contain only (a) flowing water during or immediately following periods of rainfall, or (b) water supplied by the discharger. These waterways would normally have no active aquatic community."
80 Part I A.2		Monitoring Data	Changed this to require owners of treatment works serving buildings or dwellings other than individual single family dwellings (i.e., those that report to DEQ) to submit their monitoring results to the Department along with their maintenance logs. This change will assist the Department with compliance with this permit. "~~Reporting of results to DEQ is not required; however, the monitoring~~

			Monitoring results for treatment works serving buildings or dwellings other than individual single family dwellings shall be ~~made available to DEQ personnel upon request~~ submitted to the department on a Discharge Monitoring Report (DMR) no later than the 10th of January following the monitoring period. The monitoring period is January 1 through December 31. A copy of the maintenance log required by Part I D 2 b (4) shall also be submitted with the DMR."
80 Part I B 1		Second Effluent Limits Table	Changed the Total Residual Chlorine (TRC) limit to break out "After contact tank" and "Final effluent" as two separate entries, to be consistent with the way this is presented in the Part I A Effluent Limits table.
80 Part I B.2		Monitoring Data	Changed this to require owners of treatment works serving buildings or dwellings other than individual single family dwellings (i.e., those that report to DEQ) to submit their monitoring results to the Department along with their maintenance logs. This change will assist the Department with compliance with this permit. "~~Reporting of results to DEQ is not required; however, the monitoring~~ Monitoring results for treatment works serving buildings or dwellings other than individual single family dwellings shall be ~~made available to DEQ personnel upon request~~ submitted to the department on a Discharge Monitoring Report (DMR) no later than the 10th of January following the monitoring period. The monitoring period is January 1 through December 31. A copy of the maintenance log required by Part I D 2 b (4) shall also be submitted with the DMR."
	80 Part I C		Added a new limits set for discharges to receiving waters subject to the Policy for the Potomac River Embayments (PPRE) (9VAC25-415). This was done to allow owners of treatment works discharging to these waters to be eligible for coverage under this general permit. Presently these facilities must be covered under an individual permit. Monitoring for these dischargers is required quarterly and the limits are based on the PPRE limits and on limits developed for existing individual permits in the PPRE area. Monitoring results for treatment works serving individual single family dwellings in this area are to be submitted to both DEQ and VDH.
80 Part I C	80 Part I D	Special Conditions	Renumbered to accommodate the addition of the new limit set above.
80 Part I D.2		Maintenance Contract	Renamed this special condition to "Operation and Maintenance". In D.2.a, removed the detail from the special condition and specified: "~~The~~ Operation and

			maintenance requirements for treatment works serving individual single family dwellings are specified in the Virginia Department of Health regulations at 12VAC5-640-500 ~~require maintenance contracts for treatment works serving individual single family dwellings~~." In D.2.b, clarified that this applies to: "Treatment works serving ~~nonsingle~~ buildings or dwellings other than an individual single family dwellings." In D.2.b(2), changed the requirement for the owner of a proposed treatment works to submit a copy of a valid maintenance contract to have the owner submit a certification that they have a valid maintenance contract. In D.2.b(3)(b), added: "… the owner shall begin emergency pump and haul of all sewage generated from the facility or dwelling or otherwise ensure that no discharge occurs if full and complete repairs cannot be accomplished within 48 hours;" In D.2.b(3)(c), specified that the contract provider log shall be maintained "at the treatment works" Deleted D.2.b(3)(e) that the maintenance contract shall be valid for a minimum of 24 months of consecutive coverage. The section already requires that a maintenance contract be kept in force during the permit term, so this requirement was unnecessary.
	80 Part I D.2.b(4)		Added a requirement for the permittee to keep a maintenance log: "(4) The permittee shall keep a log of all maintenance performed on the treatment works including, but not limited to, the following: (a) The date and amount of disinfection chemicals added to the chlorinator. (b) If dechlorination is used, the date and amount of any dechlorination chemicals that are added. (c) The date and time of equipment failure(s) and the date and time the equipment was restored to service. (d) The date and approximate volume of sludge removed. (e) Dated receipts for chemicals purchased, equipment purchased, and maintenance performed."
80 Part I D.3		Operation and Maintenance Plan	Made editorial changes to Part I D.3: "3. Operation and maintenance plan. The owner of any treatment works serving a ~~nonsingle~~ building or dwelling other than an individual single family dwelling may request an exception to the maintenance contract requirement by submitting an operation and maintenance plan to the board for review and approval. At a minimum, the operation and maintenance plan shall contain the following information:

			3.b(1) The date and amount of disinfection chemicals added to the chlorinator (if applicable). 3.d. An effluent monitoring plan to conform with the requirements of Part I A, Part I B or Part I ~~B~~ C, as appropriate, including all sample collection, preservation, and analysis procedures. Note: ~~The~~ Discharges from the treatment works should be sampled during normal discharging operations or normal discharging conditions (i.e., operations that are normal for that ~~facility~~ treatment works). The owner or maintenance provider should not force a discharge in order to collect a sample."
80 Part I D.4		Compliance Recordkeeping	Added quantification levels (QL) for $cBOD_5$ (2 mg/L), Ammonia as N (0.20 mg/L), and Total Phosphorus (0.10 mg/L). These were added parameters under the PPRE limit set (Part I C), so the QLs were needed.
	80 Part II A.4	Monitoring	Added A 4 as follows: "Samples taken as required by this permit shall be analyzed in accordance with 1VAC30-45 (Certification for Noncommercial Environmental Laboratories) or 1VAC30-46 (Accreditation for Commercial Environmental Laboratories)." This is a new regulatory requirement effective January 1, 2012, and is being added to all general permits as they are reissued.
80 Part II I NOTE		Reports of Noncompliance	Added an online allowance for immediate (24-hour) noncompliance reporting, and a link to the web page.
80 Part II M		Duty to Reapply	Made date changes and editorial changes: "M.1. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, and the permittee does not qualify for automatic permit coverage renewal, the permittee shall submit a new registration statement (or for an individual single family dwelling a VDH combined application) at least 60 days before the expiration date of the existing permit, unless permission for a later date has been granted by the board. The board shall not grant permission for registration statements (or combined applications) to be submitted later than the expiration date of the existing permit. M.2. A permittee qualifies for automatic permit coverage renewal and is not required to submit a registration statement (or for an individual single family dwelling a VDH combined application) if: M.2.a. The ownership of the treatment works has not changed since this general permit went into effect on August 2, ~~2011~~2016, or, if the ownership has changed, a new registration statement (or for an individual single family dwelling a VDH combined

			application) or VPDES Change of Ownership form was submitted to the department by the new owner at the time of the title transfer; M.2.b. There has been no change in the design or operation, or both, of the treatment works since this general permit went into effect on August 2, ~~2011~~2016; M.2.d. For treatment works serving ~~nonsingle~~ buildings or dwellings other than single family dwellings, the board has no objection to the automatic permit coverage renewal for this treatment works based on system performance issues, ~~or~~ enforcement issues, or other issues sufficient to the board. If the board objects to the automatic renewal for this treatment works, the permittee will be notified by the board in writing. M.3. Any permittee that does not qualify for automatic permit coverage renewal shall submit a new registration statement (or for an individual single family dwelling a VDH combined application) in accordance with Part II M 1."
80 Part II V		Upset	Clarified that the term "upset" is defined in 9VAC25-31-10 (the VPDES Permit Regulation).
80 Part II Y		Transfer of Permits	Revised this subsection so that the Board may waive the automatic transfer timing requirement (i.e., 30 days in advance of proposed transfer). Permittees are rarely able to meet this requirement and the staff thinks they need some flexibility with this. Also, the references to modifications and revocations and reissuances have been removed because these events are not appropriate for coverage under general permits. "~~1.~~ Permits are not transferable to any person except after notice to the department. ~~Except as provided in Part II Y 2, a permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued, or a minor modification made, to identify the new permittee and incorporate such other requirements as may be necessary under the State Water Control Law and the Clean Water Act.~~ ~~2. As an alternative to transfers under Part II Y 1,~~ Coverage under this permit may be automatically transferred to a new permittee if: ~~a~~1. The current permittee notifies the department within 30 days of the transfer of the title to the facility or property, unless permission for a later date has been granted by the board; ~~b~~2. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and ~~c~~3. The board does not notify the existing permittee

			and the proposed new permittee of its intent to ~~modify or revoke and reissue~~ deny the new permittee coverage under the permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in Part II Y 2 ~~b~~. "

Significant Noncompliers Report: No new facilities reported to EPA on the Quarter Noncompliance Report for the quarter ending December 31, 2014.

Fairfax County Board of Supervisors, Fairfax County - Consent Special Order w/ Civil Charges: The Fairfax County Board of Supervisors ("County") owns a portion of the sanitary sewer collection system that feeds into the Alexandria Renew Enterprises Water Resources Recovery Facility. The collection system is maintained by Fairfax County Public Works and Environmental Services ("Fairfax"). On October 14, 2013, Fairfax experienced a sanitary sewer overflow ("SSO") into Holmes Run of approximately 250,000 gallons of sewage resulting in a fish kill. According to information received by the Virginia Department of Game and Inland Fisheries (VDGIF), this reach of stream had recently been stocked with close to 1000 trout. On October 21, 2013, Fairfax submitted an incident report to DEQ attributing the cause of the SSO to high flows in the sewer line from flooding upstream combined with a blockage in the line. After restoring flow, Fairfax discovered that a portion of the sewer line had collapsed requiring the installation of a bypass. Fairfax has since replaced this line with a larger pipe with work completed in December 2013. On October 17, 2013, Fairfax notified DEQ of a SSO that occurred into an unnamed tributary to Hunting Creek. The cause of the SSO was a tree that was outside of Fairfax's easement that fell at the tributary crossing breaking a sanitary sewer pipe. On October 18, 2013, Fairfax replaced the piping and also cleared the surrounding area of any other trees that could potentially affect the piping. Fairfax estimated the SSO at approximately 17,800 gallons of sewage. On April 30, 2014, Fairfax provided notification to DEQ of an approximately 300,000 to 400,000 gallon discharge of wastewater to Holmes Run and Lake Barcroft. In Fairfax's writing description of the event it stated that on April 29, 2014, Fairfax found a leak in a joint connection of new piping it had just installed at the Barcroft pump station force main. On April 30, 2014, the area experienced a large rain event. Due to the previously discovered leak, Fairfax was unable to use the pump station for the excess flows and had to bring portable pumps and a tanker truck to use in conjunction with the temporary bypass already in place. The portable pumps were unable to carry the excess flow resulting in the SSO. The leak was repaired on May 5, 2014. On May 16, 2014, Fairfax reported a discharge of 3,240 gallons of wastewater from a manhole into Holmes Run leading to Lake Barcroft. The overflow was attributed to pumps being incorrectly locked out when preparing for heavy rains predicted for May 15th. Employees were onsite at the time and were able to quickly switch the pumps. On May 19, 2014, Fairfax reported a discharge of 6,404 gallons of wastewater into Lake Barcroft stemming from lost communication at the Barcroft Pump Station due to issues with a Verizon Communication line. Verizon was unable to correct the issues and advised that it was unable to work over the weekend and would come back the following Monday. Fairfax employees verified operation of the station throughout the weekend and discovered the overflow the morning of May 19th. On June 16, 2014, Fairfax reported a discharge of approximately 8,000 gallons of wastewater of which 6,000 gallons reached Holmes Run leading to Lake Barcroft. Fairfax discovered that a gasket in the area of piping that was repaired after the April 30th discharge had failed. Fairfax hired an engineering firm to investigate and they determined that despite concrete being in place at the bends, the pressure in the pipe likely caused the pipe to move leading to the failing gasket. Fairfax installed additional coupling restraints and then as an extra precaution, slip-lined the interior circumference of piping.

DISCUSSION:

Fairfax has implemented repairs of the piping that led to the overflows. Additionally, Fairfax has installed additional equipment including a cell based SCADA system. Accordingly, the Order does not require additional measures to correct the items leading to the SSOs. The Order does require Fairfax to submit to DEQ for review and comment notification procedures to be used after occurrences of SSOs that ensure appropriate public notification and include requirements for suitable signage depending on the circumstances of the SSO event.

CIVIL CHARGES/SUPPLEMENTAL ENVIRONMENTAL PROJECT:

A civil charge of $27,300 is being assessed for the SSOs. This was based on a moderate to serious potential for harm. One of the SSOs did result in a fish kill thereby removing a special recreational use. Some of the SSOs did occur during heavy rainfall events which mitigates the potential for harm. Of the $27,300 charge, 90% will be used towards a Supplemental Environmental Project (SEP). For the SEP, Fairfax will donate the money to the Virginia Department of

Game and Inland Fisheries (VDGIF) to use for restocking trout in Holmes Run. The SEP meets the statutory criteria as it will benefit the geographic region where the SSOs occurred and will support a recreational use of the stream.

PUBLIC COMMENT

The consent order was signed on February 20, 2015. A public notice for this proposed consent order was run on March 23, 2015, and April 23, 2015 in the *Washington Times*, and in the *Virginia Register* on March 23, 2015, and May 18, 2015, and on the Department's website. The public comment period closed on May 28, 2015. The following outlines the comments received on the proposed Order and staff response. Those comments that were similar in nature were combined where it was possible without losing specifics.

1. Comment: The April 30th sanitary sewer overflow (SSO) should have been charged in a Notice of Violation (NOV).

DEQ Response:

DEQ did decide not to issue a NOV (due to heavy rainfall contributing to the SSO). Nonetheless, DEQ did include the SSO in the Order.

2. Comment: The Order did not acknowledge or address Fairfax's use of an undersized bypass pipe or temporary pump.

DEQ Response:

DEQ did investigate this concern and according to Fairfax the pump sizes were based on historical flow data and were twice the size that normally would be required. DEQ has no other evidence to suggest that Fairfax did not employ good engineering principles.

3. Comment: The Order should state that the cause of the April 30, 2014, SSO was the contractor who conducted testing of its work during heavy rains.

DEQ Response:

According to the evidence presented to DEQ, the force main was tested on April 29th. It was because of this testing that a leak was discovered. The SSO itself was caused by heavy rains which resulted in excess flows. Due to the leak, Fairfax was unable to use the pump station for excess flows and had to use portable pumps and a temporary bypass already in place.

4. Comment: The Order should require Fairfax to review its contract management procedures and require the County to retain an independent contractor to oversee quality control.

DEQ Response:

DEQ holds Fairfax liable for the SSOs not the contractors completing the work. Historically, DEQ has a high level of confidence in Fairfax's Collection System Management and Maintenance Program (CMOM).

Comment: The SEP should compensate the Lake Barcroft Association and its citizens for the loss of lake use and specifically reimburse LBA for the emergency notification company that LBA employed.

DEQ Response:

It is the responsibility of the party subject to the Order to submit a SEP if they so choose. The SEP proposed by Fairfax meets the statutory requirements, in particular environmental restoration, and in reviewing and approving the SEP DEQ followed those procedures and protocols set forth in Enforcement Guidance Memorandum No. 3-2006.

5. Comment: The Consent Order should include specific guidelines for notice to the public of SSOs.

DEQ Response:

Those specifics will be part of the document required by the Order. Fairfax already has procedures in place which comply with regulatory requirements for notification.

6. Comment: There should be an environmental assessment of the damage from the SSOs.

DEQ Response:

Fairfax has completed extensive testing of Lake Barcroft both during and after the SSO events. Based on this data, DEQ does not believe further assessment is necessary.

7. Comment: There should be a review of the alarm systems and the pump stations should shut down in the case of an overflow.

DEQ Response:

The pump stations are designed in conformance with the sewage collection and treatment regulations (9 VAC 25-790).

8. Comment: The Order should require Fairfax to install sewage containment prevention systems prior to beginning work.

DEQ Response:

The Order addresses past events. Fairfax does conduct repairs and upgrades to its system daily with no issues. DEQ has confidence in Fairfax's CMOM.

9. Comment: A review of the "combined sewer system" around the lake should be performed to check for leaks.

DEQ Response:
The collection system in the vicinity of Lake Barcroft is not a combined sewer system. Fairfax does have a model Capital Improvement Program in which it evaluates and identifies areas of its system in need of repair or upgrades. This program is what led Fairfax to identify the pump stations and piping in the Lake Barcroft area for replacement. Fairfax has completed work on the piping and pump stations that led to the SSOs. Any further assessment is best handled by Fairfax and not through an enforcement mechanism.

10. Comment: The Authority should be required to have a spill response plan for sewer overflows.

DEQ Response:
The comment is outside the scope of the Order. Fairfax's CMOM does address how to handle SSOs.

11. Comment: There should be a fine for failure to notify DEQ and the Health Department of the SSOs.

DEQ Response:
DEQ has no information to suggest that Fairfax did not comply with notification requirements.

Duke Energy Carolinas, LLC, Eden, North Carolina - Consent Special Order w/ Civil Charge:
BACKGROUND: On February 2, 2014, a coal ash and water mixture was released from a buried 48-inch stormwater pipe, at Duke's Dan River Combined Cycle Station north of Eden, North Carolina. The cause of the release was the sudden collapse of the 48-inch pipe, which runs beneath the Station's primary coal ash storage impoundment. Coal ash and ash pond water flowed into the pipe and discharged to the Dan River. The estimated volume of ash released was between 30,000 and 39,000 tons. In addition, approximately 24 million to 27 million gallons of ash impoundment water was released. The release of coal ash extended approximately 80 miles down the Dan River, from the Station to the Kerr Reservoir. Sampling results for surface water, taken at the time of the release and thereafter, revealed levels of arsenic, lead, aluminum, iron, beryllium, copper, boron, zinc, nitrate nitrogen and manganese which exceed EPA's risk-based ecological risk screening levels. Iron levels exceeded the Board's Water Quality Standard for iron. Sampling results for the ash material indicated the presence of arsenic, beryllium, cadmium, chromium, copper, lead, mercury, nickel, manganese, selenium, iron and zinc, all of which (with the exception of iron) have been listed by EPA as hazardous substances. The U.S. Fish and Wildlife Service advised that, following the release, ash deposits from five inches deep to trace amounts occurred at various locations along the Dan River from the Station to Kerr Reservoir. In addition, EPA identified that there were several larger deposits of ash in the Dan River, including an approximately 2,500 ton deposit above the Schoolfield Dam in Danville. (The Schoolfield Dam deposit has since been removed by Duke.) Immediately following the release the Virginia Department of Health issued an advisory warning against contact with coal ash in Dan River water or sediments. In addition, during this period, water treatment plants on the Dan were forced to implement enhanced treatment methods to remove coal ash fines from the river water, prior to distributing the water to customers. Duke has agreed to reimburse Commonwealth agencies and localities, including DEQ, for response costs. In addition, Duke is currently participating in a natural resource damage assessment process with the Department of Environmental Quality, the Department of the Interior, North Carolina Department of Environment and Natural Resources, and other stakeholders to determine natural resource injury and to identify projects addressing that injury.
DISCUSSION: The order requires payment of $2,500,000 in settlement of the violations cited in the order, of which $250,000 is to be paid within 30 days of the effective date of the order. The civil charge does not include an economic benefit component, as any cost savings which Duke may have realized in the maintenance of the 48-inch pipe were outweighed by the remediation and corrective action costs incurred as a result of the pipe failure. The remaining $2,250,000 is to fund certain Virginia projects which, generally, are intended to either improve water quality or enhance beneficial uses of the Dan River for affected Virginia communities.
PUBLIC COMMENT: The consent order was signed on March 27, 2015 by Duke. Public notices for the order were run on April 8, 2015 in The Gazette-Virginian and The Mecklenburg Sun and on April 9, 2015 in The Danville Register & Bee and The South Boston News and Record, as well as in the Virginia Register on April 20, 2015 and on the Department's website. The public comment period ended on May 20, 2015. Public comments were received regarding the order and a summary of the comments follows. Responses to the comments will be provided at a later date.
1 The $2.5 million dollar settlement figure is insufficient to address cleanup costs and mitigation of the effects of the spill on water quality. The Virginia Projects in Appendix A of the Order do not address cleanup and/or mitigation of spill effects.
2 The information contained on the Department's website about the Kingston, Tennessee Plant spill does not appear to be accurate.
3 The amount of the penalty should be more than the cost of environmental restoration.
4 Relative to the cost of the short term economic and environmental impacts of the spill, i.e. $295 million, the amount of the $2.5 million settlement figure is too small.

5 The investment of $2,250,000 in Virginia Projects is insufficient to compensate local governments impacted by the negative publicity related to the spill, the adverse effect that the spill had on public opinion regarding the attractiveness of Dan River and the impact on recreational and tourism businesses.
6 The Order should require a substantially larger settlement in Order to ensure that all the projects mentioned in Appendix A are performed, i.e. it should be $50 million. As a comparison, adjusting for inflation, the 1977 kepone fine of $13.2 million would be $51.13 in today's dollars.
7 Duke should not be able to satisfy its obligations under the Order with promises already made to upgrade the amenities at Abreu-Grogan Park.
8 Duke should not be allowed under the provisions of the Order to unilaterally determine which Virginia Projects will be performed.
9 The Order should clarify that payments by Duke in the nature of restitution, damages or penalties may not be used to offset the $2,250,000 amount.
10 The $2.5 million settlement figure is too low compared to the criminal case settlement of $102 million.
11 Any funds appropriated by Duke Energy pursuant to its Water Resources Fund should be separate and distinct from the $2,250,000 settlement figure.
12 The $2.5 million settlement figure is too low given the fact that Duke has cleaned up only 8% of the volume of ash spilled, that Virginia Beach and Norfolk declined to use Lake Gaston as a drinking water source for three months after the spill, that North Carolina did not withdraw its warning about touching Dan river water until July 2014, that farmers expressed concerns about irrigating crops and feeding cattle with contaminated river water and given the toxic nature of coal ash.
13 The Order should provide a definition for the term "Virginia Stakeholders" and should clarify how the Stakeholders will participate in the project selection process.
14 The Order should include a list of baseline requirements that each project must meet before it will be awarded funds from the settlement. The public should have an opportunity to view and comment on those baseline requirements prior to final approval of the Order.
15 The Department should base its penalties on EPA's $37,500 per violation per day cap and should use EPA's penalty calculation factors.
16 An independent third party should oversee the process of using the settlement funds.
17 The $2.5 million settlement figure is too low compared to the 2014 salary of Duke Energy's CEO ($8.3 million).
18 Appendix A of the Order includes a project to provide information to the public that the coal ash spill did not adversely affect agriculture, livestock or wildlife. Including this project could impede clean-up efforts in that surface water samples reveal pollutants that exceed EPA screening levels, wildlife mortality is attributable to the spill, and constituents of the ash have been listed by EPA as hazardous substances.
19 SEP guidance was not followed in this case.