

**TENTATIVE AGENDA  
STATE WATER CONTROL BOARD MEETING  
WEDNESDAY, JULY 19, 2017**

**DEPARTMENT OF ENVIRONMENTAL QUALITY  
PIEDMONT REGIONAL OFFICE  
4949-A COX ROAD, TRAINING ROOM  
GLEN ALLEN, VA 23060**

**CONVENE – 9:30 A.M.**

			<b>TAB</b>
<b>I. Minutes</b> (May 17, 2017)			A
<b>II. Permit - Virginia Water Protection Permit</b> Legacy of Poquoson (Poquoson)	Parolari		B
<b>III. Regulation – Final</b> General VPDES Permit for Vehicle Wash Facilities and Laundry Facilities [9VAC 25-194]	Daub		C
<b>IV. Regulation – Final Exempt</b> Virginia Stormwater Management Regulation Amendment (9VAC25-870) Water Quality Management Planning Regulation Amendment (9VAC25-720-60C) Underground Storage Tanks: Technical Standards and Corrective Action Requirements (9VAC25-580) and Petroleum Underground Storage Tank Financial Responsibility Requirements (9VAC25-590) - Amendment	Cunningham Cunningham Lamp		D E F
<b>V. Regulation – Fast Track</b> Public Participation Guidelines (9VAC25-11)	Porterfield		G
<b>VI. Regulation – Proposed</b> General VPDES Permit for Discharges from Petroleum Contaminated Sites, Groundwater Remediation and Hydrostatic Tests [9VAC25- 120] General VPDES Permit for Non-Contact Cooling Water Discharges of 50,000 Gallons per Day or Less [9VAC25-196] General VPDES Permit for Potable Water Treatment Plants [9VAC25-860] Certification of Nonpoint Source Nutrient Credits [9VAC 25-900]	Richardson Richardson Daub Harris		H I J K
<b>VII. Total Maximum Daily Loads (TMDLs)</b> Four TMDL reports (E. coli TMDL Development for the James River And Tributaries near Lynchburg; Bacteria TMDL Development for Lower Chickahominy River Watershed Located in Charles City, James City, and New Kent Counties; Benthic TMDL Development for the Kits Creek Watershed; and Bacteria MDLs for Nassawadox Creek and Tributaries and Westerhouse Creek in Northampton County; and Water Quality Management Planning Regulation (9VAC25-720) Amendments (Fourteen new and nine revised WLAs)	Richards		L
<b>VIII. Significant Noncompliance Report</b>	O’Connell		M

**IX. Consent Special Orders - VPDES**  
Tyson Farms, Inc. (Accomack County) O'Connell N

**X. Consent Special Orders – VWP**  
Spotsylvania Courthouse Village II, LLC (Spotsylvania County) Crowell O

**REMAINING ITEMS NOT BEFORE 1:00 P.M.**

**XI. Division Director's Report** Davenport

**XII. Public Forum**

**XIII. Other Business**

Future Meetings (Holding October 16, 17 & 18 and November 1 and 2;  
Confirming December 11)

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 actions 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; e-mail: [cindy.berndt@deq.virginia.gov](mailto:cindy.berndt@deq.virginia.gov).

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**Issuance of Virginia Water Protection (VWP) Permit No. 15-0620, Legacy of Poquoson, Poquoson, Virginia:** On May 5, 2015, the Big Woods Development Company, LLC (applicant) submitted a Joint Permit Application (JPA) seeking an Individual VWP Permit authorization for surface water and wetland impacts under the Code of Virginia §62.1-44.15:20 and Virginia Administrative Code, 9VAC25-210-10, et seq. At the July 19, 2016 meeting of the State Water Control Board, the Board will consider the issuance of Virginia Water Protection (VWP) Permit 15-0620 to The Big Woods Development Company, LLC. This matter is before the Board due to public comment and a public hearing held regarding issuance of this proposed permit. Procedural Rule No. 1 (9VAC25-230) calls for the Board to make a final permitting decision following the close of a formal hearing. This memo will briefly explain the projects purpose, location and project scope; the proposed wetland impacts and compensatory mitigation; and the avoidance and minimization measures taken to avoid surface water impacts, a summary of the draft permit issuance, public notice and comments received. Additionally a summary of the public hearing and comments, a summary of the comments received and responses provided and the staff findings and recommendations.

**Project Purpose:** The applicant proposes to construct a mixed-use development with associated infrastructure known as “The Legacy of Poquoson,” on an approximately 100-acre site commonly referred to as “the Big Woods” within Poquoson. As described in the JPA, the purpose of the project is to provide a mixed-use development that stimulates local economic development, increases the number of school age children in the project area, is the focal point for the entrance to Poquoson, and provides alternative housing and retail choices within the City.

**Project Location:** The Big Woods site is located on the south side of Victory Boulevard approximately 0.1 mile west of the intersection of Victory Boulevard and City Hall Avenue. The majority of the 100-acre project site is 26.59 acres of non-tidal wetlands, 99% of which are forested. The project site is bifurcated by a man-made channel known as Oxford Run.

Project Scope: The proposed project includes 238 single-family homes, 107 townhomes, 176 apartments, 11 cottages, 40,000 square feet of retail space, two clubhouses with pools and associated infrastructure and utilities. The development will be accessed from Victory Boulevard, which will be slightly widened to accommodate turn lanes, which align with the two proposed access roads.

*The U.S. Army Corps of Engineers (Corps) has issued a preliminary permit for the same project scope under Section 404 of the Clean Water Act; however, they lack authority over the 1.87 acres isolated wetland impacts so those areas are not considered impacts in the Corps permit action.*

Proposed Wetland Impacts and Compensatory Mitigation: As currently proposed, the project will permanently impact 9.87 acres of surface waters at 32 separate locations throughout the site, 14 of which are less than 1/10 acre in size. These impacts consist of 7.70 acres of non-tidal forested wetlands, 1.87 acres of isolated forested wetlands, 0.26 acres of emergent wetlands, and 0.04 acres of open water.

Mitigation will be provided at 2:1 ratio for forested wetlands impacts and a 1:1 ratio for emergent wetland impacts through the purchase of 9.9 wetland credits from the Middle Peninsula Environmental Bank in Gloucester County, Virginia, and 9.5 wetland credits from the Virginia Aquatic Resources Trust Fund. No mitigation was required for the open water impacts associated with Oxford Run.

Avoidance and Minimization Measures: As part of the off-site project alternatives analysis, the permittee selected 10 sites within the City of Poquoson and, at the request of the Corps, one site within York County (11 total) for evaluation. Each site was evaluated on the following criteria, a 40-acre minimum size, access to public roadways, zoning, floodplains, Chesapeake Bay Preservation Act (CBPA) impacts, extent of on-site wetlands, and the ability to provide a focal point for the entrance to the City of Poquoson. Upon analysis, all of the alternative sites either failed to meet the project purpose, were unavailable, or resulted in greater wetland impacts. The proposed project site was the only one that met the project purpose.

As proposed, the project avoids 16.87 acres of non-tidal forested wetlands in three areas located on the western side of the site, which results in the avoidance of approximately 63% of the on-site wetland areas. Two of the three avoided wetland areas are also the components of the largest on-site contiguous forested wetland areas. The three avoided wetland areas are separated by forested uplands; however, all are located within a 22.6-acre upland/wetland open space, which will be demarcated by signs placed every 100 feet identifying it as a conservation area.

Specific measures that were taken during the project design include the use of a bridge within the tidal Resource Protection Area (RPA) of Oxford Run, which eliminated road crossing impacts; the lots for the single family homes are the minimum size required; and the apartment buildings are multi-story which reduces their footprint. Additionally, the number of proposed apartments was reduced from 200 to 176 which meant 54 less parking spaces were required. A portion of the proposed primary access road, Legacy Boulevard, is a single-loaded street, meaning that homes are only proposed on one side. The proposed single-loaded configuration eliminates 15 single-family lots that would have impacted wetlands.

Draft Permit, Public Notice, and Comments: The draft permit package for the project was sent to the applicant on December 29, 2016. The public notice was publicized in The Daily Press on January 4, 2017. The 30-day public comment period was concluded at the close of business on February 3, 2017. Notification of the draft permit, the public comment period, the public hearing, and copies of the public notice were sent to the locality in which activities are proposed. During the draft permit public comment period DEQ received 70 written responses. Six of these comments were in support of the project while 64 were opposed. Of those in opposition, 36 consisted of individually submitted form letters; each signed and dated by a different individual. A total of 63 requested a public hearing be held by DEQ.

Public Hearing and Comments: The notice of intent to hold a joint Coastal Zone Management Program and VWP public hearing was publicized in The Daily Press on March 22, 2017. The 45-day public hearing comment period was concluded at the close of business on May 17, 2017. Ms. Heather Wood of the State Water Control Board presided over the public hearing which was held on May 2, 2017. During the public hearing, 32 individuals provided verbal comments of which 15 were in favor of the project and 17 were opposed.

During the 45-day public hearing comment period DEQ received 98 written responses, 11 of which were from individuals who also spoke at the public hearing. In all, 116 individuals provided written and/or verbal comments during the public comment period and of those, 27 were in favor of the project, and 89 were opposed. Of the comments in opposition, 60 consisted of individually submitted form letters; each signed and dated by a different individual.

#### **Poquoson Summary of Public Comments and DEQ Staff Responses**

1. *Eighty comments were received regarding increased flooding downstream and within adjacent areas, excessive stormwater runoff due to extensive fill, increased sedimentation and water pollution (excess nutrients) within Oxford Run, the Back River, and the Chesapeake Bay. One commenter expressed concern regarding the amount and type of fill required to prepare the site for development. Additionally, commenters expressed concern regarding the project scope inhibiting Poquoson's ability to respond to sea level rise.*

#### *General Discussion*

The VWP permit requires the following:

- Protection of instream beneficial uses (including fish and wildlife habitat)
- All construction activities shall be accomplished in a manner that minimizes surface water and downstream impacts from construction and waste materials
- All fill place within surface waters (including wetlands) shall be free of contaminants in accordance with all applicable laws and regulations
- DEQ shall be notified within 24 hours or as soon as possible on the next business day when potentially threatening conditions are encountered regarding debris removal and/or potentially toxic substances.
- Virginia Water Quality Standards shall not be violated as a result of the project activities.

The amount of fill required for the project is unknown as it depends on soil type, size and type of proposed structure, etc. Final elevations will be established during development of the final site design submitted for local approval. However, all activities associated with fill will be required to adhere to all VWP and required stormwater permits.

It is true that wetland areas serve to help remove nutrients and reduce flooding associated with stormwater runoff. The same can be said for forested upland areas and other undisturbed vegetated areas. However, the evaluation of the actual impacts disturbing these areas as a result of any given development proposal are appropriately addressed at the local government level. The City of Poquoson operates a Virginia Stormwater Management Program (VSMP) per §62.1-44.15:27 of the Stormwater Management Act and is therefore delegated authority for private and public projects. As such the City is required to review and approve a project's stormwater management plan consistent with the Virginia Stormwater Management Act and Regulations (VSWMA&R). The VSWMA&R require that projects maintain after-development runoff rate of flow and characteristics that replicate, as nearly as practicable, the existing predevelopment runoff characteristics and site hydrology, or improve upon the contributing share of the existing predevelopment runoff characteristics and site hydrology if stream channel erosion or localized flooding is an existing predevelopment condition. This means that the developer not only cannot cause additional flooding issues as a result of development activities; they must actually make improvements to mitigate flooding in areas that do experience localized flooding. As proposed, the Legacy of Poquoson project incorporates six stormwater retention ponds. During the JPA process, DEQ does request information on required stormwater measures to assist staff in assessing the need for any proposed wetland impacts. In this case, DEQ specifically requested that the project plan titled "Exhibit-Wetland Impact Areas, Legacy of Poquoson," depict the location and approximate size of the proposed stormwater retention ponds, and the location of the proposed stormwater outfalls within Oxford Run. Per the applicant, the proposed stormwater measures are for on-site development only, and that no off-site stormwater will be directed to the proposed ponds.

#### *Sea Level Rise*

DEQ does not have the ability or regulatory authority to implement the requirements of the VWP program based on future conditions that may exist as a result of anticipated or unanticipated changes in sea level.

2. *Seventy eight comments were received expressing concerns regarding the avoidance and minimization of wetland impacts to the maximum extent practicable, that wetland impacts were excessive, and that the Clean Water Act (CWA) is not being properly enforced. Additionally, comments were received regarding wetland impacts A2 and A6 with respect to Legacy Boulevard, and that grass buffer strips for stormwater management will encroach on avoided wetlands.*

#### *General Discussion*

Per 9VAC25-210-10, practicable is defined as "available and capable of being done after taking into consideration cost, existing technology and logistics in light of overall project purposes." During the application review process, the avoidance and minimization of wetland impacts was evaluated using those criteria.

To ensure that avoidance and minimization of wetlands to the maximum extent practicable occurred, the applicant submitted an Off-site Alternative Analysis which looked at 11 other project sites, 10 within the City of Poquoson and 1

within York County. It was determined that the alternative sites would either result in a substantial increase in wetland impacts, were unavailable or did not meet the project purpose.

Typically, larger contiguous on-site wetland areas avoided during construction are considered more readily able to retain their existing functions and values post construction. Conversely, small, scattered, non-contiguous or isolated wetland areas surrounded by development are considered at risk because there is a greater chance these areas will lose their existing functions and values over time. The proposed project site contains 32 separate wetland areas of which 18 are considered isolated. Of the 18 isolated wetlands, 14 are less than 1/10th-acre in size. Given the location of these 14 wetlands (0.55 acres cumulatively) within the project site, even if the permittee had tried to avoid them by building around them, we believe the development would have eliminated their wetland functions and values. Similarly, the four isolated wetlands over 1/10th acre (totaling 1.32 acres) are either centrally located within large upland areas, or are long linear features. As with the smaller areas mentioned above, avoiding these small wetlands and surrounding them with development would more than likely eliminate their existing functions and values. As such, even if these areas were presented as avoided and surrounded by development, DEQ would have considered them to be impacted and required the applicant to provide compensatory mitigation.

Of the non-isolated wetlands, five of the impact areas are within drainage features containing emergent wetlands. Four of these are within Oxford Run, a man-made channel with the wetland areas regularly maintained, and the drainage ditch adjacent to and south of Victory Boulevard.

Two of the wetland impacts, B2 and E, are linear features running east/west on the northern portion of the site. Their location at the front of the site would require them to be bifurcated to effectively access buildable uplands and/or they would be surrounded by development. Bifurcation would substantially reduce the existing wetlands functions and values. Surrounding them with development would isolate any remaining wetlands associated with these features. Additionally, avoiding both areas entirely would remove approximately 38 townhomes, two single family homes, one apartment building and the entrance roads from the project scope. DEQ staff did not consider it practicable to avoid these wetland areas.

In order to ensure that impacts to on-site surface waters (including wetlands) are avoided and minimized to the maximum extent practicable, the permittee must describe what specific measures were taken in designing the project to accomplish that. The costs of the measures relative to the project scope are also considered in determining the avoidance and minimization of surface waters.

Specific measures that were taken during the project design include the use of a bridge within the tidal portion (RPA) of Oxford Run, which eliminated impacts associated with that road crossing. The lots for the single family homes are the minimum size required, and the apartment buildings are multi-story which reduce the project's footprint. Additionally, the number of proposed apartments was reduced from 200 to 176 which meant 54 less parking spaces were required. Within the vicinity of avoided wetland A1, Legacy Boulevard is a single-loaded street, meaning that homes are only proposed on one side. This configuration eliminates 15 single family lots that would have impacted wetlands.

As proposed, the project avoids 16.87 acres of non-tidal forested wetlands in three areas located on the western side of the site. This results in the avoidance of approximately 63% of the on-site wetland areas. Two of the three avoided wetland areas are also the components of the largest on-site contiguous forested wetland areas. Area A1 and Area B1 are approximately 15 acres and 1.8 acres in size respectively. A wetland function and values assessment determined that these were the highest quality wetlands on the site. While Area WI is a small emergent wetland that is approximately 0.11 acres in size, it is contained within a drainage feature ensuring its hydrology. The three avoided wetland areas are separated by forested uplands; however, all are located within a 22.6 acre upland/wetland open space, which will be demarcated by signs placed every 100 feet identifying it as a conservation area.

#### *The Clean Water Act*

The proposed project scope was evaluated by the U.S. Army Corps of Engineers (Corps) under Section 404 of the Clean Water Act. During their application review process they coordinated with the Environmental Protection Agency (EPA), Fish and Wildlife Service (FWS), and the Department of Historic Resources (DHR). After receiving comments from these agencies and completing their permit process, the Corps issued a preliminary permit for the same project scope that is currently under review by DEQ.

The proposed project scope was evaluated by the DEQ VWP Program under Section 401 of Clean Water Act. During the VWP application review process, DEQ coordinated with the Virginia Department of Game and Inland Fisheries (DGIF), Virginia Department of Conservation and Recreation (DCR), Virginia Marine Resources Commission (VMRC) and Virginia Department of Health (VDH) to determine if the project would potentially impact threatened and endangered

plants, insects, animal species and/or public health. No determinations of impacts to State protected species or comments in opposition were received from these agencies as a result of this coordination.

It is staff's opinion that the issuance of this permit is in compliance with the Clean Water Act.

#### *Wetland A2*

Wetland Impact A2 is a 3.37-acre forested wetland impact centrally located on the site. This impact is required to build Legacy Boulevard and access a substantial portion of uplands at the southern end of the property. Legacy Boulevard is the primary entrance road to the project and was designed to provide a straight line-of-sight, a feature that was deemed to be a critical design aspect of the development and therefore part of the project purpose. Due to interference with City Hall Avenue and intersection requirements on Victory Boulevard, Legacy Boulevard cannot be shifted east to minimize impacts to Wetland A2 while maintaining a straight line-of-sight. The location of Oxford Run eliminates the possibility of moving Legacy Boulevard enough to completely avoid Wetland A2. If Legacy Boulevard was curved to partially avoid Wetland A2, it would result in the loss of approximately 20 single family homes and would not maintain a straight line-of-sight.

Based on the necessity of accessing developable uplands, the project purpose of providing a focal point for the entrance of Poquoson, and the loss of single family lots, it was not considered practicable to require additional avoidance and minimization of this impact

#### *Wetland A6*

Wetland Impact A6 is a 0.36-acre forested wetland, avoiding this impact would require the reconfiguration of Legacy Boulevard, Street C, and Street L from straight roads, and also remove a minimum of seven single family homes. It was not considered practicable to avoid this impact based on the negative effect on the project scope when compared to the size of the wetland impact.

#### *Grass Buffer Strips*

Staff is not aware of any grass infiltration strips within the project scope that will impact avoided wetlands. All proposed wetland impacts and avoided wetland areas are clearly marked on the project plans.

*3. Seventy two comments were received concerning traffic. Commenters were concerned that the project site will adversely impact traffic because it will be accessed from Victory Boulevard which is a primary emergency ingress and egress for the City. Additionally, in the event of a hurricane, the evacuation route will be blocked with excessive traffic.* The project scope includes the addition of east bound turn lanes at both proposed access roads off of Victory Boulevard as well as an east and west bound turn lane at the eastern most access road to allow ingress and egress from the development. Local government and/or the Virginia Department of Transportation have responsibility for assessing transportation needs in response to changing development patterns.

*4. Seventy two comments were received indicating the proposed project scope is too large and the high density project does not fit in with the community, and that local aesthetics will be negatively affected by the project.* Establishing aesthetic requirements, architectural restrictions and zoning density restrictions are the responsibility of local government, not DEQ. DEQ did request the use of multistory buildings to minimize wetland impacts associated with the proposed apartments. While this may impact aesthetics for some residents, it represents part of the avoidance and minimization process evaluated during draft permit development.

In addition, as part of the federal permit process, the Corps coordinated with the Virginia Department of Historic Resources which takes view sheds, architecture, etc. into consideration with regards to impacts on historic properties. This process determined that the project would have no effect on historic resources.

*5. Sixty seven comments indicated that An Environmental Impact Statement (EIS) or an Environmental Assessment (EA) should be done for the project site.*

The requirement for an applicant to provide an EIS or EA is a federal decision. DEQ's VWP Program has no legal authority under either the Code of Virginia (§62.1-44.15:20) or the Virginia Administrative Code (9VAC25-210-10, et seq.) to require preparation of an EIS or EA for this project. The Corps has reviewed this proposal and issued a preliminary permit for the project scope without requiring an EIS or EA.

6. *Sixty six comments were received expressing concerns that the project has excessive development within the Resource Protection Area (RPA) and Resource Management Area (RMA) boundaries, and that zoning should not allow for development within RPA/RMA.*

The VWP Program does not have authority to establish or enforce RPAs or RMAs. Section 9VAC25-830 of the Virginia Administrative Code establishes the requirement that localities in Tidewater Virginia, which includes the City of Poquoson, comply with the Chesapeake Bay Preservation Area Designation and Management Regulations through development and implementation of a local program. The Act and regulations recognize local government responsibility for land use decisions and are designed to establish a framework for compliance without dictating precisely what local programs must look like. Local governments have flexibility to develop water quality preservation programs that reflect unique local characteristics and embody other community goals. The regulations use a resource-based approach that recognizes differences between various land forms and treats them differently. Within DEQ, oversight of these local programs to ensure that they are being properly implemented is the responsibility of DEQ's Office of Local Government Programs.

7. *Sixty four comments were received regarding the local bat population, and the general loss of on-site fauna.*

A fundamental component of the VWP programs evaluation of any proposed project impacting surface waters is coordination with other State agencies regarding potential impacts to fauna and flora of special interest that may exist on the site. As required during the application process, DEQ coordinated with the Virginia Department of Game and Inland Fisheries (DGIF), Virginia Department of Conservation and Recreation (DCR), Virginia Marine Resources Commission (VMRC) and Virginia Department of Health (VDH) to determine if the project would potentially impact threatened and endangered plants, insects, animal species and/or public health. No determinations of impacts to State protected species or comments in opposition were received from these agencies as a result of this coordination.

As part of the related federal Corps application process, they also coordinated this project with the EPA, and the FWS regarding impacts to threatened and endangered species. The FWS determined the project will not have an impact on the Federal-threatened species including the Northern Long-Eared Bat (*Myotis septentrionalis*) due to the distance from any hibernacula or known roost trees.

8. *Sixty three comments were received regarding the project purpose and need, and called for a full independent economic study. Commenters were concerned that the purpose and need was not substantiated.*

As described by the applicant, the project purpose for Legacy of Poquoson is to provide a mixed-use development that stimulates local economic development, increases the number of school age children in the project area, is the focal point for the entrance to Poquoson and provides alternative housing and retail choices within the City. In evaluating the application, DEQ concluded that the project scope and location was consistent with the above referenced purpose and need description. There is no specific requirement in the State Water Control Law or attendant regulations requiring submission of a full economic study.

Poquoson's mayor, the vice mayor, and the chairman of the school board have expressed verbal and/or written support of the project either by speaking at the public hearing or providing letters of support during the public comment period. Additionally, in October of 2013, the City established a Planned-Unit Development (PUD) - Mixed Use Overlay District for the Big Woods area to promote the Legacy project.

The purpose of the PUD Overlay District which was to promote a more efficient use of land over conventional development, to produce a pedestrian friendly environment, to reduce vehicle use within the community, to create an appropriately balanced mix of residential and non-residential uses, to provide alternative housing choices and opportunities with respect to the City's comprehensive plan, and to provide for the assemblage of smaller parcels to enhance a unified development concept. It is the City's position that the development will provide a main source of income based on the residential property taxes, while addressing the declining school enrollment.

9. *Nine commenters expressed concern that there are too many houses available for sale now within the City.*

DEQ has no ability or authority to quantifiably assess the real estate market with respect to supply and demand for housing. In addition, we give deference to the judgment of local government and the development community with respect to housing and other development needs. As described by the applicant, the purpose of the project is to create a new mixed-use residential development that provides housing and commercial options that do not currently exist in the

City of Poquoson. The City of Poquoson is the authority over the zoning of property regarding the number and type of homes allowed, if any.

10. *Nine commenters indicated that the Legacy project will be a tax burden on the community and will not be profitable. One commenter questioned City's economic gain from the project based on past fiscal analysis of other projects in Poquoson.*

DEQ has no regulatory authority over the financial decisions or the methods utilized to evaluate the burdens or benefits of new development proposals under the purview of local government. Similarly, we do not attempt to mandate a range of acceptable profitability associated with development activities. Poquoson's mayor, the vice mayor, and the chairman of the school board have expressed verbal and/or written support of the project either by speaking at the public hearing or providing letters of support during the public comment period. Additionally, in October of 2013, the City established a Planned-Unit Development (PUD)-Mixed Use Overlay District for the Big Woods area to promote the Legacy project. The purpose of the PUD Overlay District which was to promote a more efficient use of land over conventional development, to produce a pedestrian friendly environment, to reduce vehicle use within the community, to create an appropriately balanced mix of residential and non-residential uses, to provide alternative housing choices and opportunities with respect to the City's comprehensive plan, and to provide for the assemblage of smaller parcels to enhance a unified development concept. It is the City's position that the development will provide a main source of income based on the residential property taxes, while addressing the declining school enrollment.

11. *Six comments were received regarding the proposed compensatory mitigation. Commenters were concerned that mitigation should be a last resort and the use of a mitigation bank will not address the loss of on-site wetlands within the immediate project area.*

While compensatory mitigation is usually proposed at the time an application is submitted, the actual requirements are always established only after avoidance and minimization opportunities have been thoroughly evaluated. The proposed mitigation contained in the draft permit is fully in compliance with the requirements of State and Federal law and regulations. Per 9VAC25-210-116.C., the purchase of mitigation bank credits and in-lieu fee program credits when available shall in most cases be deemed the ecologically preferable form of compensation for project impacts. The mitigation bank is in the appropriate Hydrologic Unit Code (HUC) and the in-lieu fee fund also has credits available within that HUC. There is no regulatory requirement that mitigation be provided in the immediate vicinity of the project.

12. *Five comments were received regarding the Poquoson school system. Commenters thought that existing schools should be combined, that the project would not bring in enough additional children, or that additional schools would have to be constructed which would cost the City money.*

The applicant determined the project purpose which included attracting additional school-age children to the City. Combining or existing schools, or constructing new schools is a City decision. DEQ does not have authority over the location or number of schools within a locality. Additionally, the City (including the chairman of the school board) has endorsed project with respect to potentially adding additional school-aged children.

**VPDES General Permit Regulation for Vehicle Wash and Laundry Facilities VAG75 Amendments to 9VAC25-194 and Reissuance of General Permit:** The current VPDES Vehicle Wash General Permit will expire on October 15, 2017 and the regulation establishing this general permit is needed to reissue another five-year permit. The staff is bringing this final regulation before the Board to request adoption. The regulation took into consideration the recommendations of a technical advisory committee (TAC) formed for this regulatory action. The TAC consisted of industry representatives, several localities, two environmental groups, one consultant and DEQ staff.

The Board's authorization of the proposal was received at the December 12, 2016 meeting. A Notice of Public Comment Period (NOPC) was held January 9, 2017 to March 10, 2017 with a public hearing on February 9, 2017. No one attended the public hearing. Public comments were received from several localities and the Virginia Municipal Stormwater Association.

Substantive changes to the existing regulation include:

- Allowing maintenance and construction equipment washing;

- Allowing towed small (less than 8.6’ beam and 25’ length) recreational boat washing;
- Requiring the permittees to notify the Municipal Separate Storm Sewer System (MS4) owners before getting coverage under the general permit if their discharge is into the MS4;
- Requiring stormwater inlet protection measures to be described as part of the registration, included in the weekly visual examinations and included in the O&M manual (where applicable);
- Clarifying that inspections (visual examinations) of the effluent include sheen, floating solids, visible foam, examination date and time and examination personnel;
- Requiring the effluent to be free of sheens, and;
- Requiring discharges of vehicle wash water directly to a stormwater drain to provide inlet protection measures in addition to meeting all other requirements of the permit.

The comments and responses are summarized below:

<b>Commenter</b>	<b>Comment</b>	<b>Agency response</b>
Hampton Roads Planning District Commission, Whitney S. Katchmark, PE, Principal Water Resources Engineer	Requests an exemption to the regulation that would allow equipment used for municipal maintenance operation and fire apparatus to be washed at the permitted wash rack, provided that the effluent limitations are met. This exemption would provide the flexibility to the permittees and still remain protective of downstream surface waters. Also supports the City of Norfolk comments.	The agency agrees with this comment and has added that construction equipment related to earth moving and maintenance equipment washing (not just for municipalities but for the any defined maintenance and construction equipment) is allowable for coverage as the pollutants from wash water associated with this equipment is similar to any other vehicle. Loaders were added to the construction equipment definition for clarification but staff did not agree that paving equipment should be included as an allowable activity and that was moved to the list of equipment that is not allowed vehicle wash coverage. Maintenance equipment was defined to mean catch basin trucks (Vactor trucks) and street sweepers in response to the specific requests in the comments received (below). Spreaders were not included because of the concern with chemicals involved with ice and snow control. Fire trucks were previously listed as a covered vehicle.
City of Norfolk, Public Works, June Whitehurst, Environmental Programs Manager	The permit limits the equipment that may be washed. The city currently uses the following BMPs to treat wastewater and meet effluent limits from vehicle and street sweeper washing: oil water separator, grit chamber and retention pond. The City proposed an exemption be added to the regulation that allows for equipment used for municipal maintenance operations to be washed at the facility as long as BMPs are in place and permit effluent limits are met. Requests this equipment exemption be added/clarified in the construction equipment definition. The City incorporates the Hampton Roads Planning District Commission’s and Virginia Municipal Stormwater	The agency agrees with this comment (see response above).

	Association's letters as part of their comments.	
Virginia Municipal Stormwater Association, Randy Bartlett, P.E., President	<p>The definition of "Vehicle Wash" should expressly include municipal washing activities. The following sentence should be added to this definition: "This definition includes any municipal washing activity, including for example, washing maintenance equipment such as dump trucks, loaders and fire trucks."</p> <p>The definition of "Construction Equipment" should be revised to clarify that it does not apply to municipal equipment. The following sentence should be added to this definition: "This does not include municipal equipment such as but not limited to, dump trucks, loaders, spreaders and Vector trucks."</p> <p>Additionally, VAMSA recommends adding a new Part I section to address effluent limitations and monitoring requirements for discharges from municipal washing activities. This section should make clear that as long as the municipal Vehicle Wash General Permit permittee is implementing BMPs consistent with its MS4 good housekeeping permit requirements, it should be exempt from additional effluent limitations or monitoring requirements under the Vehicle Wash General Permit.</p>	<p>DEQ agrees with this comment in part (see responses above).</p> <p>DEQ does not agree that as long as a municipality is implementing BMPs consistent with its MS4 good housekeeping permit requirements, that it should be exempt from additional effluent limitations or monitoring requirements under the Vehicle Wash General Permit. DEQ thinks sufficient flexibility has been given to the municipalities through the allowance of maintenance equipment washing described in the responses above.</p>
Fairfax County, Cathy Roth, Code Specialist II Stormwater Planning Division	<p>The permit needs to address the situation where VPDES permitted car washes are discharging to the storm drain with no treatment. The businesses are not monitoring very frequently and based on the activity (washing); pH and detergents (foam) would be in continual violation unless the business had treatment which the permit does not require. They have observed this occurring in locations in Fairfax</p>	<p>DEQ agrees and has added a special condition requirement that the owner of a facility discharging vehicle wash water directly to a stormwater drain shall provide inlet protection measures in addition to meeting all other requirements of the permit.</p> <p>Also, added a requirement to describe the inlet protection measure to the registration statement so DEQ can make a determination that it is adequate.</p> <p>Also, added a requirement to the O&amp;M manual to describe inlet protection methods.</p>

	<p>County and allowing detergents to enter the storm drainage system is a violation of their ordinance.          Could the new proposed permit tighten up these loose ends?</p>	
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**Exempt Action Final: Amendment of the Stormwater Management Regulations (9VAC25-870-150 A) related to Administration of the program by Third-Party Professionals:** During the 2017 General Assembly Session legislation was passed (HB 2009 – Virginia Acts of Assembly Chapter 349) which provided that a Virginia Stormwater Management Program (VSMP) Authority could enter into contracts with third-party professionals who hold certificates of competence in the appropriate subject areas to carry out any or all of the responsibilities required of a VSMP authority, including plan review and inspection but not including enforcement. Section 9VAC25-870-150 establishes the authorization procedures for Virginia Stormwater Management Programs. Staff is proposing an amendment to 9VAC25-870-150 A 3 to reflect the changes made to the Code of Virginia by the 2017 General Assembly through House Bill 2009.

**Exempt Action Final: Amendment of the Virginia Water Quality Management Planning Regulation for the James River Basin - Nitrogen and phosphorus wasteload allocations to restore the Chesapeake Bay and its tidal rivers. (9VAC25-720-60 C):** Section 9VAC25-720-60 C identifies the nitrogen and phosphorus allocations for the James River Basin that have been established and approved as wasteload allocations to restore the Chesapeake Bay and its tidal rivers. Staff is proposing an amendment to 9VAC25-720-60 C to reflect the transfer of 80,000 pounds/year of nitrogen wasteload allocation from the Virginia Electric and Power Company (Dominion-Chesterfield) to Tranlin, Inc. (aka Vastly) pursuant to a Memorandum of Understanding (MOU) between Dominion and Tranlin, Inc. dated the 5<sup>th</sup> day of April 2017. This would result in (i) a reduction of the nitrogen wasteload allocation currently allocated to Dominion-Chesterfield (VA0004146) from 352,036 pounds/year to 272,036 pounds/year, and (ii) the addition of Tranlin, Inc./Vastly to facilities listed under 9VAC25-720-60 C with a nitrogen wasteload allocation of 80,000 pounds/year. Notice of the proposed amendments was posted to the Virginia Regulatory Town Hall on May 23, 2017 and published in the Virginia Register of Regulations on June 12, 2017. The 30-day comment period began on June 12, 2017, and will close on July 12, 2017 and a public meeting will be held on June 28, 2017. Staff will provide the Board a report on the public comment period at the Board meeting.

**Request to Adopt Exempt Action Final Amendments to the Underground Storage Tanks: Technical Standards and Corrective Action Requirements (9VAC25-580) and the Petroleum Underground Storage Tank Financial Responsibility Requirements (9VAC25-590):** The staff will bring to the State Water Control Board (Board) at the July 19, 2017 meeting, a request to accept final amendments to the Underground Storage Tanks: Technical Standards and Corrective Action Requirements (9VAC25-580) (UST Regulation) and the Petroleum Underground Storage Tank Financial Responsibility Requirements (9VAC25-590) (FR Regulation). The regulations establish requirements for underground storage tanks (USTs). USTs must meet operating and maintenance requirements and technical standards for tank design and installation, leak detection, spill and overflow control, corrective action, and tank closure. The UST Regulation also establishes notification, operator training and delivery prohibition requirements, in addition to release reporting, investigation, response and corrective action requirements to be followed when leaks occur. The UST Regulation also addresses temporary and permanent closure of USTs. The FR Regulation requires that UST owners demonstrate financial responsibility for cleanup and third party costs associated with petroleum releases from USTs. These regulatory amendments are needed to update Virginia’s regulations to be consistent with federal regulations.

These regulatory amendments are exempt from the state administrative procedures for adoption of regulations that are not materially different from the federal requirements (§2.2-4006(A)(4)(c) of the Code of Virginia).

The Energy Policy Act (EPAAct) of 2005 was signed into law on August 8, 2005. This federal law addressed multiple energy related topics, and specifically included additional requirements for the prevention of releases from USTs. EPA issued guidance to states concerning the implementation of the UST related provisions of the EPAAct of 2005. Pursuant to this guidance, the State Water Control Board promulgated amendments to Virginia’s UST Regulation that became

effective on September 15, 2010 that addressed operator training, delivery prohibition and secondary containment requirements. These amendments were subsequently reviewed by EPA.

On July 15, 2015, EPA published in the Federal Register a final rule titled "Revising Underground Storage Tank Regulations - Revisions to Existing Requirements and New Requirements for Secondary Containment and Operator Training." This federal rule was adopted in response to the federal EPCRA of 2005 and modified regulatory requirements concerning USTs found in 40 CFR Part 280. This federal rule addressed some topics previously detailed in guidance issued by EPA on the EPCRA of 2005.

The agency prepared revisions to the UST Regulation and the FR Regulation and posted the revisions on the agency website. An informal comment period was held from March 27, 2017 to May 1, 2017, on the proposed amendments. The Virginia Petroleum, Convenience and Grocery Association (VPCGA) and the EPA submitted comments on the proposed amendments. DEQ made three minor changes to the proposed amendments based on the comments. The public comments and DEQ's responses are included in the Town Hall document.

This regulatory action incorporates additional changes made by EPA to federal underground storage tank regulations (specifically 40 CFR Part 280) in response to the federal EPCRA of 2005. This regulatory action revises Virginia's Underground Storage Tanks: Technical Standards and Corrective Action Requirements (9VAC25-580) and Virginia's Petroleum Underground Storage Tank Financial Responsibility Requirements (9VAC25-590) to include requirements found in 40 CFR Part 280.

Amendments to Virginia's Underground Storage Tanks: Technical Standards and Corrective Action Requirements (9VAC25-580) have been made to be consistent with the modifications in 40 CFR Part 280 as follows:

- Secondary containment requirements for new and replaced tanks and piping;
- Compatibility requirements;
- Notification changes;
- Periodic operation, inspection and maintenance requirements for UST systems;
- UST systems deferred in the federal 1988 UST regulation;
- Inclusion of new release prevention and detection technologies;
- Updating codes of practice; and
- Editorial corrections and technical amendments.

As part of this regulatory action, Virginia is revising its secondary containment requirements to be consistent with EPA's regulatory requirements. Virginia is retaining (with minor revisions) its existing operator training and delivery prohibition requirements which were based on EPA's previous guidance.

Additionally, 40 CFR 280 Subpart H - Financial Responsibility requirements were also revised as part of EPA's July 15, 2015 final rule. In Virginia, financial assurance requirements for USTs are located in a separate regulation from the technical standards for USTs. Virginia's Petroleum Underground Storage Tank Financial Responsibility Requirements (9VAC25-590) are also being revised as part of this regulatory action. USTs previously deferred from regulation, airport hydrant fuel distribution systems, field constructed tanks and USTs that are temporarily closed are now required to comply with financial responsibility requirements.

**Request to Adopt Fast Track Amendments to the Public Participation Guidelines (9VAC25-11 et seq.):** The staff will bring to the State Water Control Board (Board) at the July 19, 2017 meeting, a request to accept final amendments to the Public Participation Guidelines (9VAC25-11 et seq.) This regulatory amendment will be processed using the fast-track regulatory process. Section 2.2-4012.1 of the Code of Virginia allows for regulations to be modified using the fast track process when changes are expected to be noncontroversial. The current regulations are based on model Public Participation Guidelines (PPGs) developed by the Virginia Department of Planning and Budget (DPB). The regulation is being revised to be consistent with state statute and DPB's model Public Participation Guidelines by providing interested parties the right to be accompanied by or represented by counsel during the formulation of a regulation.

**General Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation for Discharges from Petroleum Contaminated Sites, Groundwater Remediation and Hydrostatic Tests - Amendments to 9VAC25-120 and Reissuance of General Permit:** The current VPDES Petroleum Sites and Hydrostatic Testing General Permit will expire on February 25, 2018, 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. The proposed regulation takes into consideration the recommendations of a technical advisory committee formed for this regulatory action. The technical advisory committee consisted of an industry representative, consultants, and DEQ staff. Substantive changes to the existing regulation include:

- Including “associated distribution equipment” as components that can be hydrostatically tested under general permit coverage;
- Requiring the permittees to notify a Municipal Separate Storm Sewer System (MS4) owner of the existence of the discharge at the time of registration under the general permit and include a copy of that notification with the registration statement;
- Clarification that dewatering projects “shall be managed to control the volume and velocity of the discharge, including peak flow rates and total volume, to minimize erosion at outlets and to minimize downstream channel and stream bank erosion”.
- Requiring that hydrostatic discharge flows “be managed to control the volume and velocity of the discharge, including peak flow rates and total volume, to minimize erosion at outlets and to minimize downstream channel and stream bank erosion”.
- Clarification that total residual chlorine data below the quantification level of 0.1 mg/L shall be reported as “<QL”.

**General Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation for Noncontact Cooling Water Discharges of 50,000 Gallons per Day or Less - Amendments to 9VAC25-196 and Reissuance of General Permit:** The current VPDES Noncontact Cooling Water General Permit will expire on March 1, 2018, 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. DEQ staff received requests from six individuals to be appointed to the technical advisory committee (TAC) for this regulatory action. On the date of the TAC meeting there was not a quorum of TAC members. The proposed regulation takes into consideration the recommendations of two members of the proposed TAC, both consultants representing permittees, and DEQ staff. Substantive changes to the existing regulation include:

- Requiring the permittees to notify a Municipal Separate Storm Sewer System (MS4) owner of the existence of the discharge at the time of registration under the general permit and include a copy of that notification with the registration statement;
- Removed the Effluent Limitations and Monitoring Requirements for the first four years of the previous permit term as these requirements are not applicable for this reissuance;
- Clarification that the “1/3 Months” monitoring frequency equals the following three-month periods each year of permit coverage: January through March, April through June, July through September, and October through December.
- Requiring the permittee to develop an operations and maintenance manual for equipment or systems used to meet effluent limitations within 90 days of permit coverage.

**Certification of Nonpoint Source Nutrient Credits, 9VAC25-900 Revised Proposed Regulation:** The revised proposed regulation, Certification of Nonpoint Source Nutrient Credits (9VAC25-900), is presented to the Board for your consideration. The Department developed this new regulation as required pursuant to § 62.1-44.19:20 of the State Water Control Law. The regulation establishes the process for the certification of nonpoint source nitrogen and phosphorus nutrient credits and assures the generation of those credits. Nonpoint source nutrient credits must be certified by the Department prior to placement on the registry for exchange. Nonpoint credits may include credits generated from agricultural and urban stormwater best management practices, management of animal feeding operations, land use conversion, stream or wetlands restoration, and other established or innovative methods of nutrient control or removal.

The Board approved the proposed regulation for public comment at its meeting on December 17, 2013. The proposed regulation was published for public comment on December 29, 2014 and two public hearings were held: February 11, 2015 (Glen Allen, VA) and February 12, 2015 (Roanoke, VA). No one commented at either public hearing. The comment period closed on March 16, 2015. During the proposed regulation's comment period, 295 persons provided comments. There were 277 people that submitted comments under the Chesapeake Bay Foundation action alert requesting: (i) strengthening local water quality protections; (ii) providing for a public comment process; and, (iii) adding a 35 foot vegetated buffer on all farm pasturelands. In addition to the action alert comments, the Department received an additional 149 comments from 18 individuals and entities.

A summary of the comments received is provided in the TH-10, under the *Public Comment from Previous Stage* section. Additionally, a response to comments document is attached to the Town Hall document and includes all comments received and the agency's response to each comment.

The revised proposed regulation includes application procedures, baseline requirements, credit calculation procedures, release and registration of credits, compliance and reporting requirements for nutrient credit-generating entities, enforcement requirements, application fees, and financial assurance requirements. Based on the public comment received, the Regulatory Advisory Panel (RAP) was reconvened with a primary purpose to revise the regulation in order to: (i) incorporate wetland and stream restoration practices used to generate nutrient credits; (ii) further consider the use of innovative practices for credit generation; (iii) discuss if term credits should include limits; and, (iv) further define perpetual credits.

The proposed regulation has been revised based on: (i) public comment received on the proposed regulations; (ii) the reconvened RAP process; (iii) statutory changes; and (iv) the Department's programmatic experience. These changes contained in the revised proposed regulation, some of which are substantive, are consistent with the requirements outlined in § 62.1-44.19:20 of the State Water Control Law and include the following:

1. **Public Comment.** Revisions have been made to the regulation based on comments received on the proposed regulation. This includes clarification of various terms, the applicability and limitation provisions, application processing, public notification, the credit retirement and exchange provisions, baseline, implementation plans, compliance and enforcement, and financial assurance. Additionally, requirements for MS4s generating nutrient credits for certification have been included and the baseline provision for MS4s has been added.
2. **Reconvened RAP Process.** The RAP was reconvened to provide additional input for revisions to the regulation regarding the issues noted above. During the reconvened RAP process, the following changes were made:
  - **Stream/Wetland Restoration Practices.** Provisions for the certification of nutrient credits generated from the restoration of wetlands or streams by mitigation banks or new restoration projects have been added throughout the revised proposed regulation, as appropriate.
  - **Innovative Practices.** Additional requirements for innovative practices that may be used to generate nutrient credits have been incorporated such as: (i) defining innovative practices as a practice that is not approved by the Chesapeake Bay Program Partnership or the Virginia Stormwater BMP Clearinghouse; (ii) limiting innovative practices to generating only term credits; and, (iii) including a second public notification for projects using innovative practices.
  - **Credits.** The revised proposed regulation defines term credits to include a maximum term of five years with an option to renew. The requirements for renewal applications have been included and a financial assurance exception is provided for term credits generated by structural BMPs when such credits are annual verified prior to release. The definition of and the requirements for application for certification of perpetual credit have been clarified including requirements for deed restrictions and site ownership.

3. Land Conversion Applications. The 2016 General Assembly adopted a statutory change mandating the process for reviewing applications and releasing credits generated by nutrient credit-generating projects using land conversion. The revised proposed regulation includes the statutory process and comports with the legislative changes provided in Chapter 653 of the 2016 Acts of Assembly.

4. Department Changes. Revisions to the proposed regulation have been made based on the department's additional experience processing requests for nutrient credit certifications pursuant to Subsection C of § 62.1-44.19:20 of the State Water Control Law which requires that, prior to the effective date of the regulation, nutrient credits be certified on a case-by-case basis using the best available scientific and technical information. Further details on the substantive changes made to the regulation and the RAP's non-consensus topics are provided in the Detail of Changes section of the TH-10.

**Approval of four TMDL reports and amendment of the Water Quality Management Planning regulation to include the corresponding TMDL wasteload allocations:** Staff will propose the following Board actions:

Approval of four TMDL reports and Amendment of the Water Quality Management Planning regulation to incorporate fourteen new and nine revised WLAs:

1. The report titled, "*E. coli TMDL Development for the James River and Tributaries near Lynchburg, VA*", proposes *E. coli* reductions for the James River – Upper, James River – Lower, Ivy Creek, Fishing Creek, Blackwater Creek, Tomahawk Creek, Burton Creek, and Judith Creek watersheds and provides revised *E. coli* waste load allocations of  $.33E+15$  cfu/year,  $4.07E+12$  cfu/year,  $3.76E+13$  cfu/year,  $3.61E+14$  cfu/year,  $1.01E+12$  cfu/year,  $3.47E+12$  cfu/year, and  $3.26E+11$  cfu/year. The report also proposes *E. coli* reductions for the James River – Upper, Beaver Creek, Pedlar River, and Harris Creek watersheds and provides new *E. coli* waste load allocations of  $2.27E+11$  cfu/year,  $3.26E+11$  cfu/year,  $7.86E+11$  cfu/year, and  $1.02E+13$  cfu/year..

2. The report titled, "*Bacteria TMDL Development for Lower Chickahominy River Watershed Located in Charles City, James City, and New Kent Counties, VA*", proposes *E. coli* reductions for the Diascund Creek, Beaverdam Creek, Unnamed Tributary to Beaverdam Creek (XAH), Barrow's Creek, and Mill Creek watersheds and provides *E. coli* waste load allocations of  $2.51E+11$  cfu/year,  $1.27E+11$  cfu/year,  $4.52E+10$  cfu/year,  $6.90E+10$  cfu/year, and  $9.90E+11$  cfu/year. The report also proposes *Enterococci* reductions for the Diascund Creek (tidal), Chickahominy River, and Gordon Creek watersheds and provides *Enterococci* waste load allocations of  $7.12E+12$  cfu/year,  $9.57E+13$  cfu/year, and  $6.15E+12$  cfu/year.

3. The report titled, "*Benthic Total Maximum Daily Load (TMDL) Development for the Kits Creek Watershed*", proposes Sediment reductions for the Kits Creek watershed and provides a Sediment waste load allocation of 2.96 ton/year. The report also proposes Total Phosphorus reductions for the Kits Creek watershed and provides a Total Phosphorus waste load allocation of 13.1 lbs/year.

4. The report titled, "*Bacteria Total Maximum Daily Loads for Nassawadox Creek and Tributaries and Westerhouse Creek in Northampton County, Virginia*", proposes Fecal Coliform reductions for the Nassawadox Creek and Westerhouse Creek watersheds and provides revised Fecal Coliform waste load allocations of  $6.04E+12$  counts/year and  $2.29E+11$  counts/year.

The specific portions of the TMDL report to be approved include the TMDL itself and all the TMDL allocation components, the pollutant reduction scenarios, implementation strategies, reasonable assurance that the TMDL can be implemented, and a summary of the public participation process.

The process for amending the Water Quality Management Planning regulation is specified in §2.2-4006A.14 and §2.2-4006B of the Code of Virginia. The amendments consist of adding fourteen new and nine revised WLAs that are included in the TMDL reports reviewed by EPA. Staff will therefore propose that the Board, in accordance with §2.2-4006A.14 and §2.2-4006B of the Code of Virginia, adopt the amendments to the Water Quality Management Planning regulation (9 VAC 25-720)

Public Participation: The TMDL reports were developed in accordance with Federal Regulations (40 CFR §130.7). The TMDL reports were subject to the public participation process contained in §2.2-4006.A.14 of the Code of Virginia and DEQ's "Public Participation Procedures for Water Quality Management Planning" that the Board approved in September 2014. Written comments provided by stakeholders as well as the Commonwealth's responses are submitted to EPA together with the TMDL report. TMDL reports are also made available to the public on DEQ's web site:

<http://www.deq.virginia.gov/Programs/Water/WaterQualityInformationTMDLs/TMDL/TMDLDevelopment.aspx>. The proposed final amendments to the Water Quality Management Planning regulation are exempt from the provisions of

Article II of the Administrative Process Act. The TMDL WLAs were published in the Virginia Register (Volume 33, Issue 16) on April 3, 2017, with a public comment period ending on May 3, 2017. Staff received no comments.

**REPORT ON FACILITIES IN SIGNIFICANT NONCOMPLIANCE:** One new permittee was reported to EPA on the Quarterly Noncompliance Report (QNCR) as being in significant noncompliance (SNC) for the quarter ending December 31, 2016. The permittee, the facility and the reported instances of noncompliance are as follows:

Permittee/Facility: Town of Lawrenceville, Lawrenceville WWTP  
Type of Noncompliance: Failure to Meet Permit Effluent Limits (Total Kjeldahl Nitrogen [TKN])  
City/County: Lawrenceville, Virginia  
Receiving Water: Roses Creek  
Impaired Water: Roses Creek is listed as impaired due to water quality sampling showing exceedances of the E. coli water quality standard. The Roses Creek Bacterial TMDL was approved by the Board in 2004. The City received a wasteload allocation and subsequent E. coli permit effluent limits as a result of the TMDL. The City is meeting those limits.

River Basin: Chowan River and Dismal Swamp Basin

Dates of Noncompliance: September and December 2016

Requirements Contained In: VPDES Permit

DEQ Region: Piedmont Regional Office

The city attributed the September violations to high influent flows resulting from extreme weather conditions (a single day, 4" rain event). The December violations were attributed to mechanical failure of the drive for the wastewater treatment plant's clarifier weir plates. Staff of the agency's Piedmont Regional Office and the City are currently negotiating a consent order addressing the violations. The draft order contains a civil charge of \$7, 875. There have been no further TKN violations reported - although it should be noted that the City also experienced violations of its total suspended solids permit effluent limits in January, February and March of 2017. These violations, which were attributed to further operational issues with the clarifier weir plates, are also addressed by the draft order.

**Tyson Farms, Inc. (Accomack County) - Consent Order with Civil Charge and Corrective Action Plan:** Tyson Farms, Inc. ("Tyson") is a manufacturing operation located in Temperanceville, Virginia. The manufacturing operation consists of a poultry hatchery, which supplies chicks to contract growers, and the processing of live chickens. Poultry processing including the slaughtering, defeathering, eviscerating, chilling, packaging, and shipping of poultry products for human consumption to an offsite destination. DEQ issued VPDES Permit No. VA0004049 ("Permit") to Tyson on January 1, 2016 (expires on December 31, 2020). The Permit authorizes Tyson to discharge stormwater and wastewater resulting from poultry processing and rendering operations. The Permit requires Tyson to monitor and report compliance with effluent limits for biological oxygen demand (BOD<sub>5</sub>), ammonia, fecal coliform, *E.coli*, and total suspended solids (TSS). In submitting Discharge Monitoring Reports ("DMRs"), as required by the Permit, Tyson indicated that discharge limits contained in Part I.A.1 of the Permit were exceeded for ammonia for the March 2015, August 2015, and August 2016 reporting periods, TSS, *E. coli*, and fecal coliform for the March 2015 reporting period, and BOD<sub>5</sub> for September 2015 reporting period. Tyson also failed to provide a letter of explanation for non-compliance with its Permit limits for the August, September, and March 2015 reporting periods in violation of Part II.I.3 of the Permit. DEQ issued to Tyson Notice of Violation ("NOV") No. W2015-09-T-0003 on October 27, 2015 for the aforementioned 2015 violations. Tyson signed a proposed consent order to resolve the NOV on December 16, 2016. The proposed December 2016 consent order required Tyson to submit to DEQ for review and approval a Corrective Action Plan ("CAP") and schedule that fully examined the cause(s) of ammonia, TSS, E. coli, fecal coliform, and BOD<sub>5</sub> exceedances at the Facility and described actions that Tyson had taken or planned to take to comply consistently with the discharge limits established in the Permit, by January 1, 2017. The proposed order also required Tyson to pay a civil charge of \$16,150.00. The proposed December consent order was public noticed from January 23, 2017 to February 22, 2017 and from March 20, 2017 to April 19, 2017, and received eight comments. Tyson submitted the CAP on December 16, 2016, which subsequently DEQ did not approve, considering it incomplete. On February 23, 2017, DEQ requested that Tyson submit a revised CAP. DEQ received the revised CAP on March 8, 2017. The revised CAP included the following:

- o a plan and process to address excess solids in the anaerobic lagoon on a continuous basis;
- o a schedule to provide documentation of an Audit and Assessment process that Tyson will use to make further operations and maintenance decisions regarding removal of solids;

- o additional information regarding Tyson's ongoing water conservation goals, schedule, and implementation plan;
- o and the feasibility, schedule, and implementation of a third-party full engineering process review with recommendations to be implemented for improving solids handling capability for current and future

The revised CAP was complete, addressed concerns raised during the public comment period, and was approved by DEQ on May 15, 2017. Based on the comments received and the revised CAP, the proposed order was revised. The current order requires that Tyson comply with the revised CAP as expeditiously as possible and in no event later than December 31, 2017 and pay an increased civil charge. Civil Charge: \$26,160.00. A public notice for the proposed consent order was published on January 23, 2017 in Eastern Shore News and on the Department's website and ended on February 22, 2017. A public notice for the proposed consent order was published on March 20, 2017 in the *Virginia Register* and ended on April 19, 2017. During the public notice period, DEQ received eight comments. The public comments are summarized as follows:

- Civil Penalty
  - o The civil penalty did not consider repeat violations or compliance history (e.g. Tyson had a consent order in 2011 that was not factored into this enforcement action).
  - o The civil penalty did not consider the economic benefit from non-compliance (i.e. cheaper to pollute than correct the problem).
  - o The civil penalty did not consider the ongoing, serious nature of the discharges and harm to the sensitive ecosystem (e.g. eel grass die offs, harm to waterfowl).
  - o Additional violations that occur while order is in effect may go unpunished.
  - o The civil penalty was too low relative to Tyson's net income.
- Corrective Action Plan
  - o The CAP does not provide sufficient assurance that future violations will be prevented as a result of simply cleaning out the solids from the ponds (Tyson indicated that it began removing solids in January 2016, yet there was an August 2016 violation).
  - o The CAP did not include a schedule for ensuring future compliance (e.g. an improved O&M manual, routine maintenance schedule of the anaerobic lagoon, and plans for additional capital improvements, plant engineering redesign, and construction to ensure capacity and prevent exceedances).
  - o The CAP should include upgrades to the facility's disinfection system in addition to the changes proposed for the anaerobic lagoon.
  - o The CAP should require more frequent discharge monitoring requirements for pollutant discharges that have significantly impacted water quality.
  - o The lagoons are insufficiently sized, engineered, and managed.
  - o The CAP should include mitigation and remediation cost offsets and off-site ecological renewal projects that recognize the downstream costs that violations have generated.

In response to these comments, DEQ re-evaluated the civil charge. Two violations were raised in severity from moderate to serious, and the culpability was raised from serious to high. Together, these reclassifications adjusted the civil charge upward to \$26,160.00. In addition, DEQ considered the comments on the CAP as part of the review and approval of the revised CAP submitted by Tyson.

**Spotsylvania Courthouse Village II, LLC (Spotsylvania County) - Consent Special Order w/ Civil Charges:**

Spotsylvania Courthouse Village II LLC (Spotsylvania Courthouse) owns the Spotsylvania Courthouse Village Area C phase 1 construction site (Site) located at the end of Courthouse Commons Drive, Spotsylvania County, Virginia. The development of the site is subject to Construction Stormwater General Permit Authorization No. VAR10G495 (Permit) effective July 1, 2014 and expires on June 30, 2019. On May 18, 2016, DEQ received a complaint reporting sediment discharges from the Site to an unnamed tributary to the Ni River occurring on April 29, 2016. As a result of the complaint, DEQ inspected the Site on May 13, 19, and 20, 2016. The goal of the inspections was to assess the complaint, and site conditions related to the ongoing construction activities and the Permit. During the inspections, DEQ observed both wetland and streams were adversely affected by sediment discharge. Based on review of resources provided by Spotsylvania Courthouse, and its consultant, The Timmons Group (Timmons), the affected surface waters are approximately 1,800 linear feet of stream and 1.6 acres of palustrine forested (PFO) wetlands. In addition, during the inspections, DEQ observed that the affected surface waters area had been partially cleared and excavated. Based upon the May 19, 2016, review of documents/reports generated by Timmons, the Spotsylvania County Virginia Stormwater

Management Program inspection reports, and Spotsylvania Courthouse internal inspection reports contained in the Storm Water Pollution Prevention Plan, discharges of sediment may have originated from events as early as December 2015 without notification and authorization. As a result of the document review and the inspections, DEQ issued a Notice of Violation (NOV), NOV No. W2016-05-N-001, to Spotsylvania Courthouse, dated May 26, 2016. On June 28, 2016, representatives of Spotsylvania Courthouse and Timmons met with DEQ to discuss the NOV. At the meeting, Timmons submitted a detailed survey and impact totals for review. The survey found the actual impacts were 2,061 linear feet of stream channel and 1.02 acres of PFO. At the meeting Timmons informed DEQ that impacted areas would be restored. On September 8, 2016, DEQ and Spotsylvania Courthouse negotiated a Consent Order (Order) to resolve the violations cited in the May 26, 2016, NOV. This Order included a civil charge of \$39,000.00 and the submittal of a Corrective Action Plan (CAP). On September 23, 2016, Timmons, on behalf of Spotsylvania Courthouse, submitted a report to DEQ detailing sediment discharges to an unnamed tributary to the Ni River at the Project Site. On October 5, 2016 Department Staff conducted an inspection of the Project Site. During the inspection, DEQ confirmed additional wetland and streams were adversely affected by sediment discharge. Based on a review of map resources provided by Spotsylvania Courthouse and Timmons on September 23, 2016, an additional 414 lf of stream and 0.18 acre of PFO wetlands were impacted without authorization. As a result of the reported and observed unauthorized impacts, DEQ issued a second NOV No. 1610-000010, dated October 18, 2016, to Spotsylvania Courthouse. DEQ assessed an additional civil charge and CAP requirements for the impacts observed on October 5, 2016. Appendix A of the Consent Order (Order) requires Spotsylvania Courthouse to follow the terms of a CAP. The CAP requires that by no later than May 15, 2017, Spotsylvania Courthouse submit proof to DEQ of the completion of the restoration of 2,475 lf of stream channel and 1.20 acres of PFO as set forth in the CAP. The corrective measures required by Appendix A ensure no net loss of surface water function and value. Civil charge: \$74,400.00.