

NOTE TO INTERESTED PERSONS REGARDING REVISIONS TO THE AGENDA

The agenda for the April 12, 2018, meeting of the State Water Control Board has been revised due to the limited seating capacity of the meeting room. The revised agenda maximizes the use of the meeting room's available space through the scheduling of agenda items.

The revisions are highlighted on the agenda on page 2 and summarized below.

- An additional public forum has been added to the agenda for Eastern Shore matters. This additional public forum is shown immediately following the VPDES permits. This public forum is subject to the same public forum rules.
- The regularly scheduled public forum remains at the end of the agenda and as noted on the agenda will **NOT** be held before 1:30 p.m.

NOTE TO INTERESTED PERSONS REGARDING BANK OF AMERICA BUILDING RULES

Please be advised that all Bank of America building rules and regulations apply to the conference room and include but are not limited to:

- means of ingress and egress cannot be obstructed or encumbered
- no unseemly or disturbing noises or disturbance or interference with other tenants or occupants of the building or neighboring buildings or premises whether by the use of any musical instrument, radio, television set or other audio device, unmusical noise, whistling, singing, or in any other way shall be made

REVISED TENTATIVE AGENDA
STATE WATER CONTROL BOARD MEETING
THURSDAY, APRIL 12, 2018

DEPARTMENT OF ENVIRONMENTAL QUALITY
3RD FLOOR CONFERENCE ROOM
1111 EAST MAIN STREET
RICHMOND, VIRGINIA

CONVENE – 10:00 A.M.

TAB

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XI. Public Forum - Other Matters (No Eastern Shore Matters - 3 minutes per speaker)

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.

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.

Issuance of Virginia Pollutant Discharge Elimination (VPDES) Confined Animal Feeding Operation (CAFO) Permits: VA0C50004 (FPNA Farms, Inc.), VA0C50005 (Brady Farm) and VA0C5006 (Horsey Poultry Farm, LLC):

Regulatory Background: Virginia has regulated Animal Feeding Operations (AFOs) under the authority of the State Water Control Law since the 1970's. The Virginia Pollution Abatement (VPA) program has steadily evolved into a comprehensive permitting and compliance mechanism for animal feeding operations, beginning with livestock and later including poultry. In 1999, the Virginia General Assembly passed House Bill 1207 (§ 62.1-44.17:1.1) which established the Virginia poultry waste management program. This legislation required the State Water Control Board to develop and implement a regulatory program governing the storage, treatment and management of poultry waste, including dry waste. This regulatory program began in 2000 as a Virginia Pollution Abatement (VPA) non-point source program, and established provisions for issuing general permits to poultry feeding operations that confine 200 or more animal units (20,000 chickens or 11,000 turkeys). In addition, it imposed utilization; storage; tracking and accounting requirements related to poultry waste, including tracking and reporting for transferred poultry waste.

Under the VPA program, point source wastewater discharges are not permissible and farmers are required to adhere to best management practices (BMPs) pertaining to animal housing, waste storage and transfer, land application, nutrient management planning and recordkeeping.

Since the establishment of the poultry waste management program and subsequent regulation, the State Water Control Board has adopted two general permits, each with a term of 10 years. The second 10-year general permit was issued in 2010, and includes significant amendments establishing requirements for proper storage, land application and recordkeeping for end-users of poultry waste and is due to expire on November 30, 2020. The process to amend the regulation to extend the current general permit for a third 10-year term will begin later this year.

In addition to the VPA program, the Virginia Department of Environmental Quality (DEQ) implements and administers the final 2012 federal CAFO rule through the VPDES CAFO program. This program is a comprehensive mechanism responsive to the federal CAFO rule, and includes state regulations promulgated in accordance with Virginia State Water Control Law and federal regulations. The subject draft permits include provisions found in those regulations. The owner of any CAFO that discharges pollutants to state waters, in a form other than agricultural storm water, has a duty to apply for coverage under a VPDES CAFO Individual Permit.

However, the substance of the federal CAFO rule has been a moving target, by virtue of federal rule changes resulting from litigation. In response to these changes, DEQ has modified the VPDES regulation on three separate occasions in order to maintain conformance with the federal CAFO rule. One of the most significant modifications followed the 2011 decision in *National Pork Producers v. EPA* in which the Fifth Circuit Court of Appeals held that only facilities actually discharging required discharge permits. The Circuit Court decision compelled EPA to revise the federal rule, with the revisions becoming effective on July 30, 2012. DEQ then amended the Virginia regulation to comply with the 2012 Final CAFO Rule and this amendment became effective in November 2013.

It is also noteworthy that on October 23, 2013, in *Alt vs. EPA*, the United States (U.S.) District Court for the Northern District of West Virginia ruled that the litter and manure that washed from the Alt farmyard to navigable waters by a precipitation event was an agricultural storm water discharge and therefore not a point source discharge. The U.S. District Court found that although the manure and litter on the Alt farm originated from the CAFO production area, it was not a

point source of pollution because the farmyard where it settled and was washed from, was not part of the production area. The court's decision rendered the discharge exempt from the National Pollutant Discharge Elimination System (NPDES) permit requirement of the Clean Water Act. EPA did not appeal this decision.

DEQ staff has worked closely with EPA staff to adapt to these significant amendments to the CAFO Rule, including EPA interpretations of the federal rules following litigation. Since 2015, DEQ and EPA staff have worked together to negotiate the language and EPA approval of the draft VPDES CAFO individual permits for each of the subject poultry operations. This has been a long and demanding process.

Farm Specific Background: In 2010, the United States Environmental Protection Agency (EPA) conducted inspections at the three poultry operations (the farms) located in Accomack County, Virginia (FPNA Farms, Inc. owned and operated by Mr. Fayyaz Mukhtar in Withams, VA; Brady Farm owned by Mr. Ryan L. Brady in Atlantic, VA; and Horsey Poultry Farm, LLC owned and operated by Mr. and Mrs. Fredrick W. Holland in New Church, VA). At the time of the inspections, the farms were covered by the VPA General Permit for Poultry Waste Management (general permit), and the VPA general permit coverage is still effective. The EPA inspections resulted in EPA issuing Administrative Orders (AOs) to each of the farms. The AOs stated that the farms either proposed to discharge (FPNA and Brady) or discharged (Horsey) without having held or applied for NPDES permits. The AOs required the farms to seek NPDES permit coverage from DEQ through its VPDES program.

EPA issued the first two AOs (FPNA and Brady) on September 29, 2010 and the last (Horsey) on March 31, 2011. The following events occurred after the AOs were issued:

- December 31, 2010 – The original term of the VPDES General Permit for CAFOs expires, and DEQ determines that individual VPDES permit coverage will be used for any CAFO owners that require NPDES permits.
- March 15, 2011 – The U.S. Court of Appeals for the Fifth Circuit vacated provisions in the federal CAFO rule imposing a duty to apply for a NPDES permit for a facility that “proposed” to discharge.
- July 30, 2012 – EPA revised the federal CAFO rule in response to the vacated provisions.
- November 20, 2013 – The Virginia State Water Control Board adopts revisions to the VPDES permit regulation to conform with federal rule changes.
- October 23, 2013 – In *Alt vs. EPA*, the U.S. District Court for the Northern District of West Virginia rules that manure washed from the Alt poultry farmyard by precipitation is an exempt agricultural storm water discharge. EPA does not appeal. The decision only applies to West Virginia.
- February 3, 2015 – DEQ issues the first VPDES CAFO permits in Virginia to two swine facilities managing liquid waste.

In late 2015, all three of the farm owners submitted VPDES CAFO individual permit applications pursuant to the VPDES permit regulation 9VAC 25-31 *et. seq.* and State Water Control Law §62.1-44.17:1 A1.

The Farms

FPNA Farms, Inc.: The operation has been operating under VPA General Permit VPG250098 since February 22, 2002, and consists of 6 broiler houses with a total combined capacity of 170,000 birds per flock (5.5 flocks per year) for a total of 935,000 broilers per year. The farm operates under contract with Perdue Farms. Approximately 1275 tons of manure is produced annually, all of which is transferred off-site. Manure is stored in one on-site litter storage shed. Daily mortality is disposed in an on-site composter.

The applicant proposes to release storm water from ditching alongside the poultry houses at an estimated rainfall Bay, Atlantic Ocean & Small Coastal watershed. This facility has no external process wastewater outfalls. Storm water collects at the corner of House #5 & #6 and discharges via one storm water outfall to several hundred feet of agricultural ditch prior to entering an unnamed tributary of Bullbegger Creek.

Best Management Practices: All pads are frequently swept back into the houses to minimize discrete discharges from the facility. The facility operates under a Department of Conservation and Recreation (DCR) approved nutrient management plan written in October of 2014 and valid until October of 2019. The plan documents the planned transfer of all poultry waste produced.

EPA issued an AO to FPNA Farms, Inc. on September 29, 2010. The AO stated that the facility “is designed, constructed, operated, and maintained in a manner such that a discharge will occur to Bullbegger Creek via a series of ditches, and is therefore proposing to discharge.” The AO ordered the owner to submit to DEQ a permit application for VPDES permit coverage. DEQ received a complete VPDES permit application from Mr. Mukhtar on September 10, 2015.

Brady Farm: The facility has been operating under VPA General Permit VPG250107 since November 17, 2006, and consists of 3 broiler houses with a total combined capacity of 63,000 birds per flock (5.5 flocks per year) for a total of 346,500 broilers per year. The farm operates under contract with Amick Farms. Approximately 433 tons of manure is produced annually, all of which is transferred off-site. Litter management consists of windrowed in-house composting and scheduled clean outs. There is no litter shed for storage. Daily mortality is disposed in an on-site incinerator.

The applicant proposes to release storm water from ditching alongside the poultry houses at an estimated rainfall dependent flow of 0.005 million gallons per day into an unnamed tributary of Assawoman Creek in the Chesapeake Bay, Atlantic Ocean & Small Coastal watershed. This facility has no external process wastewater outfalls. Storm water collects at the southwest corner of house #3 and would travel through a series of farm ditches to an unnamed, free flowing tributary of Assawoman Creek.

Best Management Practices: All pads are frequently swept back into the houses to minimize discrete discharges from the facility. The facility operates under a DCR approved nutrient management plan written in May of 2015 and valid until May 15, 2020. The plan documents the planned transfer of all poultry waste produced.

EPA issued an AO to Brady Farm on September 29, 2010. The AO stated that the facility “is designed, constructed, operated, and maintained in a manner that has proposed to discharge pollutants from man-made ditches to the unnamed tributary to Assawoman Creek during rain events generating runoff.” The AO ordered the owner to submit to DEQ a permit application for VPDES permit coverage. DEQ received a complete VPDES permit application from Mr. Brady on August 19, 2015.

Horsey Poultry Farm LLC: The farm has been operating under VPA General Permit VPG250097 since February 22, 2002 and consists of 6 broiler houses with a total combined capacity of 198,000 birds per cycle (6.0 flocks per year) for a total of 1,188,000 broilers per year. The farm operates under contract with Tyson Foods. Approximately 1,155 tons of manure is produced annually, all of which is transferred off-site. Manure is stored in two on-site litter storage sheds. Daily mortality is disposed in an on-site composter.

The applicant proposes to release storm water from ditching alongside the poultry houses at an estimated rainfall dependent flow of 0.0213 million gallons per day into an unnamed tributary of Pitts Creek in the Chesapeake Bay, Atlantic Ocean & Small Coastal watershed. This facility has no external process wastewater outfalls.

Best Management Practices: Three (3) storm water holding areas; buffers, filter strips; and pads that are frequently swept back into houses. Storm water discharge collects at the southwest corner of House #6 and travels through a series of farm ditches before entering the headwaters of Pitts Creek less than a mile away. The facility operates under a DCR approved nutrient management plan written August 1, 2015 and valid until August 1, 2020. The plan documents the planned transfer of all poultry waste produced.

EPA issued an AO to Horsey Poultry Farm LLC on March 31, 2011. The AO stated that the facility “discharged pollutants through man-made ditches to the unnamed tributary to Pitts Creek during rain events generating runoff without having obtained a VPDES permit in violation of the [Clean Water] Act and its implementing regulations. It also cited a second violation of a storm water discharge associated with “small construction activity.” The AO ordered the owner to submit to DEQ a permit application for VPDES permit coverage. DEQ received a VPDES permit application from Mr. Holland on August 20, 2015.

All of the farm owners have corrected the issues noted by EPA to cause a point source discharge of process wastewater from the production area. DEQ prepared draft permits that authorize i) point source discharges of manure, litter, or process wastewater only in the case of an overflow caused by a storm event greater than a 25-year, 24-hour storm event, ii) point source discharges of stormwater from around the poultry houses, and iii) agricultural storm water from land application areas. While the draft permits authorize land application, all three facilities transfer all poultry waste produced to other end-users.

Draft Permit Review by Owners: DEQ sent draft permit packages to each of the three applicants on March 14, 2017 for review and approval. DEQ received no corrections or comments from any of the applicants.

Draft Permit Public Notice and Comments: Each of the three public notices was published the same day in the Eastern Shore News on September 20, 2017. The 30-day public comment period was concluded at the close of business on October 20, 2017. During the draft permit public comment period DEQ received 67 written comments, all opposed to the permits as written.

Summary of Locality and State Agency Responses: The Virginia Department of Health Office of Drinking Water commented that no public raw water intakes were found downstream or upstream from the discharge area, and that there are no apparent impacts to waterworks sources as a result of this permit.

The Virginia Department of Health Division of Shellfish Sanitation nor the Virginia Marine Resources Commission provided comment on the draft permits.

Accomack County did not provide comment on the draft permit.

Disposition of Public Hearing Requests: Out of the 67 total comments received during the draft permit public comment period, 61 stated that DEQ should hold a public hearing. Out of the total comments expressing a desire for a hearing, less than 25 comments included all of the information required by §62.1-44.15:02.B. of the Code of Virginia which specifies the information that must be contained in a request for public hearing. On the basis of this analysis, the statutory criteria that would compel the Director to grant a public hearing or Board consideration for the proposed permit issuance was not met. However, DEQ recognized the breadth of public interest and controversy surrounding these proposed permit issuances, and the Director granted a public hearing on his own motion.

Public Notice and Public Hearing Comments: Public notice to announce the public hearing was published in the Eastern Shore News on December 20, 2017 and December 27, 2017. The public hearing was held at 6:30 p.m. on January 30, 2018, at Nandua High School in Onley. Ms. Heather Wood, State Water Control Board member, served as hearing officer. An interactive informational session preceded the hearing.

Approximately 170 people attended the hearing, and 37 provided oral comments. One of the permit applicants provided comments and spoke in favor of the permit terms. Of the other public comments, 30 people spoke in disagreement with the terms of the permit, and 7 spoke in favor. DEQ also received 50 written comments during the public hearing comment period, with 44 persons expressing disagreement with the permit terms, 4 speaking favorably, and 1 suggesting that each farm should conform to the VPA general permit requirements rather than be issued VPDES permits. The public hearing comment period closed on February 14, 2018.

Public Comments and Staff Responses: The DEQ staff response that follows is organized according to comment topics.

Topic #1
<p>DEQ received comments expressing concern that the permit conditions are not protective, to include:</p> <ul style="list-style-type: none">• Permits do not adequately protect surface water, particularly the Chesapeake Bay;• Permits lack provisions to adequately protect groundwater;• Permits should require groundwater quality monitoring;• The importance of groundwater on the Eastern Shore of Virginia as the sole or principal source of drinking water;• Concerns related to land application of poultry waste;

- **Soils monitoring requirements were inadequate to protect water quality;**
- **Design considerations of the growing houses and storage structures;**
- **Require lining of wastewater storage;**
- **Protecting the area that has been recognized as an International Biosphere Reserve; and**
- **Impacts to downstream shellfish waters, including condemnation due to bacteria.**

DEQ Response: The draft permits contain a number of provisions designed to be protective of surface and groundwater quality. These include:

- Poultry waste must be stored in a manner that prevents contact with surface water and ground water. (Waste storage requirements including any outside storage are included in Part II.A.1, 2 and 3 of the draft permits.)
- If poultry waste is stored outside for greater than 14 days:
 - Poultry waste must be covered;
 - Storm water must be diverted from stored waste;
 - Storage must include at least a 2 ft separation from the ground water table or include a liner with 1 ft separation;
 - If storage is not under roof, storage must be >100 ft from surface water, drainage & wells; and
- Part II.C.6. of the draft permit specifies requirements related to the 100-year floodplain.
 - New, expanded, or replacement growing houses and waste storage structures shall not be built within the 100-year floodplain unless the houses are part of an existing farm and protected from inundation.
- The draft permits prohibit the burial of routine mortalities.
- Nutrient Management Plans (NMPs) are required in order to minimize nutrient loss. The requirements for the plan differ depending upon whether the owner or operator of the poultry growing houses land applies poultry waste on farmland under their control, or if they transfer the poultry waste to other farmers.
- The NMP must be written by a planner certified by the Virginia Department of Conservation and Recreation (DCR), and the NMP must be approved by DCR.
- When poultry waste is applied to land under the operational control of the operator of the poultry growing houses:
 - The NMP must include an assessment of soil productivity to determine maximum nutrient application;
 - The NMP must include soil analyses of fields where litter will be applied, with Nitrogen and Phosphorous applications limited based on the soil test;
 - Poultry waste analyses are required to measure the Nitrogen and Phosphorous in the waste, and are required at least once every 3 years;
 - The NMP prescribes waste application timing and rate to ensure nutrient uptake by plants rather than runoff and leaching, and varies by season based on crop growth;
 - NMPs prohibit application to ice or snow covered ground or saturated soils;
 - Setbacks are required from homes, wells, surface water, and Karst topography;
 - Recordkeeping is required for land application sites, rates, dates, crops.
- When all of the waste is transferred, the poultry grower must
 - Analyze the poultry waste to measure the Nitrogen and Phosphorous in the waste at least once every 3 years;
 - Keep records of the amounts and address of recipients; and
 - Must provide a DEQ Fact Sheet to the recipient with the land application requirements and include an analysis of the waste.

DEQ derived the waste storage requirements directly from the Virginia Pollution Abatement Regulation and General Permit for Poultry Waste Management (VPA GP regulation). The draft VPDES permits cover existing facilities, thus they comply with the regulatory standards for construction and siting that exist in the VPA GP regulation as well as the draft permit language. The VPA GP special conditions are the basis for the permit requirements contained in the draft permit and exceed the requirements found in the federal CAFO rule.

Regarding lining of wastewater storage, all of the facilities subject to this permit action are poultry operations that generate, handle and store dry poultry waste. The draft permit contains specific requirements related to the design, siting, operation and maintenance of the growing houses and dry waste storage. As these facilities do not handle or

store liquid waste, they are not required to have a storage facility built to handle liquid waste. For facilities that generate, handle and store liquid waste, there are permit requirements that specify the lining material, thickness and permeability rating. A liner constructed in accordance with the Code of Virginia, regulations and permit requirements is required for all liquid waste storage and treatment facilities.

The draft permits also include the requirements for visual monitoring of stormwater, visual inspections of features at the site, site-specific best management practices (BMPs) prevent contact with poultry waste, and recordkeeping and reporting requirements.

Regarding soils monitoring, DEQ VPA and VPDES regulations require soils monitoring for facilities where the poultry waste will be land applied at sites that are under the control of the poultry operation. Soils monitoring is not required for facilities that transfer all farm generated poultry waste off-site. The operators of each of the existing facilities addressed by the draft VPDES permits transfer all of the farm generated poultry waste off-site. As the facilities subject to the draft permits do not land apply any poultry waste, they are not required to monitor soils. The draft permits contain BMPs for poultry waste storage that protect soils from accumulation of pollutants.

For facilities that land apply all or any portion of the farm generated poultry waste on the farm, the permit requires soils monitoring at the land application sites once every three years. This requirement is more restrictive than the once every five years requirement found in the federal CAFO rule. Any DEQ permits drafted to cover a poultry farm that land applies poultry waste will include the more restrictive soils monitoring language from the Virginia regulations.

Regarding groundwater monitoring, DEQ considers the permit conditions related to waste storage and land application (liners, separations from groundwater table, NMPs, etc.) to be protective of groundwater and therefore DEQ does not require groundwater monitoring for poultry operations. DEQ typically applies groundwater monitoring requirements in animal waste permits where in-ground storage units are utilized.

Regarding protection of shellfish waters, all of the requirements noted above are designed to abate the contribution of bacteria to surface waters. Also, as a part of the process to develop these draft permits, DEQ seeks input from the Virginia Department of Health (VDH), Division of Shellfish Sanitation (DSS) and the Virginia Marine Resource Commission. DEQ did not receive comments from the VDH-DSS during the development of these draft permits.

Additionally, the draft permits contain special conditions that allow DEQ to modify the permit requirements if any of the situations mentioned in the special conditions arise during the term of the permit. These conditions are in Part II.C.1, 2 and 3 and Part IV.X.

Topic #2

DEQ received comments concerning the visual water quality monitoring of storm water, including:

- **Visual monitoring is not adequate to evaluate discharges;**
- **Remove substitute sample provision during adverse weather conditions;**
- **Remove reference to normal working hours;**
- **Monitoring should be conducted by external party and not self reported; and**
- **Monitoring should include a quantitative analysis of pollutants, including nutrients and bacteria.**

DEQ Response: The draft permit requires implementation and maintenance of BMPs to mitigate or eliminate any discharges from the site that are not allowed by the permit. The BMPs employed at the site must ensure that the discharges occurring from the production area(s) (i.e. areas in and around the growing houses and waste storage) are not process wastewater. The permit allows storm water to discharge, composed of rainwater that has flowed across the production area where properly functioning BMPs have minimized contact between stormwater and poultry waste. These BMPs might include housekeeping (e.g. removing poultry waste from the ends of the houses, storage areas, and mortality disposal areas), covered manure storage, ditches to channel storm water, operation and maintenance of fans, or additional BMPs that the Farm Operating Manual might identify.

The requirements at Part I.B.1. of the draft permits specify requirements to complete visual monitoring, and Part I.C.2. of the draft permits specify what will be collected, examined and documented for the visual inspection and

sample monitoring. These requirements mirror the quarterly visual monitoring required in VPDES permits for industrial stormwater ([9VAC25-151-70](#) Part I.A.1.a.). All DEQ water permits that contain monitoring of this nature provide exemptions due to adverse weather conditions, as well as provisions for obtaining samples during normal working hours as standard regulatory language. The permittee must comply with all conditions in the permit including ensuring that someone is on-site to obtain the samples during normal working hours.

DEQ added the visual monitoring requirement to facilitate determination that an unpermitted discharge from the site is occurring, to include observation of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and other obvious indicators of stormwater pollution. Accompanied by recordkeeping and reporting, the requirements serve to document the nature of the storm water discharge and provide additional information to the permit holder as to whether permit conditions are met. The federal CAFO rule does not require any monitoring (visual nor analytical) of areas where discharges may occur. While the draft permit requirements go beyond those set forth by the federal CAFO rule, it offers a practical tool for the permit holders to assess permit compliance while making the permit more protective than the federal requirements.

The draft permit conditions outline the steps that the permit holder must take if the visual monitoring produces irregular findings. Those steps might include stopping the source of pollutants, evaluating the required BMPs used at the site to prevent a discharge to state waters, and reporting the findings, including any discharges to state waters.

Regarding self-reporting, the permittee must complete the visual monitoring and reporting requirements in accordance with the draft permit conditions. Self-reporting is a concept used widely in federal Clean Water Act programs as well as state programs, and do not require the monitoring or reporting to be completed by a third party.

Regarding the addition of quantitative analysis, [9VAC25-31-210](#) of the VPDES Permit Regulation authorizes establishment of permit conditions, including monitoring, on a case-by-case basis where necessary to ensure compliance with the law and regulations. [9VAC25-31-220](#) of the VPDES Permit Regulation describes the basis for which monitoring conditions would be required. The regulation describes quantitative monitoring as best employed where a particular value for a monitored parameter can represent compliance or non-compliance with permit conditions, and where defined conditions exist that enable positive identification of the source of pollutants. Examples might include a pipe discharging effluent from a treatment system with defined operational characteristics, or stormwater passing over an impervious surface subject to unique industrial chemical exposures.

While the definition of point source now includes “concentrated animal feeding operation,” the actual on-site conditions at poultry CAFOs managing dry waste are much more similar to non-point source discharges with respect to identifying the source of pollutants. At the subject CAFO facilities, the areas contributing runoff include not only impervious surfaces (concrete end pads and roofs), but a considerable amount of pervious grassed areas, gravel farm pathways, runoff from nearby agricultural fields, and in some cases wooded areas and roadways that front the farm. The primary parameters that could be monitored (nitrogen, phosphorous, bacteria) are ubiquitous in an agricultural environment, possibly emanating from multiple sources not associated with what could be defined as a point source discharge from the CAFO. These variables affecting the composition of runoff make regulating discharges from the area surrounding the growing houses much more similar to evaluating non-point source discharges associated with VPA permits, where the primary regulatory mechanism is BMP implementation. Choice of required BMPs is based upon study of the efficiency of those BMPs in more controlled environments, rather than through quantitative analysis of discharges where more variable conditions exist.

[9VAC25-31-220.K](#) of the VPDES Permit Regulation clearly contemplates requiring BMPs to control or abate the discharge of pollutants where numeric effluent limitations are infeasible or impractical. The nature of the stormwater flow at these operations does indeed affect the feasibility of applying numeric effluent limitations. The requirements for visual monitoring allow the permit holder to evaluate obvious sources of pollution, such as feathers from a composting area, or colors associated with stored manure, and make immediate corrections. The permit requires reporting of such conditions and corrective actions.

DEQ will begin the regulatory process to reissue the VPA General Permit Regulation for Poultry Waste Management later this year (2018), as the general permit term expires November 30, 2020. An evaluation of the BMPs that could be used for eliminating point-source discharges at dry poultry operations will be a component of

the regulatory advisory committee's work during this upcoming regulatory process. Through this process, DEQ will address more globally the requirements to abate pollution from dry poultry operations.

Topic #3

DEQ received comments that the storm water monitoring requirement should be removed because:

- **It is more stringent than federal CAFO permit requirements; and**
- **Testing discharged waters is not accurate to determine origination of pollutants - pollutants could be from wildlife or originating off-site.**

DEQ Response: While the federal CAFO rule does not require visual sampling or analyses of pollutants in stormwater discharges, the requirements to complete visual monitoring mirror the stormwater requirements for monitoring found in VPDES permits for storm water, and provide a practical tool for the poultry grower to evaluate BMP functionality. The requirements for visual monitoring, inspections of the site, and recordkeeping and reporting help ensure the effectiveness of the implemented BMPs to minimize and mitigate the risk of discharges that may occur from the site.

DEQ acknowledges that due to the course of storm water flow at the facilities, it is possible that the source of the pollutants could originate off-site. For this reason, it is imperative that the location of the discharge point, where the proposed sampling will take place, is situated to best avoid off-site influences. Where off-site influences cannot be avoided, the on-site inspections of the production area and the implementation of best management practices will help to ensure that the source of any irregular findings is not from the permitted farm's production area.

Topic #4

DEQ received comments expressing concern regarding the discharges authorized by the draft permits, including:

- **Discharges allowed by the permit are not consistent with federal regulation;**
- **Concern regarding the 25 year, 24 hour storm event;**
- **The bypass and upset provisions should be removed from the draft permits;**
- **The locations of the discharge points were not adequately described;**
- **Poultry waste should be managed such that wastewater discharges are not necessary;**
- **Alternatives to wastewater discharges are needed.**

DEQ Response: DEQ staff consulted with EPA Region III staff during the drafting of each of the subject draft permits. EPA Region III staff then reviewed and approved each of the draft VPDES CAFO permits and fact sheets addressed by the public notice. Accordingly, these draft permits meet the Clean Water Act and the federal requirements related to CAFOs. In many cases, the conditions contained in the draft permits exceed the federal requirements since Virginia has additional state laws and regulations governing the permitting, and operation and maintenance of poultry waste at poultry growing operations within the Commonwealth. Where additional requirements exist in Virginia law regulations, DEQ added these requirements to the subject draft VPDES CAFO permits.

The 25-year, 24-hour storm event is a standard term used to describe the probability of a given rainfall amount for a given area. Engineers incorporate this value in the design of engineering practices and the value must be determined for the area in which the project is being constructed. The United States Department of Agriculture Natural Resource Conservation Service (USDA-NRCS), recognizes this approach as a sound criterion for design of agricultural engineering practices. The USDA-NRCS is the federal authority regarding agricultural engineering and conservation practices. In Virginia, the 25-year, 24-hour storm event is 6-7 inches depending on location. The rainfall charts are determined by the National Oceanographic and Atmospheric Administration (NOAA) based on historic precipitation event observations. If rainfall patterns are changing, NOAA will analyze the data and update the rainfall charts. Section 62.1-44.17:1 of the Code of Virginia and chapters 9VAC25-31-200 E, 9VAC25-192 and 9VAC25-630 of the Virginia Administrative Code establish this standard. Changes to this standard would require changes to the Code of Virginia, the Virginia Administrative Code (regulations) and the federal CAFO rule, which is the basis for the conditions found in 9VAC25-31-200.

Federal regulations require inclusion of the bypass and upset provisions in all VPDES water permits, thus 9VAC25-31-190 of the VPDES permit regulation requires that all VPDES permits contain or specifically cite the conditions

contained in Part IV of the draft permits. These conditions mirror those required by the federal rules.

The latitude and longitude of the discharge points are included in the permit application addendum and the draft permit Fact Sheet. This is a standard requirement in the VPDES CAFO individual permit application.

DEQ regulates the majority of the poultry operations in Virginia through the VPA General Permit for Poultry Waste Management. The VPA General Permit is a well-established tool for protecting water quality and does not allow point-source discharges at facilities engaged in this type of farming activity. DEQ agrees that elimination of point source discharges is the most effective management, with compliance with the VPA General Permit for Poultry Waste Management as the best alternative. Where discharges from the production area cannot be completely eliminated, the VPDES CAFO permit is an effective tool to manage that scenario.

Topic #5

DEQ received comments that the VPDES individual permit should be used for all the permitted poultry operations on the Eastern Shore rather than the VPA General Permit.

DEQ Response: The federal CAFO rule and the VPDES permit regulation are clear that only facilities that discharge process wastewater from the production area to state waters are required to obtain a VPDES CAFO permit. Neither VPDES CAFO permits nor VPA permits allow the type of process wastewater discharges that triggered the requirement for these three facility owners to apply for a permit. While the facility owners have corrected those conditions, they have agreed to VPDES permit coverage. EPA Litigation following EPA's 2003 amendments to the CAFO rule further clarified the authority given by the Clean Water Act; owners of CAFOs that do not discharge are not required to obtain a VPDES permit. If the operators of poultry CAFOs manage poultry waste so as not to create a point-source discharge, DEQ cannot mandate that the facility owners obtain VPDES permits.

Topic #6

DEQ received comments regarding the VPA General Permit, including:

- **The VPA General Permit for Poultry Waste Management contains adequate provisions to protect water quality; and**
- **Coverage under the VPDES CAFO permits is not necessary.**

DEQ Response: DEQ acknowledges that the VPA General Permit is a well-established tool for protecting water quality at facilities engaged in poultry production. The physical requirements for poultry waste management are nearly identical in the VPA General Permit and the draft VPDES individual CAFO permits. However, it does not meet the federal requirements for permit coverage in the event of any point-source discharge, including that occurring after a storm event greater than the 25-year, 24-hour storm event.

It is important to note that while each of the facility owners addressed the conditions cited in the EPA Administrative Orders as cause for requiring the VPDES permit, each of the owners decided to move forward to obtain the VPDES CAFO individual permit to cover their individual farms.

Topic #7

DEQ received comments regarding the Farm Operating Manual, to include:

- **The manual should be made available for public comment prior to permit issuance, rather than submitted to DEQ following a permitting decision;**
- **The permit application, draft permit and nutrient management plan must be made available to public;**
- **There is no requirement that it be in a language that farm employees can read; and**
- **There is no requirement that employees have any training in the procedures required by the manual.**

DEQ Response: The federal CAFO rule requires that the draft permit, application, and Nutrient Management Plan (NMP), to include the nine elements of the NMP, be made available for public comment and input. DEQ's public notice process met each of the state and federal regulatory requirements for notice of the draft permit, permit application, and NMP (including all nine elements of the NMP).

DEQ made the permit applications, draft permit fact sheets, draft permits and NMPs available to the public in accordance with the requirements outlined in sections 260 and 290 of Chapter 31 of the Virginia Administrative

Code and federal CAFO rule. On September 20, 2017, the public notice for the three draft permits was published in the Eastern Shore News. The public comment period related to the public hearing was from December 20, 2017 to February 14, 2018. The documents were available for public review during both public comment periods and at the public hearing as required by the regulations.

The nine elements of the NMP, that the regulations require be made available for public review, exist in a combination of the permit language, permit application, permit application addendum, and NMP that were available for public comment. As a supplement to the federal requirements, DEQ also requires that the permit holder submit an operations and maintenance manual (termed a “Farm Operating Manual”) when facilities are covered by an individual permit. Once DEQ approves the manual, it would become an enforceable part of the permit. The manual is designed to serve as an adaptive management approach, as it gives the permittee the flexibility to modify the plan and operating parameters following initial approval (See Part II.C.4 of the draft permits).

The purpose of the Farm Operating Manual is two-fold. The manual (i) provides an opportunity for the permittee to provide the details of the day-to-day operations of the facility, and (ii) is designed to allow the permittee to propose the details in cases where the federal rule does not provide specificity regarding a requirement. One example of such a case is the frequencies of inspections in order to detect leaks on equipment used for liquid manure handling and land application. The federal rule specifies that the permit holder must inspect the equipment, but does not specify a frequency. In the Farm Operating Manual, the permit holder will specify the frequency of these inspections.

Part II.C.4.f. of the draft permits states that the Farm Operating Manual must include “an emergency plan which includes appropriate procedures for employees to follow in case of an emergency...” This condition makes it clear that the Farm Operating Manual must be understandable by the employees in order to implement the Manual. The permit provision allowing submission of the manual after permit issuance gives the permit holder the flexibility to adapt the manual language to best suit changing needs of employees and site conditions.

Part II.C.9 of the draft permit requires that each operator complete a training program offered or approved by DEQ. Furthermore, all permitted operators must complete the training program at least once every five years. The training program covers topics related to the permits, nutrient management and compliance with the permits.

The requirement to submit an approvable Farm Operating Manual within 90 days of the permit effective date is consistent with all other state and federal water permitting programs that DEQ administers. Once the permit holder submits the manual, it would be subject to DEQ release through Freedom of Information Act requests.

Topic #8

DEQ received comments expressing concern regarding the amount of poultry waste that is produced by the poultry growing facilities, to include:

- **Ensuring appropriate utilization of the poultry waste;**
- **The NMP should be in place prior to issuing the VPDES permit and list where the litter is going; and**
- **The permits should require a long-term (10 year) contract for the transfer of poultry waste.**

DEQ Response: Each of the existing facilities, subject to this permit action, transfer all of the farm generated poultry waste off-site. These facilities are not proposing to expand or create more poultry waste than they do currently. The VPA GP for Poultry Waste Management and the VPDES CAFO Individual Permits contain requirements related to poultry waste transfers, including recordkeeping. Part I.C.6 of the draft VPDES CAFO Individual Permits contain the recordkeeping conditions and Part I.D contain the reporting requirements. Based on DEQ inspections, the permittees are in compliance with the requirements related to poultry waste transfers set forth in the current VPA General Permit and the requirements found in the draft VPDES CAFO IPs.

The draft permit conditions require the permittee to implement a site-specific NMP, written by a DCR certified plan writer. Additionally, DCR must approve the NMP prior to permit issuance. The NMP is enforceable through the permit. Neither the applicable DCR regulations, the federal CAFO rule, nor the VPA General permit regulation mandate that transfer-based NMPs identify the entities to whom the litter will be transferred. The VPA General Permit and Regulation for Poultry Waste Management contains technical requirements for end-users of transferred poultry litter that mandate rate, timing, storage, and site-specific land application requirements so as to ensure land

application that is protective of the environment.

DEQ acknowledges that it is important for a poultry grower to appropriately manage poultry waste such that litter is used appropriately and beneficially. However, the primary issue that a long-term contract would solve is ensuring that litter is moved off the facility and not create problems in storage. The draft permit conditions require the permittee to store the poultry waste in a manner that is protective of water quality. Markets for poultry litter as fertilizer are strong, thus issues with excessive amounts of litter stored at the facility are unlikely.

Neither the federal CAFO rule nor the VPA general permit regulations require long-term contracts for transferred poultry waste. Further, requiring the permittee to enter into a ten-year contract would create a requirement that is longer than the five-year permit term. DEQ could not effectively ensure compliance with a permit condition beyond the term length of a permit.

Final Exempt Action, Annual Update 2017 and Methods Update Rule: This regulatory amendment is presented to the Board for your consideration as final regulation. Various regulations of the Board include incorporation by reference to federal regulations under Title 40 of the Code of Federal Regulations (40 CFR). This regulatory amendment will revise these 40 CFR references to the most recent CFR published on July 1, 2017, for 9VAC25-31, 9VAC25-32, 9VAC25-210, 9VAC25-590, 9VAC25-610, 9VAC25-790, and 9VAC25-870. Additionally, as part of this amendment, EPA's dental effluent guidelines promulgated under 40 CFR Part 441 are being incorporated by reference into 9VAC25-31-30, and EPA's *Methods Update Rule* amendments to 40 CFR Part 136 are being incorporated into 9VAC25-31, 9VAC25-32, 9VAC25-210, 9VAC25-610, 9VAC25-790, and 9VAC25-870.

Stormwater Management Regulations (9VAC25-870) - Final Plan Elements, Specifications, or Calculations:

Chapters 10 (Senate Bill 1227) and 163 (House Bill 1127) of the 2017 Acts of Assembly require all final plan elements, specifications, or calculations whose preparation requires a license under Chapter 4 (§ 54.1-400 et seq.) or Chapter 22 (§ 54.1-2200 et seq.) of Title 54.1 be appropriately signed and sealed by a professional who is licensed to engage in practice in the Commonwealth.

The requirements for a Stormwater Management Plan and the technical criteria and requirements for state projects are set forth in the Virginia Stormwater Management Program Regulation (9VAC25-870). The Department is proposing the replacement of the existing language in 9VAC25-870-55 C and 9VAC25-870-160 D 7 with new language as illustrated below:

9VAC25-870-55. Stormwater management plans.

C. Elements of the stormwater management plans that include activities regulated under Chapter 4 (§ 54.1-400 et seq.) of Title 54.1 of the Code of Virginia shall be appropriately sealed and signed by a professional registered in the Commonwealth of Virginia pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1 of the Code of Virginia. All final plan elements, specifications, or calculations of the stormwater management plans whose preparation requires a license under Chapter 4 (§ 54.1-400 et seq.) or 22 (§ 54.1-2200 et seq.) of Title 54.1 shall be appropriately signed and sealed by a professional who is licensed to engage in practice in the Commonwealth of Virginia. Nothing in this subsection shall authorize any person to engage in practice outside his area of professional competence.

9VAC25-870-160. Technical criteria and requirements for state projects.

D. As a minimum, a stormwater management state permit application shall contain the following:

1. The location and the design of the proposed stormwater management facilities.
2. Overall site plan with pre-developed and post-developed condition drainage area maps.
3. Comprehensive hydrologic and hydraulic computations of the pre-development and post-development runoff conditions for the required design storms, considered individually.
4. Calculations verifying compliance with the water quality requirements.
5. A description of the requirements for maintenance of the stormwater management facilities and a recommended schedule of inspection and maintenance.
6. The identification of a person or persons who will be responsible for maintenance.

7. All stormwater management and erosion and sediment control plans associated with a state permit application shall be appropriately sealed and signed by a professional in adherence to all minimum standards and requirements pertaining to the practice of that profession in accordance with Chapter 4 (§ 54.1-400 et seq.) of Title 54.1 of the Code of Virginia and attendant. All final plan elements, specifications, or calculations whose preparation requires a license under Chapter 4 (§ 54.1-400 et seq.) or 22 (§ 54.1-2200 et seq.) of Title 54.1 shall be appropriately signed and sealed by a professional who is licensed to engage in practice in the Commonwealth of Virginia. Nothing in this subsection shall authorize any person to engage in practice outside his area of professional competence.

A 60-day public comment period for the amendments was held and ended on October 6, 2017. No public comments were received.

Consideration of a Fast Track Rulemaking to Amend the Water Quality Standards Regulation (9 VAC 25-260-185) to Include the November 2017 Chesapeake Bay Criteria Assessment Protocols Addendum: Staff intends to ask the Board at their April 2018 meeting for approval to initiate a rulemaking to amend the Water Quality Standards regulation to include the November 2017 Chesapeake Bay Criteria Assessment Protocols Addendum. The staff proposal will be for a fast track rulemaking as the amendment is expected to be non-controversial because these protocols have been developed by U.S. EPA through a collaborative process within the Chesapeake Bay Program. These protocols reflect the best scientific approach for the Bay states to use in assessing attainment of the standards for the Chesapeake Bay and its tidal rivers.

Background: In 2005 the State Water Control Board adopted dissolved oxygen, water clarity, and chlorophyll-a standards specifically for the Chesapeake Bay and its tidal rivers. Due to the complex nature of the circulation patterns and varying salinity of the Bay waters the standards regulation also includes reference to criteria assessment procedures published by EPA. Since that initial action, the Board has approved amendments to the standards regulation to include references to updated assessment procedures published by EPA in 2007, 2008, and 2010.

Current Proposal: EPA has continued to refine the assessment procedures as scientific research and management applications reveal new insights and knowledge about the Chesapeake Bay. Each of EPA's updated procedure documents replace or otherwise supersede similar criteria assessment procedures published in earlier documents, but not all of them. Therefore, it is necessary for the Virginia standards to refer to each of the addenda published by EPA. The 2017 addendum provides newly developed procedures for assessing short-term dissolved oxygen criteria (i.e., 7-day mean, 1-day mean, and instantaneous minimum criteria) in the tidal waters of the Chesapeake Bay. It also discusses the results of a literature review conducted by multiple Chesapeake Bay workgroups to reconcile differences between the 1993 Chesapeake Bay Program restoration targets for submerged aquatic vegetation and the water quality standards adopted by Maryland, Delaware, Washington D.C, and Virginia. Finally, it provides guidance for determining whether a segment should be categorized as having insufficient information for benthic assessment due to statistical uncertainty.

Request to Adopt Fast-Track Amendments to the Aboveground Storage Tank and Pipeline Facility Financial Responsibility Requirements (9VAC25-640): The staff will bring to the State Water Control Board (Board) at the April 12, 2018 meeting, a request to accept final amendments to the Aboveground Storage Tank and Pipeline Facility Financial Responsibility Requirements (9VAC25-640 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. Subsection D of 62.1-44.34:16 of the Code of Virginia authorizes the State Water Control Board to promulgate regulations requiring operators of facilities to demonstrate financial responsibility based on the total storage capacity of all facilities operated within the Commonwealth and operators of pipelines: demonstrate financial responsibility for any pipelines operated within the Commonwealth.

Background: The Aboveground Storage Tank and Pipeline Facility Financial Responsibility Requirements specify the criteria by which operators of aboveground storage tank and pipeline facilities can demonstrate adequate financial resources for the containment and cleanup of any oil discharge which may occur at their facilities.

Final Amendments to the Regulation: Amendments are being made to this regulation as a result of changes made to a companion regulation, the Facility and Aboveground Storage Tank (AST) Regulation (9VAC25-91). The Aboveground Storage Tank and Pipeline Facility Financial Responsibility Requirements regulation (9VAC25-640) specifies the financial assurance requirements for pipeline facilities and aboveground storage tanks regulated by the Facility and Aboveground Storage Tank (AST) Regulation (9VAC25-91). The Facility and Aboveground Storage Tank (AST) Regulation (9VAC25-91) contain the technical requirements for registration of facilities and individual ASTs, as well as

the standards and procedures for operators of certain facilities relating to pollution prevention, and oil discharge contingency plans.

Section 30 of the Facility and Aboveground Storage Tank (AST) Regulation (9VAC25-91) excludes certain activities from regulation. Exclusions from regulation are also listed in § 30 of the Aboveground Storage Tank and Pipeline Facility Financial Responsibility Requirements (9VAC25-640). This amendment modifies the language in § 30 of the Aboveground Storage Tank and Pipeline Facility Financial Responsibility Requirements (9VAC25-640) to include the revisions made to the exclusions in § 30 of the Facility and Aboveground Storage Tank (AST) Regulation (9VAC25-91).

An obsolete section is also being deleted from the Aboveground Storage Tank and Pipeline Facility Financial Responsibility Requirements regulation. Regulations are periodically reviewed as required by Executive Order 17 (2014) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia.

VPDES General Permit Regulation for Concrete Products Facilities 9VAC25- 193: The current VPDES Concrete Facilities General Permit will expire on September 30, 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 (TAC) formed for this regulatory action.

Substantive changes to the existing regulation are:

- Requiring Municipal Separate Storm Sewer owner notification with the registration statement;
 - Requiring State Corporation Commission identification number to attain the proper legal owner name of the company for permitting and enforcement purposes;
 - Removing the limits and requirements for noncontact cooling water as this industry does not use these systems;
 - Clarifying that any waste concrete and any dredged solids from the settling basins are two different types of waste and any associated wastewater or stormwater must be collected for recycle or treated prior to discharge as this was always the intent;
 - Simplifying the one foot freeboard log reporting requirement for the settling basins per TAC discussions;
 - Requiring reports per Part III H of an unusual or extraordinary discharge for facilities designed to operate as 'no discharge' when or if they discharge during 2 5-year, 24-hour storm events and reporting of unauthorized discharge per Part III G if a discharge occurs outside of 25-year, 24-hour storm event. This provides some type of notification for discharge since DMRs are not required for these systems. The same requirement is in the non-metallic mineral mining permit since that industry also often operates in a no discharge mode;
 - Adding that dust suppression spraying shall not occur during measureable rain events as it is unnecessary and more likely to result in a discharge from the site;
 - Removed sampling waivers for benchmark monitoring as it was generally agreed upon in the TAG that one annual stormwater sample can easily be collected during a calendar year with proper planning. The sampling waivers for quarterly visual examinations were moved to the next section. Deleting this waiver also removes the requirement for a substitute sample the following period;
 - Clarified that when visual assessments indicate stormwater pollution, stormwater controls must be updated. This follow-up for corrective action was missing from this requirement;
 - Added documentation of routine facility inspections as this was missing from this requirement;
- Where appropriate, changed language to match the EPA Multi-sector General Permit for Stormwater Discharges Associated with Industrial Activity; and
- Throughout the regulation, where appropriate, made due dates for various requirements 60 days (registration, outfall changes and stormwater plan updates and corrections) for consistency.

A Notice of Intended Regulatory Action (NOIRA) for the amendment was issued February 6, 2017. The public comments received were requests to be on the TAC and concerns related to sampling during non-daylight hours.

Report On Facilities In Significant Noncompliance

1. One new permittee was reported to EPA on the Quarterly Noncompliance Report as being in significant noncompliance (SNC) for the quarter ending March 31, 2017. The permittee, the facility and the reported instances of noncompliance are as follows:

Permittee/Facility: **Frederick-Winchester Service Authority/Opequon Water Reclamation Facility**
 Type of Noncompliance: **Failure to Meet Permit Effluent Limits (Ammonia as N)**
 City/County: Frederick County, Virginia
 Receiving Water: Opequon Creek
 Impaired Water: Opequon Creek is listed as impaired for not meeting the General Standard (Benthics) for aquatic life use. This section of the river is also listed as having elevated levels of coliform bacteria. A TMDL addressing the impairments includes waste load allocations for discharges from the Facility for *E.coli* and sediment.
 River Basin: Potomac River Basin
 Dates of Noncompliance: September 2016, January 2017, and March 2017
 Requirements Contained In: VPDES Permit
 DEQ Region: Valley Regional Office

The Authority attributed the violations to the implementation of a green energy system that beneficially reuses methane gas to power the Facility. The violations were related to some trial testing the Authority was doing with different waste streams. In response to the violations, the Authority made operational modifications to remediate the causes of the violations and the beneficial reuse system is now operating in compliance. Because this is a historically well operated Facility and the violations were caused by a beneficial reuse project, staff of the agency's Valley Regional Office, with concurrence from the agency's Central Office staff and EPA, informally closed the case without the issuance of a consent order with penalties.

2. There were no new facilities reported to EPA on the Quarterly Noncompliance Report as being in significant noncompliance for the quarter ending June 30, 2017.

3. One new permittee was reported to EPA on the Quarterly Noncompliance Report as being in significant noncompliance (SNC) for the quarter ending September 30, 2017. The permittee, the facility and the reported instances of noncompliance are as follows:

Permittee/Facility: **Greensville County Water and Sewer Authority/Three Creek WWTP**
 Type of Noncompliance: **Failure to Meet Consent Order Effluent Limits (Copper, total recoverable)**
 City/County: Greensville County, Virginia
 Receiving Water: Three Creek
 Impaired Water: Three Creek is listed as impaired for Fish Consumption Use due to a Virginia Department of Health advisory for mercury in multiple fish species. The Aquatic Life Use is fully supporting with observed effects because the creek is subject to low summertime dissolved oxygen. The WWTP was addressed in a bacterial TMDL for Three Creek that was approved by the Board in 2013. The WWTP received an *E. coli* wasteload allocation and subsequent *E. coli* permit effluent limits as a result of the TMDL. The WWTP is currently meeting those limits.
 River Basin: Chowan River and Dismal Swamp River Basin
 Dates of Noncompliance: August 2017
 Requirements Contained In: VPDES Permit
 DEQ Region: Piedmont Regional Office

The Facility was operating under a consent order with DEQ that set enforcement limits for copper from August 2014 through August 2017. During the 2012-2017 permit term, the Authority conducted a Water Effect Ratio (WER) study for copper. The result of the WER study and subsequent waste load allocation calculations was that a permit limit for copper was not required for the Facility. Based on the results, when the permit was reissued to the Authority on September 1, 2017, the permit did not contain copper limits. The Facility was not referred for additional enforcement for the August 2017 exceedance of the enforcement limit because the results from the WER study and subsequent calculations concluded that a limit was not required and the Facility returned to compliance with the issuance of the 2017 permit.

4. There were no new facilities reported to EPA on the Quarterly Noncompliance Report as being in significant noncompliance for the quarter ending December 31, 2017.

Dynamic Aviation Group, Inc. - Consent Order w/Civil Charge and a Corrective Action Plan: Dynamic's Main Facility, located at 1402 Airport Road, has an assigned EPA ID No: VA0000980524; the Logistics Center Facility, located at 7487 Kiser Road, has an assigned EPA ID No. : VACESQG31 604 and Building 7, located at 1675 Airport Road, has an assigned EPA ID number: VAR000531442 (Facilities). At the Facilities, Dynamic repairs, stores, fuels, and maintains aircraft and company vehicles. On June 20 and 28, 2016, DEQ staff conducted an inspection of the facilities. The staff observed the following:

- 1.) the physical characteristics of the Airport Road, Kiser Road and Building 7 facilities,
- 2.) the existence of stormwater outfalls at the sites,
- 3.) the presence of industrial materials, equipment and solid and hazardous wastes in exposed areas and/or adjacent to stormwater conveyance features at the sites,
- 4.) the presence of sources of wastewater discharges (i. e. an oil water separator, aircraft parts cleaning sinks and sump pumps) at the Building 7 site,
- 5.) the lack of regular inspections of the sites for potential pollution sources, and
- 6.) the lack of regular visual observation of the quality of stormwater discharges at the sites.
- 7.) Approximately one acre of wetlands had been impacted.

DEQ staff concluded from their inspections as well as a subsequent file review that industrial activity was taking place at the three facilities and that stormwater discharges associated with industrial activity would have occurred at the three facilities during a time when agency records indicate that Dynamic did not have VPDES permit coverage for the discharges.

The consent order before the Board includes a civil charge and injunctive relief consisting of requirements to complete a Corrective Action Plan and the purchase of compensatory mitigation credits to ensure to no net loss.
Civil Charge: \$50,000.

6801 Woolridge Road – Moseley LP a.k.a. Magnolia Green Subdivision, Chesterfield County - Consent Special Order w/ Civil Charges: 6801 Woolridge Road – Moseley LP (WRMLP) owns and is developing the Property in Chesterfield County. On December 10, 2007, DEQ issued permit VWP permit 06-2748 (Permit) to Magnolia Green Development, L.L.C. The Permit was transferred twice, first to 6801 Woolridge Road – Moseley TRS, LLC on June 15, 2009, and again to WRMLP on October 23, 2013.

The Permit authorized the permanent impacts of 2.64 acres of forested wetlands, 0.02 acres of emergent wetlands, and 11,147 linear feet of stream channel. Additionally this project has been authorized to convert 2.39 acres of forested wetlands to emergent wetlands and temporarily impact 0.41 acres of forested wetlands and 1,065 linear feet of stream channel.

On October 21, 2015, WRMLP submitted to DEQ an “Overall Impacts Map” dated June 15, 2015, indicating impacts to surface waters that were not authorized by the Permit and requesting a permit modification. On November 6th and 9th, 2015, DEQ staff conducted site inspections which revealed that the impacts that began between June 2005 and May 2006, were already complete. In addition, DEQ staff observed multiple failures of permit requirements resulting in wetland impacts. On March 3, 2016, the Department issued NOV number 16-02-PRO-700 to WRMLP for the observed violations observed on November 6 and 9, 2017.

On March 22, 2016, the Department met with WRMLP to discuss the violations cited in the NOV. The Department requested a formal written response to the violations. During the meeting, the Department made it clear that future permit modifications must be made before start of construction and the impacting of wetlands and streams.

On November 18, 2016, the Department conducted a site visit of the WRMLP to verify existing impact areas and review proposed impact areas in Phases I & II with WRMLP’s consultant. DEQ staff observed additional wetland and streambed impacts that were not authorized by the Permit.

On January 20, 2017, WRMLP's consultant reported a sediment discharge into an estimated 1,053 square feet of forested wetland due to a failure of erosion and sediment controls. On February 3, 2017 WRMLP's consultant provided additional information after the wetland area had been cleaned by hand and restored to native soils and contours. The erosion and sediment controls had been improved to prevent future sediment releases in this area.

On July 12, 2017, WRMLP's consultant reported a sediment discharge into an estimated 4,280 square feet of forested wetland in the forested wetland system on the Property.

On a number of occasions, WRMLP's consultant conducted activities impacting wetlands that were not authorized by the Permit, later submitting plans for a Permit amendment based on the unauthorized actions.

This Order requires a plan, suitable for Department approval, for on-site restoration of the golf course to complete the Permit modification and submittal of deed restriction language for protecting the compensation site. Civil Charge: \$56,062.

John C. Holland Enterprises, Inc., Suffolk - Consent Order w/ civil charge and injunctive relief: On June 29 and 30, 2017, DEQ staff conducted onsite inspections of the John C. Holland Enterprises, Inc. ("JCHE") Landfill (SWP 280) ("Landfill"), 4801 Nansemond Parkway, Suffolk, located at Suffolk Tax Map # 20*37 and 20*37A ("Site") for the purpose of assessing potential unauthorized impacts to surface waters regulated under the Virginia Water Protection Permit Program statutes and regulations.

During this inspection, staff observed that approximately three (3) acres of nontidal forested wetlands located outside of the eastern property line of the Landfill on the adjacent property were impacted by earthen and gravel fill material, as well as a small structure, concrete pad and electrical generator, as a result of an expansion of landfill operations onto the adjacent property. DEQ files did not indicate that a Virginia Water Protection Permit had been issued authorizing these activities in wetlands.

On August 4, 2017, the Tidewater Regional Office issued JCHE a Notice of Violation ("NOV") #1708-000463 for unauthorized impacts to wetlands.

The Order requires JCHE to pay a civil charge within 30 days of the effective date of the Order. The Order also requires JCHE to submit a Corrective Action Plan ("CAP") within 60 days of the effective date of this Order for the restoration of impacted wetlands or purchase of compensatory mitigation credits. The Order is currently pending execution. Civil Charge: \$50,948.

Colonial Pipeline Company -Consent Order w/Civil Charge and a Corrective Action Plan: On September 21, 2015, a petroleum odor was reported to Fairfax County 911. Fairfax County officials initially believed the gasoline was likely from an illegal dumping operation. Cleanup crews had collected approximately 3,000 gallons of water-petroleum mixture in a vacuum truck from a stormwater catch basin. Crews also deployed absorbent booms and collected a similar mixture in a vacuum truck at a stormwater retention pond. Fairfax County Fire Marshal contacted Colonial to report a sheen on the stormwater retention pond. Colonial began to shut down two pipelines in the local vicinity.

On September 23, 2015, the discharge was confirmed by Colonial through a series of investigatory test pits. After the leak was identified, Colonial excavated the impaired section of the pipeline and made repairs.

On October 26, 2015, DEQ received an Initial Abatement Report describing initial containment and clean-up actions. Colonial estimated that 4,000 gallons of oil were discharged. DEQ staff requested additional information regarding the method Colonial used to calculate the volume of oil discharged.

On October 27, 2015, the Department issued Notice of Violation No. W2015-10-N-001.

On June 6, 2017, the National Transportation Safety Board (NTSB) issued its Pipeline Accident Brief. The NTSB determined that the probable cause of the discharge of oil was a through-wall corrosion fatigue crack that developed at a

dent in the pipeline due to residual and operational stress and exposure to the underground environment. Contributing to the accident were Pipeline and Hazardous Materials Safety Administration (PHMSA) regulations that did not require a dent of the size in this case to be removed. PHMSA is currently considering regulatory revisions to address the concern. Also contributing to the delay in recognizing the discharge were the limitations of pipeline Supervisory Control and Data Acquisition systems to detect small pipeline leaks.

Colonial has been implementing a corrective action plan to address the discharge and has taken a number of proactive measures to prevent future discharges in the Commonwealth. Civil Charge: \$48,571.

Approval of two TMDL reports and amendment of the Water Quality Management Planning regulation to include the corresponding TMDL wasteload allocations: Staff will ask the Board to approve portions of two TMDL reports and adopt the corresponding amendments to Virginia's Water Quality Management Planning regulation. As of July 1, 2014, TMDL waste load allocations receive State Water Control Board approval prior to EPA approval due to amendments outlined in §2.2-4006. A.14 of the Code of Virginia. The TMDL reports have been reviewed by EPA for required TMDL elements; however, they remain in draft form until State Water Control Board approval.

Proposed Actions: Staff will propose the following Board actions:

Approval of two TMDL reports, Amendment of Water Quality Management Planning regulation to incorporate six new WLAs

a. The report titled, "*Sediment TMDLs for the Accotink Creek Watershed, Fairfax County, Virginia*" proposes sediment reductions for the Upper Accotink Creek, Lower Accotink Creek, and Long Branch watersheds and provides sediment waste load allocations of 2,338 tons/year, 3,073 tons/year, and 936 tons/year, respectively.

b. The report titled, "*Chloride TMDLs for the Accotink Creek Watershed, Fairfax County, Virginia*" proposes chloride TMDLs for the Upper Accotink Creek, Lower Accotink Creek, and Long Branch watersheds and provides chloride waste load allocations of 5,444,279 lbs/year, 3,723,479 lbs/year, and 873,049 lbs/year, respectively.

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.

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 under <http://www.deq.virginia.gov/Programs/Water/WaterQualityInformationTMDLs/TMDL/TMDLDevelopment/DraftTMDLReports.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 34, Issue 11) on January 22, 2018, with a public comment period ending on February 21, 2018. Staff received no comments.