

REVISED  
TENTATIVE AGENDA  
STATE WATER CONTROL BOARD MEETING  
MONDAY, APRIL 27, 2009  
AND  
TUESDAY, APRIL 28, 2009 (if necessary)

House Room C  
General Assembly Building  
9<sup>th</sup> & Broad Streets  
Richmond, Virginia

Convene – 9:30 a.m. (Both Days)

<b>I.</b>	<b>Minutes</b> (October 16-17 and December 4, 2008)		<b>TAB</b> A
<b>II.</b>	<b>Permits</b> Middlesex Courthouse WWTP (Middlesex Co.)	<b>DEFERRED UNTIL NEXT MEETING</b>	
<b>III.</b>	<b>Final Regulations</b>		
	Water Quality Management Plan Waste Load Allocation Amendments for Merck WWTP	Weeks	C
	Water Quality Management Plan Waste Load Allocation Amendments for Frederick-Winchester Service Authority Opequon WRF	Pollock	D
	Water Quality Standards Amendments – Protection of Eastern Shore Tidal Waters for Clams and Oysters	Daub	E
	VPDES General Permit for Non-Metallic Mineral Mining	Cosby	F
	VPDES General Permit for Storm Water Associated with Industrial Activity	Tuxford	G
<b>IV.</b>	<b>Proposed Regulations</b>		
	Underground Storage Tanks: Technical Standards and Corrective Action Requirements – Amendments	Lamp	H
	VPA General Permit for Poultry Waste Management	Bowles	I
<b>V.</b>	<b>Petition for Rulemaking</b> – Eastern Shore Water Quality	Weeks	J
<b>VI.</b>	<b>Total Maximum Daily Loads</b>	Lazarus	K
	Approval of 4 Reports and 1 Modification (Difficult Run-Fairfax; Opequon Watershed-Frederick and Clarke Co.; Lick Creek- Dickenson, Russell and Wise Co.; Rivanna River-Charlottesville And Albemarle, Greene, Nelson and Orange Co.; Parker Creek-Accomack Co.) and Notification of Delegated Actions		
<b>VII.</b>	<b>Significant Noncompliance Report</b>	O’Connell	L
<b>VIII.</b>	<b>Consent Special Orders (VPDES Permit Program)</b>	O’Connell	M
	Northern Regional Office Town of Hamilton STP (Loudoun Co.) Piedmont Regional Office Hammaker East, L.P. (Chesterfield Co.)		

Tidewater Regional Office  
 Robert L. Ingram, Jr. (Norfolk)  
 S.E.A. Solutions Corp. (Chesapeake)  
 Blue Ridge Regional Office  
 Blacksburg County Club, Inc. (Montgomery Co.)  
 Valley Regional Office  
 Aqua Virginia, Inc. – Lake Monticello (Fluvanna Co.)  
 Southwest Regional Office  
 Town of Big Stone Gap (Wise Co.)

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|-------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------|---|
| <b>IX.</b>  | <b>Consent Special Orders (VWP Permit Program)</b>                                                                                                                                                                                                                                                                                                                      | O’Connell | N |
|             | Northern Regional Office<br>Stanley Martin Companies, LLC (Prince William Co.)<br>Piedmont Regional Office<br>Beverly Hills, Inc. & The Wilton Companies, LLC (Henrico Co.)<br>Blue Ridge Regional Office<br>Boone Homes Inc. of Roanoke<br>R & K Foundations, Inc. (Franklin Co.)<br>Norman Woods (Montgomery Co.)<br>Central Office<br>Arthur J. Fisher (Augusta Co.) |           |   |
| <b>X.</b>   | <b>Consent Special Orders (Ground Water Program and Others</b>                                                                                                                                                                                                                                                                                                          | O’Connell | O |
|             | Tidewater Regional Office<br>Six L’s Packing Co., Inc. (Accomack and Northampton Co.)<br>Blue Ridge Regional Office Regional Office<br>Novozymes Biologicals, Inc. (Salem)                                                                                                                                                                                              |           |   |
| <b>XI.</b>  | <b>Public Forum</b>                                                                                                                                                                                                                                                                                                                                                     |           |   |
| <b>XII.</b> | <b>Other Business</b>                                                                                                                                                                                                                                                                                                                                                   |           |   |
|             | Revolving Loan Fund Economic Stimulus Funding List                                                                                                                                                                                                                                                                                                                      | Gills     | P |
|             | Funding for Study on Nutrient Loss – Water Reuse Reg                                                                                                                                                                                                                                                                                                                    | Gilinsky  | Q |
|             | Water Conservation Measures Report                                                                                                                                                                                                                                                                                                                                      | Kudlas    |   |
|             | Division Director’s Report                                                                                                                                                                                                                                                                                                                                              | Gilinsky  |   |
|             | Legislative Update                                                                                                                                                                                                                                                                                                                                                      | Jenkins   | R |
|             | Future Meetings                                                                                                                                                                                                                                                                                                                                                         |           |   |

**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 Cindy M. Berndt at (804) 698-4378.

**PUBLIC COMMENTS AT STATE WATER CONTROL BOARD MEETINGS:** The Board encourages public participation in the performance of its duties and responsibilities. To this end, the Board has adopted public participation procedures for regulatory action and for case decisions. These procedures establish the times for the public to provide appropriate comment to the Board for its consideration.

For **REGULATORY ACTIONS** (adoption, amendment or repeal of regulations), public participation is governed by the Administrative Process Act and the Board's Public Participation Guidelines. Public comment is accepted during the Notice of Intended Regulatory Action phase (minimum 30-day comment period) and during the Notice of Public Comment Period on Proposed Regulatory Action (minimum 60-day comment period). Notice of these comment periods is announced in the Virginia Register, by posting to the Department of Environmental Quality and Virginia Regulatory Town Hall web sites and by mail to those on the Regulatory Development Mailing List. The comments received during the announced public comment periods are summarized for the Board and considered by the Board when making a decision on the regulatory action.

For **CASE DECISIONS** (issuance and amendment of permits), the Board adopts public participation procedures in the individual regulations which establish the permit programs. As a general rule, public comment is accepted on a draft permit for a period of 30 days. If a public hearing is held, there is an additional comment period, usually 45 days, during which the public hearing is held.

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

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

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

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

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

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

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

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

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**Summary of Comments Received During Public Hearing/Comment Period VPDES Permit No. VA0091316, Middlesex Courthouse WWTP, Middlesex County:** On June 6, 2008, DEQ received an application from Middlesex County for re-issuance of VPDES permit number VA0091316 for the Middlesex Courthouse Wastewater Treatment Plant (WWTP). This permit was originally issued for the first time on December 11, 2003 and expired on December 10, 2008. During the original 2003 issuance process, notification was made to 18 riparian land owners downstream of the project, and no public comments were received during the public notice phase of the original permit. The 2003 permit authorized the permittee to discharge treated municipal wastewater from a treatment facility with a design capacity of 39,900 gallons per day (gpd) into an unnamed tributary of Urbanna Creek, in the Rappahannock River basin. At the outfall point, the receiving water body is a free-flowing intermittent stream. The outfall location is 0.85 miles upstream of the unnamed tributary's confluence with tidal Urbanna Creek; however, 0.1 mile downstream of the outfall point, ambient stream flows within the channel disappear into a swallow hole. A Certificate to Construct (CTC) the facility was issued on August 29, 2005, but as of today, the treatment facility has not been built. The proposed treatment facility will serve Middlesex County's recently built Courthouse complex, the County's High School, and an undetermined number of local businesses in the Saluda area. Since 2003, sewerage generated at the Courthouse complex has been handled through a pump-and-haul arrangement. The High School is currently served by a failing drain field located on its athletic fields. The application for re-issuance of this VPDES discharge permit requested that the current permitted design capacity of 39,900 gallons per day be carried forward to the re-issued permit cycle. A notable difference between the application for the 2003 permit and the application for the 2008 re-issuance is that the location of the proposed treatment plant was changed by the permittee due to the purchase of a larger lot to build the treatment works. The new location is east of Saluda, off State Route 33. However, the County plans to pump the treated wastewater approximately 0.8 mile back to the proposed 2003 outfall site (off SR 618) in Saluda to avoid shellfish issues. Consequently, the outfall location will remain the same as the current permit. The proposed draft permit for re-issuance contains most of the same limitations and conditions of the existing permit, with minor exceptions added or removed to address new agency requirements and procedures promulgated since the initial issuance of this permit. These include additional significant digits requirements, additional bacterial limitations and monitoring requirements, additional compliance reporting requirements, and the removal of total residual chlorine limits and monitoring due to the planned design change from chlorination/dechlorination to ultraviolet disinfection methods. Although the Water Quality Standards require that only E.coli bacteria be limited for discharges to freshwater streams, a limitation for Fecal Coliform was carried over to the draft permit re-issuance from the existing permit to account for any effluent that may reach Urbanna Creek (shellfish waters). The Middlesex Courthouse

treatment facility does not currently possess a Chesapeake Bay nutrient allocation because a CTC was not issued before July 1, 2005. However, the facility will be authorized to discharge total nitrogen and total phosphorus under the General VPDES Watershed Permit Regulation for Total Nitrogen and Total Phosphorus Discharges and Nutrient Trading in the Chesapeake Bay Watershed in Virginia (9 VAC 25-820) because the design flow is less than 40,000 GPD. If in the future the County requests and receives approval of an expansion of the facility to 40,000 GPD or more, the County would be required under the General Permit to formally register for General Permit coverage, offset their entire discharged load and comply with any applicable technology requirements. The proposed outfall point is not directly in designated shellfish waters. Nonetheless, DEQ staff coordinated with the Virginia Department of Health, Division of Shellfish Sanitation in preparing the proposed permit. Downstream, in the tidal portion of Urbanna Creek, the VDH has identified areas of both condemned and prohibited shellfish growing waters. On July 2, 2008, VDH responded that the proposed permit would not cause an increase in the size or type of currently designated restricted shellfish growing areas, and offered no further comments on the proposed permit. Effluent limits were developed to maintain water quality criteria under "critical" low flow drought conditions. Due to the intermittent nature of the receiving stream, the discharge was evaluated without the benefit of dilution. Consequently, the proposed permit limits reflect the need for the treated effluent to maintain water quality standards by itself, or at the "end-of-pipe." The draft permit proposes to limit the following parameters:

<u>Carbonaceous Biological Oxygen Demand (cBOD<sub>5</sub>)</u>	<u>10 mg/l (1500 g/day) monthly average</u>
<u>Total Suspended Solids (TSS)</u>	<u>10 mg/l (1500 g/day) monthly average</u>
<u>Total Kjeldahl Nitrogen (TKN)</u>	<u>3.0 mg/l (450 g/day) monthly average</u>
<u>Dissolved Oxygen</u>	<u>5.0 mg/l minimum</u>
<u>E.coli bacteria</u>	<u>126 N/100 mL monthly geometric mean</u>
<u>Fecal Coliform bacteria</u>	<u>200 N/100 mL monthly average, and</u>
<u>pH</u>	<u>6.0 S.U. min. and 9.0 S.U. max.</u>

The draft permit was public noticed in the Southside Sentinel on 9/11/2008 and on 9/18/2008. A total of 179 comments were received by email, fax, written letter, or form letter during the 30-day public comment period. Of these comments, 147 requested a public hearing, and were submitted in full compliance with the information requirements outlined in 9VAC 25-230-40 of Procedural Rule No. 1. Based on the comments received, DEQ concluded there was significant public interest, and substantial, disputed issues relevant to the re-issuance of VPDES permit VA0091316. The DEQ Chief Deputy Director concurred, and approved the holding of a public hearing on November 3, 2008. Members of the State Water Control Board were notified, and no comments were received requesting a meeting of the Board to review the Director's decision to grant a hearing or to delegate the permit to the Director for his decision. Consequently, the Department proceeded with scheduling this hearing and notifying interested parties. Public notice of this hearing was published in the December 18 and December 25, 2008 editions of the *Southside Sentinel* newspaper. The comment period closed at 4:00 p.m. on February 6, 2009. A Public Hearing was held at the Saint Clare Walker Middle School in Locust Hill, VA in Middlesex County on January 21, 2009 at 7:00 pm. Mr. Robert Wayland served as the Hearing Officer, and DEQ staff present included Richard Weeks, Kyle Winter, Curt Linderman, Jeremy Kazio, Jaime Bauer, and Emilee Carpenter. Public attendance included 105 citizens, of whom 17 presented oral comments opposing the proposed permit re-issuance. Approximately 33 letters and emails were received during the comment period between December 18, 2008 and February 6, 2009.

**Summary of Comments Received at the January 21, 2009 Public Hearing for the Proposed Middlesex Courthouse Wastewater Treatment Plant Permit Reissuance (VA0091316) and in written form between December 18, 2008 and February 6, 2009**

**1) Issue: Should other alternatives to the point source discharge of wastewater at the proposed outfall location be evaluated/pursued?**

Comment: The permittee should be forced by the State to withdraw their application to discharge and instead apply for a treatment system which utilizes applying wastewater to land. Although the proposed permit does not incorporate nutrient limits, there is sufficient evidence that the permittee plans to expand, which will require that nutrient limits be applied to the facility. Nutrient removal technology is ungainly and expensive, and cannot be afforded by the permittee. Land application is a better alternative because the nutrients can be used on agricultural fields in the area, which will help support the local economy and prevent pollution of local waterways.

Commenters: Marian Agnew, Mike Floyd, Dan Gill, Robert Calves

Comment: Generally, Virginia's state government operates with too narrow of a focus and not enough practicality. Specifically, the State should require that all localities take a regional approach to wastewater disposal, and that long term plans be required instead of allowing multiple small wastewater treatment plants to be constructed within relatively diminutive areas.

Commenters: Roger Martin, Robert Calves

Comment: The DEQ should be required to ask for the Hampton Roads Sanitation District's input on the proposed wastewater treatment facility because they are a "government entity" which specializes in municipal wastewater disposal.

Commenters: Sean Kemple

Comment: The Middlesex County government (the permittee) has not considered a long term solution to the existing or future sewage disposal needs of the county. Construction of the proposed plant will serve very few people, and will not promote growth within the county, and it will cause the county government to delay it's obligation to address the rest of the county's sewage needs.

Commenters: Stan Coloff, Urbanna Town Council/Janet Smith, Peter Mansfield, H.Deiter & Mary E. Hoinkes, Ingrid Roper, James Knupp

Comment: The County's sewage should be piped to the HRSD-owned York River WWTP via the proposed pipeline that will serve Mathews, VA. This will prevent the pollution of Urbanna Creek and promote the cleanup of the Chesapeake Bay.

Commenters: Urbanna Town Council/Janet Smith, Sean Kemple, H.Deiter & Mary E. Hoinkes, Stan Coloff

Comment: In general, there are other alternatives that exist which will channel wastewater out of Middlesex County. These should be considered.

Commenters: Urbanna Town Council/Janet Smith, Don Richwine, Helen & Roger Hopper, Elizabeth Pritchard, Kerry Robusto, Robert Montague, Margaret Gerds, James Knupp, James Pitts

Comment: The wastewater from the proposed facility should be piped to the Rappahannock River instead of Urbanna Creek. The Rappahannock River provides more dilution and is tidally flushed.

Commenters: James Pitts

Comment: The discharge from the proposed wastewater treatment plant should be directed to Dragon Run (headwaters of the Piankatank River) instead.

Commenters: Aubrey Hall

Comment: The Middlesex County government (permittee) has claimed that they are being forced to halt their current pump and haul method for disposal of sewage from the new courthouse complex. Some citizens have questioned whether this is true, and state that the County government should continue pumping and hauling because it is cheaper.

Commenters: Sean Kemple, Peter Mansfield, H.Deiter & Mary E. Hoinkes

Comment: Demographically, there's nothing within the county that warrants the construction of a wastewater treatment plant in the Saluda area. The existing private subsurface sewage disposal systems are adequately addressing citizens' sewage needs. In addition, the proposed wastewater treatment plant does not address issues regarding sewage disposal in other areas of the county which are in need of it, such as Hartfield and Deltaville.

Commenters: Urbanna Town Council/Janet Smith, Sara Chaves Beam, James Knupp, Peter Mansfield

Comment: Middlesex County's own comprehensive plan states that all measures will be taken to discourage the construction of any source of discharge to waters within the county. The proposed treatment plant does not follow this part of the plan.

Commenters: Roger Martin

Comment: The Middlesex County government (permittee) should be required by DEQ to request to be part of HRSD's "Regional Plan" for addressing sewage. This plan's goal is to incorporate the sewage disposal needs of multiple small localities into fewer large wastewater treatment facilities.

Commenters: Sean Kemple,

Comment: The Virginia State Government has an obligation to encourage cost effective and sustainable approaches to wastewater treatment, rather than promoting costly treatment practices that are "Neanderthal" and "self serving".

Commenters: Dan Gill

Comment: Royster Malcolm Pirnie, the engineering consultant to Middlesex County (the permittee), disagreed with verbal comments made at the public hearing. The disagreement was in regard to the statement made by a representative of the Urbanna Town Council that the consultant was instructed by the Board of Supervisors to place the discharge from the proposed wastewater treatment facility into Urbanna Creek. The consultant stated that the Board of Supervisors never instructed them where to place the outfall; rather, they instructed them to look

at all alternatives that were available for discharge of the effluent. In a 1995 study of wastewater alternatives for the Saluda Area, the consultant stated, "In the Saluda area the closest water way suitable for discharge of treated effluent from a wastewater plant is Urbanna Creek." Following through on the County's requirements, the consultant investigated a discharge to both Dragon Run and the Rappahannock River, and was advised by DEQ that a discharge permit would not likely be granted for either one of these tributaries. Land application was investigated in the aforementioned 1995 report as an alternative, but proved to be not economically feasible. The consultant met with HRSD on several occasions to try and pump the wastewater to their Mathews Courthouse force main. This alternative, also, proved to be not economically feasible. The consultant studied "re-use" as an alternative and, as a result, designed the plant to meet the "re-use" effluent requirements. The consultant submitted that the Urbanna Town Council was misinformed concerning the facts surrounding the alternatives analyzed for the discharge point of the plant.

Commenters: Roger O. Hart, P.E., Royster Malcolm Pirnie

Staff Response: *The Department of Environmental Quality does not have the authority to require specific wastewater treatment alternatives to an applicant or permittee. It is DEQ's obligation to evaluate permit applications it receives to determine the impact to State waters in accordance with the Water Quality Standards, and to assign effluent limitations to a facility in order to maintain these Standards. Nevertheless, the permittee has indicated that the design of the proposed treatment facility will incorporate the ability to meet Level 1 water quality requirements defined in 9 VAC 25-740-90 (Water Reclamation and Reuse Regulation) should a future customer emerge seeking beneficial use of reclaimed wastewater. Also, the permittee has considered other discharge locations such as the Rappahannock River and Dragon Run Swamp, but these alternatives would cause a change in shellfish closure areas by the VDH Department of Shellfish Sanitation that may render them ineligible for VPDES coverage. The permittee has also considered joining into the proposed sewage line that will serve the Mathews area, which will be directed to the HRSD York River WWTP. It was determined, through a study conducted by HRSD and paid for by the permittee, that the construction of a sewage trunk line of this length would not be as cost effective (upwards of 3-4 times more) as building a wastewater treatment facility within the county.*

*DEQ staff recommends that no change to the proposed permit is necessary in response to these comments.*

## **2) Issue: Does the proposed permit adequately address and protect Urbanna Creek Water Quality / Beneficial Uses / Nutrient Pollution?**

Comment: The water in Urbanna Creek is stagnant, especially in the upper portions of the creek below the proposed discharge location. The proposed effluent would not be flushed out of the creek by tidal flux, and will become concentrated to a point that it inhibits the creek's current recreational uses.

Commenters: John Amos, Mrs. Marshall, Richard Marshall, Margaret Gerdt, Ingrid Roper, Robert Calves, Kerry Robusto, George Guhse, James Knupp

Staff Response: *It has previously been recognized that Urbanna Creek has modest tidal flushing capability or dilution capacity in water models conducted for the Urbanna Wastewater Treatment Plant. However, the proposed facility will discharge to an intermittent stream greater than 0.8 miles from its confluence with Urbanna Creek. The effluent from the proposed facility is required to meet current Water Quality Standards at the "end of pipe" due to the lack of any*

*dilution by the intermittent stream. It is not expected that the proposed discharge will reach Urbanna Creek under permitted design drought flow conditions. However, (due to the presence of storm water runoff or other base flows), the resulting mixed water quality would contain a more dilute pollutant load that would be expected to further reinforce the ability to meet or enhance Water Quality Standard criterion.*

*DEQ staff recommends that no change to the proposed permit is necessary in response to these comments.*

Comment: Section §62.1-44.2 of the Code of Virginia requires that the State take measures to prevent any increase in the pollution of State waterways, and to reduce existing pollution within its waterways. The proposed wastewater treatment plant will add pollution to Urbanna Creek, which has existing VDH/DSS condemnations on shellfish harvesting from the creek.

Commenters: Roger Martin

Staff Response: *The draft permit has been developed to require that the effluent from the facility meet Water Quality Standards before reaching State Waters. Therefore, the proposed facility is not expected*

*to cause or contribute to an impairment of State waterways. During the proposed permit re-issuance's development, the VDH/DSS was contacted to determine if the proposed discharge would have an impact on the existing shellfish closure for Urbanna Creek. VDH/DSS responded stating that it would not increase the size or type of closure, and that they had no comments on the proposed permit reissuance.*

*DEQ staff recommends that no change to the proposed permit is necessary in response to these comments.*

Comment: The fresh water from the proposed facility's effluent will cause salinity levels in Urbanna Creek to lower, which may disrupt the ecosystem for aquatic life living there.

Commenters: Clyde Roper

Staff Response: *It is not expected that the proposed discharge at the proposed design capacity will cause salinity levels within Urbanna Creek to decrease. The Total Maximum Daily Load (TMDL) Report for Shellfish Areas Listed Due to Bacterial Contamination, Urbanna Creek (February 2005) was developed to address fecal coliform bacteria within a portion of Urbanna Creek. This TMDL focused on roughly half of the creek and used a "tidal prism" model to approximate the volume within that half of the creek based on area and field depth readings. It was calculated that this portion of the creek contained approximately 113,741,900 gallons of water that is exchanged every 0.7 days. If this volume is doubled to approximate the remaining half of the creek that was not modeled, it would place the volume of the creek at 227,483,800 gallons of water exchanged approximately every 0.7 days. Although the effluent from the proposed facility is not expected to reach Urbanna Creek, if it were assumed that the plant operated at design capacity and 100% of the effluent reached Urbanna Creek, this would mean that the effluent would constitute <0.02% of the creek's volume between tidal flux. This calculated ratio is an overly conservative hypothetical assumption, and is not expected to cause substantial changes to Urbanna Creek's salinity levels.*

*DEQ staff recommends that no change to the proposed permit is necessary in response to these comments.*

Comment: There is a very general concern regarding nutrient loading and particulate matter levels within Urbanna Creek. It has been observed during the summer that Urbanna Creek is very cloudy and green colored, which many people attribute to algal growth. Nutrient loads will cause further algal growth.

Commenters: Urbanna Town Council/Janet Smith, Mike Floyd, James Knupp, Clyde Roper, Phil Mullins, Stan Coloff, George Guhse

Comment: The government is not doing enough to clean up the Chesapeake Bay, which is why the Chesapeake Bay Foundation and the Waterman's Association is suing EPA for not cleaning up the Bay by the agency's goal of 2010. Allowing the proposed discharge would only prove this point further.

Commenters: Alana Courtney

Staff Response: *The proposed treatment plant will be designed to meet the nutrient removal standards for a "new discharger" that is not considered a significant discharger under §62.1-44.19:14.C.5 (Code of Virginia) and 9 VAC 820-10 (Chesapeake Bay Watershed General Permit Regulation). In addition, Total Kjeldahl Nitrogen is limited to a concentration of 3.0 mg/L monthly average in the draft permit re-issuance.*

*DEQ staff recommends that no change to the proposed permit is necessary in response to these comments.*

Comment: Urbanna Creek has been declared a "dead creek". Instead of adding further pollution, it should be cleaned up.

Commenters: Alana Courtney, Robert Straw, Robin Starbird, Roger Martin

Comment: If the proposed treatment plant is built, a plan for growing oysters within Urbanna Creek to help in reducing or eliminating pollution cannot be implemented because the Department of Shellfish Sanitation will condemn the creek for shellfish harvest for an indefinite period of time.

Commenters: Phil Mullins

Comment: The Department of Shellfish condemnation of the creek will not be lifted if the proposed wastewater treatment plant begins discharging. The discharge may also expand the current condemnation of shellfish harvest within the creek.

Commenters: Urbanna Town Council/Janet Smith, John Zuegner, Margaret Gerdts, Roger Martin, Phil Mullins

Staff Response: *Commenters made reference to Urbanna Creek being declared a "dead" creek because a portion of it is restricted for shellfish harvest due to the VDH/DSS condemned designation. This does not mean that Urbanna Creek is "dead", but only that a portion of the creek has the potential to contain high enough concentrations of fecal coliform that harvesting shellfish from the creek with intent to consume them could cause illness due to filter-feeding by the shellfish. This does not mean that the shellfish are harmed by these high bacterial levels, nor does it mean that any other natural life within or around Urbanna Creek is affected.*

*Shellfish harvesting is prohibited in portions of Urbanna Creek due to the presence of the HRSD-owned Urbanna Wastewater Treatment Plant and the discharge from the Middle Peninsula Regional Security Center Wastewater Treatment Facility. VDH/DSS has certified that the proposed discharge will not adversely affect shellfish use. While not required, the proposed permit includes a fecal coliform bacteria effluent limit to provide further reliable protection of shellfish. The permit will not cause or contribute to the impairment of Urbanna Creek.*

*The VDH/DSS cannot lift a shellfish closure, as a safety precaution, when there is a known point source discharge directly to tidal waters that has the potential to contribute fecal coliform to a water body, such as a municipal sewage treatment plant like the HRSD-Urbanna Wastewater Treatment Facility. The proposed Middlesex Courthouse WWTP will not be a direct discharge to tidal waters and has been certified by VDH/DSS to not adversely affect shellfish use. This closure does not prevent citizens from growing oysters in order to clean up the creek; however, it does prevent the consumption or sale of those oysters and other shellfish.*

*DEQ staff recommends that no change to the proposed permit is necessary in response to these comments.*

Comment: The cumulative impact of the proposed discharge and existing discharges on Urbanna Creek should be studied. Also, there should be a better characterization of the intermittent stream to which the proposed treatment facility will discharge.

Commenters: Sara Chaves Beam, H.Deiter & Mary E. Hoinkes, Stan Coloff

Comment: The existing wildlife in Urbanna Creek will disappear if the proposed treatment facility is allowed to discharge.

Commenters: Bernice Chewing, Francis Hall, Kerry Robusto

Comment: Urbanna Creek provides swimming and recreational opportunities which will be eliminated if the proposed wastewater treatment plant is allowed to discharge.

Commenters: Roger Martin, Richard Marshall, Francis Hall, Betty Coulson

Comment: There is insufficient evidence indicating that the proposed wastewater treatment plant will not have a comprehensive impact on Urbanna Creek's wildlife or recreational uses.

Commenters: Roger Martin, Sara Chaves Beam,

Comment: Sub-aquatic vegetation is low, and turbidity, heavy algae, suspended solids, and siltation are currently severe problems within Urbanna Creek. There have been no assurances made that the proposed discharge will not collapse Urbanna Creek's remaining ecosystem.

Commenters: John Zuegner

Staff Response: *As stated above, the Water Quality Standards define what is needed to maintain ambient water quality for fish and wildlife habitat, and primary and secondary contact recreational uses. The receiving stream has been characterized as both intermittent and, due to the downstream swallow hole, unmodelable, and therefore cannot be characterized further by DEQ water modeling methods. In these cases, the most conservative approach is taken and very stringent conventional pollutant limitations are assigned. Effluent limitation calculations are*

not given the benefit of dilution, and therefore are limited to meet Water Quality Standards prior to discharge.

Further characterization of the stream is not warranted, as “end-of-pipe” effluent limits represent the most conservative permitting approach. By the time the effluent travels the >0.8 mile distance to Urbanna Creek, it will have been treated further by natural attenuation and will meet the requirements determined by the Water Quality Standards for maintaining current wildlife and human uses.

DEQ staff recommends that no change to the proposed permit is necessary in response to these comments.

Comment: Urbanna Creek is recognized statewide as a historical and recreational water body. Treated wastewater should not be allowed to discharge to a historical creek.

Commenters: Urbanna Town Council/Janet Smith, Roger Martin

Staff Response: Only the designation of Urbanna Creek as a Tier III would prohibit point source discharges. The water body will be protected for its current natural and human resources by compliance with the Water Quality Standards, which will be achieved by compliance with the proposed permit re-issuance.

DEQ staff recommends that no change to the proposed permit is necessary in response to this comment.

Comment: Independent testing for fecal coliform in Urbanna Creek has revealed “smoking hot” levels due to the existing two wastewater treatment plant discharges as well as dumping from boats within the creek. Extensive aquaculture activities outside of Urbanna Creek will most likely be affected by the proposed discharge because of additional bacteria and nutrients introduced to and carried by Urbanna Creek to the Rappahannock River.

Commenters: Sarah Chaves Beam

Staff Response: During the draft permit re-issuance’s development, the VDH Department of Shellfish Sanitation was contacted in order to determine if, by their modeling methods, the proposed discharge would have any affect on the existing shellfish condemnation, or would cause further condemnations or closures downstream. The VDH/DSS responded that they did not object to the permit’s re-issuance and that it would not cause an increase in size or type of shellfish condemnation. A TMDL for Urbanna Creek addressing fecal coliform bacteria levels was conducted in 2004-2005. It was determined that sources of fecal coliform consisted of the following percentages listed below:

Livestock	17%
Wildlife	36%
Human	23%
Pets	24%
Point Sources	<<1%

The category of “Human” sources has been noted in the TMDL as being from failed septic systems and from boating activity. As stated above, the VDH/DSS has determined that any aquaculture activities located downstream of the proposed discharge will not be affected.

*DEQ staff recommends that no change to the proposed permit is necessary in response to these comments.*

Comment: Non-point sources are contributing to a large portion of the pollution problems of Urbanna Creek. The proposed wastewater treatment plant will promote growth within in the county and cause further non-point source pollution due to housing construction. The discharge should not be allowed, and in addition, a plan should be implemented to reduce the impacts of population growth that includes stipulations to: a) enforce better land use practices, b) adopt new DCR sedimentation control and storm water regulations, c) encourage better agricultural practices, and d) educate citizens of what they can do to reduce or eliminate pollution to Urbanna Creek.

Commenters: John Zuegner,

Staff Response: *Land use and zoning issues are the prerogative of local, rather than State, government and therefore are not within our authority to use as a basis to re-issue, modify, or deny the proposed permit.*

*DEQ staff recommends that no change to the proposed permit is necessary in response to this comment.*

Comment: The modeling effort conducted on the receiving stream for the proposed wastewater treatment plant only addresses the actual receiving stream, not the water bodies to which the receiving stream flows, like Urbanna Creek. The model assumes that the noted "swallow hole" will prevent the discharge from reaching Urbanna Creek, and does not evaluate the impact of the effluent on Urbanna Creek once it has traveled via subsurface conductance and leached into Urbanna Creek. Also, no evaluation has been conducted on the impact that the proposed discharge will have on the brown algae noted in stream model.

Commenters: Clifford Randall, Stan Coloff

Staff Response: *DEQ staff performed a field site visit of the receiving waters in May 2003 to determine the viability of using established DEQ mathematical water quality modeling tools. During their site visit investigation, DEQ staff observed the accumulation of brown filamentous algae along the bottom of the stream channel (as compared to green algae floating along the top). The brown algae are believed to be a diatom population, which are commonly found in stream with sandy bottoms, small flows, and good water quality. Diatoms are general indicators where there is not an excessive nutrient problem. DEQ staff also observed that stream flow (about 1.5 feet wide and approximately 1-inch deep at the time of the site visit) completely disappeared into a hole on the west side of the channel bank, approximately 500 downstream of the proposed outfall point. DEQ "desktop" surface water quality modeling tools are not designed to analyze sub-surface absorption flows. In addition, the length of stream reach from the outfall point to the "swallow hole" was deemed inadequate to appropriately use available DEQ modeling tools. In situations where standard DEQ models are not applicable due to complex or site-specific situations, long-established DEQ protocols provide for effluent limitations to be established based on conservative, best professional judgment. 1987 DEQ guidance establishes  $cBOD_5=10$  mg/L,  $TSS=10$ mg/L, and  $TKN=3$  mg/L to be representative of "self sustaining" effluent limits, or those capable of maintaining the Water Quality Standards if the stream were to consist of 100% effluent. These effluent limitations have been incorporated into the proposed permit. Effluent that achieves Water Quality Standards prior to entering the "swallow hole" should benefit from further biological treatment as it travels via subsurface conductance. It can*

*only be assumed that the exchange capacity caused by subsurface travel will enable pollutant levels to be further reduced before reaching Urbanna Creek. Further downstream analysis of effluent that is already required to achieve Water Quality Standards at “end-of-pipe” is not warranted.*

*DEQ staff recommends that no change to the proposed permit is necessary in response to these comments.*

Comment: This permit reissuance is prohibited by SWCB regulation 9 VAC 25-31-50 C.1 and CWA regulation 40 CFR 122.4(a) which states that a permit may not be issued if the conditions of the permit do not provide for compliance with the requirements of the CWA, or any regulations promulgated under the CWA. SWCB regulation 9 VAC 25-31-220 and CWA regulation 40 CFR 122.44 require that all permits include conditions necessary to achieve and maintain applicable WQS. The proposed wastewater treatment plant’s discharge will eventually reach the Chesapeake Bay, and in 2004 the Commonwealth of Virginia established water quality standards for the designated uses of the tidal portions of the Rappahannock River and the Chesapeake Bay. The draft permit does not address these pollutants of concern, including total nitrogen or total phosphorus, and therefore violates SWCB regulation 9 VAC 25-31-220 and CWA regulation 40 CFR 122.44, and in doing so, violates 9 VAC 25-31-50 C.1 and 40 CFR 122.4(a).

Commenters: Chesapeake Bay Foundation/Joseph Tannery

Staff Response: *DEQ staff disagrees with the interpretation that the permit fails to address water quality standards for the tidal Rappahannock River and Chesapeake Bay and, therefore, violates 9 VAC 25-31-220 and 40 CFR 122.44. 9VAC 25-40-10 of the “Regulation for Nutrient Enriched Waters and Dischargers Within the Chesapeake Bay Watershed” regulation states, “The provision of this regulation [9VAC 25-40-10 et. seq.] and the Water Quality Management Planning Regulation (9VAC 25-720) constitute the nutrient reductions requirements for point source dischargers in the Chesapeake Bay Watershed to protect the Chesapeake Bay and its tidal rivers.” The regulations establish no requirements to include total nitrogen or total phosphorus effluent limitations for municipal facilities within the Bay watershed with a design flow of less than 40,000 gallons per day. Consequently, the proposed permit is in full compliance with all applicable legislation and water quality regulations.*

*DEQ staff recommends that no change to the proposed permit is necessary in response to these comments.*

### **3) Issue: Are the design flows reflected by the permittee accurate?**

Comment: The Middlesex County government is not truthfully telling the public or DEQ what the real design capacity of the wastewater treatment plant will be.

Commenters: Urbanna Town Council/Janet Smith, Peter Mansfield, James Knupp

Comment: Once the wastewater treatment plant is built, the County will ask DEQ to expand and DEQ will not impose stricter limitations on the permittee because it would cause economic hardship. This will cause higher pollution of Urbanna Creek.

Commenters: Roger Martin, Peter Mansfield,

Comment: The Middlesex County government's (permittee's) consulting engineer has been purposefully misleading the public and DEQ as to the size and design capacity of the proposed wastewater treatment plant.

Commenters: Sean Kemple, Peter Mansfield,

Comment: If the proposed treatment plant is built, and they decide to expand, there will be a period of time in which DEQ is developing the modified permit for the expansion. During that period, or any time the permit is reopened, the flow from the treatment plant will go unchecked and the permittee will be able to discharge freely without limits.

Commenters: Clyde Roper

*Staff Response: The application for the proposed permit re-issuance requested a design flow of 39,900 gallons per day, and is the same as the original 2003 permit issuance. The flow from the facility must be monitored on a daily basis and reported monthly to DEQ via DMR's (data monitoring reports). If the permittee discharges at a rate that is within 95% of the permitted design capacity for three consecutive*

*months, the proposed permit requires the development and implementation of a plan to address the high influent flows (for example, controls to prevent infiltration/inflows, etc.) Exceedances of permitted pollutant loads (resulting from the excessive flows) will be handled as permit violations. If it is determined that the permittee cannot reduce the discharge rate, a modification of the permit will be required for increasing the design flow, which will incorporate reevaluating effluent limitations to meet a larger design flow. Modification of the permit would require downstream riparian owner notification and an opportunity for public participation in response to publication of another public comment period.*

*The design of a wastewater treatment plant must meet the requirements of DEQ's Sewage Collection and Treatment (SCAT) regulations (9VAC 25-790). These regulations include requirements pertaining to the sizing of treatment plant components to handle anticipated peak (as compared to average) effluent flows. These requirements are necessary to avoid overflow or treatment bypass conditions during peak events. The consulting engineer for Middlesex County has further enhanced the sizing and design of the treatment plant components to improve the performance and reliability of its operations. However, while the treatment plant may be capable of treating to higher peak flows, the proposed permit authorizes no greater than an average design flow of 39,900 gallons per day.*

*It has been made public by the permittee that the long-term plan for the proposed treatment facility will be to expand and potentially accept sewage currently being treated by antiquated and/or outdated treatment facilities within neighboring areas (Christchurch School, Urbanna WWTP, and the Regional Jail). At the time that the permittee plans to expand this facility, modifications will be made to the permit that will require compliance with all limitations, monitoring, and conditions mandated by any applicable legislation and/or regulations that exist at the time.*

*Any potential modification of a permit cannot be acted upon by the permittee until the permit modification is issued by DEQ. During the time that a permit is being modified, the permittee must comply with the existing permit. DEQ staff recommends that no change to the proposed permit is necessary in response to these comments.*

**4) Issue: Should nutrient controls be added even though the design flow is less than the regulated threshold?**

Comment: The permittee is utilizing a “loophole” within State regulations to avoid nutrient limitations by requesting a permit for a design flow of 39,900 gallons per day rather than 40,000 gallons per day. If the proposed discharge is allowed, nutrient limitations should be applied.

Commenters: John Zuegner, Peter Mansfield, H.Deiter & Mary E. Hoinkes, Stan Coloff, James Knupp

Comment: Nutrients added by the proposed wastewater treatment plant will only add to the two existing discharges on Urbanna Creek. One has a design flow under 40,000 gpd and the other is considered a significant discharger, but cannot meet its nutrient allocations. The one that is a significant discharger cannot meet the nutrient allocations given in the Chesapeake Bay Watershed Nutrient General Permit, and therefore purchases nutrient credits. So essentially, there will be three dischargers to Urbanna Creek which do not have nutrient limitations.

Commenters: Mike Floyd, H.Deiter & Mary E. Hoinkes

Comment: Flow from the proposed wastewater treatment plant should be limited in the permit. Otherwise, nutrient offsets should be required of the permittee.

Commenters: John Zuegner, Robert Burnley

Staff Response: *The proposed treatment plant will be designed to meet nutrient removal standards for a “new discharger” that is not considered a significant discharger under §62.1-44.19:14.C.5 (Code of Virginia) and 9 VAC 820-10 (Chesapeake Bay Watershed General Permit Regulation). In addition, Total Kjeldahl Nitrogen is limited to a concentration of 3.0 mg/L monthly average in the draft permit re-issuance. It should be noted that the original permit was issued in December 2003 with the same design flow*

*criteria. This 2003 issuance existed prior to the promulgation of the above regulations regarding the definition of a significant discharger for the purposes of determining coverage under the Chesapeake Bay Watershed General Permit.*

*Monitoring and testing requirements for established pollutant limits in permits are divided into categories depending on the design flow of the permitted facility. With each increasing flow category, the monitoring and testing requirements, and costs, can increase significantly, causing economic strain on small dischargers. The first monitoring and testing category for municipal facilities stops with a design flow of 40,000 gallons per day.*

*The design flow capability of a treatment facility is not the rate at which the permittee discharges. Nevertheless, it is used as a basis for limitation development in order that conservative calculations and assumptions may be made. The permittee is required to notify DEQ if the facility discharges at a rate within 95% of the design flow, at which point DEQ takes appropriate actions. Part I.B.1 of the draft permit addresses this. DEQ staff recommends that no change to the proposed permit is necessary in response to these comments.*

Comment: The Middlesex County government has claimed that the local high school’s existing drainfield is failing and that the high school will need to be served by the proposed wastewater treatment plant. A few concerned citizens do not believe that this is true.

Commenters: H.Deiter, Mary E. Hoinkes, Sean Kemple

Staff Response: *The reasoning provided by a permittee for requesting a discharge permit is not a part of DEQ's evaluation of whether or not the discharge is permissible by applicable law. DEQ staff recommends that no change to the proposed permit is necessary in response to these comments.*

**5) Issue: Will the proposed wastewater treatment plant be reliable?**

Comment: Concern exists over the permittee's ability to afford and construct a high quality treatment plant that will not fail during power outages and severe weather conditions.

Commenters: H.Deiter & Mary E. Hoinkes, Urbanna Town Council/Janet Smith, Peter Mansfield, Alana Courtney

Staff Response: *As part of the conditions and limitations set forth in the draft permit, the permittee is mandated to comply with the requirements set forth in 9 VAC 25-790-390 of the Sewage Collection and Treatment Regulations to meet a Reliability Class of One (1). This requires that the permittee take all precautions to be able to operate at peak flows for a minimum of 24 hours without power.*

*DEQ staff recommends that no change to the proposed permit is necessary in response to these comments.*

**6) Issue: Has groundwater quality been considered with respect to the existing "swallow hole" located downstream of the proposed discharge?**

Comment: Groundwater contamination may occur due to the "swallow hole" that the intermittent stream flows into. This is sited in the Stream Sanitation Memorandum used for permit development.

Commenters: Clifford Randall

Staff Response: *It is not expected that groundwater resources will be affected. In addition, the effluent from the proposed treatment facility will be treated to much higher levels than the surrounding septic systems, which rely on soil as a medium for bacterial growth and treatment of raw sewage. DEQ staff recommends that no change to the proposed permit is necessary in response to these comments.*

**7) Issue: How does the existing bacterial TMDL for Urbanna Creek have a bearing on this permit's re-issuance?**

Comment: The current TMDL for Urbanna Creek addressing Fecal Coliform bacteria states that "... measures must be taken to reduce pollutant levels in the water body." The proposed wastewater treatment plant will go against this statement.

Commenters: Sean Kemple,

Comment: This permit re-issuance is prohibited by SWCB regulation 9 VAC 25-31-50 C.9 and CWA regulation 40 CFR 122.4(i) which states that no new discharges will be allowed to water bodies if it will contribute or cause the water segment to violate WQS. These regulations do provide for an exception in that if a TMDL has been established for that water body, then a new

discharge to that water body is only allowed if it was given an allocation in the TMDL and existing discharges have been given a compliance schedule with conditions that will bring the water body into compliance with the WQS. Since a TMDL has been established for Fecal Coliform on Urbanna Creek, and existing dischargers do not have a wasteload allocations or a compliance schedule to meet them, and the proposed discharger has not been given a wasteload allocation, the permit is prohibited. It has also been established that the Chesapeake Bay watershed is "impaired" by nutrient pollution. Since a TMDL has not been implemented for the Chesapeake Bay for nutrients, the proposed discharge will contribute additional nutrients to the water body that is already violating WQS.

Commenters: Chesapeake Bay Foundation/Joseph Tannery

Staff Response: *The proposed discharge is to an intermittent tributary of Urbanna Creek 0.8 miles upstream of tidal waters. The Virginia Department of Health/Department of Shellfish Sanitation (VDH/DSS) has assigned two different types of shellfish closures to Urbanna Creek. The upper portion of tidal Urbanna Creek (area 42B) has been designated by the VDH/DSS as a "prohibited" shellfish growing area due to the presence of the HRSD Urbanna Sewage Wastewater Treatment Plant, which discharges directly to the tidal portion of Urbanna Creek. In prohibited areas, shellfish are not allowed to be harvested for market. Prohibited shellfish areas are not considered impaired for fecal coliform (and thus do not require a TMDL) because this administrative closure by the VDH removes shellfish harvest as a beneficial use of these waters.*

*The lower portion of tidal Urbanna Creek (area 42A) has been designated as a "condemned" shellfish growing area, where harvested shellfish must first be transported for depuration in other non-condemned waters for 30 days prior to consumption or sale. The TMDL addressing fecal coliform bacteria that is referenced by the commenter only applies to the portion of Urbanna Creek corresponding to shellfish area 42A. The proposed discharge (in addition to the Middle Peninsula Regional Security Center, VA0073318) would flow to area 42B (if either effluent were to reach tidal Urbanna Creek). Since these existing dischargers will not expand to the current shellfish harvest prohibited zones, they are not addressed or subject to the TMDL. PRO Planning and Assessments staff have certified that the proposed permit will not be in conflict with the Urbanna Creek fecal coliform TMDL.*

*Regarding the nutrient impairment of the Chesapeake Bay, as previously cited, 9VAC 25-40 and 9VAC 25-720 constitute the nutrient reduction requirements for point source dischargers in the Chesapeake Bay Watershed to protect the Chesapeake Bay and its tidal rivers. These regulations establish no additional permitting requirements for municipal facilities within the Bay watershed with a design flow of less than 40,000 gallons per day. Consequently, the proposed permit is in full compliance with all applicable legislation and water quality regulations.*

*DEQ staff recommends that no change to the proposed permit is necessary in response to these comments.*

## **8) Miscellaneous Comments**

Comment: The Middlesex County government (the permittee) does not sufficiently consider the wishes of its citizens because the Town of Urbanna is represented by an elected district supervisor who covers a

much larger area than the Town. If the Town were independently represented in the county government, there would be more political pull and the decision to construct a wastewater treatment plant would not have come to fruition.

Commenters: Robert Straw, Roger Martin

Comment: The location of the venue (outside of Urbanna), time of year, and the temperature discouraged people from attending the public hearing held on January 21, 2009 at 7:00 pm. Also, the question and answer session held prior to the hearing was too short.

Commenters: Sean Kemple

Comment: The Town of Urbanna's jurisdictional boundary extends to the middle of Urbanna Creek. The citizens of the Town do not want to allow the proposed discharge to occur, but do not have independent representation in the Middlesex County government in order to oppose it.

Urbanna Town Council/Janet Smith

Staff Response: *These comments are not relevant to DEQ's determination of applicable State environmental regulations.*

**Merck Nutrient Allocation:** At its last meeting on December 4, 2008, the Board deferred action on revisions to the Merck nutrient allocation until its spring 2009 meeting. Since then, staff met twice with Merck. The review of options and questions that the Board raised on December 4 were reviewed during these meetings and a response prepared by Merck. Also, out of those discussions, the following language was developed to augment the staff's original recommendation that increased the Merck allocations conditioned on possible future reductions resulting from full scale treatment technology evaluations:

(b.) in any year when credits are available after all other exchanges within the Shenandoah-Potomac River Basin are completed in accordance with §62.1-44.19:18 of the Code of Virginia, Merck shall acquire credits for total nitrogen discharged in excess of 14,619 lbs/yr and total phosphorus discharged in excess of 1,096 lbs/year; and (c) the allocations are not transferable and compliance credits are only generated if discharged loads are less than the loads identified in paragraph (b).

The intent of this language is to forestall any actual increase in nutrient loadings to the Shenandoah River for as long as possible. Staff fully expects that credits will be available in the Shenandoah-Potomac River Basin for Merck to acquire in accordance with the suggested language. For example, in 2008, the delivered nitrogen load was below the total basin nitrogen allocation by 55,000 pounds. In addition, sixteen nutrient removal projects that are receiving grants from the Water Quality Improvement Fund are expected to be completed by the end of 2010 and will provide significant further nutrient reduction within the basin. Following the meetings with Merck, three meetings /conference calls were held with Merck, Joe Tannery with the Chesapeake Bay Foundation, Jeff Kelble the Shenandoah Riverkeeper, Leon Szeptycki representing the Shenandoah and Potomac Riverkeeper Organizations, Ed Merrifield the Potomac Riverkeeper, Keith Oing with the Virginia Economic Development Partnership and Joe Paxton the Rockingham County Administrator. The focus of these discussions was the preference on everyone's part that Merck be able to acquire allocations thus avoid the need to raise the "cap" on nutrient loading for the Shenandoah River. However, the Nutrient Credit Exchange Law only allows "new or expanding" facilities to acquire allocations. Therefore, it would take a regulatory action by the Board to facilitate a purchase of an allocation by Merck. As a result of these discussions the following language was added to the staff recommendation:

2. Direct staff to initiate a rulemaking to reduce or remove unused allocations of other facilities within the Shenandoah-Potomac River Basin, preferably in the area of Merck's discharge, to offset the needed increased nitrogen and phosphorus allocations for Merck due to the technological limitations of treatment.

3. Direct the staff to provide an annual report on unused nutrient allocations for each significant discharger in the Chesapeake Bay watershed. This will include a comparison of actual loads vs. allocations. For municipal facilities, this will also include a comparison of each facility's constructed capacity vs. the design flow used to establish the allocations. For industrial facilities updates will be provided on any known changes to the basis for the original allocation.

The intent is for Merck to negotiate the purchase of allocations and have these purchases finalized by a change in the Water Quality Management Planning Regulation. Among the facilities whose unused allocations should be considered are the former Pilgrims Pride Alma facility and the Shenandoah County – North Fork Regional WWTP. The total allocation from these two facilities would exceed Merck's need for additional nitrogen allocation and meet about half of their need for additional phosphorous allocation. Merck prefers this approach over the annual purchasing of credits, possibly indefinitely, and it will avoid the need to raise the "cap." Both riverkeepers would prefer to have the Board hold off on the increase in Merck's allocation until the other allocations are reduced and feel this is most consistent with the regulation and would send the right message to the rest of regulated community. However, Shenandoah Riverkeeper supports the proposed arrangement as the next best alternative and feels that with Merck's commitment to a SEP in the event credits are not available for purchase, then this proposal represents all possible reductions conceivable within the current regulatory framework while giving Merck certainty of compliance. Merck's position is that they need the certainty now in order to make the needed investments to accommodate ever changing product lines. CBF provided extensive comments. In response to their comment that the proposal does not ensure compliance with water quality standards, the complete package does ensure that water quality standards for nitrogen and phosphorous will be met. In fact, DEQ staff is confident that we have five years of certainty as far as the availability of credits is concerned. We believe this also addresses the over allocation issue. Also, now that we have a final proposal we are in the process of reviewing the proposal with EPA. As soon as we have EPA's position we will share it with the Board. The Chairman of the Board of Supervisors of Rockingham County provided the following comment on the proposal:

"The County has reviewed the proposed alternative that will be recommended by DEQ to the State Water Control Board at its meeting on April 27, 2009, and strongly supports this alternative as meeting the important long-term needs and goals of the Commonwealth, as well as, providing certainty for Merck to make important business investment decisions related to its Stonewall plant. The unique nature of Merck's case makes the proposed rulemaking the right approach to resolving the matter, with sensitivity to the overall nutrient loading of the Bay, while also providing an important level of confidence for Merck to be able to make long term investment decisions."

Staff sees this combination as being the best resolution to allow Merck its needed certainty while maintaining the nutrient "cap", in the interim and over the long term. The success of this approach is assured by the following:

1. Staff fully expects there will be nutrient credits available until this second regulatory action is completed;
2. Merck has agreed, that if there is a year when they need to purchase credits and none are available, they will deposit equivalent funding into an escrow or trust to be disbursed to fund an environmental project in the Shenandoah Valley with preference given to nonpoint source nutrient reduction projects; and,
3. While the recommendation assures that credits need to be purchased in the interim, completing the second regulatory action is expected to occur prior to the end of 2011, the first year the nutrient allocations in the Watershed General Permit are effective; thereby, eliminating the need for the credit purchases by Merck and ensuring the current regulatory based nutrient allocations are maintained in the Shenandoah-Potomac basin.

The following is the staff's recommendation.

Staff recommends the Board:

1. Adopt the proposed changes to the Water Quality Management Planning Regulation (9 VAC 25-720-50.C), as shown:

VA Water Body ID	VPDES	Total Nitrogen WLA (lbs/yr)	Total Phosphorus WLA (lbs/yr)
B37R	VA0002178	14,619 <u>43,835</u>	1,096 <u>4,384</u>

Notes: (10) Merck-Stonewall – (a.) waste load allocations will be reviewed and possibly reduced based on “full-scale” results showing the optimal treatment capability of the 4-stage Bardenpho technology at this facility, consistent with the level of effort by other dischargers in the region. The “full scale” evaluation will be completed by December 31, 2011 and the results submitted to DEQ for review and subsequent Board action; (b.) in any year when credits are available after all other exchanges within the Shenandoah-Potomac River Basin are completed in accordance with §62.1-44.19:18 of the Code of Virginia, Merck shall acquire credits for total nitrogen discharged in excess of 14,619 lbs/yr and total phosphorus discharged in excess of 1,096 lbs/year; and (c) the allocations are not transferable and compliance credits are only generated if discharged loads are less than the loads identified in paragraph (b).

2. Direct staff to initiate a rulemaking to reduce or remove unused allocations of other facilities within the Shenandoah-Potomac River Basin, preferably in the area of Merck’s discharge, to offset the needed increased nitrogen and phosphorus allocations for Merck due to the technological limitations of treatment.

3. Direct the staff to provide an annual report on unused nutrient allocations for each significant discharger. This will include a comparison of actual loads vs. allocations. For municipal facilities, this will also include a comparison of each facility’s constructed capacity vs. the design flow used to establish the allocations. For industrial facilities updates will be provided on any known changes to the basis for the original allocation.

**Opequon Water Reclamation Facility:** This memorandum is to advise you of a budget amendment regarding the Opequon Water Reclamation Facility. During its 2009 Session, the Virginia General Assembly passed HB 1600/ SB 850 to amend the state budget. Included among the General Assembly’s budget amendments was the following amendment (Item 368 #5c) regarding criteria for you to use when considering the provision of additional nitrogen and phosphorus allocations to the Opequon Water Reclamation Facility:

The State Water Control Board shall give due consideration to the provision of additional nitrogen and phosphorus nutrient allocations to the Opequon Water Reclamation Facility based upon: (1) the Commonwealth’s multiple investments in the facility through the Water Quality Improvement Fund, (2) the execution of a Water Quality Improvement Grant agreement for the installation of state-of-the art nutrient removal technology on or before December 31, 2008, (3) capital investments made prior to July 1, 2005 to expand the facility’s capacity, (4) the capacity under which the facility will likely operate by December 31, 2010, (5) the facility’s schedule for planning, design, and construction, and (6) the discharge flow authorized by the facility’s VPDES permit and the tiered design flows contained in that permit.

The explanatory language included with the amendment describes the amendment as follows:

This amendment provides criteria for use by the State Water Control Board in determining whether to approve additional

nitrogen and phosphorus nutrient allocations for the Opequon Water Reclamation Facility. This facility requires additional nutrient allocations due to expanded capacity, which was begun prior to July 1, 2005. The facility is also in the process of installing state-of-the-art nutrient reduction technology. The Opequon facility's nutrient reduction project will be complete prior to 17 other facilities for which additional nutrient allocations were granted by the State Water Control Board.

Although the Governor has not yet acted on this budget amendment, he will have done so before the next Board meeting, therefore, in the event the legislation is signed, this issue has been placed on the agenda for the April 27-28 Board meeting. Additionally, DEQ staff advised Jesse Moffett, Executive Director of the Frederick-Winchester Service Authority of this budget amendment by letter dated March 12, 2009 and the Authority has provided information regarding the criteria established by the budget amendment.

**Request to Adopt Amendments to the Water Quality Standards – 9VAC25-260-275 - Protection of Eastern Shore Tidal Waters for Clams and Oysters:** Staff will request Board adoption of amendments to the Water Quality Standards regulation to include a new section, 9 VAC 25-260-275 that requires an analysis be conducted to determine if a wastewater management alternative other than a Virginia Pollutant Discharge Elimination System discharge to shellfish waters on the Eastern Shore would be feasible, produce less of an environmental impact, and not result in significant social and economic impacts. This requirement is initiated only when applications for new or expanded individual VPDES discharges to Eastern Shore waters result in condemnations but are not denied pursuant to 9 VAC 25-260-270 (Shellfish buffer zones; public hearing). The purpose of the proposal is to provide additional water quality protection for clams and oysters in waters on the Eastern Shore of Virginia and to ensure that the wastewater management disposal alternative chosen for that area has less of an environmental impact than another alternative. The proposal is intended to reduce condemnations on the Eastern Shore so more waters may be protected for clam and oyster production, including aquaculture. This rulemaking began as a Governor's initiative to support aquaculture wherein he requested ways be identified that encourage consideration of alternatives to the discharge of wastewater for treatment facilities on the Eastern Shore. The goal was to enhance high quality waters which are especially well-suited for shellfish or aquaculture operations and to safeguard important shellfish habitat areas and the sustainability of Virginia's aquaculture industry by providing additional water quality protection for these waters on Virginia's Eastern Shore. The initiative also supports the Virginia Coastal Zone Management Program's Seaside Heritage Program which strives to protect coastal resources and ensure the growth of sustainable industries such as shellfish farming and ecotourism that depend on high water quality. A Notice of Intended Regulatory Action (NOIRA) was published in Virginia Regulatory Town Hall on September 17, 2007 with the comment period ending November 30, 2007. A public meeting was held in Painter, VA on October 17, 2007. A summary of comments was provided to the Board for your July 29, 2008 regular meeting where staff was given approval to go to public comment and hearing with the proposal. The Department utilized the participatory approach by forming an ad hoc advisory committee that held three public noticed meetings (March 18, April 24 and May 22, 2008) on the Eastern Shore. A summary of each of these meetings is provided at the following web address <http://www.deq.virginia.gov/wqs/rule.html#SHELL>. Generally, the committee had varying opinions on whether to include all Eastern Shore waters for this new requirement or to choose individual areas. Several members were concerned about the appearance of 'designating' waters for aquaculture when other uses apply (i.e. recreation). Concerns were raised over the costs of an alternatives analysis. The committee also discussed the timing of the alternatives analysis and how it relates to the existing regulation Section 270 (Shellfish buffer zones; public

hearing) in light of the Captain's Cove legal actions that were occurring at the time. Staff attempted to craft a regulation that does not 'designate' waters for aquaculture; rather applies to all Eastern Shore tidal waters. However, its application is limited in that it affects individual, new or expanded discharges that are not denied per the requirements of section 270 yet result in a shellfish condemnation (usually sewage discharges). Staff also inserted a phased approach to the alternatives analysis in an attempt to relieve costs of the analysis. Staff believes the proposal takes a balanced approach to enhancing protection of these waters while also limiting additional regulatory burdens. A public comment period ran from December 20, 2008 until February 20, 2009. A public hearing was held on the Eastern Shore in Eastville at 6 p.m. on January 28, 2009. Thirty-two people attended and the five people that spoke had positive comments. Mr. Wayland served as hearing officer. Eleven additional written comments were received and all were in support of the rulemaking although one citizen thought that siltation of the creeks should be addressed first. No changes were made to the amendments in response to public comment; however, the citation to the U.S. Food and Drug Administrations' Guide for the Control of Molluscan Shellfish was updated to reflect the 2007 edition and more specifically the chapters therein. The comments received are summarized below.

Commenter	Comment	Agency response
Thomas Cooper	<p>Supports. Grew up collecting quahog clams on Long Island. Nobody can do that now. One of the only parts of the bay where the bottom was privately held (leased) was at mouth of the largest river and the watershed for that river was largely protected from development. Waterfront property and areas near the water are often times more densely populated, with a higher percentage of impervious surfaces. These areas generate larger amounts of waste water and potentially contaminated runoff. Restricting the discharge of effluent and limiting the proximity of development to the shoreline is not only good for the quality of the environment, it is critical for aquaculture and the long term health of coastal marine life.</p>	DEQ acknowledges the support.
Linda Henderson Gordon	<p>Supports and looks forward to a moratorium on any overboard disposal of wastewater &amp;/or other pollutants. Accomack and Northampton waters and adjoining lands, provide our citizenry and visitors with delicious seafood, bountiful agricultural products, and much of the poultry consumed by our citizenry.</p> <p>Concerned that socio-economic opt-out will result in a gutting of the intent of this state proposal. Developers need to make sure they can afford to dispose of (in an environmentally acceptable way), or contain there own wastes generated by their plans. Most intend to squeeze as many profitable lots into their plans and the resulting storm water run-off and waste products by the most cost effective (for them) method and later the environmental and financial costs are placed on the public.</p>	DEQ acknowledges the support.

	The land and water belong to our citizens not developers. Please continue to do everything in your power to responsibly protect this unique area.	
June Swan	Supports. Appreciates everything we and do to keep our coasts clean.	DEQ acknowledges the support.
Billy Graham	For successful clam and oyster harvest, there must be enough water in the creeks. The bays and creeks are filling with silt to the point of becoming non-navigable. If these areas are not dredged sufficiently to promote tidal flow (reduce siltation) and waters deep enough to maneuver fishing craft in these same waters, the attempt to promulgate these regulations is futile.	DEQ thinks this concern does not render this regulation futile. This regulation addresses a different problem affecting shellfish (condemnations) and believes there will be some waters that will be protected by the new standard.
Phyllis Stoudt	Supports because the regulation will result in long term positive economic impact for the Eastern Shore; provide important environmental protection now and for the future; protect the existing tourism and all fisheries such as commercial, recreational, sport including rental boats; will promote the continued rapid growth of ecotourism and aquaculture; protect our high water quality by ensuring that the waste water disposal option chosen will have the least negative environmental impact possible and allow suitable shellfish growth and safe consumption of shellfish. Also believes the overall impact to small business will be very positive and the resulting revenues will far outweigh the added costs for alternative discharge analysis to businesses.	DEQ acknowledges the support.
J.W. Stoudt	The costs required to analyze waste water options will pale in comparison to the positive financial impact to the many large and growing industries that will be protected and supported by utilizing the option that will have the minimum environmental impact on water quality. One of the many benefits will be to protect and restore Eastern Shore's, greatest asset, our water quality. The overall economic impact to small businesses will be overwhelmingly positive. Adopt as soon as possible.	DEQ acknowledges the support.
Denard Spady, Executive Director Citizens for a Better Eastern Shore	Supports. Shellfish aquaculture is important to the Eastern Shore and local economy. Successful clam culture requires clean, high quality tidal waters. The regulation is a step in the right direction and a valuable addition to the tools available for such protections.	DEQ acknowledges the support.

	<p>Questions will arise about how the feasibility and socio-economic impacts of effluent disposal alternatives and how that will be quantified and evaluated. Other uses of tidal waters such as boating, fishing and swimming should be considered as additional beneficial uses and are important to the local economy. The State Department of Planning and Budget stated that the benefits likely exceed the costs for all the proposed changes.</p>	
<p>Paul Driscoll, President Citizens for a Better Eastern Shore (CBES)</p>	<p>Supports. CBES is a 501(c)(3) non-profit organization interested in environmental and public affairs. CBES has approximately 1000 members, most of whom live on the Virginia Eastern Shore, and a governing board of 19 members. CBES echoed the comments heard from Denard Spady. In addition, they believe that questions about the social and economic studies will help frame the debate on future project proposals, and it is fortunate that the new regulation requires that they be aired.</p> <p>They look forward to seeing the particulars of how this will be implemented, the new regulation is a substantial step toward better protection of our tidal waters, and we hope that it will be approved.</p>	<p>DEQ acknowledges the support.</p>
<p>Webtide Partners (Gerard Esposito, President, Tidewater Utilities, Inc.)</p>	<p>Webtide is a joint public-private venture. They are proposing to fund, design, build, and operate a zero discharge water and wastewater facility for the lower Eastern Shore have submitted preliminary plans to the Towns and County. They believe it is affordable and the area is in need of this facility due to the age of existing infrastructure or lack thereof and will improve the quality of life on the Eastern Shore. Believes their proposal is consistent with this regulation.</p>	<p>No response necessary.</p>
<p>Steve Parker, Director, Nature Conservancy, VA Coast Reserve</p>	<p>Supports. The mission of the Nature Conservancy is to protect natural systems by preservation. Thanked DEQ staff for their rigorous and thorough approach in preparing the regulation and conducted a fair, transparent and professional process. This amendment reflects a bottoms-up need to protect these unique, valuable, high quality waters. The amendment provides clarity and guidance for permit applicants and is a reasonable and much needed.</p>	<p>DEQ acknowledges the support.</p>
<p>Dave Burden VA Eastern Shore River Keeper</p>	<p>Supports. Agrees with what Steve Parker said and urges the DEQ to adopt the amendment.</p>	<p>DEQ acknowledges the support.</p>
<p>Steve Bunce, Partner, Shooting Point Seafood</p>	<p>Supports. Raises clams in Nassawadox Creek. Supports the requirements for new discharges but believes the rules for renewals should be just as strict. This is an excellent time to have old discharges land based as there is an abundance of land and it is easy to do. Many of these systems have been installed on the Maryland Eastern Shore and they do not cause</p>	<p>DEQ acknowledges the support and the suggestion that the renewals be subject to the</p>

	<p>problems to shellfish. The Northampton Board of Supervisors will not approve new surface water discharges.</p> <p>Complimented and thanked staff for making the information available and explaining the possibilities of cleaning up some of the discharges.</p>	<p>same requirements. Staff does not believe this is a change that can be made at this time since the technical advisory committee did not consider existing discharges in their discussions.</p>
Mary E. Miller	<p>Aquaculture and tourism brings millions of dollars to the local business base. Aquaculture and tourism are interconnected from the visitors' point of view and interdependent from the business owner perspective. Visitors come to enjoy what the Shore offers, including an abundance of clean, safe seafood and waters. The aquaculture industry is compromised by the point-source discharge of low-salinity treated wastewater. This rulemaking will provide a significant contribution toward safeguarding the region's economic engine of aquaculture and an incentive for responsible, land-based disposal of treated wastewater.</p>	<p>DEQ acknowledges the support.</p>
Anthony C. Picardi, Ph.D.	<p>Enthusiastically and unequivocally supports the regulation as a creator of wildlife habitat on his 66 acre farm and an educator to citizen groups about wildlife habitat and global warming. The economic comparative advantage and the key to jobs for the next generation lies with agriculture and this includes all forms of aquaculture. Aquaculture supports the open space that will also support eco-tourism and outdoor hunting and fishing. Every dollar earned directly in aquaculture generates two dollars of ancillary economic activity on the Eastern Shore. Please do not let the real estate developers hijack our economic future like they have done all up and down the East Coast.</p> <p>Protecting and maintaining pristine tidal waters makes economic sense, it makes environmental sense, and the hundreds of people he has talked to are unanimous in their opinion that this type of regulation is needed.</p>	<p>DEQ acknowledges the support.</p>
Tom Wescott	<p>Supports. Believes it is common sense and the potential effect of development pressure on the Shore is clearly indicated by water quality problems in the states to our North. Hopes the regulation is strong enough and timely enough to protect our waters. The cost if it does not is great - and ever so permanent. Problems inflicted on unprotected water resources are rarely, if ever,</p>	<p>DEQ acknowledges the support.</p>

	reversed. It makes no sense to lose the economic advantages of aquaculture, commercial fishing, tourism, etc. Even though an increasing population is inevitable, with proper regulation that increase can take place without eliminating the resource.	
Bowdoin Lusk, Jr.	<p>Supports. Appreciate the hard work of DEQ and the TAC in developing the proposed regulation, and I am glad to see recognition of the value of shellfish to the Eastern Shore community. Protection of the waters where he grows clams allows him to be a part of the community with reasonable assurance that he will be able to afford to stay on the Eastern Shore.</p> <p>Beyond protecting the immensely important economic value of shellfish, the proposed regulations help protect other sources of local income. Proper wastewater treatment benefits commercial fishermen, crabbers, the local tourism industry, and recreational fishermen. By helping prevent the formation of hypoxic "dead zones" and maintaining water clarity necessary for seagrass habitat, the proposal supports all of the above sources to our economy. I hope that all of the economic benefits to our community will be considered when looking at the proposal, not solely the benefits to shellfish.</p>	DEQ acknowledges the support.

**General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Non-Metallic Mineral Mining (9 VAC 25-190):**

The staff intends to bring to the Board, at the April 27<sup>th</sup> meeting, a request to amend the draft general permit regulation for non-metallic mineral mining. On March 21, 1994 the Board adopted the General VPDES Permit Regulation for Non-Metallic Mineral Mining operations which allowed the issuance of the general permit effective June 30, 1994. The general permit was amended on March 11, 1999 and March 23, 2004 and became effective on June 30, 1999 and July 1, 2004 respectively. This general permit will expire June 30, 2009. In order to provide continued coverage for permittees, another general permit regulation must be in effect by July 1, 2009. A public hearing was held February 4, 2009 for the draft regulation and no comments were received. The public notice comment period ended on March 6, 2009 and no comments were received. EPA submitted a comment and recommendation letter dated March 4, 2009. As a result of the EPA comment letter the following recommendations were incorporated into the draft general permit regulation:

The general permit has been modified to include a provision to prohibit discharges that cause or contribute to a violation of the water quality standards or that adversely affect aquatic life.

The total maximum daily load (TMDL) language in the regulation and draft general permit has been revised to clarify that these requirements apply where the facility is a source of the TMDL pollutant of concern.

The termination clause language has been added to the draft general permit to describe what is required to terminate coverage under this general permit.

To address the requirements of Virginia's antidegradation policy; language has been added to the draft general permit in 9VAC25-190-50 (Authorization to Discharge).

Storm water monitoring language of a storm event has been added to the draft general permit to be aligned with the EPA multi-sector permit.

Additional language referencing inactive and unstaffed facilities exclusion of visual assessment has been added to the draft general permit.

The registration statement information has been revised to address Municipal Separate Storm Sewer System (MS4) and wetlands.

**Reissuance of the General VPDES Permit for Discharges of Storm Water Associated With Industrial Activity (VAR05) (9 VAC 25-151):**

The purpose of this agenda item is to request that the Board adopt the subject VPDES industrial storm water general permit regulation as a final regulation. At the Board's October meeting, the staff presented a draft regulation amendment for 9 VAC 25-151. The public comment period ran from November 10<sup>th</sup>, 2008 until January 9<sup>th</sup>, 2009, and a public hearing was held on the proposed rulemaking on December 16<sup>th</sup>, 2008 at the Piedmont Regional Office in Glen Allen.

The most noteworthy changes to the regulation and permit include:

- The addition of language to both the regulation and permit to address requirements and restrictions associated with the Water Quality Standards Antidegradation Policy;
- The addition of language to the permit specifically requiring the permittee to control the facility's storm water discharges as necessary to meet applicable Water Quality Standards;
- The addition of requirements to allow coverage for new dischargers to impaired waters that do not have established and approved TMDL;
- The addition of permit monitoring requirements for dischargers to impaired waters that do not have established and approved TMDL; and
- The Department will now post all storm water permit Registration Statements to the DEQ public web site for 30 days prior to issuing coverage under the permit to allow public review.

This regulation will reissue the existing general permit for industrial activity storm water discharges (VAR05) that will expire on June 30, 2009. The proposed permit was based generally on EPA's draft 2006 Multi-Sector General Permit (MSGP). Changes have been made based upon EPA's final 2008 MSGP, and comments received from the general public, EPA, and Department staff. The substantive changes between the proposed and final regulation are as follows:

**1. 9 VAC 25-151-10 (Definitions).**

Added definitions for "existing discharger", "impaired water", and "total maximum daily load", and restored the definitions for "large and medium MS4" and "small MS4".

**2. 9 VAC 25-151-50 (Authorization to Discharge - Limitations on Coverage).**

Restored the "water quality standards" subsection (3 b) and the TMDL subsection (3 d), in response to public comments.

Added a new subsection (e) for new dischargers (i.e., those without VPDES permit coverage for their storm water discharges) discharging to impaired waters without an established and approved TMDL, and explaining what those facilities had to do to be allowed to be covered under the general permit.

Added a sentence to subsection (f) (Antidegradation Policy - was subsection (e) in the proposed draft) clarifying how the Department will address proposed discharges to high quality waters (Tier II) and exceptional waters (Tier III).

**3. 9 VAC 25-151-60 (Registration Statement and SWPPP).**

Subsection A. Changed the requirement that existing permittees who intend to continue coverage under this general permit need to review and update their SWPPP to meet any new permit requirements prior to submitting their registration statement. Since the general permit

reissuance process is taking longer than anticipated, existing permittees will not have time to update their SWPPP prior to the June 30<sup>th</sup> deadline to submit registration statements. Changed the requirement to allow existing permittees until October 1<sup>st</sup> to review and update their SWPPP. New facilities will still have to have their SWPPP developed and implemented prior to submitting their registration statement.

Subsection B (Deadlines for Submitting Registration Statement). Restored subsection 5 which requires additional notification by the applicant for discharges to MS4s.

Subsection C (Registration Statement Contents). Changed the requirement that existing permitted facilities submit the site map from the permit SWPPP (as revised by this issuance) with the registration statement. Since the general permit reissuance process is taking longer than anticipated, existing permittees must now submit the site map as soon as possible, but not later than October 1<sup>st</sup>, 2009.

Added a new subsection (F) stating that the Department will post all registration statements received to the agency's public web site for 30 days prior to the Department granting coverage under the general permit.

#### **4. 9 VAC 25-151-70 (General Permit).**

##### Part I A - Effluent Limitations, Monitoring Requirements and Special Conditions.

- Part I A 1 c (Compliance Monitoring For Discharges Subject To Numerical Effluent Limitations or Discharges to Impaired Waters).

Added subsection (d) to section I A 1 c (3) (Facilities Discharging to Impaired Waters With an Established and Approved TMDL) that allows facilities to discontinue the TMDL monitoring after the first four monitoring periods (subject to Department approval) if the pollutant subject to the TMDL is not detected in any of the samples.

Added subsection (4) (Facilities Discharging to Impaired Waters Without an Established and Approved TMDL) to section I A 1 c that outlines the monitoring requirements for facilities discharging to these waters. Facilities must monitor once during the monitoring period (essentially annually) for all the pollutants that are causing the impairment. Facilities may be waived from further monitoring if the pollutant is not present in their discharge, or the presence is due solely to natural background conditions. Monitoring must be submitted annually on a DMR to the Department.

- Part I A 4 (Reporting Monitoring Results).

Changed the monitoring due dates from January 30<sup>th</sup> or July 30<sup>th</sup> to January 10<sup>th</sup> or July 10<sup>th</sup> to be consistent with the Agency's standard requirement.

Restored subsection (b) related to additional reporting for facilities that discharge through an MS4.

- Part I A 5 (Corrective Actions).

Added a sentence to Part I A 5 a (1) (Data Exceeding Benchmark Concentration Values) that allows a facility extra time if construction is necessary to implement BMPs that are added in response to the required SWPPP evaluation. Also added this provision into the Part I A 5 b (3) (Corrective Actions) subsection.

Added subsection Part I A 5 a (2) that allows a facility to forgo corrective action for benchmark exceedances where the exceedance is due to natural background conditions.

##### Part I B - Special Conditions

- Part I B 6 (Salt storage piles).

Deleted the 24-hr 25-year storm event requirement for sizing the basin required to contain salt contaminated runoff, and added that the facility may also use above ground or below ground storage tanks to contain the waste, or may dispose of the runoff through a sanitary sewer.

- Part I B 8 (Water Quality Protection).

Added several sentences from EPA's final 2008 Multi-Sector General Permit (MSGP) requiring the permittee to control discharges as necessary to meet applicable water quality standards, and indicating that it is expected that compliance with the conditions of this permit will control discharges as necessary to meet applicable water quality standards.

- Part I B 10 (Antidegradation Requirements for New or Increased Discharges to High Quality Waters).

Added this special condition to discuss how new or expanded discharges from a facility may be subject to additional SWPPP control measures, or may require that the facility apply for an individual permit in order to meet the applicable antidegradation requirements.

#### Part II - Conditions Applicable to All VPDES Permits

- Part II B 2 (Retention of Records).

Modified the records retention requirement to require that records be kept for three years following the date that coverage under this permit expires or is terminated, to be consistent with EPA's final 2008 MSGP.

#### Part III - Storm Water Pollution Prevention Plans (9 VAC 25-151-80)

- Part III A 1 (Deadlines for Plan Preparation and Compliance - Facilities That Were Covered Under the 2004 General Permit).

Changed the requirement that existing permittees who are continuing coverage under this permit need to review and update their SWPPP to meet any new permit requirements prior to submitting their registration statement. Since the general permit reissuance process is taking longer than anticipated, the existing permittees will not have time to update their SWPPP prior to the June 30<sup>th</sup> deadline to submit registration statements. Changed the requirement to allow existing permittees until October 1<sup>st</sup>, 2009 to review and update their SWPPP.

- Part III B 6 (Contents of the Plan - Storm Water Controls).

Added a title to Part III B 6 b ("Control Measures (Non-numeric Technology-based Effluent Limits)") to be consistent with EPA's final 2008 MSGP.

Added a requirement to Part III B 6 b (5) (Routine Facility Inspections) that at least once each calendar year the routine facility inspection shall be conducted during a period when a storm discharge is occurring.

- Part III C (Maintenance).

Changed the documentation requirements for maintenance activities to be consistent with EPA's final 2008 MSGP.

- Part III D (Nonstorm Water Discharges).

Deleted Part III D 3 that required all non-storm water discharges to be subject to all the provisions of this permit, to be consistent with changes EPA made for their final 2008 MSGP.

- Part III E (Comprehensive Site Compliance Evaluation).

Deleted the requirement that at least one member of the Pollution Prevention Team participate in the comprehensive site compliance evaluation, and added a statement that the personnel conducting the evaluations may be either facility employees or outside constituents hired by the facility.

Changed Part III E 1 h (Certification of Outfall Evaluation for Unauthorized Discharges) from a certification to an annual evaluation. Deleted the Part III E 1 h (2) notification requirement and replaced it with an allowance for the permittee to request approval from the Department to be able to evaluate 20% of their outfalls annually on a rotating basis such that all outfalls are evaluated over the permit term.

Restored Part III E 4 that allows the facility to use the annual site compliance evaluation to serve as one of the facility's routine inspections where the two schedules overlap.

- Part III F (Signature and Plan Review).

Modified Part III F 1 (Signature/Location) to be consistent with the changes EPA made for their final 2008 MSGP.

#### Part IV - Sector Specific Permit Requirements

Deleted the additional benchmark monitoring that was added based upon changes EPA was proposing in their draft 2006 MSGP. EPA dropped the additional monitoring for their final 2008 MSGP, so the Department also deleted the additional EPA-based monitoring. However, the benchmark monitoring that was added based on recommendations from the Technical Advisory Committee that assisted the Department with the drafting of this permit was retained (that monitoring is in Sectors N, P, R, S, U and AD).

### **INDUSTRIAL STORM WATER GP (ISWGP) REGULATION 2009 COMMENTS AND RESPONSES**

#### **THE TREATED WOOD COUNCIL (TWC) [Jeffrey T. Miller, Pres. & Executive Director ]:**

**1. Additional Sampling for Phenols and Total Suspended Solids are not required under US EPA Guidelines** [9VAC25-151-70.A.(6).b-Benchmark monitoring of discharges associated with specific industrial activity, Table 70-1 and 9VAC25-151-90. Sector A-Timber Products]

**a.** For Industry Sector A, Industry Sub Sector Wood Preserving Facilities, the proposal adds monitoring of Phenols and Total Suspended Solids to the Benchmark Monitoring Parameters. We understand that the US EPA does not recommend these additional monitoring requirements, and therefore, they should not be adopted into the Virginia regulations.

**Response 1a:** *EPA originally proposed these parameters as part of their draft 2006 Multi-Sector General Permit (MSGP). EPA removed their proposed additional monitoring requirements for the final 2008 MSGP and will be doing further analysis of the data to determine if the additional monitoring should go in the next reissuance of their permit. We will remove the requirement.*

**b.** For your information, wood preserving facilities that only use water-borne preservatives and do not use oil-based preservatives, monitoring for Phenols is unnecessary since none of the water-borne preservatives contain any phenolic compounds. At a minimum, Table 70-1 and Table 90-2 should be changed by adding a footnote that phenol monitoring is not required for facilities using only water-borne preservative formulations.

**Response 1c:** *We are removing the monitoring requirement, so no additional changes are necessary.*

c. Similarly, Table 70-1 and Table 90-2 should be changed by adding a footnote that metals (copper, chromium and arsenic) monitoring is not required for facilities using only oil-based preservatives.

**Response 1c:** *We will add the footnote.*

**2. Benchmark Concentration for Phenols is Extremely Low and Will Require Expensive Analytical Procedures** [9VAC25-151-70.A.(6).b-Benchmark monitoring of discharges associated with specific industrial activity, Table 70-1 and 9VAC25-151-90. Sector A-Timber Products]

Table 90-2 indicates that the benchmark concentration is 16 µg/L (parts per billion) for phenols. This is an exceedingly low concentration and will require expensive analytical procedures to reach a detection limit at or below this concentration. Again, TWC recommends that the benchmark monitoring for phenols be dropped (see point A above); however, if the Department of Environmental Quality (DEQ) disagrees, before Virginia should adopt this benchmark concentration, an evaluation of the impact of low concentrations of phenols on water quality should be undertaken by DEQ before requiring such a low action level.

**Response 2:** *The phenols monitoring was added by EPA in their draft 2006 MSGP. EPA removed the monitoring for the final 2008 MSGP, and we are also dropping that parameter (see Response 1a above). The benchmark concentration was based on EPA's proposed benchmark monitoring value, so it will be reevaluated as part of EPA's analysis of their additional monitoring parameters.*

**3. Procedures Should Be Added to Eliminate Contaminant Concentrations from Naturally-Occurring Sources** [9VAC25-151-90, E. Benchmark monitoring and reporting requirements, Table 90-2.]

This table specifies "Pollutants of Concern" and "Benchmark Concentration" applicable to Wood Preserving Facilities (SIC 2411). Please note that the analysis of water samples for the metals arsenic, chromium and copper should be changed to allow for the filtering of storm water samples to remove entrained solids, leaves, sediment, etc. Since soil and other naturally occurring materials have been shown to contain some of these metals, principally arsenic and chromium, using "Total Recoverable Arsenic" or "Total Recoverable Chromium" etc. without the ability of the facility to filter the sample may result in the metals in entrained materials being dissolved into the water as the sample is prepared for analysis. This occurs since acid is used to preserve the water samples. By adding acid to the sample, the entrained solid material will be dissolved, causing the metal (chromium, arsenic, copper, etc) to be dissolved in the water. Therefore, when the sample is analyzed, the reported metal concentration will include both the metal dissolved in the water (if present) and the metal carried along with the entrained material (soil or other naturally occurring materials).

DEQ should eliminate this contribution from entrained material by allowing facilities to filter the sample prior to it being submitted for laboratory analysis. Table 90-2 should be expanded to incorporate the filtration of samples prior to metal analysis, effectively eliminating the contribution of metals contained in naturally occurring material such as soil.

**Response 3:** *We have no data at this time that shows that this is a problem at any of the facilities in Virginia. If funds allow, we will work with the wood products industry during the permit term through joint DEQ/industry sampling to determine if this provision needs to be included in future reissuances of this permit. For this reissuance, we are not going to add an allowance for facilities to filter samples prior to submitting them to the labs for analysis.*

**DOMINION [Pamela F. Faggert, Vice President and Chief Environmental Officer]:**

**4. Additional TSS benchmark monitoring.** Chesterfield Power Station is the only current Dominion facility in Virginia that has a General VPDES Storm Water Permit. The power station

is subject to annual benchmark monitoring for iron and quarterly visual monitoring and we understand that this will continue under the new permit but with new annual Discharge Monitoring Report (DMR) requirements. Also, the proposed regulation includes the addition of benchmark monitoring for Total Suspended Solids (TSS) for those facilities that do benchmark monitoring, including Chesterfield Power Station.

As you are aware, EPA recently issued their new Storm Water Multi-Sector General Permit for industrial facilities for coverage in non-delegated states. While EPA originally proposed the addition of TSS benchmark monitoring, the final regulation dropped this requirement until results of a National Research Council (NRC) report on storm water management has been assessed. EPA chose to continue the amount of benchmark monitoring that was required in the previous federal permit regulation. Dominion understands that the key driver for including TSS monitoring in the state general storm water regulation was the fact that EPA had included it in the federal rule. We therefore believe it is appropriate for Virginia to delete the TSS benchmark monitoring from the draft state regulation until such time as the NRC report can be properly evaluated for any changes to the storm water monitoring program.

**Response 4:** *EPA removed their additional monitoring requirements for the final 2008 MSGP and will be doing further analysis of the data to determine if the additional monitoring should go in the next reissuance of their permit. We will remove the monitoring we added that was based on EPA's draft 2006 MSGP additional monitoring. However, we are retaining the additional monitoring we added that was based on recommendations from our ISWGP Technical Advisory Committee (TAC).*

**GENERAL SHALE BRICK, INC. [Steve Wyse, Environmental Engineer]:**

**5. Sampling for total recoverable aluminum in Sector E - Clay Product Manufacturers as it affects the brick manufacturing industry.** We have always been concerned about the requirement for sampling for total recoverable aluminum in Sector E - Clay Product Manufacturers as it affects the brick manufacturing industry. Brick is manufactured using shale and siltstone that are not necessarily predominately clay materials (the primary source of aluminum in this sector). Analyzing stormwater from brick manufacturing sites for aluminum may not be indicative of stormwater contamination from our manufacturing activity.

Aluminum (Al) is the third most abundant crustal element. Furthermore aqueous aluminum chemistry is complex and care must be taken to avoid Al contamination when collecting stormwater. Sample procedures are certainly not normal activities for plant personnel with requirements for containers to be acid washed and rinsed with ASTM Type II deionized water and/or "pre-preserved" with acid. Since Al is so prevalent in the earth's crust, sample jars can get dusty and potentially contaminated making the sample results exceed the benchmark concentration (0.75 mg/l). This can lead to costly and unnecessary controls and retesting resulting from the new "corrective actions" section with its requirements for exceeding benchmark monitoring concentrations.

Fortunately, the addition to the permit of monitoring for Total Suspended Solids (TSS) provides a much better measure of the effectiveness of the stormwater BMPs used in the brick industry. Stormwater runoff that is contaminated due to the use of shale and siltstone is better identified using TSS since the shale and siltstone can cause suspended solids in stormwater but may not necessarily contain clay (Al) minerals. At the same time, since Al is so predominate and contamination of the samples possible, the Total Recoverable Aluminum results could be, at best, redundant or more likely not representative of the industrial activity at the plants.

Since TSS analysis is easier to sample for, a better indicator of the impact that brick industrial activity has on the stormwater, and a better indicator that our BMPs are effective, the waters of the State can be adequately protected without the analysis of Al. Therefore we recommend that

Total Recoverable Aluminum be removed from the Sector E Benchmark Monitoring Requirements for the Brick and Structural Clay Tile Industry, SIC Code 3251.

**Response 5:** *The monitoring requirements for aluminum are based on EPA's MSGP Sector E requirements, which were developed in the early 1990's based on data collected from industries in the sector as part of EPA's "Group Application" process. In Virginia, we do not have any monitoring data from the brick facilities that would indicate that the aluminum monitoring is not necessary or appropriate. The benchmark monitoring that is required to be collected is primarily for the permittees to use to assess whether their BMPs are working as they were intended to reduce the impacts of their storm water runoff to the maximum extent practicable. While the new permit proposes to require the permittee to review the SWPPP and modify it as necessary to address any deficiencies that cause their benchmark monitoring data to exceed a benchmark concentration value, it does not require the permittee to retest the storm water during that monitoring period. We will look at the monitoring data that the brick facilities collect for this permit reissuance, and if the monitoring data indicates that the aluminum monitoring is not needed, we will consider removing the requirement for the next permit reissuance.*

**DEPARTMENT OF DEFENSE (NAVY) [Christine H. Porter, Director, Regional Environmental Coordination Department]:**

**6. 9VAC25-151-60.A, Deadline for SWPPP Update and Compliance, and 9VAC25-151-80, Part III.A.1, Deadline for SWPPP Update and Compliance**

DEQ is proposing to require owners of facilities that were covered under the 2004 Industrial Stormwater General Permit to review and update their Stormwater Pollution Prevention Plan (SWPPP) to meet all requirements of the new general permit prior to submitting the registration statement. The previous permit allowed the owner to review and update the SWPPP within 60 days of filing the registration statement. This additional time is particularly important for DoD installations and other larger facilities with collocated industrial activities. Since there are fairly significant changes to the general permit, DoD requests that the new general permit also allow the owner 60 days to review and update the SWPPP.

**Response 6:** *We agree that existing facilities will not have time to update and implement the new SWPPP requirements prior to submitting the Registration Statement. For existing facilities, we are changing the requirement and giving them until October 1<sup>st</sup>, 2009 to update and implement any revisions to the SWPPP. New facilities will still need to prepare and implement the SWPPP prior to submitting a registration statement.*

**7. 9VAC25-151-60.B.1.b, Deadline for Facilities covered by Individual Permit to Submit Registration Statement**

DEQ is proposing to amend the regulation to allow facilities that hold individual permits to seek coverage under this general permit if they notify DEQ 180 days prior to expiration of their permit and file a registration statement 30 days prior to permit expiration. DoD is concerned that the 180 day notification requirement could potentially prevent facilities that were previously covered by an individual permit from obtaining coverage under the general permit which would save facility and DEQ resources. If a facility files a timely reapplication for individual permit coverage but later applies for general permit coverage due to changes in circumstances, we request that DEQ clarify that the 180 day notification requirement would not preclude them from being eligible for coverage. Even if the reapplication is not filed 180 days prior to permit expiration, DoD believes that although a facility should be subject to possible enforcement action for the late application, it should not be precluded from obtaining coverage under the general permit.

**Response 7:** *We agree that the 180 day notification to DEQ prior to the individual permit expiration may be confusing and restrictive. We are removing the "180 days" requirement, but we are keeping the requirement that they apply for the general permit at least 30 days prior to the expiration date of the individual permit.*

## **8. 9VAC25-151-60.C.8, Inclusion of SWPPP Site Map with Registration Statement**

In this section, DEQ is proposing that the facility submit its SWPPP site map with the registration statement. As discussed in a previous comment, it is burdensome for military installations and other large facilities with several collocated industrial activities that are covered by the 2004 general permit to update their SWPPP site maps prior to filing the registration statement. DoD requests that DEQ retain the language in the existing general permit that only requires submission of a topographic map or other map that indicates the location of the facility, all stormwater discharges, and all receiving waters. Alternatively, DEQ could require the SWPPP site map be included with the registration statement for facilities requesting coverage for the first time, but allow facilities covered by the 2004 general permit to submit the SWPPP site map within 60 days.

**Response 8:** *Existing facilities may not have time to update their site map prior to submitting their Registration Statement to renew their permit coverage. We have changed the requirement to update the SWPPP to allow existing permitted facilities until October 1<sup>st</sup> to update their plan. We will also change the Site Map submittal requirement to require that the updated map be submitted as soon as practicable, but not later than October 1<sup>st</sup>, 2009. New facilities must still submit the site map with the registration statement.*

## **9. 9VAC25-151-70, Part I.A.1.a, Visual Monitoring Flexibility**

DoD supports the revision to paragraph (2) that clarifies that the permittee is only responsible to perform visual monitoring of qualifying storm events during daylight hours. DoD also supports the representative outfall provision in paragraph (5) since it allows facilities to perform visual monitoring at representative outfalls and report the results for outfalls that are substantially identical to the representative outfall. DoD recommends that the second to the last sentence of this section be revised to replace "quantitative data" with "observations" since the monitoring is visual rather than analytical.

**Response 9:** *The change will be made.*

## **10. 9VAC25-151-70, Part I.A.5, Corrective Actions Deadlines for Structural BMPs when Benchmark Concentrations are Exceeded**

This section requires the facility to review and revise the SWPPP 30 days after exceedance of a benchmark concentration value is discovered or 30 days following discovery of an inspection deficiency and implement BMPs before the next storm event if possible but no later than 60 days after the benchmark exceedance or inspection deficiency is discovered. The 60 day deadline is reasonable for nonstructural BMPs but structural BMPs often require a much longer period of time to implement, particularly if design and construction contracts are required. DoD requests that DEQ incorporate language from previous EPA stormwater general permits that allows facilities up to 3 years to implement structural BMPs.

**Response 10:** *We agree that the permittee should be allowed extra time if construction is necessary to implement additional BMPs. The "Corrective Actions" section has been changed to allow up to 3 years to complete the construction. Appropriate nonstructural and/or temporary controls must also be implemented in the affected portions of the facility until construction is completed.*

## **11. 9VAC25-151-70, Part I.B.9, Submission of Updated SWPPP Map for Adding or Deleting Stormwater Outfalls**

DoD supports this provision that allows addition or deletion of outfalls without having to file another registration statement.

**Response 11:** *No changes necessary.*

## **12. 9VAC25-151-80, Part III.B.2.d, Size of Wetlands Receiving Discharges**

In this section, DEQ is proposing to require that the SWPPP include the size and description of wetland sites that may receive discharges from the facility. While it is important to identify stormwater discharges to wetlands since wetlands are considered waters of the state, it will be burdensome for facilities to determine the size of the wetland that receives discharges, particularly if all or part of the wetland is not located on the facility. Since the requirement is burdensome and there is no readily apparent benefit to providing this information, DoD requests that DEQ delete the requirement to provide the size of the wetland or clarify that the size may be an estimate that does not require a formal wetland delineation.

**Response 12:** *We agree that having the permittee provide the size of wetlands that may receive storm water discharges from the facility is burdensome and serves no useful purpose. EPA removed that requirement from their final 2008 MSGP. We will remove the requirement also.*

### **13. 9VAC25-151-80, Part III.E, Comprehensive Site Compliance Evaluation Staffing**

The existing general permit allows the comprehensive site compliance evaluation (SCE) to be performed by personnel from the facility or outside constituents. DEQ is proposing that at least one member of the pollution prevention team participate in the site compliance evaluation. This provision would prevent facilities from using consultants to perform the SCE and resultant SWPPP update because there is no benefit to hiring a consultant if a facility representative needs to accompany them on the SCE. The ability to use consultants to perform SCEs and update SWPPPs is particularly important to military installations and other large facilities with collocated industrial activities because the SCE and SWPPP update is quite labor intensive for such facilities. Although it is beneficial and preferable for a pollution prevention team member to conduct the SCE or participate, it is not feasible for large facilities. Therefore, DoD requests that DEQ delete the requirement for a pollution prevention team member to participate in the site compliance evaluation, unless it is clarified that participation can mean oversight of a consultant that is performing the SCE.

**Response 13:** *This was a change EPA made for their 2008 MSGP reissuance. We agree that requiring a pollution prevention team member to participate in the comprehensive site compliance evaluation may not be feasible or reasonable for certain facilities. We will remove the requirement.*

### **14. 9VAC25-151-80, Part III.E.1.h.(1), Comprehensive Site Compliance Annual Certification of Outfalls for Unauthorized Discharges**

The requirement to annually certify that all outfalls have been evaluated for the presence of unauthorized discharges is burdensome for facilities with many stormwater outfalls and particularly for those facilities with tidally influenced outfalls. Since there is no way to observe for dry weather flow at tidally influenced outfalls, the facility would have to examine all drainage structures leading to tidally influenced outfalls on an annual basis. Since observation of all drainage structures is very burdensome and the system generally does not change from year to year, DOD suggests that DEQ either require that the certification be performed when the facility applies for permit coverage (rather than annually), or that it be performed annually for a percentage of the total number of outfalls(e.g., 20% per year).

**Response 14:** *EPA modified this requirement for their final 2008 MSGP by removing the certification requirement and requiring only documentation in the SWPPP. We agree that evaluating all the outfalls every year would be burdensome for large facilities. We have modified the requirement by changing the certification to an annual outfall evaluation, and by allowing the facility to evaluate 20% of the outfalls each year on a rotating basis if they request and receive written permission from the Department.*

### **15. 9VAC25-151-80, Part III.E.4, Comprehensive Site Compliance Substitution for Routine Inspection**

DEQ is proposing to delete this provision that allows facilities to use their annual site compliance evaluation as one of its routine inspections. Since the annual site compliance evaluation basically includes all the provisions of a routine inspection as well as some additional requirements, there does not appear to be a valid reason for requiring routine inspections during the same timeframe. Therefore, DoD requests that this section of the existing general permit be retained.

**Response 15:** *We agree and will restore this provision.*

#### **16. 9VAC25-151-80, Part III.F.2, Signature Authority for SWPPP Revisions**

DEQ is proposing that both the initial plan and all revisions be signed by a person of authority as defined in Part II.K. Although it is reasonable for the initial plan to be signed by a person of authority as defined in Part II.K, DoD requests that a qualified person working for the initial signatory be authorized to sign revisions to the plan.

**Response 16:** *The language in the proposed regulation was based on EPA's draft 2006 MSGP language. EPA changed the language for the final 2008 MSGP. We have changed the section to reflect the changes EPA made.*

#### **17. 9VAC25-151-230.C.3.d, Sector P Vehicle and Equipment Washwater Requirements, and 9VAC25-151-260.C.2.f, Sector S Vehicle and Equipment Washwater Requirement**

This section requires facilities that discharge vehicle and equipment washwaters to the sanitary sewer system to notify the operator of the sewer system and associated treatment plant and attach a copy of the notification letter in the SWPPP. If the facility has an industrial user permit under the pretreatment program, the permit shall be referenced in the plan and if washwaters are disposed of offsite, details of disposal frequency, volume, and destination shall be included in the plan. These requirements are burdensome and do not seem relevant to this permit since the purpose of the permit is to regulate discharges of stormwater to state waters. The permit language that prohibits the discharge of vehicle and equipment washwaters under this permit should be sufficient. Requirements to notify POTWs and describe the disposition of these discharges in the SWPPP should be removed. Some military installations and large industrial facilities operate their own sanitary sewer systems and treatment plants. Therefore, if DEQ chooses to retain these washwater discharge notification provisions, DoD requests that they be modified to indicate that notification of the operator of the sanitary sewer system is required except when the sanitary sewer system and associated plant are operated by the facility covered by the stormwater general permit.

**Response 17:** *We agree that the requirement is burdensome and not relevant to this permit. We are removing the requirement.*

#### **JAMES RIVER ASSOCIATION (JRA), THE SHENANDOAH RIVERKEEPER, AND THE POTOMAC RIVERKEEPER [David W. Sligh, Upper James Riverkeeper, James River Association]:**

The proposed regulatory amendments and General Permit addressed in these comments include some important and valuable measures to help protect and restore Virginia streams and other water bodies. We recognize that the Department of Environmental Quality (DEQ) staff has devoted significant work to the review of this program and the effort to improve it. In the following pages we will note a number of provisions proposed by the staff which we strongly endorse.

However, we assert that there are serious deficiencies and problems in the proposed regulation and General Permit that cause these proposals to violate mandates, under both State and Federal law, which the State of Virginia is required to meet. Therefore, we request that the Virginia State Water Control Board reject these regulatory proposals and require that the General Permit program for regulating discharges of storm water associated with industrial

activities be improved to better protect citizens and the environment and conform with all legal requirements.

We recognize that General discharge permits, which cover a class of facilities or activities with similar characteristics, are used by both EPA and States to more efficiently regulate the large numbers of point source pollution discharges that must be controlled. Where less individualized administrative reviews and procedures, such as those embodied by these General Permits, adequately protect citizens and the environment and meet all legal requirements, we endorse their use. However, it must be acknowledged that each water body to be affected by a discharge has unique conditions. Neither the Clean Water Act nor Virginia laws allow the State to provide less environmental protection under General Permits than is provided by individual permits, nor do these laws allow regulators to weaken the public's rights to be informed and active in the permitting and enforcement processes. We believe that, in its current form, the amended regulation would do both.

### **18. Limitations on Coverage**

**a.** The amendment would remove two clauses from the current regulation, at 9VAC25-151-50.B.3.b and 9VAC25-151-50.B.3.d. These sections withhold authorization for coverage under the General Permit for, respectively, discharges the DEQ Director believes will or may cause or contribute to violation of Water Quality Standards (WQS) and discharges to waters with established TMDLs, where the Stormwater Pollution Prevention Plan (SWPPP) does not properly reflect the allocation scheme to meet the TMDL.

We assert that these two clauses should be retained in the regulation. The State is already obligated, by statute, to assure that each discharge allowed under either a general or individual permit will uphold both the Water Quality Standards and TMDL allocations. Still, we believe it is appropriate and desirable to retain these two clauses in this regulation.

The fact sheet or statement of basis that accompanies each individual permit prepared by the DEQ, includes detailed analyses to demonstrate, based upon the specific nature of the receiving stream and of the discharge (both the quality and quantity of each), that WQS and TMDL provisions will be met. Since this type of individualized analysis of stream and effluent conditions is not completed for each discharge covered under the General Permit, these broadly worded exclusions are especially important. If the agency staff, the permit applicant, or a third party possesses evidence that raises serious questions about a discharge's potential to violate WQS or TMDL provisions, then the applicant should be required to apply for an individual permit and the staff should perform the necessary detailed analyses to develop appropriately protective effluent limitations.

**Response 18a:** *We agree with the comment. The sections will both be restored.*

**b.** We also note that the DEQ staff has proposed to retain a similar provision in this section, previously listed as 9VAC25-151-50.B.3.e, to prohibit coverage under the General Permit for any discharge not meeting antidegradation requirements. The antidegradation policy is, in fact, a component that EPA requires states to include in their Water Quality Standards. We absolutely support the proposal to keep this clause in place, but we see no logical reason to treat the other two clauses differently.

**Response 18b:** *No changes necessary.*

**c.** One category of discharges that must be excluded from coverage under the General Permit, is those entering impaired waters for which TMDL allocations have not yet been developed and approved. The DEQ may not permit a discharge to any water that would cause or contribute to WQS violations. Therefore, if a receiving water body is impaired and the discharge would contribute any amount of the pollutant(s) responsible for the impairment, then no discharge may be allowed under the General permit or any other.

**Response 18c:** *The EPA requirements in 40 CFR 122.4(i) state that new dischargers may not be issued a permit if the discharge from its construction or operation will cause or contribute to the violation of water quality standards. We have added a subsection to the regulation in section 9 VAC 25-151-50 B 3 (Limitations on Coverage - Storm Water Discharges Not Authorized by This Permit) similar to the language included by EPA in their final 2009 MSGP, and addressing new dischargers that discharge to impaired waters for which a TMDL has not been established and approved, and what they have to do to be allowed to get coverage under the ISWGP.*

*Existing dischargers that discharge to impaired waters for which a TMDL has not been established and approved are required to meet water quality standards in accordance with the permit Special Condition #8. No additional changes are proposed for these dischargers.*

## **19. Registration Statement and Stormwater Pollution Prevention Plan (SWPPP)**

a. We support the provision in the regulation, at 9VAC25-151-60.A, requiring that applicants for coverage under the General Permit, "prepare and implement a written SWPPP ... prior to submitting the registration statement." It is important that the SWPPP be available to the DEQ staff and to the public at the time the registration statement is filed. In addition, the requirement in this same section requiring dischargers already covered by the current General Permit to review and revise their SWPPPs as appropriate to conform with the amended regulation is necessary and we support this language.

**Response 19a:** *The requirement that new applicants for coverage under the General Permit prepare and implement a SWPPP prior to submitting the registration statement is a continuation from the previous permit. Note that the SWPPP is not required to be submitted to the Department with the Registration Statement. A SWPPP is only required to be submitted if requested by the DEQ Regional Staff. Since the general permit reissuance process is running so late, existing permitted facilities will not have adequate time to update and implement the new SWPPP requirements prior to submitting the Registration Statement. Therefore, for existing permitted facilities, we are changing the requirement and giving them until October 1<sup>st</sup>, 2009 to update and implement any revisions to the SWPPP. New facilities will still need to prepare and implement the SWPPP prior to submitting a registration statement.*

b. We oppose the removal of the condition previously listed at 9VAC25-151-60.B.5, as recommended in the draft regulation. This condition requires that a discharger of industrial stormwater to municipal separate storm sewer system (MS4) submit a copy of the registration statement to the operator of that MS4. We think this notification is appropriate and that it should be retained in the regulation. MS4 operators have the, often difficult, task of tracking polluted discharges into their systems and controlling the quality of the effluent from those systems. This required notification cannot fail to make that effort more efficient and effective.

**Response 19b:** *We agree that the MS4 should be notified of industrial storm water discharges to its system. The requirement will be restored.*

## **20. General Permit**

a. The opening portion of the draft General Permit contains the following sentence:

"The authorized discharge shall be in accordance with this cover page, Part I-Effluent Limitations, Monitoring Requirements and Special Conditions, Part II-Conditions Applicable to All VPDES Permits, Part III-Storm Water Pollution Prevention Plan, and Part IV-Sector-Specific Permit Requirements, as set forth herein."

We propose the addition of the words:

"This discharge shall not cause or contribute to a violation of Water Quality Standards and any such violation of Water Quality Standards will constitute a violation of this permit."

As discussed above in these comments, the DEQ staff will not prepare a detailed analysis to demonstrate how each discharge covered by the General Permit will affect the particular receiving waters. Where such analyses are completed and incorporated into approval documents for individual permits, regulators have sometimes considered it appropriate to include so-called "shield" provisions in those permits, stating that conformance with permit limits would also be deemed compliance with Water Quality Standards. We see no language in the draft regulation reviewed here that states or implies that such a "shield" provision exists under the General Permit, however we favor an affirmative statement such as that proposed above to eliminate any confusion on this issue.

Such a "shield" provision is not justified for dischargers covered by a general permit. Those seeking coverage under the General Permit enjoy reduced administrative burdens and costs and must take on more of the responsibility of ensuring that their particular discharge will meet all WQS. The flexibility given to permit applicants to develop a system of BMPs under their SWPPP also must place responsibility on the permit holder. Further, as demonstrated in Part I.A.5 of the draft General Permit, "The permittee must take corrective action whenever ... [t]here is any exceedance of an effluent limitation..., TMDL wasteload allocation, or water quality standard" and follow-up monitoring must show that water quality standards are met. The response to an exceedance of a WQS is the same as those for an effluent limit or a wasteload allocation and, likewise, the exceedance of any of the three levels should be considered a permit violation.

**Response 20a:** *Part I B 8 of the permit (Special Conditions - Water Quality Protection) deals with compliance with Water Quality Standards. Similar to what EPA included in their final 2008 MSGP, we have added the following wording to the beginning of that subsection: "The discharges authorized by this permit shall be controlled as necessary to meet applicable water quality standards." We modified the next sentence ("The permittee shall select, install..."), see Response 36b. We then added the following sentence (also similar to EPA's final 2008 MSGP): "The board expects that compliance with the conditions in this permit will control discharges as necessary to meet applicable water quality standards." We have also made some other changes at the end of that section - see Response 35.*

**b.** Part II.B.2 of the draft General Permit requires that a permittee retain "all monitoring information ... copies of all reports required by this permit, and records of all data used to complete the registration statement for this permit, for a period of at least three years from the date of the sample, measurement, report or request for coverage." We believe that the retention period for these documents must be extended to five years and that this change is necessary to meet minimum federal requirements. Further, there is a strong practical reason to maintain these documents throughout the permittee's entire period of coverage under the General Permit, as this information may be important in assessing compliance and pursuing enforcement actions that may be needed. Also, such data would likely be useful and appropriate information to consider upon application for coverage under the next General Permit.

**Response 20b:** *We agree that the Part II B 2 section needs updating. Based on EPA's final 2008 MSGP language in Section 7.5, we have modified Part II B 2 to require the documents to be kept for three years after permit coverage expires or is terminated.*

## **21. Monitoring Requirements**

The General Permit's monitoring requirements (both visual inspections and stormwater sampling) are insufficient with respect to their frequency and the pollutant parameters and locations to be monitored. The scientific literature demonstrates that the quality of stormwater discharges can be significantly different from one event to the next, based upon the intensity and timing of the storm, differences in weather and site management from one time to another, and other factors. Even, when other factors are similar, there is inherent variability within a

population of samples from the same discharge during the same event. Therefore, we consider the "bare minimum" monitoring regimes required in the draft permit to be inadequate to ensure protection of receiving waters.

a. The requirement at Part I.A.1.a, that visual monitoring be conducted only once per quarter is inadequate to obtain a representative sample of the discharges. Because visual sampling requires very little in the way of resources or expense, we recommend that the General Permit require that at least 10 qualifying storm events be visually monitored each year, at each outfall, with the requirement that at least one monitoring event occur in each calendar quarter (unless the permittee documents that no qualifying storm event occurred in any quarter). Of these 10 storm events to be monitored visually, we believe that both individual grab samples and series of samples should be included, with grab samples taken as specified in the draft permit but with series of samples taken during at least four of the 10 sampling events, as follows: the first sample to be taken within the first 30 minutes after the discharge starts to occur, and additional samples of the same quantity to be taken each half-hour thereafter during the first 2 hours of discharge, unless the discharge lasts for a shorter period of time, in which case samples will be taken every 30 minutes for the discharge's duration.

**Response 21a:** *The quarterly visual examination (QVE) requirement has been in EPA's MSGP since that permit was first developed in 1995. DEQ has mirrored this requirement in each of the industrial storm water general permits that we have issued. EPA developed this requirement as a tool for permittees to use to evaluate the effectiveness of the SWPPP. The visual examination provides a simple, low cost means of assessing the quality of storm water discharge with immediate feedback. When conducting the examination, the facility personnel can relate the results of the examination to potential sources of storm water contamination on the site. If a source can be located, then this information allows the facility operator to immediately conduct a clean-up of the pollutant source, and/or to design a change to the pollution prevention plan to eliminate or minimize the contaminant source from occurring in the future. When contamination is observed, the personnel can evaluate whether or not additional BMPs should be implemented in the SWPPP to address the observed contaminant, and if BMPs have already been implemented, evaluating whether or not these are working correctly or need maintenance. Permittees may also conduct more frequent visual examinations than the minimum quarterly requirement, if they so choose. By doing so, they may improve their ability to ascertain the effectiveness of their plan. EPA believes that permittees should be able to maximize the effectiveness of their storm water pollution prevention efforts through conducting visual examinations which give direct, frequent feedback to the permittee on the quality of the storm water discharge.*

*At this time we believe the quarterly visual monitoring requirement is doing what it was designed to do, and that no changes are needed.*

b. In addition to the documentation required in the draft permit, we request that photographs of the samples collected for each visual inspection be taken and included with the documentation required in the draft permit. Photographs must be taken of the samples under the same conditions as specified for the visual samples.

**Response 21b:** *While photographs may be a nice idea (and the permittee is always welcome to include these with the QVE documentation), we do not feel that the added expense and burden this would put on the permittee is justifiable for the end results that would be achieved. Photographs would allow the DEQ inspectors (and anyone else who looks at them) to see what the permittee was looking at when the evaluation was made, but unless the inspector is there when the sample is pulled, there is not a whole lot of utility in just having the picture (there is no way to QA/QC the process to ensure a clear and adequate photo, you can't detect odors, you may or may not see a sheen if present, and you can't look more closely if you see something that doesn't look right). We do not propose to make this change.*

c. We believe the clause addressing "representative outfalls," at Part I.A.1.a.(5) should be changed. While some outfalls may be proven to be essentially the same in quality, we believe that such an assumption must be based upon data, rather than subjective assumptions. If after at least four sampling events at every outfall in any year the permittee can demonstrate that samples from two or more outfalls are statistically indistinguishable, based not only on the factors cited in the draft permit but also on the actual quality of the samples taken, then subsequent samples during that year may be taken only from one of the discharges of that similar group. In such a case, the permittee must testify in the documentation describing sampling results that the conditions in the areas drained by the various outfalls have not changed significantly since the previous sampling periods.

**Response 21c:** *In the proposed permit, the determination that a facility's outfalls have substantially identical effluents must be based on similarities of the industrial activities, significant materials, size of drainage areas, and storm water management practices occurring within the drainage areas of the outfalls. This determination must be documented in the SWPPP, and is subject to review and approval of the DEQ inspectors when the facility inspection is conducted. The suggestion outlined above would require that samples be analyzed to determine the quality of the effluent, and then be compared statistically to prove that they were statistically indistinguishable before they would be considered as substantially identical effluents. This suggestion would be costly and burdensome to the facility without adding any real benefit to the visual inspection requirement. We believe the process as currently set up works well for the determination of representative outfalls.*

d. As explained below, we believe that water quality-based effluent limitations will be required for some discharges, based on the need to ensure compliance with the anti-degradation policy, numerical water quality standards, or TMDL allocations. Therefore, our comments here apply to quantitative monitoring done to assess compliance with either technology-based or water quality-based limitations, as addressed in Part I.A.1.c of the draft permit. Of course, in addition to the parameters measured to assess compliance with technology-based limits, parameters addressed in water quality-based limits must also be added to the sampling regime. Further, we suggest that certain parameters be measured from these discharges, even though effluent limits are not set. For example, turbidity, conductivity, temperature, pH, and dissolved oxygen should be standard tests for stormwater discharges and, particularly for all water bodies within the Chesapeake Bay watershed, nitrogen and phosphorous should be measured, because these pollutants are recognized contributors to severe water quality impairments in the Bay.

**Response 21d:** *If numeric water quality-based effluent limits are necessary for some dischargers, based on the need to ensure compliance with the anti-degradation policy, numerical water quality standards, or TMDL wasteload allocations, then the general permit is not appropriate for those dischargers, and an individual permit will be issued. The numeric effluent limitations in the proposed permit are based solely on EPA's Effluent Limitation Guideline monitoring parameters, and are the same as required by EPA in their MSGP. As far as adding additional parameters to the sampling requirements, we have no basis to require these "standard tests". Also, while nitrogen and phosphorous are recognized contributors to severe water quality impairments in the bay, storm water discharges from most industrial facilities have not been identified as a source that needs reductions. Any that have been identified are already permitted under an individual permit containing limits for nitrogen and phosphorous. If any industrial storm water general permit holders are identified in the future as sources needing reductions, they will be handled on a case-by-case basis through an individual permit.*

e. As discussed above, we believe the variability in discharge quality is predictably much too great to allow for once per year sampling, as is permitted for most of the period covered by the draft permit. We recommend that quantitative sampling be done at least 3 times per year at each discharge point, with a period of at least 3 months separating any two sample events.

Further, we recommend that at least one of these 3 samples per year be a composite sample, while the other two events may be grab samples.

**Response 21e:** *For the effluent limitation (EL) monitoring, the proposed permit matches EPA's 2008 MSGP requirement of once/year. If the facility exceeds the EL, they have to take corrective action and do follow-up monitoring until they come into compliance again. We believe this is sufficient to ensure compliance with the limitation.*

*Benchmark monitoring is used primarily by the permittee to assess the effectiveness of the SWPPP and the BMPs employed on site. If the benchmark monitoring result is above the benchmark monitoring concentration, the proposed permit requires the permittee to review the SWPPP and modify it as necessary to address any deficiencies that caused the exceedance. We believe the current benchmark monitoring requirements are sufficient to achieve what the benchmark monitoring is designed to do. However, since we did not receive benchmark monitoring DMRs from permittees during the previous permit term, we have no idea what the range of monitoring results look like. We will be receiving DMRs from all facilities that require benchmark monitoring for this permit cycle. We will review the submitted monitoring data over the permit term to determine if additional monitoring requirements need to be added for the next reissuance of the permit.*

f. We recommend that the words "or estimates" be removed from the condition entitled "storm event data" at Part I.A.2.c. We see no reason why actual rainfall data cannot and should not be provided by the permittee in conjunction with discharge monitoring results, particularly since no guidance is given as to how a valid estimate of rainfall amounts over a storm event would be obtained.

**Response 21f:** *EPA removed the "estimate" language and made several other changes to the "measurable storm events" requirement for their final 2008 MSGP. We will modify our requirements to match EPA's new requirements.*

g. The requirements for reporting monitoring results, at Part I.A.4, allow too much time to pass between the collection of discharge data and its reporting to make timely enforcement and corrective actions possible, both for DEQ and citizens. In each case, we recommend that monitoring results be submitted to DEQ no later than the 30 days following the date of sampling on the Discharge Monitoring Report (DMR). Further, we believe that all sampling data should be reported to DEQ on this schedule, without the exemptions from reporting contained in the draft permit.

**Response 21g:** *If monitoring results are below the effluent limitation or TMDL wasteload allocation, then no problem is indicated, no corrective action is necessary, and no follow-up monitoring is required. To be consistent with the DEQ reporting protocol, we have changed the due date for these DMRs to January 10<sup>th</sup> for EL monitoring, and January 10<sup>th</sup> and July 10<sup>th</sup> for TMDL monitoring. We have also changed the benchmark monitoring DMR due date to January 10<sup>th</sup>.*

*If monitoring results exceed the effluent limitation or TMDL wasteload allocation, then a problem is indicated, corrective action is necessary, and follow-up monitoring is required. We have added a due date for these DMRs as: (1) either January 10<sup>th</sup>, or 30 days after the results are received by the facility (whichever is earlier) for EL monitoring; and (2) either January 10<sup>th</sup> or July 10<sup>th</sup>, or 30 days after the results are received by the facility (whichever is earlier) for TMDL monitoring.*

*We have modified the permit to require the submittal of the additional monitoring at metal mining facilities (sector G). However, consistent with EPA's final 2008 MSGP, we are not requiring the submittal of quarterly visual monitoring results.*

h. We also recommend that the language in the clause formerly styled Part I.A.4.b be retained and continue to require the submittal of discharge monitoring reports to the operator of a MS4 system into which the permittee's stormwater discharges.

**Response 21h:** *We agree that facilities discharging to MS4s should be required to submit a copy of their DMRs to the MS4 operator. We have reinstated that subsection.*

i. Part I.B.5 of the draft permits prohibits the discharge of "floating solids or visible foam in other than trace amounts." We recognize that this clause has been a standard formulation in NPDES permits but we are also aware that the lack of definition for the term "trace amounts" prevents this condition from being easily or reliably enforced. We recommend some more definable measure of floating solids or visible foam to be prohibited, such as the following: no floating solids or visible foam in discrete groupings of a size greater than one square foot or identifiable in the receiving water body for more than ten feet from the discharge point. We also suggest that wording from Virginia's "General criteria" at 9VAC25-260-20, be incorporated into this permit provision and prohibit the discharge of any substance

"attributable to sewage, industrial waste, or other waste in concentrations, amounts, or combinations which contravene established standards or interfere directly or indirectly with designated uses of such water or which are inimical or harmful to human, animal, plant, or aquatic life. Specific substances to be controlled include, but are not limited to: floating debris, oil, scum, and other floating materials."

**Response 21i:** *The "floating solids or visible foam in other than trace amounts" language is standard language that EPA has been requiring in permits since the early 1970's. EPA has never chosen to define what this means exactly, so both the DEQ and the regulated community have to guess how to interpret this. Until EPA comes up with a definition, or allows us to take the statement out, we will leave it as written.*

*We have added a statement at the beginning of the permit Special Condition 8 (Water Quality Protection) that states that the discharge "shall be controlled as necessary to meet applicable Water Quality Standards". Therefore, we do not believe it is not necessary to add wording from the Standards "General Criteria" to this section.*

## **22. Water Quality-Based Effluent Limits**

a. The General Permit fails to include water-quality based effluent limitations to supplement the permit's technology based effluent limitations and ensure that discharges of storm water associated with industrial activity will meet all applicable water quality standards. In particular, the General Permit fails to reflect a reasonable potential analysis ("RPA") or to provide for RPAs to be conducted at the time of registration to determine whether water quality-based effluent limits are required due to a reasonable potential that discharges will cause or contribute to violations of applicable water quality standards. See generally 40 CFR 122.44(d) and MSGP §§ 1.1.4.7; 1.1.4.8; 2.2; 5.1.4 and 5.1.5.

It must particularly be noted that such RPAs must be conducted in relation to compliance with numerical water quality standards but also to compliance with the antidegradation policy. Although the draft General Permit prohibits coverage for any discharge failing to meet antidegradation requirements at 9VAC25-151.50.B.3.c, the amended regulation includes no requirement that the registration statement include any analysis by the applicant to ensure such compliance, no monitoring requirements to make such an analysis possible, and no protocol for DEQ staff to follow in completing the required RPA. In short, this permit cannot ensure that a covered discharge will meet the antidegradation policy's requirements.

**Response 22a:** *The Department has added a requirement into Part I B 8 (Special Conditions - Water Quality Protection) that discharges "shall be controlled as necessary to meet applicable water quality standards". The Department has used the phrase "controlled as necessary to*

meet applicable water quality standards," rather than the phrase "do not cause or contribute to a violation of water quality standards." This wording was used because the "cause or contribute" phrase derives from EPA's regulation specifying how the permit authority should determine whether there should be a water quality based effluent limitation, 40 CFR 122.4(d)(1)(i) and (ii) (often referred to as the "reasonable potential" determination.) Once the permit authority determines that a water quality-based effluent limitation is warranted (the discharge causes, has the "reasonable potential" to cause, or contributes to non-attainment of applicable water quality standards), then CWA section 301(b)(1)(C) and the implementing regulations at 40 CFR 122.4(d), 122.44(d)(1) and 122.44(d)(1)(vii)(A) require the effluent limitation be included in the permit as necessary to meet applicable water quality standards.

This permit includes non-numeric water quality-based effluent limits (WQBELs) to control discharges as necessary to meet applicable water quality standards. The provisions of Part I B 8 (Special Conditions - Water Quality Protection) constitute the WQBELs of this permit, and supplement the permit's technology-based effluent limits in Part I A 1 c (1) and (2), and Part IV. The following is a list of the permit's WQBELs: (1) Control the discharge as necessary to meet applicable water quality standards in the receiving waterbody; (2) Comply with any additional, more stringent requirements that are necessary to meet an applicable TMDL wasteload allocation, or to control discharges to impaired waters that do not yet have an approved or established TMDL; and (3) Comply with any additional, more stringent requirements that the Board determines are necessary to comply with applicable antidegradation conditions for new or increased discharges to Tier 2 waters. The Board may require the permittee to implement additional WQBELs on a site-specific basis, or require the permittee to obtain coverage under an individual permit, if information indicates that the facility is causing or contributing to an exceedance of water quality standards, a TMDL wasteload allocation, or is causing downstream pollution (as defined in the Code of Virginia §62.1-44.3).

The Department will determine at the time a facility submits a Registration Statement whether a "reasonable potential" exists to require numeric water quality-based effluent limits based on the need to ensure compliance with the anti-degradation policy, numerical water quality standards, or TMDL wasteload allocations. If the Department determines that numeric water quality-based effluent limits are necessary for a discharger, then the general permit is not appropriate for that discharger, and an individual permit will be issued. We believe that the staff review of the facility's Registration Statement, and the implementation by the permittee of the general permit water quality requirements will ensure that both water quality standards and the antidegradation requirements are met.

**b.** Because different waterbodies will need different antidegradation requirements, based upon the existing conditions in the receiving waters, there must be provision within the General Permit for variable treatment of discharges. A prerequisite for antidegradation analysis is to determine whether Tier I, II, or III standards apply. Waterbodies designated for Tier III protection are identified at 9VAC25-260-30.c.3 and "No new, additional, or increased discharge of sewage, industrial wastes or other pollution into waters designated in subdivision 3 c ... shall be allowed," according to 9VAC25-260-30.b, except where pollution sources and any resulting impairments will be temporary. We assert that no facility proposing to discharge industrial stormwater into Tier III waters should be covered by the General Permit.

**Response 22b:** The ISWGP Registration Statement that the applicant submits identifies where the facility is located, their receiving stream, and what types of activities are occurring at the site. The DEQ staff use the registration to determine what antidegradation requirements apply to the waterbody receiving the storm water discharges from the facility. Facilities proposing storm water discharges to Tier III waters are not authorized under this general permit (as per the WQS Antidegradation Policy.)

**c.** Tier II antidegradation requirements specify that:

"Where the quality of the waters exceed water quality standards, that quality shall be maintained and protected unless the board finds, after full satisfaction of the intergovernmental coordination and public participation provisions of the Commonwealth's continuing planning process, that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located."  
9VAC25-260-30.A.2.

According to EPA's *Water Quality Standards Handbook*, all parameters need not be of better quality than the State's ambient criteria for the water to be deemed a "high-quality water." "EPA believes that it is best to apply antidegradation on a parameter-by-parameter basis. Otherwise, there is potential for a large number of waters not to receive antidegradation protection, which is important to attaining the goals of the Clean Water Act to restore and maintain the integrity of the Nation's waters." *Water Quality Standards Handbook*, Section 4.5 Protection of Water Quality in High-Quality Waters - 40 CFR 131.12(a)(2), (updated July 3, 2007). We assert that wherever any aspect of a water body's quality exceeds the minimum level mandated by Water Quality Standards and necessary to support both designated and "existing" uses (as defined at 9VAC25-260-5), then no discharge may be allowed to degrade that quality without the proper finding of social or economic need.

Absent evidence to the contrary, waters should be assumed to exceed minimum quality standards and Tier II protections should be applied. Therefore, unless data indicate that impairment already exists for any measure of water quality, pollutants in excess of concentrations existing in the water may not be exceeded, in discharges regulated by either individual or general permits. Clearly then water body monitoring must be done before any new or increased pollutant discharges may be allowed under the General Permit here under review, these monitoring results must be submitted with the registration statement, and the SWPPP must demonstrate and DEQ must find that Tier II requirements will be satisfied, based upon these data.

**Response 22c:** *A section has been added to the ISWGP regarding antidegradation requirements for new or increased discharges to high quality waters (Part I B 10 - Special condition #10). The permit requires permittees to notify the Department of new outfalls or increased discharges from the facility. Possible outcomes of this notification and the subsequent evaluation of Tier II status by the Department are that the permittee will be notified that additional control measures and/or other permit conditions may be imposed at the facility to comply with the applicable antidegradation requirements, or the facility may be required to apply for an individual permit. This is consistent with EPA's final 2008 MSGP requirement for Tier II implementation.*

*New dischargers are subject to an evaluation of Tier II status by the Department at the time the facility files a Registration Statement. We have added a sentence to the section 9 VAC 25-151-50 B 3 (Authorization to Discharge - Limitations on Coverage) stating that: "If authorization to discharge under this general permit will not comply with the antidegradation requirements, an individual permit may be required to allow a discharge that meets the requirements for high quality waters in 9VAC25-260-30 A 2."*

*While Tier II status in Virginia may not be to the full parameter by parameter basis, Virginia is more conservative than other states in that we assume a waterbody is Tier II in the absence of information to the contrary. In addition, bacteria, chlorine, and taste and odor criteria or fish consumption advisories are not used to place waters into the Tier I category. Furthermore, if ammonia and D.O. are determined to be better than water quality criteria (Tier II), then those parameters shall remain Tier II level, even if other parameters cause a Tier I determination.*

*Finally, the implementation of the antidegradation policy is currently under review by the agency, and at the October 2008 State Water Control Board meeting, the Board directed the staff to form an ad hoc advisory group to assist staff on development of new guidance for*

*implementation of the antidegradation policy. Staff will ensure that antidegradation and its applicability to general permits will be discussed in this advisory group.*

**d.** Tier I requirements under the antidegradation policy applies to parameters that already violate Water Quality Standards. As included above, under our comments on Limitations on Coverage, no permit may allow discharges of pollution that will cause or contribute to WQS violations and the General Permit may not cover a discharge unless it is shown to be in conformance with an approved TMDL.

**Response 22d:** *We have added a new subsection "e" to 9 VAC 25-151-50 B 3 (Authorization to Discharge - Limitations on Coverage) similar to what EPA included in their final 2008 MSGP that discusses coverage for new dischargers into impaired waters without an established or approved TMDL. If coverage is granted, then their discharges must be controlled as necessary to meet applicable water quality standards, in accordance with permit Special Condition #8 (Water Quality Protection). We have also restored section "d" for dischargers into impaired waters with an established and approved TMDL. If coverage for these facilities is granted, then their discharges must also be controlled as necessary to meet applicable water quality standards, in accordance with permit Special Condition #8 (Water Quality Protection), and their SWPPP must also comply with Special Condition #7 (Discharges to Waters Subject to TMDL WLAs).*

**e.** In all cases discussed above, the registration statement filed by an applicant must show that all Water Quality Standards will be met, and numeric limits must be specified in the SWPPP to ensure WQS compliance wherever technology-based limits are inadequate for this purpose. DEQ must review and verify the appropriateness of these limits, which must be incorporated, by reference, as requirements of the permit. We propose that wording be added to the General Permit at Section II.L as follows:

"The registration statement and Stormwater Pollution Prevention Plan (SWPPP) submitted for coverage under this permit are hereby incorporated by reference into the permit and are enforceable conditions thereof. Modifications of the SWPPP during the life of the General Permit, required to continue to achieve compliance with this permit, will also be incorporated into the Permit and become enforceable conditions thereof."

Without such a condition, the General Permit cannot provide a "Reasonable Potential" that Water Quality Standards and other applicable requirements (such as TMDL allocations) will be met and will, therefore, violate the Clean Water Act and Virginia law. This incorporation of the registration statement and SWPPP acknowledges the reality that recent federal court decisions have recognized: that the registration or Notice of Intent for a General Permit is "a substantive component of a regulatory regime" and that, in the case of the General Permit for MS4s, the "NOI is a permit application that is, at least in some regards, functionally equivalent to a detailed application for an individualized permit." *Environmental Defense Center v. EPA*, 344 F.3.d 832 (9th Cir. 2003). We would argue that the reasoning for the MS4 General Permit is equally valid for this permit. We also note that in *Environmental Defense Center v. EPA*, the 9th Circuit determined that, in the MS4 context, it is "the NOIs, and not the general permits, that contain the substantive information about how the operator of a small MS4 will reduce discharges to the maximum extent practicable." This assertion is also certainly true of this permit in many respects, especially as it is accompanied by the detailed plans in the SWPPP.

The Second Circuit Court of Appeals, in reviewing the EPA General Permit for Confined Animal Feeding Operations (CAFOs), held that the terms of nutrient management plans required under the Permit were "*themselves* effluent limitations in fact." *Waterkeeper Alliance v. EPA*, 399 F.3.d 486 (2d Cir. 2005). Again, the nutrient management plans in that case are closely analogous to the SWPPPs required under this permit.

**Response 22e:** *The ISWGP Registration Statement that the applicant submits merely identifies where the facility is located and what types of activities are occurring at the site. The DEQ staff use the registration to determine where the facility is discharging, what antidegradation requirements apply to the facility, if the receiving waters are impaired, if there are threatened or endangered species impacted by the discharge, and the industrial sectors that are applicable to the facility. SWPPPs are not submitted by facilities at the time of the registration, but are maintained on site unless the facility is requested to submit the plan to the Department. SWPPPs are a permit requirement, so they are an enforceable part of the permit already. The permit that is sent to the facility includes the "general" permit requirements, and the sector specific requirements determined from the registration statement information. The ISWGP registration process is not the same as the small MS4 GP NOI process. The small MS4 GP NOI requires the applicant to identify the BMPs they propose to use, the measurable goals and who will implement each of the six minimum control measures that EPA laid out in the small MS4 general permit. The ISWGP requires none of this, and is in no way functionally equivalent to a detailed application for an individualized permit. We do not propose to make this change.*

### **23. Clean Water Act and Constitutional Notice and Comment Requirements**

**a.** "Congress identified public participation rights as a critical means of advancing the goals of the Clean Water Act in its primary statement of the Act's approach and philosophy. See 33 U.S.C. § 1251(e); see also *Costle v. Pacific Legal Found.*, [445 U.S. 198, 216](#), 100 S.Ct. 1095, 63 L.Ed.2d 329 (1980) (noting the 'general policy of encouraging public participation is applicable to the administration of the NPDES permit program") *Environmental Defense Center v. EPA*, 344 F.3.d 832 (9th Cir. 2003).

This General Permit precludes the public from obtaining timely information about applications for coverage (registration statements and SWPPPs) and deprives them of the right to influence the permitting decision through public comment and hearings. We assert that this failure to provide meaningful public involvement before a discharge is covered under the General Permit violates the Clean Water Act.

Recent court decisions have affirmed that the Clean Water Act requires NOIs (or registration statements, as they are called in VA) to be subject to the Clean Water Act's public availability and public hearings requirements. See *Environmental Defense Center v. EPA*, 344 F.3.d 832 (9th Cir. 2003); *Waterkeeper Alliance v. EPA*, 399 F.3.d 486 (2d Cir. 2005). The Virginia DEQ can remedy this situation by providing public notice upon receipt of a complete registration statement and SWPPP, by soliciting and considering public comments, and where appropriate, holding public hearings. EPA and some states post notice of registration on their websites and this method would be a workable solution to enfranchise citizens to play their proper role in regard to this General Permit's application and enforcement.

**Response 23a:** *We will develop a system that allows us to post the Registration Statements on the DEQ public web site for 30 days for review by interested parties prior to granting permit coverage.*

**b.** In addition to the statutory requirements under the Clean Water Act, the U.S. Constitution also requires that due process be afforded to parties, before they may be deprived of life, liberty, or property.

"An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. *Milliken v. Meyer*, [311 U. S. 457](#); *Grannis v. Ordean*, [234 U. S. 385](#); *Priest v. Board of Trustees of Town of Las Vegas*, [232 U. S. 604](#); *Roller v. Holly*, [176 U. S. 398](#)." *Armstrong v. Manzo*, 380 U.S. 545 (1965). In *Mathews v. Eldridge*, 424 U.S. 319, 96 S.Ct. 893, 47 L.Ed.2d

18 (1976), the Supreme Court articulated three identifiable factors for assessing the constitutional requirements of due process. These are:

- First, the private interest that will be affected by the official action;
- Second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and
- Finally, the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

The James River Association, the Shenandoah Riverkeeper, and the members of both organizations possess property rights that may be and often have been affected by discharges of polluted storm water from industrial sites. As expressed above, Congress judged that public involvement was an essential component of the Clean Water Act and was necessary for it to meet its vital objective and goals.

EPA and the State of Virginia acknowledge, when issuing individual pollution control permits that public notice and comment is required under CWA and State law. No demonstration has been made that the impact of stormwater discharges allowed under general permits are any less damaging than those for which an individual permit is required. Therefore, there is no technical or practical reason to give potentially affected parties less notice and opportunity to be heard in protecting their interests. Finally, the administrative burdens in providing public notice and the right to be heard need not be at all burdensome. The fact that other states, such as Vermont and Oregon have devised workable systems to provide due process should indicate that Virginia can do likewise.

**Response 23b:** See Response 23a above.

**THE VIRGINIA FOREST PRODUCTS ASSOCIATION (VFPA) [J. R. (Randy) Bush, CAE, President]:**

**24. DEQ Should Continue To Strive To Make The Storm Water General Permit For Industrial Activity as Flexible As Possible in Order to Reduce Costs To Both the Agency and The Industry, Particularly Those Classified as Small Businesses.**

Most of the facilities incorporated into Sector A: Timber Products over the past several years have experienced serious economic hardships based on a variety of factors, including the loss of secondary wood processing facilities to other countries, the reduction of exports, and the collapse of the housing market, to name just a few. In fact, the industry in general has been experiencing the worst market conditions in several decades, bordering on "depression" economics. An added factor is that the overwhelming majority of facilities included in Sector A are classified as small businesses ... with many of them family businesses as well. Unlike larger corporations, many of these businesses do not have the employee base, either in terms of specialty knowledge or time resources, to efficiently address varying components of the program. With these constraints, the compliance expenses for small businesses are disproportionately costly and burdensome. All of these factors join together to create challenges for small businesses in Sector A: Timber Products. While we realize that these pressures should not exempt these businesses from compliance with the General Permit, at the same time we hope that consideration for the small business aspect and flexibility in addressing their situations can be incorporated into the permit administration and requirements.

**Response 24:** We agree that the permit needs to be both protective of the environment and flexible enough in its requirements so that it is not a burden to the regulated community. Through our Technical Advisory Committee process, the ISWGP interested stakeholders and DEQ staff have worked to develop a proposed permit that we feel works for both considerations.

**25. VFPA Supports the Comments for Sector A: SIC Code 2191 (Wood Preserving) as provided by the Treated Wood Council.**

As mentioned previously, VFPA membership covers a diverse range of facilities that will be affected by the proposed amended regulations, specifically wood treating operations as well as those processing other wood products in Sector A: Timber Products. To save review time for DEQ, we agree with and would like to underscore those comments regarding wood treating facilities that have been submitted by the Treated Wood Council (TWC) under separate cover. If you require a copy of their remarks to be incorporated in our comments, please advise and we will be happy to comply.

*Response 25: See Responses 1, 2 and 3 for DEQ's response to the TWC comments.*

**26. The Continued Benchmark Monitoring Requirement for Zinc at Sector A: Timber Products - SIC 2421 – General Sawmills and Planing Mills is Unnecessary and Should Be Removed.**

While the proposed Multi-Sector General Permit revisions retains zinc testing requirements for certain timber processing facilities in Sector A, we do not feel this continued testing is warranted. The initial decision to incorporate this testing parameter by EPA, and its subsequent adoption by Virginia DEQ, was based on an extremely small sampling from EPA's unsuccessful Group Permit development in the early 90's. Not only was this sampling too small to arrive at any valid statistical conclusion for zinc testing, but this particular sampling group was centered in other areas of the country and not reflective of any sampling done in the Commonwealth. We are not aware of any sampling data that has shown zinc to be a problem within the Commonwealth's wood products facilities warranting its continued monitoring. This benchmark monitoring requirement is unnecessary and should no longer be required.

*Response 26: A review by staff of EPA's 1995 MSGP fact sheet and sampling data summary appear to support this comment. We agree and will remove the benchmark sampling for zinc.*

**27. TSS Benchmark Monitoring Levels Should Be Increased From 100 mg/L to 150 mg/L.**

Although EPA's MSGP maintained the 100 mg/L benchmark monitoring level for TSS for most of Sector A: Timber Products, EPA also felt that additional study was needed before requiring all Sectors to incorporate this requirement. EPA's review stated that many commenters expressed concern about the burden of additional TSS monitoring and questioned its value. Further, comments to EPA regarding the appropriateness of the 100 mg/L target included recommendations for levels up to 5 times greater (588 mg/L). EPA data also identifies that a significant number of test results show the 100 mg/L level is difficult to obtain. As noted, EPA is conducting a study on the effectiveness and levels of TSS monitoring and concluded it is appropriate to wait for the results of this study. Also, since exceeding benchmark values triggers mandatory action, it is imperative that the target level be reasonable for that circumstance. With the additional study being undertaken by EPA regarding the effectiveness of requiring all Sectors to monitor TSS, plus continued comments regarding the most appropriate benchmark level, and the potential costs of compliance for the 100 mg/L level, we feel the TSS level for Sector A: Timber Products should be increased to 150 mg/L. This would still provide effective protection until additional study and a more complete consensus is reached.

*Response 27: The EPA benchmark concentration of 100 mg/L for TSS was originally developed for the 1995 MSGP issuance, and was based upon the median concentration from the National Urban Runoff Program (NURP) data. EPA believed that the median concentration represented a concentration above which water quality concerns may result. A review of the Group Application data by EPA indicated that this concentration should be readily achievable by industry with the implementation of BMPS, many of which are designed for the purpose of controlling TSS.*

As stated in EPA's final 2008 MSGP Fact Sheet, EPA has charged the NRC with conducting a study of the storm water program, with a special focus on benchmark monitoring, its effectiveness, and potential alternative approaches for identifying water quality concerns or verifying the effectiveness of storm water control measures. EPA concluded that it is appropriate to wait for the results of this study before it significantly expands the amount of benchmark monitoring in the MSGP.

EPA also decided to retain the 100 mg/L TSS benchmark level, concluding that the 100 mg/L concentration is a reasonable benchmark. EPA believes that proper selection, design, installation, and implementation of control measures can reduce TSS concentrations in many cases. In other cases, TSS can be reduced by control measures such as bioretention, settling mechanisms, and other types of treatment devices. Most facilities permitted by EPA under their 2000 MSGP have been able to meet the 100 mg/L benchmark.

We are retaining the TSS benchmark concentration value of 100 mg/L for this reissuance.

#### **28. Waivers for Additional Benchmark Monitoring If Two Consecutive Monitoring Periods Have Been Found To Be Below Benchmark Values Should Have More Flexibility.**

In the proposed permit, waivers for further benchmark monitoring are available to facilities whose discharges are below benchmark concentration values for samples collected in **two consecutive monitoring periods**. While we applaud this rational concept, we still recognize that because of the difficulty managing the testing regimens for small businesses and considering the problems associated with utilizing appropriate storm events, we would request that the regulation be modified to allow waivers for additional benchmark monitoring if any **two monitoring periods within the first year of the permit** are below target values.

**Response 28:** *There are only two monitoring periods in the first year of the permit. The first monitoring period is six months long, the remaining periods are each one year long. The benchmark monitoring periods are as follows:*

- (1) July 1, 2009, to December 31, 2009
- (2) January 1, 2010, to December 31, 2010
- (3) January 1, 2011, to December 31, 2011
- (4) January 1, 2012, to December 31, 2012; and
- (5) January 1, 2013, to December 31, 2013.

*Since we only require the permittee to conduct benchmark sampling and reporting once per monitoring period (essentially once per year), we are only allowing the waiver request if two consecutive periods are below the benchmark concentration. The waiver is not automatically granted, but will be evaluated based upon benchmark monitoring results, favorable compliance history (including inspection results), and no outstanding enforcement actions. The waiver can also be revoked by the Department for just cause. We feel this is a fair and equitable waiver approach. No changes are proposed by staff.*

#### **29. Testing For Effluent Limitation Guidelines from Discharges Resulting From Spray Down Or Intentional Wetting Of Logs At Wet Deck Storage Areas Should Be Required Only During Periods That The Process Is Being Utilized.**

The requirement for testing of effluent from discharges resulting from spray down or intentional wetting of logs at wet deck storage areas was initially developed by EPA and is primarily based on facilities based in other areas of the country, outside of Virginia. At these other facilities, spraying may be done over the entire course of the year, thereby driving concerns regarding effluent discharge during all periods. In Virginia, the spraying of log decks is not a prevalent practice, and under no circumstances are we aware of the practice done year around. For the most part, the practice is only done in the summer months to help prevent degrade of logs in excessive summer heat. The practice is also related to the amount of logs in storage. With

more logs in inventory, the turn around time of utilization is increased, making degradation protection more necessary. Unfortunately market conditions, and timber supplies, have reduced log inventory to the point where few, if any, continue the practice. To require this test each period is excessive and an unnecessary expense, especially if the practice is not being used each period. We request that the testing be required only during periods that the spraying is actually done.

**Response 29:** *The permit requires that non-storm water discharges from wet deck storage areas meet pH limits of 6.0 - 9.0 s.u., and there be no discharge of debris. Permittees with these discharges must be in compliance with these limits throughout the duration of permit coverage. If the permittee is intentionally spraying or depositing water (without chemicals - chemicals are not allowed to be applied) on stored logs to deter decay or insect infestation, and there is a discharge from that activity, then the permittee must take a sample of the discharge from that activity once per monitoring period (essentially once per year), and must report that sampling to the Department. The sampling is only required when the spraying is actually done, and only if there is runoff from the spraying. The test is also simple and inexpensive. No changes are proposed by staff.*

**30. Effluent Limitation Guidelines for Discharges Resulting From Spray Down Or Intentional Wetting Of Logs At Wet Deck Storage Areas Should Be Allowed The Opportunity For Waivers On Further Testing If Results Are Below Effluent Limitation Guidelines.**

As mentioned in the prior paragraph, spraying of logs at wet deck storage areas is neither a prevalent practice nor one that has shown to be a problem in Virginia. We would like to recommend the regulations be modified similar to the waivers for benchmark testing to provide waivers for further effluent testing over the course of the permit if two successive tests show results in compliance with the target values.

**Response 30:** *EPA does not allow waivers for the required effluent limitation monitoring. These discharges must be monitored once during each monitoring period (essentially once per year). If there is a non-storm water discharge during the monitoring period from the wet deck storage area, then a sample must be taken and analyzed, and a DMR sent to the Department. If there is no discharge during the monitoring period, a DMR must still be submitted with "no discharge" indicated. No changes are proposed by staff.*

**VIRGINIA MANUFACTURERS ASSOCIATION (VMA) [Brooks M. Smith, Hunton & Williams]:**

**31. Benchmark Monitoring Requirements**

a. As DEQ acknowledges, the Proposed Permit is "generally modeled after EPA's proposed 2006 Multi-Sector General Permit." However, EPA's final 2008 Multi-Sector General Permit emerged with several significant changes from the draft. Among these changes, EPA dropped a proposed requirement for all permittees to perform benchmark monitoring for Total Suspended Solids ("TSS"). EPA's rationale for this change is set forth in the Agency's Fact Sheet at pp. 91-93. We urge DEQ to follow EPA's rationale and drop the proposed across-the-board TSS benchmark monitoring requirement. (We note that EPA's rationale was based, at least in part, on a National Research Council study that began in July 2006. The final report of this study was released in October 2008. Though broad in scope and challenging in its recommendations, this report does not alter EPA's decision in the final 2008 Multi-Sector General Permit or our recommendation here.)

**Response 31a:** *EPA removed their additional monitoring requirements (both for TSS and other parameters) for the final 2008 MSGP and will be doing further analysis of the data to determine if the additional monitoring should go in the next reissuance of their permit. We will remove the monitoring we added that was based on EPA's proposed 2006 MSGP additional monitoring.*

*However, we are retaining the additional monitoring we added that was based on recommendations from our Technical Advisory Committee (TAC).*

**b.** In this same vein of benchmark monitoring, we note that EPA also changed its final permit to require the averaging of benchmark data over the calendar year. In particular, "EPA determined that it would not be appropriate to require corrective action after a single benchmark exceedance because of the high variability in stormwater monitoring results, which could lead to individual exceedances even in cases where the facility's discharge was generally below benchmark values." See EPA Fact Sheet at pp. 63 and 105. In addition, EPA included an option for permittees to justify benchmark exceedances based on local natural background concentrations. See EPA Fact Sheet at p. 103. We urge DEQ to take the same approach to averaging benchmark data and providing relief from high natural background conditions here.

**Response 31b:** *EPA allows the averaging of benchmark data after the permittee has collected four quarterly samples (one year of sampling). The proposed ISWGP only requires that one benchmark sample be taken per monitoring period (essentially once per year). Benchmark monitoring is used primarily by the permittee to assess the effectiveness of the SWPPP and the BMPs employed on site. If the benchmark monitoring result is above the benchmark monitoring concentration, the proposed permit requires the permittee to review the SWPPP and modify it as necessary to address any deficiencies that caused the exceedance. Since we only require one benchmark sampling value per monitoring period, it is unclear what or how we would average to achieve the suggestion. Any method we come up with would tend to distort the data and may cause the permittee to do extra corrective actions (when high values are averaged with subsequent low values), or no corrections when high values are averaged with preceding low values. We believe that the current benchmark monitoring requirements are sufficient to achieve what the benchmark monitoring is designed to do.*

*We will add the EPA provision that provides relief from high natural background conditions.*

### **32. Additional Monitoring in TMDL Waters**

Like EPA, DEQ has proposed additional monitoring requirements for discharges to receiving waters subject to TMDLs. Part I.A.1.c.(3)(a) of the Proposed Permit provides: "Upon written notification from the department, facilities subject to TMDL wasteload allocations will be required to monitor such discharges to evaluate compliance with the TMDL requirements." Under the equivalent EPA permit, however, sampling may be discontinued if the first year of monitoring indicates that the pollutant of concern is not present, unless the TMDL specifically precludes this. We urge DEQ to provide a similar waiver.

**Response 32:** *A provision similar to that contained in EPA's 2008 MSGP has been added. We are requiring that the permittee sample for the first four monitoring periods (i.e., the first two years of coverage), and that the permittee request approval for the monitoring "waiver" to the department in writing.*

### **33. Conditions Requiring Corrective Action**

Under the Proposed Permit, a permittee must take corrective action whenever there is any exceedance of a water quality standard. See Parts I.A.5.b.(2) and I.A.5.c. EPA, by contrast, requires the permittee to initiate corrective action whenever EPA determines that the permittee's control measures are not stringent enough for the discharge to meet applicable water quality standards. See EPA Multi-Sector General Permit, Section 3.1. We urge DEQ to follow the letter of EPA's permit, which helps to ensure that only the permitting authority, with full legal authority and technical expertise, will make the required "reasonable potential" determination.

**Response 33:** *This was a change EPA made for their final 2008 MSGP. We will add similar language.*

### **34. TMDL Wasteload Allocations**

Part I.B.7 of the Proposed Permit requires permittees to incorporate measures and controls into their SWPPPs that are consistent with the assumptions and requirements of TMDL wasteload allocations (1) established by the State Water Control Board and (2) approved by EPA prior to the term of the permit. However, the Board's practice and procedure make clear that the allocation does not apply until a third step is successfully completed: (3) adoption of the wasteload allocations into the Water Quality Management Planning Regulation, 9VAC25-720-10 et seq. This is a vital procedural safeguard, and one that DEQ cannot ignore. The Proposed Permit needs to be revised accordingly.

**Response 34:** *According to the DEQ TMDL Section, once the TMDL is approved by EPA it is applicable to the permitted facility. The purpose of the Water Quality Management Planning Regulation (9 VAC 25-720) is to list by major river basin the EPA-approved and board-adopted total maximum daily loads (TMDLs) and the stream segment classifications, effluent limitations including water quality based effluent limitations, and waste load allocations contained in the existing water quality management plans (WQMPs). The step to adopt the wasteload allocation into 9 VAC 25-720 is not necessary for the TMDL to be applicable to the permitted facility. We propose to leave the section as written.*

### **35. Water Quality Protection**

Part I.B.8 of the Proposed Permit empowers the Board to take "appropriate enforcement action" if there is evidence indicating that the discharges are causing or contributing to excursions of water quality standards or TMDL wasteload allocations. A substantially similar provision was challenged by industry in an earlier EPA permit, and that challenge led to a settlement agreement pursuant to which EPA agreed to make changes that would provide permittees with "fair notice" and an opportunity for cure prior to the threat of enforcement. EPA's final 2008 Multi-Sector General Permit preserves this opportunity in Section 2.2.1. This provision empowers EPA to require corrective action, additional control measures or an individual permit (in lieu of coverage under the general permit) upon a determination by EPA that a discharge causes or contributes to an excursion of applicable water quality standards. Notably, the provision does not empower EPA to proceed immediately to enforcement. The Board's authority should be similarly constrained here.

**Response 35:** *We have modified the subsection to make it similar to the EPA final 2008 MSGP. See also Response 36c.*

### **VIRGINIA ASSOCIATION OF MUNICIPAL WASTEWATER AGENCIES (VAMWA) [Lisa M. Ochsenhirt, AquaLaw PLC]:**

VAMWA has a number of concerns with DEQ's Proposed Regulation. However, the most pressing is the manner in which the proposal would address water quality standards and TMDL wasteload allocations from stormwater discharges. We believe this aspect of the proposal is both contrary to EPA guidance and fails to provide fair notice to POTWs and other industrial stormwater permittees of what is required to achieve compliance. VAMWA asks that DEQ re-write or delete the language as suggested below.

### **36. The GP Fails to Provide Fair Notice of Required Compliance Measures for Water Quality Standards**

Several sections of the proposed Industrial Stormwater General Permit contain problematic language exposing permittees to potential noncompliance and enforcement without adequate notice of the underlying requirement:

- DEQ has added new, extensive text requiring corrective actions for exceeding a TMDL wasteload allocation or water quality standard. (Proposed Regulation at 835, GP, Part I, A.(5)(b)(2))

- Special Condition 7 states that "If a TMDL establishes a specific numeric wasteload allocation that applies to discharges from the facility, the owner shall incorporate that allocation into the facilities SWPPP, perform any required monitoring...and implement measures necessary to meet that allocation." (Id. at 837, GP, Part I, B(7)). This inappropriately seems to focus the numeric wasteload allocation as the compliance requirement when instead in the context of stormwater runoff it should establish a requirement to "implement an iterative, BMP-based program to address the WLA."
- Special Condition 8 states that: "The permittee shall select, install, implement and maintain best management practices (BMPs) at the facility that minimize pollutants in the stormwater discharges as necessary to meet applicable water quality standards." (Id., GP, Part I, B(8)). This provision should be more clear that the permittee is in compliance so long as it is "implementing an iterative, BMP-based program to address the WLA."
- The SWPPP must also "include any more stringent measures necessary for the storm water discharges to meet applicable water quality standards." (Id. at 842, GP, Part III). This is vague provision that fails to give the permittee fair notice of what steps are required to achieve compliance with the 125-plus standards in effect. Again, the focus should be on implementation of an iterative, BMP-based program to address the WLA identified through TMDLs.
- Most concerning of all: "If there is evidence indicating that the storm water discharges authorized by this permit are causing, have the reasonable potential to cause, or are contributing to an excursion above an applicable water quality standard, an excursion above a TMDL wasteload allocation, or are causing downstream pollution...*the board may take appropriate enforcement action*, may require the permittee to include and implement appropriate controls in the SWPPP to correct the problem, and/or may require the permittee to obtain an individual permit..." (Id. at 837, GP, Part I, B(8), emphasis added) Enforcement is completely inappropriate as a response to the "reasonable potential" determination described in this provision. Under DEQ's standard permitting procedures, the usual and appropriate approach is that DEQ would establish an effluent limitation. In the context of storm-related discharges, it is well-established in federal and state regulation and policy that the appropriate form of effluent limitation is an iterative, BMP-based program. The concept of no notice and immediate enforcement, rather than an opportunity to establish a compliance program, offends the most basic notions of fairness and due process.

Combined, this permit language puts a permittee in an impossible position that will only lead to the accrual of environmental liability exposure for all of the industry sectors covered by this permit. VAMWA urges DEQ to avoid the "trap" that this permit language so unfairly and inappropriately creates and allow its permittees an opportunity understand the basis for DEQ's legal requirements and what action is required to avoid violations of the permit.

VAMWA suggests the following text changes to the regulation:

- a. Edit Special Condition 7 to read: "...the owner shall perform any required monitoring and implement BMPs designed to meet that allocation."

**Response 36a:** *We have edited the condition as suggested.*

- b. Edit Special Condition 8 to read: "The permittee shall employ an iterative, BMP-based program to select, install, implement and maintain best management practices designed to minimize pollutants in the stormwater discharge to address an exceedance of any applicable water quality standard or TMDL WLA at the request of the Department;

**Response 36b:** *We have modified the sentence to read: "The permittee shall employ an iterative, BMP-based program to select, install, implement and maintain best management practices (BMPs) at the facility designed to minimize pollutants in the storm water discharges,*

and to address an exceedance of any applicable water quality standard, effluent limitation, or TMDL waste load allocation." See also Response 20a.

c. Edit the language from Special Condition 8 to delete "may take enforcement action..." (The text would read: "If there is evidence indicating that the storm water discharges authorized by this permit are causing, have the reasonable potential to cause, or are contributing to an excursion above an applicable water quality standard, an excursion above a TMDL wasteload allocation, or are causing downstream pollution...the board may require the permittee to include and implement appropriate controls in the SWPPP to address the problem, and/or may require the permittee to obtain an individual permit...")

**Response 36c:** *We agree with the comment (see also Response 35). The sentence has been modified to read: "If there is evidence indicating that the storm water discharges authorized by this permit are causing, have the reasonable potential to cause, or are contributing to an excursion above an applicable water quality standard, an excursion above a TMDL wasteload allocation, or are causing downstream pollution (as defined in § 62.1-44.3 of the Code of Virginia), the board may require the permittee to take corrective action in accordance with Part A 5 b and c, and include and implement appropriate controls in the SWPPP to correct the problem, or may require the permittee to obtain an individual permit in accordance with 9 VAC 25-31-170 B 3."*

d. Our view that the permittee should be afforded fair notice of any exceedance or likely exceedance of a water quality standard or TMDL WLA and an opportunity (without noncompliance and enforcement) to address that standard or WLA through an iterative, BMP-based approach is further supported by EPA guidance. Notably, DEQ's proposed Industrial Stormwater GP is inconsistent with EPA's views on incorporating WLAs into municipal and small construction NPDES permits. In 2002, EPA recognized that:

**...because storm water discharges are due to storm events that are highly variable in frequency and duration and are not easily characterized, only in rare cases will it feasible or appropriate to establish numeric limits** for municipal and small construction storm water discharges. The variability in the system and minimal data generally available make it difficult to determine with precision or certainty actual and projected loadings for individual dischargers or groups of dischargers. **Therefore, EPA believes that in these situations, permit limits typically can be expressed as BMPs, and that numeric limits will be used only in rare instances.** (emphasis added) [EPA Memorandum (Wayland and Hanlon) "Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs" (Nov. 22, 2002) at 4].

Stating a flat requirement to comply with water quality standard and TMDL WLAs – rather than a requirement to implement a program to address the standard or WLA – is the equivalent of incorporating all numeric water quality standards from the Board's Water Quality Standards Regulation, 9VAC25-260, as numeric limits in the Industrial Stormwater GP. This is wholly inappropriate.

VAMWA would note that, in several key respects, Virginia has gone much farther than EPA in its recent Multi-Sector GP. (United States Environmental Protection Agency (EPA) National Pollutant Discharge Elimination System (NPDES) Multi-Sector General Permit For Stormwater Discharges Associated With Industrial Activity (MSGP) (effective date, September 29, 2008)).

Although EPA does require that discharges "must be controlled as necessary to meet applicable water quality standards..." and with corrective action if necessary, EPA assumes compliance with standards so long as a permittee complies with the conditions of the MSGP. (MSGP at 2.2.1) If a TMDL is written that impacts a permittee, EPA does not require the permittee to adopt the WLA in their SWPPP, choosing instead to "...inform you if any additional limits or

controls are necessary for your discharge to be consistent with the assumptions of any available wasteload allocation in the TMDL..." (MSGP at 2.2.2.1) EPA's water quality standard assumption and the language in the TMDL text that clarifies that controls must be "consistent with the assumptions" of a TMDL WLA are preferable to the text proposed by DEQ. (EPA's "consistent with the assumptions" language is derived from federal regulatory requirements. See 40 C.F.R. 122.44(d)(1)(vii)(B)).

For these reasons, DEQ should revise its proposed Industrial Stormwater GP to: (1) delete the requirement that permittees must incorporate WLAs into SWPPPs; (2) revise any language that mandates that stormwater discharges must meet water quality standards and in essence incorporates all 125+ standards into the permit as numeric limits; and (3) delete any language that would subject permittees to enforcement for exceedance of a TMDL WLA or water quality standard. The only fair and reasonable approach is for the Department to notify the discharge of reasonable potential for or an actual exceedance of ambient water quality standards and require the permittee to implement an iterative, BMP-based program to address the matter.

**Response 36d:** *We have revised Special Condition 7 (Discharges to Waters Subject to TMDL Wasteload Allocations) to remove the requirement that the owner incorporate the TMDL allocation into the facility's SWPPP. We have also revised Special Condition 8 (Water Quality Protection) as described in Response 35 and 36c.*

### **37. DEQ's Proposed Monitoring Requirements Are Burdensome and Excessive**

DEQ's Proposed Regulation mandates that facilities subject to a TMDL WLA monitor and report semiannually for the pollutant of concern if the DEQ notifies the facility that monitoring is required. Specific collection and testing protocols are included. (Proposed Regulation at 833, GP, Part I, A(2))

These extensive monitoring, testing and reporting requirements may be burdensome and excessive. If a permittee has a TMDL WLA, but is not a significant discharger of the pollutant of concern, the permittee should not be required to perform potentially expensive monitoring for the pollutant twice a year for the life of the permit. Better to forgo monitoring that effectively provides little new, useful information and instead direct limited public and private resources to address significant issues.

Moreover, if a pollutant of concern is present at the facility the proposed collection and testing protocol could likely result in an abnormally high and non-representative result. By requiring that a grab sample be taken during a measurable storm event during the first 30 minutes of discharge, permittees will be, in effect, be capturing the "first flush," when levels of the pollutant of concern are likely to be highest. This may not be an appropriate basis of comparison to a TMDL WLA, depending on the particular WQS, the applicable averaging or critical period, other sources of the pollutant in the watershed, etc.

As an alternative, VAMWA suggests that a permittee perform preliminary testing to verify whether the pollutant of concern is actually present in the discharge in excess of the TMDL WLA. If not, DEQ should waive additional monitoring.

**Response 37:** *EPA added a waiver provision for TMDL monitoring to their final 2008 MSGP. We have added a similar waiver into Part I A 1 c (3). We are requiring that the permittee sample for the first four monitoring periods (i.e., the first two years of coverage), and that if the pollutant of concern is not detected in any of the samples, the permittee may request to the department in writing to be waived from further TMDL monitoring.*

### **38. DEQ Has Not Given Existing Dischargers Adequate Time To Update SWPPPs and Submit Registrations Statements**

The Proposed Regulation would require facility owners, including those covered by the 2004 Industrial Stormwater GP, to "prepare and implement" or revise their SWPPP before submitting

a registration statement. Owners of existing facilities covered by the 2004 GP would be required to submit their registration statement "during the 90 day period prior to July 1, 2009." Owners of existing facilities with an expiring individual permit seeking coverage under the GP would be required to submit their registration statement "at least 30 days prior to the expiration of the individual permit, but not before April 2, 2009." All other owners of existing facilities would be required to submit by July 1, 2009. (Proposed Regulation at 825, 9VAC25-151-60)

DEQ's proposed time frame is too compressed. DEQ's Proposed Regulation will likely not be finalized until April or May, 2009, with an effective date of July 1, 2009. Until the regulation is finalized, a permittee will not be in the position to make SWPPP updates with any level of comfort or certainty. This means that DEQ has effectively given existing permittees less than 2 months to get their SWPPPs updated and their registration statements filed.

In contrast, DCR's GP for Small MS4s (effective date July 9, 2008) gave MS4 operators 180 days from designation to submit a registration statement, and until January 9, 2009 to review and provide a schedule for updating its existing MS4 Program Plan. (4VAC50-60-1240) EPA, in its MSGP (effective date September 29, 2008) gave existing dischargers until January 5, 2009 to revise existing SWPPPs and submit a Notice of Intent ("NOI") form. (MSGP at 1.3.1, Table 1-2)

VAMWA also objects to DEQ's requirement that existing dischargers review and update their SWPPPs before submitting a registration statement. Under the terms of their VPDES permits, POTWs are currently given 90 days from the permit effective date to review and update O&M manuals. Why would DEQ insist that SWPPPs (very similar in nature to O&M manuals) be revised before coverage can begin? Existing dischargers have SWPPPs in place now. They should be permitted to continue operations under these existing SWPPPs for up to 90 days after the effective date, or until October 1, 2009.

**Response 38:** *Since the general permit reissuance process is running so late, we agree that existing permitted facilities will not have adequate time to update and implement the new SWPPP requirements prior to submitting the Registration Statement. For existing facilities, we are changing the requirement and giving them until October 1<sup>st</sup>, 2009 to update and implement any revisions to the SWPPP. New facilities will still need to prepare and implement the SWPPP prior to submitting a registration statement. We have also changed the Site Map submittal requirement to require that existing permitted facilities submit the updated map as soon as practicable, but not later than October 1<sup>st</sup>, 2009. New facilities must still submit the site map with the registration statement.*

### **39. Nonstorm Water Discharges Should Not Be Subject To All of the Requirements of the Permit**

On a related topic, authorized nonstorm water discharges should not be subject to the extensive effluent limitations, benchmark testing and monitoring requirements included in the Proposed Regulation. DEQ has authorized a number of nonstorm water discharges presumably because they are either public safety related (for example, discharges from fire fighting) or present a *de minimis* risk of introducing significant pollutants into surface water (for example, discharges from washing a building without detergent). If this is the case, subjecting these discharges to all of the GP requirements is unnecessary and wasteful. (Proposed Regulation at 848, GP, Part III, D(3)). Notably, EPA's Multi-Sector General Permit only requires monitoring of nonstorm water discharges "when they are commingled with stormwater discharges associated with industrial activity." (MSGP at 6.1.8) VAMWA suggests that DEQ strike the proposed language at (D)(3). In the alternative, VAMWA recommends that DEQ revise the language consistent with the EPA MSGP.

**Response 39:** *This was from EPA's draft 2006 MSGP. Based on comments they received, EPA changed their requirement. We agree with the comment and will remove Part III D 3.*

#### **40. Permittees Should Be Allowed Reasonable Discretion to Select BMPs**

The previous version of the Industrial Stormwater GP allowed a permittee to consider new BMPs "to find the most cost-effective means of permit compliance for the facility." (Proposed Regulation at 845, GP, Part III, B(6)(b)) DEQ has revised this text to read: "The SWPPP shall incorporate, as appropriate, new BMPs or new applications of existing BMPs for the most effective means of achieving water quality protection." (Id.) Permittees should not be required to incorporate BMPs that are the "most effective." As written, "most effective" could be wrongly interpreted as a new, independent compliance standard rather than the target water quality condition itself. VAMWA suggests that the proper standard is that BMPs should be required "in compliance with the terms of this permit," and requests that DEQ re-write the language accordingly.

**Response 40:** *The language in the draft regulation (as modified by the ISWGP TAC to delete "cost") was from EPA's draft 2006 MSGP, and EPA removed that language completely for their final 2008 MSGP. We agree that the requirement could be wrongly interpreted, and since EPA removed the statement, we have decided to remove the sentence altogether.*

#### **41. DEQ's SWPPP Requirements Should Be Streamlined**

DEQ has included a number of edits to Part III of the Proposed Regulation regarding SWPPP requirements. Although these edits seem relatively minor individually, when read together, they significantly increase the regulatory burden on permittees. VAMWA asks that DEQ consider streamlining a number of these suggested requirements. Respectfully, VAMWA suggests that the focus should be on encouraging recalcitrant facilities to register, not on penalizing existing permittees.

**a.** For example, DEQ would require that a permittee document in the SWPPP "[a]ll maintenance and repair activities and dates..." including "the amount of time for maintenance and repair, and a description of the back-up practices that are in place should a runoff event occur while a BMP is off-line" and "a description of procedures and a regular schedule for preventive maintenance" of BMPs. (Proposed Regulation at 847, GP, Part III, C) VAMWA does not understand the need for this broad requirement. Why is it helpful to know how long a repair takes, particularly when the time needed can vary widely depending on any number of factors? Furthermore, why is it helpful to capture every repair done to a BMP, no matter how minor? This language should be scaled back to require recordkeeping for significant maintenance and repair jobs.

**Response 41a:** *We have modified the documentation requirement to be consistent with the requirement in EPA's final 2008 MSGP. We have changed the last sentence in the subsection as follows: "Documentation shall be kept with the SWPPP of maintenance and repairs of BMPs, including the date(s) of regular maintenance, date(s) of discovery of areas in need of repair or replacement, and for repairs, date(s) that the BMP(s) returned to full function, and the justification for any extended maintenance or repair schedules."*

**b.** DEQ's text would also require mandatory training on all topics for all members of the Pollution Prevention team. (Proposed Regulation at 846, GP, Part III, B(6)(b)(6)) Per the Proposed Regulation, PPT members have "[s]pecific responsibilities." Training should only be necessary, then, on these areas.

**Response 41b:** *EPA added this requirement for this reissuance of their MSGP (both the draft and the final). We believe it should be up to the permittee to decide if members of the Pollution Prevention Team (PPT) need training, and if so what training. We have decided to remove this requirement from the regulation. Members of the PPT will still receive training per the permit requirements if they work in areas where industrial materials or activities are exposed to storm water, or they are employees who are responsible for implementing activities identified in the SWPPP.*

c. Lastly, DEQ has changed the text that required an "evaluation" of BMPs as a part of routine facility inspections to an "assessment" of "how well" the BMPs are operating. (Proposed Regulation at 846, GP, Part III, B(6)(b)(5)) Again, why is it necessary to recharacterize this requirement? What does DEQ intend with regard to an "assessment?" Does DEQ expect a visual assessment or a higher-level assessment (chemical and/or biological)?

**Response 41c:** EPA changed that requirement to an "assessment" for their draft 2006 MSGP, but dropped the requirement altogether for the final 2008 MSGP. We have deleted the "assessment" requirement also.

For the final 2008 MSGP, EPA added a requirement that: "At least once each calendar year, the routine facility inspection must be conducted during a period when a storm water discharge is occurring." We have also added that requirement.

**VIRGINIA TRUCKING ASSOCIATION (VTA) [P. Dale Bennett, Executive Vice President]:**

**42. DEQ should continue to maintain consistency with EPA's Multi-Sector General Permit.**

We support the Department's efforts to model the Virginia VPDES permit after EPA's Multi-Sector General Permit. This approach promotes uniformity, which makes compliance less burdensome for our members, especially for those interstate carriers with facilities in multiple states.

**Response 42:** We have been generally modeling Virginia's ISWGP after EPA's MSGP since EPA started issuing that permit in 1995. Since the EPA MSGP is the best source for EPA's current thinking on industrial storm water permitting, we will continue to use EPA's MSGP as a model in the future.

**43. DEQ should retain the no-exposure certification provisions as proposed.**

We support the Department's decision to retain the no-exposure certification provisions as provided for under the EPA's Multi-Sector General Permit.

**Response 43:** The no-exposure certification provision is actually part of the VPDES Permit Regulation (9 VAC 25-31). The ISWGP allows a facility to terminate permit coverage if they file a no-exposure certification with the Department.

**44. DEQ should remove the benchmark monitoring requirements for Sector P from the proposed General VPDES Permit** in order to (a) Maintain consistency with the 2008 Multi-Sector General Permit issued by EPA, which does not require benchmark monitoring requirement for Sector P; and (b) Reduce the compliance burden and costs for an industry that is struggling to survive difficult economic conditions, especially those that are small businesses.

We urge the Department to remove the benchmark monitoring requirements for Sector P. The proposed 2009 General VPDES Permit includes a new requirement for facilities in Sector P to conduct benchmark monitoring for Total Petroleum Hydrocarbons (TPH) and Total Suspended Solids (TSS). However, EPA has decided to not include any benchmark monitoring requirements for Sector P in its recently released its 2008 Multi-Sector General Permit.

Removal of the benchmark monitoring requirement for Sector P from the General VPDES Permit will ease the compliance burden and costs for our members, especially for those that are small businesses struggling to survive in a bad economy. Many trucking operations can ill afford additional regulatory compliance costs during the difficult economic conditions we currently face. Last year's record-high fuel prices and soft freight demand have taken the deepest ever toll on the trucking industry with a record number of companies failing in the first three quarters of 2008. According to one leading trucking analyst, "the first three quarters of 2008 have already established a new record for the amount of capacity pulled from production within a single year. Never have more trucks been pulled off the road in a shorter period of time

than in the first three quarters of this year." A total of 2,690 companies located throughout the U.S. with 5 or more trucks went out of business between January and September. And experts are predicting that conditions won't drastically improve in the near future. Imposition of any level of regulatory compliance costs at this time could have a significant negative impact on Virginia's trucking industry.

**Response 44:** *The monitoring requirements in the proposed ISWGP for Sector P were not derived from EPA's draft 2006 MSGP, but were developed by the Technical Advisory Committee (TAC) that assisted the staff with the development of the permit. Concerns were raised by the TAC over the quality of the storm water discharges from these facilities, and it was decided to require the TPH and TSS benchmark monitoring for this sector. The benchmark monitoring is only required once per monitoring period (essentially once per year), and waivers are allowed for facilities that test below the benchmark concentration for two consecutive monitoring periods. We do not believe that this required monitoring will be excessively burdensome or costly to the permitted facilities. No changes to the section are proposed.*

*EPA has commented on the NMMM GP and wants a BM for TPH in there also. They have suggested a BM concentration of 100 mg/L. If we decide to go with that value, this GP BM concentration should be changed to agree with that value.*

**Underground Storage Tanks (UST): Technical Standards and Corrective Action Requirements (9VAC25-580) – Proposed Amendments Regarding Secondary Containment, Delivery Prohibition, and Operator Training for Owners and Operators:**

The federal Energy Policy Act of 2005 requires states accepting federal funding for their UST programs to make certain changes to those programs. Some of these changes require a revision to Virginia's UST regulation. Specifically, these changes impose new requirements in three areas: (1) require secondary containment for certain tanks; (2) prohibit delivery to certain noncompliant tanks; and (3) require training for certain classes of UST operators. The proposed amendments impose requirements that are as stringent as, but no more stringent than, the federal requirements. The goal of the amendments is to reduce the number and severity of petroleum leaks from UST systems by strengthening pollution prevention requirements and encouraging UST owners and operators to maintain compliant UST systems. Secondary containment for new and replaced USTs within 1,000 feet of a public water supply or potable well will help prevent future UST leaks and limit the extent and impact of contamination. A delivery prohibition program will provide added incentive for UST owner/operators to maintain compliant tank systems. Compliant tank systems reduce the likelihood and severity of petroleum leaks into the environment. An operator training program will educate UST operators about how to maintain compliant tank systems and how to recognize and respond to problems associated with leaking USTs. Operator familiarity with UST regulatory requirements and with their own UST systems will increase compliance, help prevent future UST releases and limit the extent, impact, and cleanup costs of contamination in the event of a release. The combined changes will reduce the risk of tank leaks as well as limiting the impact to the environment when leaks occur.

For changes to existing regulations, use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
9VAC25-580-10		Definitions	The proposed amendments add definitions to address terms used in the new secondary containment, operator training and delivery

			prohibition sections of the regulation. <u>Rationale:</u> The new sections are necessary to comply with requirements of the Energy Policy Act of 2005 (see: <a href="http://www.epa.gov/swerust1/fedlaws/epact_05.htm">http://www.epa.gov/swerust1/fedlaws/epact_05.htm</a> )
9VAC25-580-20		Applicability	This section was modified to state that the new delivery prohibition requirements do not apply to deferred tanks but that the new secondary containment provisions do apply to a certain type of deferred tank. <u>Rationale:</u> This change was necessary to comply with the Energy Policy Act of 2005.
9VAC25-580-50	9VAC25-580-50.7	Performance standards for new UST systems	This section was added to impose secondary containment requirements on new or replacement tanks and piping within 1000 feet of a community water source or potable water supply well. This section also imposes under dispenser containment requirements on certain motor fuel dispenser systems. Finally, this section provides procedures for demonstrating that secondary containment is not necessary and lays out conditions under which secondary containment is not required. <u>Rationale:</u> This new section was necessary to comply with the Energy Policy Act of 2005.
9VAC25-580-120.2.e		Reporting and recordkeeping	This new subsection requires operators to maintain records of training certification and operator classification. <u>Rationale:</u> These requirements will ensure that necessary information concerning training and operator classification is available to the Department when needed.
	9VAC25-580-125	NEW	This section establishes operator classes and requires owners and operators to designate and train individuals or entities in each operator class. The section imposes requirements on training course content and also provides for Department approval of training courses. This section establishes deadlines for training and circumstances under which operators must retrain and describes the documentation that owners/operators must maintain. This section also provides for reciprocity with other state training programs. <u>Rationale:</u> This section is necessary to comply with the Energy Policy Act of 2005.
9 VAC 25-580-140		Requirements for Petroleum USTs	This section is modified to provide specific requirements to which secondarily contained tanks must conform to accomplish release detection. This amended section also provides release detection requirements for those owners/operators required to have secondary containment under subsection 25-580-50.7. <u>Rationale:</u> This section is necessary to comply with the Energy Policy Act of

			2005.
	9VAC25-580-370	NEW	This new section prohibits delivery of a petroleum product into any ineligible tank. This section describes the types of noncompliance that warrant delivery prohibition, the procedure for delivery prohibition and provisions for notifying an owner and operator and product deliverer of delivery prohibition. This section also describes circumstances under which the Department may choose not to prohibit delivery to an ineligible tank. <u>Rationale:</u> This section is necessary to comply with the Energy Policy Act of 2005.

**Request to Proceed to Notice of Public Comment and Hearing on Proposed Amendments to the Virginia Pollution Abatement (VPA) Permit General Permit Regulation for Poultry Waste Management (9VAC25-630-10 et seq.):**

At the April 27 meeting, the staff intends to bring to the Board a request to proceed to notice of public comment and hearing on proposed amendments to the Virginia Pollution Abatement (VPA) General Permit Regulation for Poultry Waste Management (9VAC25-630-10 et seq.). These changes are being proposed to ensure that poultry waste is being used in a manner in which state waters are being protected from improper use or storage of poultry waste, not only on permitted farms, but on farms that receive transferred material. The proposed changes require that persons receiving transferred poultry waste abide by certain minimum requirements regarding application rates, timing, storage, recordkeeping and reporting. The end-user will not be required to obtain a permit unless they are found to be non-compliant with the requirements of the technical regulation. Concerns have been expressed by the public, legislature and executive branch that additional safeguards are necessary to ensure that poultry waste that leaves the site and control of the permitted confined poultry feeding operations for land application are managed, applied and stored in a manner that is protective of water quality. In response to a letter dated January 10, 2007 from L. Preston Bryant, Jr., Virginia Secretary of Natural Resources, a stakeholder group comprised of key representatives from the agricultural and conservation sectors met three times (March 13, 2007, May 18, 2007 and June 22, 2007) to discuss issues related to the management of off-site poultry waste. Currently, the VPA General Permit Regulations for Poultry Waste Management (9VAC25-630-10 et seq.) require that poultry waste applied on lands owned by the permitted owner/operator of a confined poultry feeding operation be done so in accordance with a nutrient management plan written by a planner certified by the Virginia Department of Conservation and Recreation (DCR). Permitted operations are inspected annually to ensure that poultry waste is stored, applied, and otherwise managed according to the regulations. However, under the current regulations, poultry waste that is transferred off-site is only required to be accompanied by waste analysis information and a fact sheet (developed by DEQ and DCR) that provides the recipient with general provisions regarding the storage, management and application of the poultry waste. The end-user must acknowledge receipt of the fact sheet by signing a separate "Poultry Waste Transfer Records" sheet. Maintenance of records, including the date and amount of the transfer, zip code of the location receiving the off-site poultry waste and nearest stream or waterbody, is the requirement of the owner/operator of the confined poultry feeding operation (or third-party broker if one was involved in the transaction). Records must be made available to DEQ personnel upon inspection of the confined poultry feeding operation. For off-site application of poultry waste, the present regulation does not require records of 1) the amount of waste received by a single farm, 2) whether or not the poultry waste will be applied in accordance with a nutrient management plan, 3) soil test levels on receiving fields, 4) timing of applications, or 5) a description of receiving crops. Based on estimates from DEQ tracking as

well as DCR nutrient management plan data, upwards of 80% of all poultry waste generated by Virginia's 894 permitted confined poultry feeding operations is transported off-site for land application. In addition, upwards of 70% of the poultry waste transferred within the Shenandoah Valley remains within the concentrated poultry production region of the Valley (Rockingham, Page, Augusta, Shenandoah, Rockbridge, and Highland counties) and over 60% of all the poultry waste transfers in Virginia remain within the same county where the poultry waste originated. Thus by far the majority of poultry waste in Virginia can be applied without adhering to the majority of the requirements in the VPA regulation designed to protect water quality. While the stakeholder group made significant progress toward identifying numerous critical components of an off-site waste management program, there remained additional unresolved issues, including: application rates, application timing, reporting/recordkeeping, storage, soil tests, and waste broker requirements. In order to address these issues, a Notice of Intended Regulatory Action (NOIRA) was published in the Virginia Register of Regulations on November 26, 2007 with the comment period ending January 11, 2008. The Department utilized the participatory approach by forming an ad hoc technical advisory committee (TAC) that held four (4) public noticed meetings (April 25, 2008; June 5, 2008; August 13, 2008 and October 8, 2008) in Charlottesville. The TAC reached general consensus that proper use of poultry waste should be encouraged, as mismanagement could not only cause water quality problems, but also cause a loss in value to the farmer. The TAC also felt that any regulatory mechanism used should include consideration of the marketing of poultry waste as a valuable resource, not to result in the "stranding" of poultry waste on producers' farms. The committee's consensus opinion was that if regulation of end-users was required, the mechanism should be as flexible as possible without compromising enforceability. Staff has proposed a mechanism that achieves this balance, in that the end-user will be required to follow the requirements included in the technical regulation which are equally as enforceable as those required by permit coverage. The end-user or broker would not be required to obtain a permit unless non-compliance with the technical regulations is identified. In these cases, coverage under the general permit would place additional requirements on the end-user or broker including soils and waste monitoring, nutrient management plans, poultry waste transfer record reporting, DEQ staff inspections and training. There was general consensus within the committee that a nutrient management plan (NMP) should not be required for all recipients of transferred poultry waste, noting the varying degrees of environmental risk involved with widely variant site conditions and management. For example, a pasture that has historically been under-fertilized poses less risk of phosphorous loss than does a row-crop field that has received annual applications of poultry waste for a number of years. Additionally, the committee noted the potential delays involved in procuring a qualified nutrient management planner prior to receiving poultry waste. For these reasons, staff crafted a proposal that gives the end-user flexibility in how the rate is determined, depending on certain site and management conditions. These include:

- 1) A standard rate of 1.5 tons poultry waste per acre (if the field has not received organic nutrient sources in the last 3 years)
- 2) Phosphorous (P) crop removal rates established by the Department of Conservation and Recreation (DCR) (if the soil test P levels are below 35% saturation)
- 3) Rates based on soil test recommendations provided by a laboratory whose procedures and recommendations are approved by the Department of Conservation and Recreation
- 4) Rates established in nutrient management plan written by a DCR certified nutrient management planner. Some members of the TAC were concerned about NMPs not being mandatory on a farm that housed any number of confined livestock or poultry, or for farms in certain areas of the Commonwealth that historically use high amounts of manure as fertilizer. Staff believes the proposal addresses these issues more effectively with management-based criteria rather than locational based criteria. If a field is located on a farm with livestock and poultry, or is in such a high density area, it is likely that the field will have received organic nutrient sources recently, thus making a soil test mandatory, and eliminating the option of a

standard rate. This proposal also will not discriminate against fields on certain farms or certain areas that may not have received manure and would thus likely not have a high phosphorous soil test. The TAC agreed that soil tests were an important agronomic tool. However, there were several members of the committee that felt that there were certain circumstances in which prior management was adequately predictive of soil nutrient levels. For instance, where a field has received only commercial fertilizer, it is less likely that soil P levels will be high, thus it is much less likely that the addition of poultry waste would cause an environmental problem. For the purposes of making the proposal as flexible as possible without adding environmental risk, staff included in the proposal an option to not require a soil test only if applications of nutrients from organic sources had not been made in the last three years. The TAC was in general agreement that the requirements currently included in the general permit which are written for application timing and setback or buffer distances from streams, wells, etc. were appropriate best management practices for all poultry waste applications. Thus, the proposal includes requirements for end-users that are identical to those required in the general permit. Most members of the committee recognized the value of good recordkeeping regarding rates and locations where poultry waste has been applied. There was concern from some members that it would be difficult for the producer to ascertain what method the recipient would be using to determine their application rate, as well as in some cases the exact watershed in which the poultry waste would be applied. Staff thus clarified in the proposal that these data were to be recorded only if the recipient knew this information at the time the poultry waste was obtained. Staff also crafted amendments to the recordkeeping requirements for producers, brokers, and end-users that add much needed information for tracking and accounting purposes, as well as clarifying who is responsible for providing specific information. The proposal does not include requirements for end-users to submit or report their records to DEQ. The committee was in general agreement that a requirement for the end-user to keep certain records, and make them available to DEQ upon request, was adequate. Staff crafted a proposal that balances this lack of reporting with staff availability to correct problems when identified. The proposal includes a requirement that permitted producers submit annual poultry waste transfer reports to DEQ. Several members of the committee felt that this was unnecessary, as DEQ receives this information during annual inspections. Other members of the committee deferred to whatever the staff recommended as a best practice. Staff believes that the proposed requirement will assist in the production of more timely tracking and accounting reports of poultry waste movement. Currently, the information is received in piecemeal throughout the year after each annual inspection. The TAC was in general agreement that the storage requirements currently included in the requirements for permitted producers were appropriate for end-users as well. The proposal also specifies that poultry waste may not be stored within 100 feet of a waterbody. The TAC was in general agreement that requirements for poultry waste brokers should be clarified, and that these requirements be suited to a robust tracking and accounting system. Some members of the committee felt that brokers should be required to obtain permit coverage in order to operate. Staff drafted a proposal that includes technical requirements that must be followed, and are equally as enforceable as those required by permit coverage. This option will reduce the administrative burden on the agency while not compromising environmental protection or accountability. In addition, staff included in the proposal a requirement for poultry waste brokers to attend training once every five years. The TAC was in general agreement with a training requirement for the broker. Staff included in the proposal a requirement for poultry waste producers to attend training once every five years. Several members of the committee felt that this was unnecessary, citing education received during the initial training as well as during annual inspections as sufficient. Staff believes that the requirement is not onerous, and will serve to better educate producers in their responsibilities when transferring poultry waste.

Detail of changes:

<b>Regulation Section</b>	<b>Action</b>	<b>Change</b>	<b>Rationale</b>
9VAC25-630-10. (Definitions)	Amended definitions	Agricultural storm water	Added the end-user and broker operations
		Permittee	Added the end-user and broker
		Poultry grower	Added grower
		Poultry waste broker	Amended for clarity who is a broker Moved threshold of transferred poultry waste that triggers requirements to 9VAC25-630-60
	Added definitions	Fact sheet	Added to clarify the purpose of the document
		Organic source	Added to clarify the options for selecting the application rate in 9VAC25-630-80
		Poultry waste end-user	Added to ensure clarity of the regulated entity
		Poultry waste hauler	Added to ensure clarity of the regulated entity
		Standard rate	Added to clarify the new term that is referenced in new section 9VAC25-630-80
	9VAC25-630-20. (Purpose, delegation of authority)	Amended subsection A	Added management of poultry waste utilized or stored by poultry waste end-users or brokers
9VAC25-630-30. (Authorization to manage pollutants)	Amended subsection A	Added internal catch line <u>Poultry Grower</u>	Added to clarify which subsection applies to a particular entity
		Amended subdivision 3. changed § 3.1-726 to § 3.2-6002	Changed due to Virginia Administration Code-recodification
		Amended subdivision 6. removed the Department of Conservation and Recreation and added additional training requirements - one time every five years	Added additional training requirements for the poultry grower
	Amended subsection B (moved language to new subsection C)	Added new language concerning the requirement of the end-user and broker to comply with the technical regulation or obtain coverage under the general permit. Added the end-user and broker	Added language to clarify who is authorized to manage pollutants

Regulation Section	Action	Change	Rationale
		to the authorization to manage pollutants governed by the general permit and added requirements similar to the growers (from subsection A.)	
	Added subsection C (contents are old subsection B)	Amended the responsibility to comply to include the end-user and broker	Amended language to clarify responsibility
9VAC25-630-40. (Registration statement)	Amended subsection A	Added internal catch line <u>Poultry Grower</u>	Added to clarify which subsection applies to a particular entity
	Amended subdivision 9 (split subdivision into 2 subdivisions)	Added language to registration statement that addresses the requirements of 9VAC25-630-30 A 4 (the nutrient management plan must be developed by a certified nutrient management plan writer	Amended to clarify the requirements of the permit applicant with regards to the attachments
9VAC25-630-40. (Registration statement)	Amended subdivision 10 (moved language to new subdivision 11)	Added language to registration statement that addresses the requirements of 9VAC25-630-30 A 4 (the nutrient management plan must be developed by a certified nutrient management plan writer	Added to clarify the requirements of the permit applicant with regards to the attachments
	Added subdivision 11 (contents old subdivision 10)	Renumbered subsection 10 to 11, because of separating language from subsection 9 into subsection 10	Added new subsection due to clarifying language in previous subsections
	Added subsection B	Added language for a registration statement for the end-user and broker	Added to allow for a separate registration statement
9VAC25-630-50 (Contents of the general permit)	Amended language in opening paragraph	Added the poultry waste end-user or poultry waste broker	Added to allow for coverage under the general permit if required
	Amended permit title	Removed "at confined poultry feeding operations"	Amended to broaden permit for the poultry waste end-user and poultry waste broker operations
	Amended language in the	Added language to cover the poultry waste end-	Added to conform with the amendments in 9VAC25-

Regulation Section	Action	Change	Rationale
	paragraphs above Part I	user and broker	630-30
	Amended Part I title	Amended Part I title to cover pollutant management and monitoring requirements for confined poultry feeding operations	Clarify the parts of the permit with which a particular entity must comply
	Amended subsection B, subdivision 4	Amended language concerning the conditions that must be met when transferring poultry waste off-site.	Clarify the language.
		Changed grower transfer tonnage threshold to five (5) tons	Lowered threshold to facilitate more effective poultry waste transfer data retrieval and analysis
		Deleted the detailed language about the fact sheet	Deleted since Fact sheet definition was added in 9VAC25-630-10
9VAC25-630-50 (Contents of the general permit)		Itemized the records required when transferring the poultry waste by: What the grower must provide (to the particular entity) and record	Rearranged the recordkeeping items to clarify the grower's requirements
		Deleted the end-user and broker recordkeeping requirements	Recordkeeping requirements were placed in amended section 9VAC25-630-60 and in new section 9VAC25-630-70
	Amended subsection B, subdivision 4c:	Added " <u>if known</u> " to the recordkeeping item (2)	There was concern that if the grower or end-user did not know this information that the grower would be penalized. It is recognized that the grower can only document what the end-user provides thus the language change
		Added (3) to the recordkeeping items	This information will facilitate more effective poultry waste transfer data analysis
	Added subsection B, subdivision 4d.	Added annual poultry waste transfer reporting requirements for growers	Annual reporting will facilitate more effective poultry waste transfer data retrieval and analysis
	Amended	Amended language from	Amended for Clarity of the

Regulation Section	Action	Change	Rationale
	subsection B, subdivision 12	a narrative format to an itemized list	requirements
	Amended subsection B, subdivision 13	Added a frequency (one time every five years) to the training requirement for the grower	Additional training will assist in compliance with the permit including poultry waste transfers and land application recordkeeping; and poultry waste transfer reporting
	Amended subsection B, subdivision 5.	Changed § 3.1-726 to § 3.2-6002	Changed due to Virginia Administration Code-recodification
9VAC25-630-50 (Contents of the general permit)	<b>NEW</b> Added Part III	Added Part III - permit requirements for poultry waste end-users and poultry waste brokers (similar to Part I - for the grower) Requirements include: soils and waste monitoring, nutrient management plan, storage conditions, poultry waste recordkeeping and reporting, land application recordkeeping, and land application buffer zone conditions	Added permit Part III to detail permit requirements specific to poultry waste end-users and poultry waste brokers
9VAC25-630-60 (Tracking and accounting requirements for poultry waste brokers)	Amended subsection A	Amended to add requirements that the poultry waste broker register with the DEQ prior to transferring poultry waste	Added to assist the DEQ in maintaining records regarding poultry waste transfers as the department is mandated
	Amended subsection B and C	Reformatted the recordkeeping requirements into an itemized list, broke it down by who and what	Rearranged the recordkeeping items to clarify the broker's requirements.
		Changed grower transfer tonnage threshold to five (5) tons	Lowered threshold to facilitate more effective poultry waste transfer data

<b>Regulation Section</b>	<b>Action</b>	<b>Change</b>	<b>Rationale</b>
			retrieval and analysis
	Amended subsection D	Amended to update the subsections pertinent to the reporting and added on a form approved by the department	Amended to clarify the reporting requirements Added the approved form to assist the broker for annual reporting and DEQ in obtaining consistent data
	Added subsections	Added subsection E: Addresses requirements for waste sampling of waste from two or more sources that are commingled	Addition stipulates requirements for the waste sampling to ensure a more accurate nutrient analysis of poultry waste
		Added subsection F: Addresses requirements of the broker if he land applies waste for the end-user	Addition ensures the end-user is provided with the information they are required to maintain according to new section 9VAC25-630-70
9VAC25-630-60 (Tracking and accounting requirements for poultry waste brokers)	Added subsections	Added subsection G: Addresses training requirements of the broker	Additional training will assist in compliance with the requirements of this technical regulation 9VAC25-630-60: including poultry waste transfers and poultry waste transfer reporting
		Added subsection H: Addresses DEQ authority to inspect	Clarifies DEQ authority to inspect
<b>NEW</b> 9VAC25-630-70 (Tracking and accounting requirements for poultry waste end-users)	Added new section	Added new section: Recordkeeping requirements	Added recordkeeping items here to clarify the end-user's requirements and responsibilities
<b>NEW</b> 9VAC25-630-80. (Utilization and storage requirements for transferred poultry waste)	Added new section	Added new section: Addresses requirements regarding the land application and storage of transferred poultry waste for both the end-user and broker; including storage requirements, land application rate methods, buffer requirements, and	Added utilization and storage requirements here to clarify the end-user's and broker's requirements and responsibilities

Regulation Section	Action	Change	Rationale
		land application timing.	
FORMS (9VAC25-630)	Amended section to list the amended and new forms	Amended: Registration Statement, VPA General Permit for Poultry Waste Management for <u>Poultry Growers</u> , RS <u>VPG2 (rev. 12/09)</u> to allow for a separate grower form.  Fixed the typographical error in the form name.  Added: Registration Statement, VPA General Permit for Poultry Waste Management for Poultry Waste End-Users and Brokers, RS VPG2 (rev. 12/09)	Amended form to clarify the entity who will use the form       Fixed the typographical error for clarity   Added a new separate form for end-user and broker to avoid complicating the grower registration statement

**Approval of four TMDL reports, one TMDL modification and amendment of Water Quality Management Planning Regulations to incorporate nine TMDL waste load allocations (WLAs) and Notification to the Board of upcoming delegated approval actions by the DEQ Director:** Staff will ask the Board to approve portions of four TMDL Reports, one TMDL modification, and to adopt amendments to four sections of the Water Quality Management Planning (WQMP) regulation: 9 VAC 25-720.50.A (Potomac-Shenandoah River Basin), 9 VAC 25-720.90.A (Tennessee-Big Sandy River Basin), 9 VAC 25-720.60A (James River Basin), and 9 VAC 25-720.110A (Chesapeake Bay-Small Coastal Basin). The amendments consist of adding nine new WLAs. All TMDL reports containing these WLAs have been approved by EPA. The Clean Water Act (“CWA”) and the U.S. EPA Water Quality Management and Planning Regulation (40 CFR §130) require states to identify waters that are in violation of water quality standards and to place these waters on the state's 303(d) List of Impaired Waters. Also, the CWA and EPA's enabling regulation require that a TMDL be developed for those waters identified as impaired. In addition, the Code of Virginia, §62.1-44.19:7.C requires the State Water Control Board (“the Board”) to develop TMDLs for impaired waters. A TMDL is a determination of the amount of a specific pollutant that a water body is capable of receiving and still meets water quality standards for that pollutant. TMDLs are required to identify all sources of the pollutant and calculate the pollutant reductions from each source that are necessary for the attainment of water quality standards. Every TMDL consists of three basic components. They are the point source component called the waste load allocation (“WLA”), nonpoint source component called the load allocation (“LA”), and the margin of safety component (“MOS”). The TMDL is equal to the sum of these three components. The U.S. EPA's Water Quality Management and Planning Regulation 40 CFR §130.7(d)(2) directs the states to incorporate EPA-approved TMDLs in the state's Water Quality Management Plan. Also, U.S. EPA's Water Quality Management and Planning Regulation 40 CFR §122.44 (d)(1)(vii)(B) requires that all new or reissued VPDES permits be consistent with the TMDL WLA. This means that the WLA component of the TMDL will be implemented through the requirements specified in the VPDES permits, for example through numeric water quality based effluent limitations or in certain cases best management practices (BMPs). The Commonwealth is implementing the LA component

using existing voluntary, incentive and regulatory programs such as the Virginia Agricultural Cost-Share Program. Specific management actions addressing the LA component are compiled in a TMDL implementation plan (“TMDL IP”). Staff will propose the following Board actions:

Approval of four EPA-approved TMDL reports and one TMDL modification containing the following nine TMDL WLAs:

1. Difficult Run Benthic TMDL, located in Fairfax, proposes: Sediment reductions for portions of the watershed and provides a sediment WLA
2. Opequon Watershed Benthic TMDLs, located in Frederick and Clarke Counties, proposes modification to the approved TMDLs for:
  - Sediment reductions for portions of the Abrams Creek watershed and provides a Sediment WLA
  - Sediment reductions for portions of the Lower Opequon watershed and provides a Sediment WLA
3. Lick Creek Benthic TMDLs, located in Dickenson, Russell and Wise Counties, propose:
  - Sediment reductions for portions of the Lick Creek watershed and provides a Sediment WLA
  - Sediment reductions for portions of the Cigarette Hollow watershed and provides a Sediment WLA
  - Sediment reductions for portions of the Laurel Branch watershed and provides a Sediment WLA
  - Sediment reductions for portions of the Right Fork watershed and provides a Sediment WLA
4. Rivanna River Benthic TMDL, located in the City of Charlottesville, and portions of Albemarle, Greene, Nelson, and Orange Counties, proposes: Sediment reductions for portions of the watershed and provides a sediment WLA
5. Parker Creek benthic TMDL, located in Accomack County, proposes: Total Phosphorus (TP) reductions for portions of the watershed and provides a TP WLA

The proposed final amendments to the WQMP regulation for the TMDLs were published in the Virginia Register on February 16, 2009, with a public comment period ending on March 16, 2009. Staff will inform the Board at its meeting of any comments received.

Staff is notifying the Board of upcoming actions by the DEQ Director to approve twenty-nine Total Maximum Daily Load (TMDL) Reports, ten TMDL Report modifications, and six TMDL Implementation Plans, and authorization to update the appropriate Water Quality Management Plans (WQMP).

**Petition on the Prevention of Degradation of Water Quality on the Eastern Shore as a Result of Large Scale Agriculture Operations:** The State Water Control Board received a petition requesting that the Board initiate the development of a regulation on large scale agriculture operations on the Eastern Shore. The petition was posted for public comment which closed on January 26, 2009. We received 20 comments in support of the petition and 22 opposed to the petition. **Those in support had the following concerns:** In plasticulture farming, run-off of rain water is significantly higher because of soil compaction by use of heavy equipment, minimal soil cultivation, and the use of plastic to cover approximately one third of the field surface. Drainage of these fields is accomplished by ditching either by mechanical or manual means through grass buffers and into transport ditches. These ditches convey this run-off water into the tidal creeks and marshes of the Eastern Shore. Large amounts of sediment in the run-off from these farms are filling the marshes and creeks into which they empty. Aquaculture is being affected by siltation where large scale agriculture operations are located nearby. Regulations are necessary to ensure that best management practices are being followed and that the storm water conveyances are constructed in such a way that they do not discharge water into the coastal creeks, streams, bays and lagoons of the Eastern Shore.

Clear-cut and effective regulations that are rigorously enforced should allow agribusiness and aquaculture to co-exist on the Eastern Shore. **Those in opposition had the following concerns:** Urge DEQ staff to work with the impacted industries, including agriculture operations, to seek a non-regulatory solution to these issues. The Department needs to work cooperatively with the impacted industry to address these concerns in a manner that both protects water quality and does not adversely impact the economic engine that agriculture operations are to the Eastern Shore and the Commonwealth as a whole. In tomato fields the industry uses both the guidance developed in a 2002 Best Management Practices Handbook funded by DEQ, and practical experience gained in recent field trials of measures funded by DCR and growers in 2006 and 2007 and defined in our booklet, "Conservation Resources for Plasticulture Farms on the Coastal Plain." Support the ongoing voluntary implementation of BMPs and continuing dialogue with growers, agriculture researchers, Cooperative Extension, and NRCS who know farming and its challenges.

There have been a few bad-actors; the Ag Stewardship Act was enacted to deal with these types of operations. Specific incidents should be documented and reported. Many erosion control measures have been installed in the past few years. Several studies have been concluded that runoff from these fields is not harmful to the waterways. Runoff is inevitable; all Eastern Shore drains to the bayside or the seaside eventually. Before any more regulations are enacted the content of this water should be known. Encourage DEQ to table this petition and work with the plastic culture users to find a suitable resolution on this matter that does not burden both parties with more unneeded regulation that cost taxpayers and farmers.

**Report On Significant Noncompliance:** No permittees were reported to EPA on the Quarterly Noncompliance Report (QNCR) as being in significant noncompliance (SNC) for the quarter July 1<sup>st</sup> through September 30, 2008.

**Town of Hamilton STP, Loudoun County** - Consent Special Order-Amendment: The Town of Hamilton Sewage Treatment Plant (the Plant) is a .16 MGD plant owned and operated by the Town of Hamilton. The Plant treats wastewater and sewage from the residents of the Town of Hamilton, and a portion of the surrounding County. The Town of Hamilton was referred to enforcement on June 8, 2007, to resolve permit effluent violations for Total Suspended Solids (TSS), Biochemical Oxygen Demand (BOD<sub>5</sub>), Ammonia, and E.Coli, six instances of unusual discharge events, one instance of improper operation due to the Plant's UV system being inoperational due to a loss of power, and a violation of the Town's March 17, 2006 Consent Order for the late submittal of plans and specs for the chemical addition system required under the March 17, 2006 Consent Order. The permit effluent violations addressed within the current Amended Consent Order are reflected in the Town's monthly DMR's from the period of January 2007 to June 2007. The Town has also experienced six instances of unusual discharge events at the Plant since January 2007. Each event was promptly reported to DEQ and took place during periods of high flow at the Plant, indicating that these unusual discharges may stem from I&I problems within the collection system serving the Plant. The permit effluent violations experienced by the Town also appear to coincide with these unusual discharge events. Throughout the negotiations process, the Town has been working diligently to address its I&I problems and to improve operations at the Plant. The Town was also cited for improper operations on June 26, 27, 28, and 29 in 2007 due to the Plant's UV system becoming inoperational because of a loss of power to the system from a loose wire at the main breaker. The problem with the UV system was immediately reported to DEQ and an electrician was promptly called by the Town to repair the system. In addition, an E.Coli violation in May resulted from this loss of power to the system. Finally the Town was required to submit plans and specs for a chemical addition system to DEQ by March 24, 2007 as required under the March 17, 2006 Consent Order. The Plans were received by DEQ on June 14, 2007. The Town explained to DEQ that the delay was due to a change in engineers overseeing the project, and a change in Town personnel. The Amended Consent Order requires the Town of Hamilton to

commence construction of the permanent chemical addition process by February 1, 2009, complete construction and request a Certificate to Operate from DEQ for the modified STP, and submit to DEQ an amended Operations and Maintenance manual that incorporates the chemical addition process. The Town is currently in compliance with these Appendix items. Following installation of the permanent chemical addition process, the Order also requires the Town to increase copper sampling from once a month to twice a month. This increased sampling shall last for four months, and the data from this sampling shall be submitted to DEQ. Following review of this data, if DEQ determines that the STP is not capable of complying with permitted copper limits, DEQ will notify the Town and the Town will submit a plan for an alternate method of meeting permitted copper limits. Upon review and approval by DEQ, this plan will become an enforceable part of the Order. During the period beginning with the effective date of the Order and lasting until 30 days after the chemical feed addition has been installed at the Plant, the Town shall have interim copper limits as outlined in Appendix B of the Order. The Order also requires the Town to adhere to the Infiltration and Inflow (I&I) Abatement Program submitted to DEQ on August 4, 2008. The dates included in this submission are to become an enforceable part of the Order. In addition, the Consent Order requires that the Town will ensure that there is a Class III (or higher) Operator at the STP, while regular STP staff is onsite, for at least 2 hours per day, five days per week. The facility has spent an estimated \$155,639 to come into compliance with Appendix A of the Consent Order. To date, The Town has expended approximately \$18,125 of this amount on its I&I program. Civil Charge: \$19,638.

**Hammaker East, L.P., Chesterfield** - Consent Special Order: Hammaker owns and operates an asphalt emulsion plant ("Facility"), in Chesterfield County, Virginia. This Facility is permitted to discharge uncontaminated stormwater and boiler steam condensate into an unnamed ephemeral tributary of the James River that flows through Fort Darling National Park. Stormwater is treated on site by an oil/water separator. On November 13, 2007, the Department received a report of a milky foam discharge in the unnamed tributary flowing through the Park. Department staff investigated and determined that the discharge had originated at the Facility. Department staff met with Hammaker staff who stated that a tank containing a copolymer called Poly Styrene-Co-Butadiene was drained and cut into pieces for demolition. Approximately 50 gallons of copolymer remaining in the tank was discharged onto the ground in the bermed containment area. The spilled material was then diluted with several thousand gallons of potable water, analyzed for pH with a result of 5.86 SU, and then discharged through the oil and water separator. Hammaker failed to report the discharge to the Department. On November 14, 2007, Department staff revisited the Hammaker site. During the inspection Department staff noticed that Hammaker's pH meter had not had an annual maintenance check. Also, monitoring records and calibration logs were not maintained. DEQ staff conducted a water quality analysis downstream in Fort Darling Park and found a pH of 2.99 SU, a D.O. of 7.5 mg/L, and a conductivity of 291  $\mu$ S/cm. In comparison, a first order stream background sample taken nearby had a pH of 6.58 SU, a D.O. of 9.38 mg/L, and a conductivity of 43  $\mu$ S/cm. On December 6, 2007, the Department issued a Notice of Violation to Hammaker, citing the discharge, the failure to report the discharge, and failure to maintain monitoring and calibration records. The Consent Order requires that Hammaker complete and submit an updated Stormwater Pollution Prevention Plan and conduct an investigation to determine alternative potential on-site sources of the low pH associated with the November 13th discharge event. The approximate cost of the injunctive relief is \$19,000. Civil Charge: \$11,500.

**Mr. Robert L. Ingram, Jr., Norfolk** - Consent Special Order: Mr. Robert L. Ingram, Jr., owns and operates Ingram Auto Mall, an automobile salvage yard ("facility") in the City of Norfolk, Virginia, at which used motor vehicles are dismantled for the purpose of selling and recycling used automobile parts and/or scrap metal. Storm water discharges from the facility are subject to the Permit through Registration No. VAR051350, which was effective July 1, 2004 and

expires June 30, 2009. The Permit authorizes Mr. Ingram to discharge to surface waters storm water associated with industrial activity under conditions outlined in the Permit. As part of the Permit, Mr. Ingram is required to provide and comply with a Storm Water Pollution Prevention Plan ("SWP3") for the facility. On July 18, 2008, DEQ compliance staff conducted an inspection of the facility that revealed the following: overall poor housekeeping practices; failure to properly perform and document quarterly visual examinations of storm water quality and benchmark monitoring of storm water discharges; failure to perform routine weekly inspections and annual comprehensive site compliance evaluations ("CSCEs"); and failure to comply with SWP3 requirements, i.e. not including the locations of potential pollutant sources or of potential major spills or leaks in the SWP3 and the accompanying site map and failure to provide a non-storm water certification. On August 26, 2008, DEQ issued a Notice of Violation ("NOV") advising Mr. Ingram of the deficiencies revealed during the facility inspection conducted on July 18, 2008. Mr. Ingram responded to the NOV in writing on September 25, 2008, and stated that he has now hired a full-time environmental manager for the facility; has moved the automobile dismantling operation inside a building; has installed a drainage system in the vehicle crusher that will capture all fluids released during crushing operations and hard-pipe them to a holding tank for disposal; has cleaned up all contaminated soil; and is in the process of overall facility cleanup. A visit to the facility by DEQ staff on October 3, 2008 verified these representations. Staff observed that overall facility cleanliness had improved considerably. The Order requires Mr. Ingram to pay a civil charge within 30 days of the effective date of the Order. Mr. Ingram has addressed all Permit deficiencies, except SWP3 deficiencies, noted above. To ensure compliance with the Permit and the SWP3, and to improve the quality of storm water discharges from the facility, the Order also requires Mr. Ingram to submit an updated SWP3; to submit documentation of routine inspections and a certification that all housekeeping deficiencies noted during the facility inspection have been corrected; and to perform benchmark monitoring of storm water discharges within six months of the effective date of the Order and to submit a corrective action plan and schedule in the event that any pollutant of concern listed in the Permit exceeds benchmark values. The Order was executed on December 4, 2008. Civil Charge: \$7,477.

**S.E.A. Solutions Corporation, Chesapeake** - Consent Special Order: On July 2, 2007 City of Chesapeake staff reported that S.E.A. Solutions Corporation ("SEA Solutions"), a Virginia corporation, was performing ship dismantling on the waterfront behind Chesapeake Grain Company, Inc. on the subject property. DEQ subsequently received information that SEA Solutions was leasing a portion of property from Chesapeake Grain Company, Inc. for its operation. On July 23, 2007 DEQ staff visited the property along with the U.S. Coast Guard ("USCG"). The inspection confirmed ship dismantling of the Staten Island Ferry "American Legion". USCG personnel found petroleum products onboard the American Legion. On August 27, 2007 DEQ sent a letter to SEA Solutions including the July 23, 2007 inspection report. The report and letter noted that a permit was required prior to the commencement of further ship dismantling activities and a Stormwater Pollution Prevention Plan must be developed and implemented prior to issuance of coverage under the applicable permit. A registration statement was enclosed with the letter. A phone conversation on September 7, 2007 between SEA Solutions and DEQ reiterated the need for a permit prior to recommencement of dismantling of the ferry. A letter on the same date, September 7, 2007, from SEA Solutions to DEQ stated "SEA Solutions shall obtain all required permits from responsible agencies prior to continuing the scrapping of the ferry American Legion." In a November 7, 2007 phone conversation, SEA Solutions discussed with DEQ the possibility of pumping the ferry of petroleum products and hauling it to another facility for dismantling. DEQ staff reiterated that SEA Solutions would need a permit for ship dismantling activities. On March 18, 2008 DEQ staff inspected the SEA Solutions operation located on the leased property of Chesapeake Grain. Staff found SEA Solutions was continuing ship dismantling activities of the American

Legion without a permit. A supervisor from SEA Solutions noted that approximately 1,000 gallons of oily water remained in the hull of the American Legion. The ferry had been dragged to the north corner of the bulkhead at Chesapeake Grain, and there was evidence of shoreline disturbance. The scrap metal from dismantling the American Legion was being stored temporarily on site, with as much as possible hauled away each day to another facility (SIMS Metal, VPDES VAR051540). During the March 18, 2008 inspection a permit application was given to the SEA Solutions supervising employee. DEQ issued Notice of Violation No. W2008-03-T-001, dated March 26, 2008, to Mr. Steve Avery, reported owner of S.E.A. Solutions Corporation, for operating a ship dismantling facility without a permit. SEA Solutions submitted a complete and correct registration statement on April 14, 2008. On April 14, 2008, DEQ confirmed SEA Solutions registration under the General Permit through the assignment of registration No. VAR051837 to SEA Solutions for operation of its ship dismantling facility under the Permit's provisions including Sector N – Ship Dismantling, Marine Salvaging and Marine Wrecking. The Order requires compliance with Stormwater General Permit Authorization No. VAR051837, and payment of a civil charge within 30 days of the effective date of the Order. The Order was executed on August 18, 2008. Civil Charge: \$10,400.

**Blacksburg Country Club, Inc., Montgomery County** - Consent Special Order: A pollution complaint was received by the Department on July 10, 2007. During an investigation of the pollution complaint by Department staff on July 10, 2007 and subsequent days, it was discovered that there had been a discharge of an unknown substance to the North Fork of the Roanoke River, which resulted in a fish kill. Investigators examined the operations at the Blacksburg Country Club, Inc. ("BCCCI") because of its location relative to the fish kill. BCCCI employees admitted to investigators that there had been an accidental spill of chemicals into the North Fork of the Roanoke River. The employees stated that on the afternoon of July 9, 2007, an employee was filling a 150 gallon sprayer which was located on the concrete wash pad ("the Site") adjacent to the river. The sprayer has a basket/strainer located on the top. Employees place concentrated chemicals into the basket/strainer and then fill the sprayer with water. The employees suspect that once the water was turned on to fill the sprayer, the dry chemicals "congealed" and created a blockage that caused the concentrated chemicals and water to spill out of the basket/strainer and onto the concrete wash pad. Further complicating the situation, the employee walked away while the sprayer was filling and returned later to find the overflow of water and concentrated chemicals. The employee sprayed down the sprayer and concrete pad with water and this 'wash' water flowed to the collection pipe associated with the concrete pad and was discharged directly to the North Fork of the Roanoke River. BCCCI does not have a permit to discharge to state waters from the collection pipe associated with the concrete pad and therefore BCCCI discharged to state waters without a permit. BCCCI's un-permitted discharge of the aforementioned chemicals to the North Fork of the Roanoke River appears to be the cause of the fish kill. The investigation of the fish kill by Department staff, Department of Game and Inland Fishery staff, and United States Fish and Wildlife Service staff indicates that 1.4 miles of the North Fork of the Roanoke River was affected by this incident. The fish kill was estimated to be at least 10,335 fish of various species including Roanoke Logperch, a listed endangered species. Roanoke Logperch losses are estimated to be 169 individuals. On August 8, 2007, the Department issued a Notice of Violation to BCCCI. The Order before the Board assesses a civil charge to BCCCI for the un-permitted discharge to state waters and requires BCCCI to fund and complete three Supplemental Environmental Projects ("SEPS"). The Order also collects the Department's fishkill investigative costs and the Department of Game and Inland Fisheries fish kill investigative costs and the fish replacement costs (with the exception of the Logperch replacement costs which will be handled through a federal consent decree). Concurrently with the Department's enforcement action, the BCCCI is currently negotiating with the United States Fish and Wildlife Service at the federal level, on a habitat restoration plan to resolve the violations and remediate the environmental damage. Civil

Charge and SEP: The calculated civil charge is **\$25,740**. BBCCI will pay a civil charge of **\$257.40** with the remaining **\$25,482.60** being applied to the three SEPs.

**Aqua Virginia, Inc. - Lake Monticello STP, Fluvanna County** - Consent Special Order amendment: Aqua Virginia, Inc. owns and operates the Lake Monticello STP, serving a population of approximately 7,750 people in Fluvanna County, Virginia, which is subject to the Permit. This Facility discharges to the Rivanna River in the Middle James River basin. The December 9, 2003 Order was issued to AquaSource Utility, Inc. and Lake Monticello Service Company. Since the issuance of the Order, the Facility's owner has undergone a corporate name change. The VPDES Permit Regulation and Part II. M. of the Permit requires Aqua Virginia, Inc. to submit to DEQ a VPDES permit reissuance application at least 180 days before the expiration of the existing permit (the application was due by October 29, 2007). Aqua Virginia, Inc. did not submit a complete application for reissuance of the Permit until February 6, 2008. The Permit expired on April 30, 2008. Aqua Virginia, Inc. continued to discharge from the Facility after the expiration of the Permit. DEQ issued three Warning Letters on November 6, 2007, December 4, 2007 and January 8, 2008, as well as two Notices of Violation on June 11, 2008 and July 7, 2008, to Aqua Virginia, Inc. for failure to submit a complete and timely application for reissuance of the Permit by October 29, 2007, in violation of 9 VAC 25-31-100.D. Aqua Virginia, Inc. was also cited for failure to submit its five-year Water Quality Monitoring Report, which was due on October 29, 2007, in violation of the Permit Part I.E. and 9 VAC 25-31-50. Additionally, the NOVs cited Aqua Virginia, Inc. for discharging without a permit after April 30, 2008. Discharging without a permit is a violation of VA Code § 62.1-44.5. and 9 VAC 25-31-50. On December 21, 2007, DEQ received Aqua Virginia, Inc.'s five-year Water Quality Monitoring Report. On June 25, 2008, DEQ staff met with representatives of Aqua Virginia, Inc. in an informal enforcement conference and discussed the issuance of the NOVs. During the period that the Facility discharged without authorization of a permit, the Facility's effluent quality conformed to the limitations in the expired permit. On November 3, 2008, DEQ reissued the Aqua Virginia, Inc. Permit. The proposed Amendment, signed by Aqua Virginia, Inc. on January 30, 2009, requires the Town to pay a civil charge to resolve the violations. Civil Charge: \$5,670.

**Town of Big Stone Gap, Wise County** - Consent Special Order – Amendment: The Town of Big Stone Gap owns and operates a wastewater treatment plant ("WWTP") and associated collection lines pursuant to VPDES permit number VA0020940, which was reissued with an effective date of September 24, 2008. The WWTP discharges to the Powell River in the Tennessee-Big Sandy River Basin. A Consent Special Order was issued to the Town on January 5, 2004. That Order was issued primarily to address overflows in the Town's sewage collection system. Appendix A of that Order contained a schedule to complete sewer line repair work that was identified in an engineering study conducted for the Town. That work was considered substantially complete in July, 2007, with final completion in August, 2007. This was beyond the November, 2005 completion date originally anticipated in the Order. Part of the work that the Town planned to complete with Town employees ultimately had to be done by contract after securing of funds and solicitation of bids. After undertaking repairs to the sewer collection system and mitigation of high flows, the WWTP capacity is still exceeded during wet weather conditions. In addition, twelve overflows were reported during the first eleven months of 2008. Also, with receipt of the Discharge Monitoring Report for April, 2008, the Town exceeded 95% of the average daily design flow of the WWTP for three consecutive months, thus activating Part I, Section E.1 of VPDES Permit No. VA0020940. This section of the permit requires written notification within 30 days, and submittal of a plan of action within 90 days, to ensure continued compliance with the permit when the average monthly flow values reported for three consecutive months are greater than 95 percent of the design capacity of the WWTP. DMRs for February, March and April, 2008 reported average monthly flow values greater than

95 percent of the design capacity of the WWTP. The Town and its consultant met with DEQ staff July 13, 2007, October 16, 2007 and February 21, 2008 to resolve the Town's compliance issues. There has been no reported impact from the increased flows or overflows. The Powell River is listed as an impaired watershed for bacteria from the confluence of the South Fork Powell River upstream through the Town of Big Stone Gap. However, the WWTP is not listed as a source of the impairment. The Town proposed an upgrade/expansion project for the WWTP, from its present treatment capacity of 2.0 MGD to 4.0 MGD. The Preliminary Engineering Report for this project was approved by DEQ on April 9, 2007. Initial funding for the project was secured in the Fall of 2007. Initial plans and specifications were submitted to DEQ by letter dated February 8, 2008. This project consists of the installation of new variable frequency drive influent pumps, a new mechanical bar screen, conversion of the existing flow equalization basin to an activated sludge reactor, flow splitter, new secondary clarifiers (sized for storm flow management), new aerobic sludge digester, a new UV disinfection system, new post aeration, and a backup generator as an alternate power source at the Aviation Road pump station. By letter dated March 5, 2008, the Town submitted a schedule for completion of the project, which, after later being revised, is incorporated as Appendix A of this Amendment. Final plans and specifications for upgrade/expansion of the WWTP were approved September 15, 2008. This contract was awarded November 21, 2008, and construction has begun. DEQ received an application for reissuance and modification of the Permit on February 22, 2008. Included in this application was the proposal for upgrade and expansion of the WWTP. The permit, with modifications to include the upgrade and expansion, was reissued with an effective date of September 24, 2008. The Town submitted a Preliminary Engineering Report entitled "Town of Big Stone Gap – Sewer System Upgrade – Preliminary Engineering Report", which is PE stamp dated February 15, 2008. The work proposed by this report consists primarily of replacement of existing 4- to 8-inch deteriorated pipes (primarily terra cotta) along existing line layouts. This Preliminary Engineering Report was approved by DEQ by letter dated March 12, 2008. By letter dated April 15, 2008, the Town identified three areas of sewer line repair work (as identified by the PER, and which include the areas where a majority of the reported overflows occurred) and submitted a schedule for completion of the work, which, after later being revised, is incorporated as Appendix B of this Amendment. Final plans and specifications were approved by letter dated October 6, 2008. This contract was awarded February 5, 2009. The Town has secured DEQ Revolving Loan Fund monies (\$4,023,000.00) for upgrade/expansion of the WWTP and Rural Development monies, as both loan (\$1,614,000.00) and grant (\$1,000,000.00), for the additional sewer line repair work.

**Stanley Martin Companies, LLC, Prince William County** - Consent Special Order: The Coles Run Manor project consists of the development of a residential subdivision with associated infrastructure in Prince William County, Virginia. The developer for the Coles Run Manor project is Stanley Martin Companies, LLC (Stanley Martin). The Coles Run Manor project is adjacent to the Parkway West project which has been developed by Beazer Homes (Beazer). There are portions of these two properties that overlap. These areas of overlap are the areas where the unauthorized impacts that are the subject of this Order occurred. A Virginia Water Protection (VWP) General Permit (Permit No. WP4-04-0109) was authorized on June 3, 2005 to Stanley Martin for the total permanent impact of .27 acre of surface waters, consisting of .06 acre of palustrine forested wetland (PFO) and .21 acre (1,487 linear feet) of intermittent stream channel. Of those authorized impacts, .06 acre of PFO and .01 acre of intermittent stream channel were taken prior to obtaining authorization. This resulted in a Consent Order issued to both Stanley Martin and Beazer, which became effective on March 17, 2006. The Consent Order was terminated on January 8, 2007. DEQ staff conducted a compliance inspection of the Coles Run Manor project site on April 18, 2007, and noted additional impacts to surface waters may have occurred. DEQ requested that Stanley Martin complete a survey of the location to verify the extent of the potential additional impacts. The survey results were submitted to DEQ and

confirmed that additional impacts to .03 acre (158.26 linear feet) of intermittent stream channel had been taken without prior authorization from DEQ. A Notice of Violation (NOV) was subsequently issued to Stanley Martin on July 9, 2007, for these additional impacts. During negotiations, Stanley Martin asserted that the impacts associated with the current enforcement action occurred prior to the 2006 Consent Order, and that approximately 34.27 linear feet of the 158.26 linear feet noted in the July 9, 2007 NOV, had previously been authorized by a 2004 DEQ Permit with Beazer. This was later confirmed by DEQ. Stanley Martin explained to DEQ that the remaining 123.9 linear feet of unauthorized impacts resulted from discrepancies in clearing limits in construction plans and permits. These discrepancies resulted in a total of 123.9 linear feet of unauthorized impacts. The Consent Order required Stanley Martin to perform compensation in the form of off-site riparian buffer reforestation and cattle exclusion along 657 linear feet along one side of an intermittent tributary to Cedar Run with a buffer width of 50 feet. Stanley Martin is performing this off-site mitigation in accordance with a Conceptual Stream Mitigation Plan that was received by DEQ on August 8, 2008. This Plan was reviewed by DEQ and the compensation was deemed acceptable compensation for the unauthorized impacts. The mitigation required by the Consent Order has been completed by Stanley Martin. Civil Charge: \$5,200.

**Beverly Hills, Inc. & The Wilton Companies, LLC, Henrico County** - Consent Special Order: Beverly Hills, Inc. ("BHI") is the owner of a 3 acre parcel located at the intersection of John Rolfe Parkway and Ridgefield Parkway in western Henrico County. The Wilton Companies, LLC ("Wilton") is the developer of the property. Mr. Rich Johnson is President of BHI and managing member of Wilton. On June 18, 2003, DEQ received a Joint Permit Application from Wilton, which was signed by Mr. Johnson. The application requested authorization from DEQ to fill 0.15 acre of forested wetlands on the site in order to build a small commercial development. By letter dated July 3, 2003, DEQ staff informed Wilton that additional information was needed to complete the application, including the permit application fee. Wilton never submitted all of the information requested or the permit fee. By letter dated October 8, 2003, DEQ staff notified Wilton that processing of the application was being suspended in accordance with 9 VAC 25-210-80.D. No permit was ever issued by DEQ for impacts to surface waters on the site. In 2007, Wilton constructed a commercial building, parking and associated infrastructure on the site. Construction resulted in the clearing and filling of 0.14 acre of forested wetlands. (The remaining 0.01 acre wetland is on a portion of the parcel that was subdivided and donated to a religious organization.) Construction was complete on November 29, 2007. On August 15, 2009, DEQ inspected and found that wetlands were filled as a result of the construction activities. DEQ issued Notice of Violation number 08-08-PRO-702 on September 5, 2008 for the unauthorized impacts to wetlands on the Site. The Consent Order requires that BHI and Wilton purchase wetland mitigation credits at a ratio of 2:1 as mitigation for the impacts taken (0.28 credits). The cost of the injunctive relief required by the Order is approximately \$15,400. Civil Charge: \$8,709. Additionally, BHI and Wilton must purchase an additional 0.14 acre of wetland mitigation credits, which is in excess of the standard mitigation requirement. These additional credits cost approximately \$7,700.

**Boone Homes Inc. of Roanoke, Roanoke County** - Consent Special Order: The Ridge at Fairway Forest, a subdivision project owned and developed by Boone Homes, Inc. of Roanoke ("Boone"), received coverage under Virginia Water Protection Permit WP4-06-2594 on April 18, 2007. The subdivision is located off of Franklin Street in Roanoke County. Boone had six unauthorized sediment discharges into an unnamed tributary of the Roanoke River (Roanoke River UT) between the months of August 2007 and August 2008. The unauthorized discharges occurred as a result of Boone's failure to observe best management practices at the development site. Boone reported all six unauthorized discharges to the Department, as required in its permit and Boone responded immediately to remediate the sediment deposits in

the Roanoke River UT. Boone first received Warning Letters from the Department and then Notices of Violations as the unauthorized sediment discharges continued. Boone cooperated with the Department to remediate the sediment deposits and mitigate the minimal environmental damage to the Roanoke River UT. Boone instituted the necessary operational modifications to minimize or eliminate the potential for future unauthorized sediment discharges. Boone has operated in compliance with its permit since the end of August 2008. The Order before the Board assesses a civil charge to Boone for the six unauthorized sediment discharges to the Roanoke River UT, which resulted in Boone violating its VWP permit. The Order specifically orders Boone to comply with all conditions of its VWP permit including the conditions regarding unauthorized discharges and the prohibition of altering state waters. Civil Charge: \$27,300.

**R & K Foundations, Inc., Franklin County** - Consent Special Order: In 2005, R & K Foundations, Inc. ("R&K") constructed a dam on property owned by R&K in Franklin County. Ms. Rosie Musgrove is the president of R&K. Ms. Musgrove and her husband, James Musgrove, constructed a home adjacent to the pond created by the dam. The Musgroves currently live in that home and use the pond for recreational purposes. R&K did not obtain a Virginia Water Protection Permit before proceeding with construction. On February 1, 2006, WCRO staff inspected the pond site and observed that dam construction had impacted a perennial stream. Subsequent calculations indicate that total of 1,759 linear feet of stream was impacted. DEQ issued Warning Letters to R&K dated October 27, 2006 and January 10, 2007 alleging that R & K had taken impacts without a VWP permit in violation of Code § 62.1-44.5, Code § 62.1-44.15:20, and 9 VAC 25-210-50. The Warning Letters requested that R&K submit a Joint Permit Application ("JPA") for the impacts. A consultant for R&K submitted a draft JPA on January 29, 2007. The JPA was not complete and a permit has not been issued. The Musgroves met with DEQ staff on July 25, 2007 to discuss options for coming into compliance with the Regulation. Subsequent negotiations focused primarily on the injunctive relief that would be required. The Musgroves were offered the options of either removing the dam and restoring the stream or retaining the dam and performing mitigation in accordance with an approved compensation plan using the criteria that would have been used for mitigation under a VWP permit. The Musgroves chose the mitigation option and signed a consent order on March 3, 2008. That order was placed on the State Water Control Board agenda for June 2008. Because after multiple attempts, the Musgroves were not able to produce an approvable mitigation plan, it began to appear by May 2008 that the Musgroves might not be able to comply with the version of the order they signed in March 2008. The order was therefore withdrawn from the Board agenda. DEQ and the Department of Conservation and Recreation ("DCR") continued to negotiate with the Musgroves from the summer of 2008 through the winter of 2009. Eventually, the Musgroves decided to abandon their attempt to submit an approvable mitigation plan and chose the dam removal option instead. On February 24, 2009, the Musgroves signed a consent order requiring them to remove the dam and restore the impacted stream. The Order before the Board includes a civil charge of \$19,880.00 for the violations listed above. The order also includes a requirement that the Musgroves remove the dam and restore the impacted stream. Civil Charge: \$19,880.

**Norman Woods, Montgomery County** - Consent Special Order: DEQ staff conducted a site inspection on June 20, 2005, and observed that stream channel grading activities were occurring on a property located in Montgomery County, identified as Tax Map ID Number 070-A5. The site was re-inspected with the U.S. Army Corps of Engineers staff (USACE) on June 23, 2005. It appeared to DEQ staff that Mr. Woods' construction activities were done with the intentions to develop a commercial catfish farm. Based upon the information gathered in the two inspections, impacts to a stream channel, identified as Falls Hollow, exceeded 500 linear feet to the perennial stream. It was estimated that as much as 1,000 linear feet of stream impact may have occurred due to stream excavation, and that as much as 400 linear feet of

stream channel had been filled. Total stream impact was estimated to be 1,400 linear feet due to on-site grading activities. Wetland impacts had also occurred at the site. Activities included both Wetland excavation and filling, but these impacts could not be fully quantified due to the extent of land-disturbing activities that had occurred at the site. It was fairly evident however, that portions of the emergent Wetland had been filled with earthen material to depths ranging between 2 to 4 feet. During the second inspection, DEQ and USACE representatives requested that Mr. Woods obtain a competent professional to assist him in developing a stream channel restoration plan. He was also requested to implement erosion and sediment control measures on graded portions of the project, including installing silt fence around the perimeter of disturbed areas, installing a check dam in an excavated area into which stream flow had been diverted in order to act as a rudimentary and temporary sediment trap, and completing grading in upland areas as soon as possible so permanent seeding could be established on all graded areas as soon possible. Mr. Woods was also advised that he should contact Ron Bonnema, County Engineer with Montgomery County, for information on their requirements for obtaining a land-disturbance permit for the project. On July 13, 2005, DEQ issued NOV #: 05-07-WCRO-002 to Mr. Woods. Mr. Woods was offered a Consent Special Order (CSO), but after several attempts to try and address the violations referenced above through use of the CSO, DEQ held an Informal Fact Finding (IFF) proceeding on September 9, 2008 pursuant to the Code of Virginia §§ 2.2-4019 and 10.1-1186. After the IFF Mr. Woods worked diligently with DEQ staff to address the environmental concerns and restoration efforts that would be necessary to resolve the violations. Before the Presiding Officer made a recommended decision on the case Mr. Woods decided to settle with DEQ by signing the CSO. Because a resolution was reached through the CSO process, the Presiding Officer's recommendation was not issued to the DEQ Director for consideration. Injunctive relief required by the CSO has been completed and has been found acceptable to DEQ. The stream has been restored to its original contour and approximate shape. The wetlands also have been restored. No compensatory mitigation is being required. Both restorations were included as corrective action plans that were incorporated into and enforceable under the CSO. The proposed CSO, signed by Woods would require him to pay a civil charge. Civil Charge: \$10,000.

**Arthur J. "Bo" Fisher, Augusta County** - Consent Special Order: On September 5, 2003, DEQ and the United States Army Corps of Engineer (USACE) staff met with a representative of Mr. Fisher to discuss a proposed project at Quarles Pond. DEQ staff informed the representative that a VWP Permit would be required prior to any construction activity being conducted on the Property (460 Mullins Lane, Stuart Draft VA 24477) that would impact Quarles Pond. On February 21, 2006 and March 17, 2006, staff from the National Forest Service, while conducting survey work in the area of the Property, noticed excavation had taken place at Quarles Pond and on March 20, 2006 reported their observation to DEQ. Quarles Pond is a wetland that supported two rare natural community types: (1) a semi-aquatic herbaceous community dominated by spatterdock and pondweeds (documented at only one other site in Virginia), and (2) a semi-permanently flooded shrub-land dominated by button bush and three-way hedge. Mr. Fisher did not have a VWP permit for the excavation activity on the Property as required by Va. Code § 62.1-44.15:20 and 9 VAC 25-210-50. On December 1, 2008, Williamsburg Environmental Group submitted a Corrective Action Plan (CAP) to DEQ for restoring the wetlands acreage and function at Quarles Pond. Subsequent revisions to the revised CAP were made at the request of DEQ, and a Final CAP, entitled *Wetland Restoration Plan – Quarles Pond* (revised February 6, 2009), was submitted to and approved by DEQ. Inspection reports indicate that all of the ecological functions at Quarles Pond were destroyed during the unpermitted earth moving, ditching, draining, and excavation. Injunctive relief through the implementation of the CAP is on hold pending final SWCB approval of the Consent Order, though there has been some natural regeneration. The CAP requires the reestablishment of the natural plant community types in order to restore lost wetlands functions

to the extent practicable because the unique ecological functions created over the 15,000 can not be replaced. Civil Charge: \$145,000.

**Six L's Packing Company, Inc. and Kuzzens, Inc., Accomack County and Northampton County** - Consent Special Order ("Order"): A subsidiary of Six L's Packing Company, Inc., Kuzzens, Inc., owns and operates the Machipongo (GW0065700), Painter (GW0065800), Christian Ames (GW0065900), and Melfa (GW0066000) Farms ("Farms") located in Accomack County and Northampton County, Virginia. The Farms are primarily used for growing tomatoes. The Farms are authorized by the respective Groundwater Withdrawal Permits for the withdrawal of groundwater from the Eastern Shore Groundwater Management Area at each farm from numerous groundwater withdrawal wells. On June 20, 2007, DEQ compliance staff conducted inspections at the Farms and found that Six L's Packing Company, Inc. and Kuzzens, Inc. had constructed ten unpermitted wells (four active, six inactive). DEQ compliance staff also noted that of the twelve permitted wells at the Farms, seven wells did not have permit required in-line totalizing flow meters installed and twelve wells did not have the permit required DEQ well identification tags affixed to the well casings. On September 26, 2007, DEQ issued a Notice of Violation advising Six L's Packing Company, Inc. and Kuzzens, Inc. advising of the deficiencies revealed during the inspections conducted at the Farms on June 20, 2007. The proposed Order requires the payment of a civil charge and the completion of a SEP. A follow-up inspection of the Farms conducted by DEQ compliance staff on November 15, 2007 noted that all permitted wells had properly installed in-line totalizing flow meters and DEQ well identification tags affixed to the well casings. Kuzzens, Inc. has also provided all requested information needed for DEQ groundwater staff to modify the permits to include the unpermitted wells. The Order was executed on February 25, 2009. Civil Charge and SEP: \$42,000; \$31,500 of which is to be offset by a SEP and \$10,500 to be paid within thirty (30) days.

**Novozymes Biologicals, Inc., Salem** - Consent Special Order – Issuance: Novozymes Biologicals, Inc. in Salem, Virginia manufactures microbial-based products for applications including agriculture, wastewater treatment, soil remediation, and septic and drain line maintenance. On April 20, 2005, approximately 6,700 fish were killed in Mason's Creek in Salem, Virginia near the Novozymes plant. On that day and during the period between April 11-19, Novozymes personnel had disposed of a total of approximately sixty-three drums of cleaning and soap-based wastes through a floor drain that discharged directly to Mason's Creek. A Novozymes contractor subsequently discovered that the pipe leading from the floor drain to the creek was broken and that a large quantity of free product and saturated soils were present in the vicinity of the break. Novozymes officials also reported to DEQ that smaller quantities of wastes had been discharged through floor drains in March 2005 and October 2004. These previous discharges had had no apparent environmental impact. Through the spring of 2005, contractors for Novozymes remediated the contaminated soils and groundwater. Remediation was completed in August 2005. Stream sampling indicated that Mason's Creek was no longer contaminated as of early June 2005. Response costs for Novozymes totaled approximately \$375,000. Novozymes has paid investigative and fish replacement costs. No further remedial action is necessary. Civil Charge and SEP: \$16,300. For a SEP, Novozymes will improve water quality along the Roanoke River by funding native riparian plantings adjacent to a greenway project in the City of Salem and Roanoke County. Novozymes is required under the Order to submit a plan to DEQ for review and approval specifying details of the project, including exact locations of the plantings, numbers and species of plants, and distance of the plantings from the river and from one another. The SEP cost is \$11,300. The final penalty amount is \$5,000.

**Virginia Clean Water Revolving Loan Fund - FY 2009 Intended Use Plan Amendment/Draft Project Priority List for Projects Targeted for Loan Assistance from 2009 Federal**

**Stimulus Funds:** Section 606(c) of the Water Quality Act of 1987 requires the State to develop a plan that identifies the intended uses of its Clean Water Revolving Loan Fund and to prepare a list of projects targeted for financial assistance with those funds. The Intended Use Plan and Project Priority List for FY 2009 were originally approved in December, 2008. Subsequent to that approval, approximately \$77 million in additional federal funds became available for projects as part of the Federal Stimulus Package. Consequently, DEQ issued an additional solicitation for loan applications and has developed a separate draft project priority list of targeted loan recipients from stimulus funds that is now open to public comment, with a public meeting to be held at DEQ's central office in Richmond on April 15, 2009. The public comment and review period will end at the conclusion of this meeting. Following public comment and subsequent action by the State Water Control Board on April 27/28, the final list of projects for financial assistance will become the State's supplemental clean water revolving loan project priority list for the 2009 federal stimulus funds.

**Report to Board on status of obtaining funding for study on nutrient loss from non-bulk irrigation with non-BNR reclaimed water:** At its July 29, 2008 meeting, the Board voted to delete 9VAC25-740-105 (Reporting of discharged total N and total P by treatment works subject to 9VAC25-820) from the Water Reclamation and Reuse Regulation. At that time the Board also directed staff to pursue a source of funding to establish a committee consisting of regional experts on non-point sources of water pollution, faculty from Virginia Tech and staff of DEQ and DCR to conduct a study to quantify the loss of nutrients from non-bulk (or urban and residential) irrigation reuse with non-BNR water for comparison with nutrient losses from non-bulk irrigation reuse with BNR reclaimed water; and identify or develop an accounting mechanism for non-point source nutrient losses from non-bulk irrigation reuse with non-BNR reclaimed water contingent upon the results of such a study. Further, in the absence of funding for the study, the Board directed DEQ staff to assemble, review and report on, as available, monitoring data of monthly N and P loads for non-bulk irrigation reuse of non-BNR reclaimed water to a service area submitted by permittees in accordance with subdivision 9VAC25-740-100.C.3.c(4) of the regulation. This loading rate could be compared to recommended fertilizer rates for lawn turf most common to the region to roughly determine if nutrients are being over applied by non-bulk irrigation reuse within the service area. This would indicate if the issue of nutrient loss could be of concern and the need to conduct the study described above. The Board indicated that DEQ staff should implement the option of assembling and reviewing available data if funding for the study option was not obtained by March 1, 2009, with a subsequent report to the Board in December 2009 on the progress of staff findings. DEQ has been unable to obtain funding for the study referenced above. Staff contacted members of the technical advisory committee who worked on drafting the regulation, as well as federal and state agencies with an interest in such issues. We received no response or interest in funding such a study. At the direction of the Board, DEQ staff will cease their search for study funding and instead assemble, review and report on available monitoring data of monthly N and P loads for non-bulk irrigation reuse of non-BNR reclaimed water to a service area submitted by permittees. Staff findings will be reported to the Board in December 2009.