

TENTATIVE AGENDA
STATE WATER CONTROL BOARD MEETING
 THURSDAY, JUNE 26, 2014

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

CONVENE – 10:00 A.M.

		TAB
I.	Minutes (December 17, 2013 and March 28, 2014)	A
II.	Briefing - Biosolids Permitting Program	Zahradka
III.	Permits Synagro Central, LLC Virginia Pollution Abatement Permit No. 00584 (Land Application of Industrial Residuals in Piedmont Region)	Winter B
IV.	Regulations - Fast-Track Alternate Dispute Resolution Regulations (9VAC25-15)	Harris C
V.	Regulations - Final Chesapeake Bay Preservation Area Designation and Management Regulations (9VAC25-830), Erosion and Sediment Control Regulations (9VAC25-840), Virginia Stormwater Management Program (VSMP) Regulation (9VAC25-870), and General VPDES Permit for Discharges of Stormwater from Construction Activities (9VAC25-880) - Implementing Chapters 151, 303 and 598 of the 2014 Acts of Assembly	Norris D
VI.	Watershed Programs Total Maximum Daily Load Reports (Maury River, Cedar Creek, and Tributaries TMDL located in Augusta, Bath, and Rockbridge Counties and Lexington and Buena Vista; Lower Clinch River TMDL located in Russell, Scott, Tazewell, and Wise counties) Water Quality Management Planning Regulation Amendments: (1) James River Basin (9VAC25-720-60) Maury River, Cedar Creek, and Tributaries TMDL - Augusta, Bath, and Rockbridge Counties and Lexington and Buena Vista. (2) Tennessee - Big Sandy River Basin (9VAC25-720-90 A) Lower Clinch River TMDL - Russell, Scott, Tazewell and Wise Counties.	McKercher E
VII.	Significant Noncompliers Report	O'Connell F
VIII.	Consent Special Orders - VPDES Piedmont Regional Office McGill Environmental Systems of N.C., Inc. (Sussex Co.)	O'Connell G
IX.	Consent Special Orders - VWP Northern Regional Office Celebrate Virginia South, LLC (Fredericksburg) Piedmont Regional Office Iluka Resources, Inc. (Greensville Co. & Sussex Co.)	O'Connell H

X. Public Forum

XI. Other Business

Combined Sewer Overflow Grants	Gills	I
Division Director's Report:	Davenport	
•Notification of No Discharge Zone Designation Application		J
Submittal to Secretary of Natural Resources		
•Report on Review of Trading Ratio for Nutrient Allocation Acquisition Pursuant to § 62.1-44.19:15 B of the Code of Virginia		
•Notification of Planned Bacteria Total Maximum Daily Load Report Approvals		
Groundwater Program	Kudlas	
Future Meetings (September 29-30 & December 11-12)		

ADJOURN

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

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

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

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

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

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

CASE DECISIONS: Comments on pending case decisions at Board meetings are accepted only when the staff initially presents the pending case decision to the Board for final action. At that time the Board will allow up to 5 minutes for the applicant/owner to make his complete presentation on the pending decision, unless the applicant/owner objects to specific conditions of the decision. In that case, the applicant/owner will be allowed up to 15 minutes to make his complete presentation. The Board will then allow others who commented during the public comment period (i.e., those who commented at the public hearing or during the public comment period) up to 3 minutes to respond to the summary

of the prior public comment period presented to the Board. No public comment is allowed on case decisions when a FORMAL HEARING is being held.

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

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

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

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

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

VPA Permit No. VPA00584, Synagro Central LLC, Land application of Industrial Residuals:

Background: Virginia Department of Health (VDH) had allowed inclusion of certain industrial residuals in Biosolids Use Regulation (BUR) permits prior to 2007. Synagro had originally intended to modify a number of their existing VPA-biosolids permits to include these materials. As this would have resulted in increased permit fees and having to undergo multiple permit modifications, Synagro, after discussions with PRO and CO OLAP staff, decided to apply for a regional VPA permit rather than modify existing biosolids VPA permits.

During the winter of 2012-2013, Synagro Central LLC. inquired about permitting the land application of industrial residuals. On February 27, 2013 a conference call between PRO and CO OLAP staff was held. Subsequent calls were held on March 26, 2013 and April 16, 2013. All calls focused on draft permit development. On May 20, 2013, DEQ received the VPA permit application from Synagro Central LLC. On May 29, 2013, the permit fee was received at DEQ. A number of sitebooks had been previously submitted.

Site reviews were conducted on 5/16/2013, 5/21/2013, and 6/14/2013. Many sites are currently included in active biosolids permits (VPA or BUR). None were deemed unsuitable for land applications; however, a number of minor map revisions were requested. Initial Form C information was sent to OLAP for review on 5/21/2013. Charlie Swanson and Seth Mullins visited Smithfield Foods WWTP on June 27, 2013. Final Form C information was submitted to PRO on August 16, 2013. The three possible sources of industrial residuals identified in the permit application all currently are included in the "Approved Sources List" maintained by OLAP.

An initial draft permit was sent to OLAP for review on June 6, 2013. Of particular concern was lack of requirements addressing sodium and its effects on soils. After numerous prior discussions between the applicant, OLAP, and PRO, a final conference call was held on December 10, 2013 and the final draft permit language agreed upon.

Public Notice and Public Hearing: Draft permit notices appeared in five different newspapers (listed below) serving the localities where the sites are located. Depending on the day of circulation the first appearance of the notice occurred during the week of December 23, 2013. Second appearances occurred the following week. The comment period ended on January 31, 2014.

- Tidewater Review – 12/25/13 and 1/1/14
- Sussex-Surry Dispatch – 12/23/13 and 12/30/13
- Progress Index – 12/26/13 and 1/2/14
- Herald Progress – 12/26/13 and 1/2/14
- Goochland Gazette – 12/26/13 and 1/2/14

Approximately 450 letters were sent to adjoining property owners advising them of the draft permit and the opportunity for them to submit comments. A copy of the draft permit notice was included with each letter. Additionally, letters were sent to the Board of Supervisors chairs, county administrators, VDH health district directors, and planning district commission directors that serve each of the affected localities.

The concerns identified in the comments received were largely related to odor, the impacts of land application on ground and surface waters, and public health. A number of the comments seem to reflect the citizens' experience with biosolids, and a number of comments specifically referenced biosolids. One commenter (who did not request a hearing) questioned the effect that land application on adjoining property would have on the value of their property. A total of 72 written comments requesting a public hearing were received. 16 of these requests did not contain all required criteria. There were also number of calls and emails from citizens who were unclear as to why they had received a letter. 41 of the comments received were in the style of a form letter.

Based on the comments received, the Director authorized public hearings, to be held in King William Courthouse on April 9, 2014 and in Goochland Courthouse on April 10, 2014. The second comment period, associated with the hearings, closed on April 25, 2014.

Including the applicant (at the King William hearing), 26 individuals provided verbal comments at the public hearings. DEQ received comments from a total of 115 persons during the two comment periods, including the verbal comments. A total of 78 comments received during the two comment periods were in the style of a form letter.

In reviewing the comments on the draft permit, staff combined some of them where it was possible to do so without losing specifics. A detailed summary of the comments received with staff responses follows.

It should be noted that many of the comments expressed in opposition to this proposed permit action were premised on an objection to characteristics (odor, contaminants etc.) of biosolids. Because the industrial residuals included in the subject permit proposal are not biosolids, and significantly different from biosolids with respect to origin, content, and odor, many of the comments were not relevant to the proposal. In this document, staff generally did not point out each instance in which this occurred, but attempted a response in the spirit in which the objection was raised.

1. *Health concern (Lee Rosson, William Andrews, Julia Gary, Elizabeth Donoghue, Diana Parker, Lee Westerman, Don Wagner, Linda Hosey). Several commenters expressed concern that people with compromised immune systems would be at particular risk from the proposed activity. Requests were made for more extensive testing of biosolids and soils, imposing time restrictions on applications, and imposing increased buffers along the James River. One commenter expressed concern for biosolids constituents entering the food chain. One commenter attributed her mother's death to a nearby biosolids application. One commenter stated that three citizens on the TAC resigned due to their concerns that health issues were not being adequately addressed by the TAC; another commenter read the resignation letter. On the other hand, two commenters stated that they live in proximity to application sites and have not observed any ill health effects.*

Staff Response: DEQ consulted with the Virginia Department of Health (VDH) to develop the current VPA regulations, and appropriate medical considerations were not diminished during regulatory development. DEQ continues to coordinate with epidemiologists and physicians at VDH to ensure that permits are protective of human health and the environment. DEQ has also developed a standard procedure for working with VDH physicians to consider extended setbacks for citizens with specific health conditions. Where citizens attest that setbacks from homes and property lines should be extended based on medical reasons, DEQ will double the setback distance upon request from the citizen's physician. If further extensions are requested, the request is reviewed by VDH and DEQ establishes a permit requirement based on the resulting VDH recommendation.

While the subject permit proposal addresses industrial residuals that are expected to contain fewer human pathogens due to the origin and composition of the materials, Part I.A.C of the draft permit requires that any industrial residuals produced at a facility where domestic sewage is comingled with the industrial wastewater in the industrial wastewater treatment facility or where meat or any other raw animal based product is processed meet the same pathogen reduction standard as is required by **9VAC25-32-560** for the land application of biosolids.

2. *Objections due to odor (Francis Gwathmey, Julia Gary, Ann Todd, Kelly Place, Ron Edwards, Bonnie Hite, Carla Sturtz) or the drift of airborne contaminants (Ken Davidson, Don Wagner). Commenters generally disapproved of odors associated with biosolids land application, with some concerns raised about the drift of materials from the application sites onto organic farmland or other property.*

Staff Response

Staff experience with the three proposed source materials indicates that impact to adjacent properties from odor will be minimal, and the respective odors are characteristically different from biosolids. The composition of the material makes it unlikely that dusts or aerosols will be emitted from the application process. The setback distances, from property lines and adjacent occupied dwellings that are contained in the draft permit are based on those required for by **9VAC25-32-560** for the land application of biosolids. To address any potential odor issues, the draft permit requires the permittee to submit to the department, within 90 days of permit issuance, an "Odor Control Plan". This plan will outline the steps the permittee will take to abate malodors at a site when detected. This plan will become an enforceable part of the permit. Part I.A.D of the draft permit requires that any industrial residuals produced at a facility where domestic sewage is comingled with the industrial wastewater in the industrial wastewater treatment facility, or where meat or any other raw animal based product is processed, meet the same vector attraction reduction standard as is required by **9VAC25-32-560** for the land application of biosolids.

3. *Objections due to Synagro compliance history and/or DEQ's record of inspections/enforcement (Julia Gary, Kelly Place, Bonnie Hite, John Davenport, Leslie Fellows, Carla Sturtz, Elizabeth Donoghue, Bill Ticharek, James Folk, Helen Eggleston, William and Emilie Townsend, Don Wagner). Commenters generally disapproved of Synagro's compliance history (several noted compliance issues in other states, and several referred to a controversial biosolids application on a tract in King William County in 2013). Other commenters asked whether inspection reports were available to the public, suggested that Synagro hire a third party contract inspector, questioned whether (and how) Synagro would indemnify anyone harmed by the proposed activity and requested that violations be assessed the "maximum penalty".*

Staff Response

Pursuant to Va. Code § 62.1-44.20, DEQ may, at reasonable times and under reasonable circumstances, enter any establishment or upon any property, public or private, for the purpose of obtaining information or conducting surveys or investigations necessary in the enforcement of the provisions of the State Water Control Law. If the permit is approved by the Board, DEQ will perform inspections to ensure compliance and will initiate enforcement action if applicable. The reports generated from these inspections are public information and will be made available on request in a manner consistent with the Virginia Freedom of Information Act.

Any injunctive relief and civil charges sought in an enforcement proceeding will be consistent with applicable law as well as DEQ enforcement guidelines and appropriate for the severity of the violation.

The proposed permit allows Synagro to land apply industrial residuals in a manner that will be protective of human health and the environment. Pursuant to Va. Code § 62.1-44.22, the fact that any owner holds or has held a permit issued by the Board shall not constitute a defense in any civil action involving private rights of adjacent or nearby property owners. In addition and upon information and belief, Synagro maintains an environmental liability policy applicable to all their land application activity in Virginia, pursuant to Va. Code § 62.1-44.16:3(H) to pay claims for cleanup costs, personal injury, and property damage resulting from the transportation, storage, or land application of sewage sludge.

Regarding the track-out and odor issues at the Rose tract in late 2013, DEQ staff inspected the site regularly and did not find evidence that either the rate of application or the proximity to buffers and setbacks contravened permit requirements. Water quality samples taken in early 2014, while DEQ was still receiving complaints about odor from the site, showed no impact to state waters that could be attributed to the application activity. Synagro's alleged performance in other states is not a statutory or regulatory basis for issuance or denial of a VPA permit.

4. *Objections due to runoff/contamination of surface waters (Bonnie Hite, Ann Todd, Ron Edwards, Alice Wellford, Patricia VonOhlen, Garrie Rouse, Kathy Crockett, Leslie Fellows, Carla Sturtz, Michael Hild, Kelly Place, L.E. Culbreth, Kendyl Crawford, Inez Fridley, Eileen Edmonds, Dotty Rilee, Ginette Bellefeuille, John Moncrief, Glen Besa, Willard Waples, Karen Tootelian, Colleen Williams, Lee Riggins Rich, Randie Trestrail, Mary Crutchfield, Rodney Tatum, James Taylor, Corey Lipscomb, William Todd, James Sears, Fred Denn, Steven Heinitz, Diedre Foerster, Erik March, Emelia March, Hayes Gouger, Ann McRee, Janet Davidson, Meredith Davis, Bob Reardon, Margaret Bridgfork, Mark Whitehead, John Coombs, Tamara Smith, Harry Dell, Natalie Leighty, Jinggie Zhang, Roger Pittard, Mary Mitchum, Barbara Jordan, James McPhereson, Rachel Brown, Robin Scheu, Judy Wyatt, Karena Crutchfield, J. Alan Schintzius, Brie Hayden, Corrina Beall, Cynthia Tanner, David Crighton, Charles Lippy, Ron Skinner, Laura Graham, Jonathan Howard, Elizabeth Greenberg, Sarah Kindig, Nick Kindig, Sandra Darnes, Page Mizell, Jimmy Cheverious, Sandy Cheverious, Robert Mefford, Dennis Bussey, Tammy Chamberlain, Linnea McCarty, Sara Hart, Alyssa Freeman, Chris Banks, Andrea Burks, Dennis Cary, Sunhwa Yoon, Emma Barnes, Sharon Klein, Steven Galvis, Gill Sigmon, Thomas Frances, Caryl Quinn, Abbi Easter, Candace Graham, Helen Eggleston, Tyla Matteson).* Commenters generally expressed concern about contamination of surface waters caused by runoff from the application fields. Specific comments included concern about application on areas with steep slopes or application in wetlands; comments also addressed impacts to specific water bodies (Mattaponi), nutrient enrichment of the Chesapeake Bay or potential impacts to shellfish beds from materials in the residuals.

Staff Response

With respect to pollution of surface waters, VPA land application permits prohibit point source discharges of pollutants to surface waters including wetlands except in the case of a storm event greater than the 25-year, 24-hour storm. This is achieved through the implementation of best management practices (BMPs) such as restrictions on application timing, rate, and setbacks from sensitive environmental features, among others. For any agricultural system to function properly, the hydrologic cycle necessarily includes rainfall, infiltration, runoff, evaporation and transpiration. Where stormwater runoff occurs in an agricultural system, the BMPs required by the VPA permit work in concert to ensure that surface waters are not negatively affected. Setbacks from surface waters in the draft permit are consistent with the requirements of **9VAC25-32-560**, **9VAC25-630-50**, and **9VAC25-192-70** which regulate the land application of biosolids, poultry litter, and animal manures respectively. The draft permit requires that a Nutrient Management Plan (NMP) be written by a DCR certified NMP writer and that land application be conducted in accordance with the NMP. The NMP will dictate rate and timing of application. The draft permit places limitations on land application to sites with >15% slope and sites characterized by the USDA Soil Survey as "Frequently Flooded". Studies and data reviews performed by DEQ staff have shown no correlation between land application activities that are performed in accordance with applicable regulations and permits and water quality impairments in the surface waters to which these lands drain. Further, some of the same processes that can cause agricultural pollution of surface waters can occur from commercially prepared fertilizers as well, and the use of a fertilizer product that requires a VPA permit provides additional assurance that the necessary BMPs are employed.

5. *Objections due to contamination of groundwater (Bonnie Hite, Ann Todd, Ron Edwards, Patricia VonOhlen, Thomas Rubino, Frances Gwathmey, Laurie Hite, L.E. Culbreth, Kendyl Crawford, Inez Fridley, Eileen Edmonds, Dotty Rilee, Ginette Bellefeuille, John Moncrief, Glen Besa, Willard Waples, Karen Tootelian, Colleen Williams, Lee Riggins Rich, Randie Trestrail, Mary Crutchfield, Rodney Tatum, James Taylor, Corey Lipscomb, William Todd, James Sears, Fred Denn, Steven Heinitz, Diedre Foerster, Erik March, Emelia March, Hayes Gouger, Ann McRee, Janet Davidson, Meredith Davis, Bob Reardon, Margaret Bridgfork, Mark Whitehead, John Coombs, Tamara Smith, Harry Dell, Natalie Leighty, Jinggjie Zhang, Roger Pittard, Mary Mitchum, Barbara Jordan, James McPhereson, Rachel Brown, Robin Scheu, Judy Wyatt, Karena Crutchfield, J. Alan Schintzius, Brie Hayden, Corrina Beall, Cynthia Tanner, David Crighton, Charles Lippy, Ron Skinner, Laura Graham, Jonathan Howard, Elizabeth Greenberg, Sarah Kindig, Nick Kindig, Sandra Darnes, Page Mizell, Jimmy Cheverious, Sandy Cheverious, Robert Mefford, Dennis Bussey, Tammy Chamberlain, Linnea McCarty, Sara Hart, Alyssa Freeman, Chris Banks, Andrea Burks, Dennis Cary, Sunhwa Yoon, Emma Barnes, Sharon Klein, Steven Galvis, Gill Sigmon, Thomas Frances, Caryl Quinn, Abbi Easter, Candace Graham, Helen Eggleston, Tyla Matteson).* Commenters generally expressed concern about contamination of groundwater resulting from the proposed activity. Specific comments included concern about application on areas in proximity to shallow or bored wells, as well as how new landowners would be made aware that their new well is being developed near a previously approved land application site.

Staff Response

The land application requirements in VPA permits are designed to ensure that neither infiltration nor runoff will have a detrimental effect on aquifers that supply drinking water. Regarding infiltration, the draft permit requires that groundwater be greater than 18” from the surface when land application takes place, and that timing of land application occurs such that crop rooting systems impede the downward movement of pollutants to groundwater. Regarding runoff that could impact wells, the draft permit addresses field conditions (crop conditions, soil type, topography, etc.) that would affect runoff potential, and requires a 100’ setback distance from all wells located near land application sites. This setback distance is consistent with the requirements of **9VAC25-32-560**, **9VAC25-630-50**, and **9VAC25-192-70** which regulate the land application of biosolids, poultry litter, and animal manures respectively. DEQ does have the authority to require increased setbacks from wells on a site specific basis where greater setback distances are deemed necessary. Where new wells are constructed after a land application site is approved, the permit holder would be required to implement the minimum 100’ setback, even though the original site map did not include the well. Land application area and total application rates for the field would necessarily be reduced based on the proximity of the new well to the land application field.

Additionally, Virginia Department of Health regulations, **12 VAC 5-630-380**, require a minimum 100’ distance between new well construction and a “Sewage Disposal System or other contaminant source” including drainfields, underground storage tanks, barnyards and hog lots. The VPA permit requirement for a 100’ setback from industrial residuals land application is a conservative application of this established standard, as agricultural fertilization of crops at controlled rates and timing is not included in the VDH regulations as a contaminant source in this context and is not an activity that would require a mandatory setback for a newly constructed well. For wells that do not meet the VDH safe construction standards, the risk to a well owner is greater from more frequent and common activities surrounding the well other than industrial residual land application. Assistance for well owners is available from the Virginia Household Water Quality Program administered by Virginia Cooperative Extension (<http://www.wellwater.bse.vt.edu/vahwqp.php>).

6. *Hazardous materials in sludges (William Andrews, Ann Todd, Julia Gary, Kelly Place, Linda Hosey, Don Wagner, Quinn Connally, Diana Parker, L.E. Culbreth, Kendyl Crawford, Inez Fridley, Eileen Edmonds, Dotty Rilee, Ginette Bellefeuille, John Moncrief, Glen Besa, Willard Waples, Karen Tootelian, Colleen Williams, Lee Riggins Rich, Randie Trestrail, Mary Crutchfield, Rodney Tatum, James Taylor, Corey Lipscomb, William Todd, James Sears, Fred Denn, Steven Heinitz, Diedre Foerster, Erik March, Emelia March, Hayes Gouger, Ann McRee, Janet Davidson, Meredith Davis, Bob Reardon, Margaret Bridgfork, Mark Whitehead, John Coombs, Tamara Smith, Harry Dell, Natalie Leighty, Jinggjie Zhang, Roger Pittard, Mary Mitchum, Barbara Jordan, James McPhereson, Rachel Brown, Robin Scheu, Judy Wyatt, Karena Crutchfield, J. Alan Schintzius, Brie Hayden, Corrina Beall, Cynthia Tanner, David Crighton, Charles Lippy, Ron Skinner, Laura Graham, Jonathan Howard, Elizabeth Greenberg, Sarah Kindig, Nick Kindig, Sandra*

Darnes, Page Mizell, Jimmy Cheverious, Sandy Cheverious, Robert Mefford, Dennis Bussey, Tammy Chamberlain, Linnea McCarty, Sara Hart, Alyssa Freeman, Chris Banks, Andrea Burks, Dennis Cary, Sunhwa Yoon, Emma Barnes, Sharon Klein, Steven Galvis, Gill Sigmon, Thomas Frances, Caryl Quinn, Abbi Easter, Candace Graham, Helen Eggleston, Tyla Matteson) Most of the commenters expressed a general concern about “hazardous materials in sludges.” One commenter expressed concern about the effects that such contamination would have on the value of adjoining properties.

Staff Response

The VPA permit application requires screening for contaminants reasonably expected to be present based on the nature of the industrial process. Of the three sources of residuals proposed for land application under this permit, two (Smithfield and Tyson) are derived from the treatment of wastewater associated with livestock slaughtering and processing operations. The nature of pork and poultry processing and associated washdown operations do not introduce hazardous materials into the waste stream that would transfer to the residuals. The third source of residuals (Rock Tenn) is a pulping operation and would be presumed to not pose risks associated with hormones, antibiotics, or pathogens.

For all three of these residuals, the alternative source of disposal is via a sanitary waste landfill. All three of these generators have made “non-hazardous” declarations to the landfills receiving the residuals and have performed the laboratory analysis to support that declaration.

In addition to providing general comments about “hazardous materials”, several commenters expressed specific concern about the following substances, addressed thus:

Dioxin in RockTenn Residuals

Staff Response:

RockTenn uses Chlorine Dioxide in its bleaching process which does not result in dioxin formation. This has become a common practice in the pulp industry.

Pesticides, PCBs

Staff response:

Where analyzed, none of the contaminants of concern were present in the residuals in amounts constituting a hazard to the public or the environment. The certificates of analysis for the respective parameters are available for public inspection.

Emerging Contaminants (antibiotics, growth hormones), viruses and prions

Staff response:

Given that most of the material in question from the animal slaughter is blood, and given that the wastewater undergoes anaerobic digestion resulting in pathogen reduction prior to the generation of residuals, there should not be emerging contaminants in the residuals in quantities that would pose a hazard to human health or the environment. A literature search by staff showed no cases in which hogs had contracted any prion-based diseases, except by direct injection during laboratory experiments. Based on the life cycle of the chicken raised for human consumption, it is reasonable to conclude that prions are not present in the wastewater from which the residuals are derived. Prions also tend to adhere to soils; where this residual is used to support crops, there is a limited exposure route for humans or livestock.

Heavy Metals, including Arsenic (used in poultry growing)

Staff Response:

Heavy metals in land applied residuals have been the subject of thorough study by the United States Environmental Protection Agency. The application limits for heavy metals is grounded in an extensive research history of the potential effects of the subject metals and the concentration limits that provide for land application that neither impedes growth of current agricultural crops nor poses risk of accumulation over time. In many cases, the concentration of metals in land applied residuals is low enough that the material acts as a sink for metals already present in the soil. The draft permit requires analysis for 9 metals. These are Arsenic, Lead, Copper, Cadmium, Mercury, Molybdenum, Nickel, Selenium, and Zinc. The Form C (source information) for the three proposed residuals all show analysis results for all metals below the Pollutant

Concentration/Cumulative Pollutant Loading Rate limits and well below the ceiling limits required by the draft permit. One commenter noted that biosolids contained heavy metals in lower concentrations than did commercial fertilizers.

7. *Enjoyment of natural areas (L.E. Culbreth, Kendyl Crawford, Inez Fridley, Eileen Edmonds, Dotty Rilee, Ginette Bellefeuille, John Moncrief, Glen Besa, Willard Waples, Karen Tootelian, Colleen Williams, Lee Riggins Rich, Randie Trestrail, Mary Crutchfield, Rodney Tatum, James Taylor, Corey Lipscomb, William Todd, James Sears, Fred Denn, Steven Heinitz, Diedre Foerster, Erik March, Emelia March, Hayes Gouger, Ann McRee, Janet Davidson, Meredith Davis, Bob Reardon, Margaret Bridgfork, Mark Whitehead, John Coombs, Tamara Smith, Harry Dell, Natalie Leighty, Jinggjie Zhang, Roger Pittard, Mary Mitchum, Barbara Jordan, James McPhereson, Rachel Brown, Robin Scheu, Judy Wyatt, Karena Crutchfield, J. Alan Schintzius, Brie Hayden, Corrina Beall, Cynthia Tanner, David Crighton, Charles Lippy, Ron Skinner, Laura Graham, Jonathan Howard, Elizabeth Greenberg, Sarah Kindig, Nick Kindig, Sandra Darnes, Page Mizell, Jimmy Cheverious, Sandy Cheverious, Robert Mefford, Dennis Bussey, Tammy Chamberlain, Linnea McCarty, Sara Hart, Alyssa Freeman, Chris Banks, Andrea Burks, Dennis Cary, Sunhwa Yoon, Emma Barnes, Sharon Klein, Steven Galvis, Gill Sigmon, Thomas Frances, Caryl Quinn, Abbi Easter, Candace Graham, Helen Eggleston, Tyla Matteson)* (This comment was provided by the above individuals via a form letter, with little additional specific information)

Staff Response:

The proposed activity is slated to take place in areas that have been historically used for agricultural or silvicultural purposes; no activity authorized under the draft permit should detract from the aesthetics of the areas in which the application will take place.

8. *Exposure to wildlife (Pete Henderson, Don Wagner, Ann Todd, Kathy Crockett, Jeanette Wagner)*

Staff Response:

The USFWS, VADGIF, and DCR Natural Heritage were all included in discussion of the proposed sites. USFWS commented that with permit compliance the species of most concern would not be adversely impacted by land application of the proposed materials. One commenter mentioned that his veterinarian was “comfortable” with the level of exposure to his cattle from substances in the proposed materials.

9. *Truck Traffic (Laurie Hite) – commenter expressed concern about increased truck traffic.*

Staff Response:

The VPA permit does not regulate truck traffic, but it is expected that traffic from the proposed activity would be infrequent.

10. *Permit Term (Laurie Hite, Lee Westerman) – commenters expressed concern that 10 years was too long a term; one commenter expressed interest in one-year permit term.*

Staff Response:

The VPA regulation allows for a permit term of up to ten years. In addition to providing opportunity for public involvement, fixed permit terms are established in order to provide for reasonable operational predictability and an administrative burden on the permitting agency that is reflective of the nature of the permitted activity. Permits will have shorter terms when the permit requirements must change more frequently to determine adequate protection of water quality. For example, permits that allow point source discharges to surface waters are issued with five year terms in order to reevaluate the allowable discharge limits based on new or amended water quality standards. In contrast, the permit conditions required to completely avoid point-source discharges (as required with this proposed land application permit) are not expected to change in a ten year period. While crops or application rates may vary, the underlying mechanism used to manage the pollutant, the DCR nutrient management criteria which plans must follow, does not change. Please note that the sites are required to be covered under a Nutrient Management Plan, which is revised every three years and is incorporated into the permit by reference.

Also note that public involvement is still required where significant changes in the nature of the permitted activity (e.g. addition of land application sites) occur during the term of the permit. Public notice and opportunities for comment are provided during such modifications of the permit.

11. *Environmental Impact Assessment (Jeanette Wagner); commenter wondered whether one should be required.*

Staff Response:

The proposed permit was developed in accordance with the requirements of the Virginia Pollution Abatement (VPA) regulation, which itself was developed according to the public notification requirements of the Administrative Process Act. The permit has been subject to public comment. Given the scope of the proposed activity, and given the scrutiny to which such activities have already been subjected, it is unlikely that an EIA would provide any information that would materially change the nature of the permit.

12. *Insufficient notice provided to Indian tribes (e.g., Mattaponi) (Karen Westermann)*

Staff Response:

Public notice of this proposed permit was provided in newspapers of general circulation in each of the localities in which this activity was proposed to take place.

13. *The different residuals should be permitted separately due to their differences (Linda Hosey)*

Staff Response:

While the original source materials from the respective facilities differ (chicken and hog processing and pulp manufacturing), the wastewater from the respective activities undergoes very similar processing and the residuals have similar physical and chemical characteristics. Permitting these sources under a single permit does not change the rates at which nutrients are applied to the soil, nor does it affect the distance of setbacks and buffers or other conditions under which the residuals may be applied.

14. *Support permit issuance (Ralph Sutton, William Andrews, Phil Minor, Bill Latane, Lee Rosson, Pete Henderson). Commenters generally approved of DEQ enforcement of permit and noted agricultural benefits of biosolids application.*

Staff Response

None required.

Regulation for Dispute Resolution, 9VAC25-15 - Amendment 1 – Fast Track Action: Amendment 1 to 9VAC25-15 is presented to the Board for your consideration under the fast track regulatory process. The *Regulation for Dispute Resolution*, 9VAC25-15, was adopted by the Board and became effective on July 1, 2001; however, the authorizing provisions under §10.1-1186.3 of the Code of Virginia make reference to statutory requirements for dispute resolution and mediation under Chapter 20.2 and Chapter 21.2 of Title 8.01 of the Code of Virginia. These chapters have been revised since 9VAC25-15 became effective. Therefore, a regulatory action to amend 9VAC25-15 is necessary to comport to the changes made to the statutory requirements for dispute resolution and mediation in Title 8.01 of the Code of Virginia.

In addition, a periodic review was conducted prior to this regulatory action. No comments were received; however, the agency is undertaking this regulatory action due to the changes made to the statutory requirements for dispute resolution and mediation in Title 8.01 of the Code of Virginia.

Section 2.2-4012.1 of the Code of Virginia provides the Board's authority for the use of the fast-track process. The fast-track process is for regulations that are expected to be noncontroversial. After review by the Governor, a notice of a proposed fast-track regulation will be published in the *Virginia Register* and there will be at least a 30 day comment period. The regulation will become effective 15 days after the close of the comment period provided that (i) no objection to use of the fast-track process is received from 10 or more members of the public, or any member of the applicable standing committee of either house of the General Assembly or the Joint Commission on Administrative

Rules, and (ii) the Department does not find it necessary, based on public comments or for any other reason, to make any changes to the proposal.

At your meeting on June 26, 2014, the Department will request that:

- The Board authorize the Department to promulgate the proposed amendment to 9VAC25-15 for public comment using the fast-track process established in §2.2-4012.1 of the Administrative Process Act for regulations expected to be non-controversial.
- The Board's authorization also constitute its adoption of the regulation at the end of the public comment period provided that (i) no objection to use of the fast-track process is received from 10 or more members of the public, or any member of the applicable standing committee of either house of the General Assembly or the Joint Commission on Administrative Rules, and (ii) the Department does not find it necessary, based on public comments or for any other reason, to make any changes to the proposal.
- The Board authorize the Department to set an effective date 15 days after close of the public comment period provided (i) the proposal completes the fast-track rulemaking process as provided in § 2.2-4012.1 of the Administrative Process Act and (ii) the Department does not find it necessary to make any changes to the proposal.

Stormwater Management Regulations, Erosion and Sediment Control Regulations and the Chesapeake Bay Preservation Area Designation and Management Regulations: At this meeting, staff is presenting for the Board's consideration amendments to 9VAC25-830, 9VAC25-840, 9VAC25-870 and 9VAC25-880 to implement all the provisions of HB 1173; SB 423 and HB 1217.

The State Water Control Board (Board) adopted the Stormwater Management Regulations and the Chesapeake Bay Preservation Area Designation and Management Regulations at its meeting held on August 26, 2013. During the 2014 General Assembly Session, the legislature took actions through HB 1173 and SB 423 to make changes to the Virginia Stormwater Management Program (VSMP) Regulations. The General Assembly also changed the Chesapeake Bay Preservation Act by passing HB 1217.

HB 1173 and SB 423 are identical pieces of legislation that contain language which allows any locality that does not operate a regulated municipal separate storm sewer system (MS4) to have the choice of establishing a Virginia Stormwater Management Program (VSMP) by July 1, 2014 or having its stormwater program administered by DEQ. Localities operating regulated MS4s must adopt a VSMP by July 1, 2014, but counties that are newly-designated by the most recent census as operators of MS4s may elect to have a six month delay (until January 1, 2015) to administer a VSMP program. DEQ will administer it for them in the meantime, if they opt for the delay. A town located within one of the MS4 counties may opt to fall within the county's program, even if the town operates a regulated MS4.

The legislation also authorizes the State Water Control Board to adopt stormwater management regulations that create a procedure for approving permits for individual parcels in a common plan of development; create a procedure whereby neither a registration statement nor payment of the state permit fee is required to obtain coverage under the General Permit for Discharges of Stormwater from Construction Activities for construction of single family detached residential structures; establish a permit fee schedule that ensures that the VSMP Authority portion of the permit fee for coverage under the Construction General Permit for small construction activity involving a single family detached residential structure with one to less than five acres of land disturbance is no greater than the VSMP Authority portion of the fee for coverage of sites with land disturbance of less than one acre within a common plan of development or sale; and provide reciprocity with other states regarding certification of best management practices. The legislation also allows the submission of an agreement in lieu of a stormwater management plan where land-disturbing activity results from the construction of a single-family residence, which is intended to save a homeowner the cost of having to hire an engineer when building only one house. The legislation amends provisions of the Stormwater Management Act concerning hearings held by localities, and requires localities that are not VSMP authorities to report their land disturbing activities to DEQ monthly in order to inform the state quickly regarding commencement of projects that require state Construction General Permit coverage.

The legislation includes enactment clauses that 1) enable the State Water Control Board to adopt regulations necessary to implement the legislation through an expedited process and 2) state that inclusion of post-construction standards in the General Permit for Discharges of Stormwater from Construction Activities shall not be construed to modify the

scope of federal agency or citizen suit enforcement pursuant to the Clean Water Act. The legislation also contains an emergency enactment clause so it took effect upon the Governor's signature.

Specific statutory changes contained in the legislation with proposed regulatory revisions to address them are presented below:

CODE SECTION	STATUTORY CHANGE	REGULATORY REVISION
62.1-44.15:24	Added definition of "Agreement in lieu of a stormwater management plan"	<p>9VAC25-870-10. Definitions.</p> <p><u>"Agreement in lieu of a stormwater management plan" means a contract between the VSMP authority and the owner or permittee that specifies methods that shall be implemented to comply with the requirements of a VSMP for the construction of a single-family residence; such contract may be executed by the VSMP authority in lieu of a stormwater management plan.</u></p> <p>"Stormwater management plan" means a document(s) containing material for describing methods for complying with the requirements of the VSMP or this chapter. <u>An agreement in lieu of a stormwater management plan as defined in these regulations shall be considered to meet the requirements of a stormwater management plan.</u></p>
62.1-44.15:24	Revised definition of "Virginia Stormwater Management Program authority": or "VSMP authority"	<p>9VAC25-870-10. Definitions.</p> <p>"VSMP authority" means an authority approved by the Board after September 13, 2011, to operate a Virginia Stormwater Management Program or, until such approval is given, the department. An authority may include a locality as set forth in § 62.1-44.15:27 of the Code of Virginia; state entity...</p>
62.1-44.15:27 A	Revised language related to "Establishment of Virginia Stormwater Management Programs" regarding localities; MS4s; the operation and establishment of a VSMP; and the localities' and DEQ's responsibilities.	<p>9VAC25-870-150. Authorization procedures for Virginia stormwater management programs.</p> <p>A. A locality required to adopt <u>adopting</u> a VSMP in accordance with § 62.1-44.15:27 A of the Code of Virginia or a town electing to adopt its own VSMP in accordance with § 62.1-44.15:27 B of the Code of Virginia, must submit to the board an application package...</p> <p>9VAC25-880-40. Delegation of authorities to state and local programs.</p> <p>A board-approved VSMP authority is authorized to administer requirements of this general permit, including but not limited to: (i) registration statement acceptance; (ii) fee collection; <u>and</u> (iii) stormwater management plan review and approval; and (iv) permit compliance and enforcement dependent upon conditions established as part of the board approval.</p>

62.1-44.15:27 A	Revised language related to establishment of Virginia Stormwater Management Programs and localities "subject to the provisions of the Chesapeake Bay Preservation Act".	<p>9VAC25-830-130. General performance criteria.</p> <p>Add new #6:</p> <p><u>6. Any Chesapeake Bay Preservation Act land-disturbing activity as defined in § 62.1-44.15:24 of the Code of Virginia shall comply with the requirements of 9VAC25-870-51 and 9VAC25-870-103.</u></p> <p>9VAC25-870-51. Chesapeake Bay Preservation Act land-disturbing activity.</p> <p>Insert new subsection numbering and revised text:</p> <p><u>A. In order to protect the quality of state waters and to control the discharge of stormwater pollutants from land-disturbing activities, runoff associated with Chesapeake Bay Preservation Act land-disturbing activities shall be controlled regulated by localities subject to the Chesapeake Bay Preservation Act or, in the case of state and federal agency projects, the department. In regulating such land-disturbing activities in accordance with subsection B, localities shall have the same authority and responsibilities as set forth in these regulations for VSMP authorities.</u></p> <p><u>B. After June 30, 2014, such land-disturbing activities...</u></p>
62.1-44.15:27 B	Revised language related to a "town"; its relationship to a county's VSMP and DEQ's VSMP responsibilities.	<p>9VAC25-870-150. Authorization procedures for Virginia stormwater management programs.</p> <p>E. A town <u>locality</u> or other authorized entity not required to adopt a VSMP in accordance with § 62.1-44.15:27 A of the Code of Virginia but electing to adopt a VSMP may <u>shall</u> notify the board <u>department</u>. Such notification shall include a proposed schedule for adoption of a local stormwater management program on or after July 1, 2014, and within a timeframe agreed upon by the board <u>in accordance with a schedule developed by the department.</u></p>
62.1-44.15:55 A	Revised for consistency with " <i>the Erosion and Sediment Control Law</i> ".	<p>9VAC25-880-30. Authorization to discharge.</p> <p>A 4 a. An erosion and sediment control plan from the appropriate VESCP authority as authorized under the Erosion and Sediment Control Regulations (9VAC25-840), unless the operator receives from the VESCP <u>authority an "agreement in lieu of a plan" as defined in 9VAC25-840-10...</u></p>
62.1-44.15:28	Clarification of the statutory citation related to the "development of regulations".	<p>9VAC25-870-66. Water quantity.</p> <p>A. Channel protection and flood protection shall be addressed in accordance with the minimum standards set out in this section, which are pursuant to the</p>

		requirements of subdivision 7 of § 4 62.1-44.15:28 of the Code of Virginia...
62.1-44.15:28 A 5 e	Added language regarding “establishing a fee schedule”; “the amount of the VSMP authority portion of the statewide permit fee for coverage” and "general permit requirements for "a single family detached residential structure".	<p>9VAC25-870-820. Fees for an individual permit or coverage under the General Permit for Discharges of Stormwater from Construction Activities.</p> <p>Table – Fee Type:</p> <p>Chesapeake Bay Preservation Act Land-Disturbing Activity (not subject to General Permit coverage; sites within designated areas of Chesapeake Bay Act localities with land-disturbance acreage equal to or greater than 2,500 square feet and less than one acre)</p> <p><u>General / Stormwater Management – Small Construction Activity/Chesapeake Bay Preservation Act Land-Disturbing Activity (not subject to General Permit coverage)/Land Clearing (Single-family detached residential structures within or outside a common plan of development or sale with land-disturbance acreage less than 5 acres)</u></p> <p>Total Fee to be paid by applicant (includes both VSMP authority and department portions where applicable) <u>\$209</u></p> <p>Department portion of "total fee to be paid by applicant" (based on 28% of total fee paid*) <u>\$0</u></p> <p>General / Stormwater Management – Small Construction Activity/Land Clearing (Areas within common plans of development or sale with land-disturbance acreage less than one acre) (<u>Areas within common plans of development or sale with land-disturbance acreage less than one acre, except for single-family detached residential structures</u>)</p> <p>9VAC25-870-825. Fees for the modification or transfer of individual permits or of registration statements for the General Permit for Discharges of Stormwater from Construction Activities.</p> <p>Table:</p> <p>General/Stormwater Management – Small Construction Activity/Land Clearing (Areas within common plans of development or sale with land disturbance acreage of less than one acre) (<u>Areas within common plans of development or sale with land-disturbance acreage less than one acre, except for single-family detached residential structures</u>)</p> <p><u>General / Stormwater Management – Small Construction Activity/Land Clearing (Single-family detached</u></p>

		<p><u>residential structures within or outside a common plan of development or sale with land-disturbance acreage less than 5 acres where the locality is the VSMP authority)</u> \$20</p> <p><u>General / Stormwater Management – Small Construction Activity/Land Clearing (Single-family detached residential structures within or outside a common plan of development or sale with land-disturbance acreage less than 5 acres where the department is the VSMP authority) \$0</u></p> <p>9VAC25-870-830. State permit maintenance fees.</p> <p>Table:</p> <p><u>General / Stormwater Management – Small Construction Activity/Land Clearing (Areas with common plans of development or sale with land disturbance acreage of less than one acre) (Areas within common plans of development or sale with land-disturbance acreage less than one acre, except for single-family detached residential structures)</u></p> <p><u>General / Stormwater Management – Small Construction Activity/Land Clearing (Single-family detached residential structures within or outside a common plan of development or sale with land-disturbance acreage less than 5 acres where the locality is the VSMP authority) \$50</u></p> <p><u>General / Stormwater Management – Small Construction Activity/Land Clearing (Single-family detached residential structures within or outside a common plan of development or sale with land-disturbance acreage less than 5 acres where the department is the VSMP authority) \$0</u></p> <p>9VAC25-880-50. General permit application (registration statement)</p> <p>A 1 c. Any operator proposing a new stormwater discharge associated with the construction of a single family residence separately built, disturbing less than one acre and part of a larger <u>single-family detached residential structure, within or outside a common plan of development or sale</u>, is authorized to discharge under this general permit and is not required to submit a registration statement or the department portion of the permit fee, provided that the stormwater management plan for the large common plan of development or sale provides permanent control measures (i.e., stormwater management facilities) encompassing the single family residence.</p>
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		<p>A 2 b. Any operator with an existing stormwater discharge associated with the construction of a single-family residence separately built, disturbing less than one acre and part of a larger <u>single-family detached residential structure, within or outside a common plan of development or sale</u>, and that intends to continue coverage under this general permit, is authorized to discharge under this general permit and is not required to submit a registration statement or the department portion of the permit fee, provided that: (1) The stormwater management plan for the larger common plan of development or sale provides permanent control measures (i.e., stormwater management facilities) encompassing the single-family residence; and (2) <u>the operator updates its stormwater pollution prevention plan to comply with the requirements of this general permit...</u></p>
62.1-44.15:28 A 7	<p>Added language to “establish a procedure for stormwater management plans to govern the development of individual parcels, including those parcels developed by subsequent owners”.</p>	<p>9VAC25-870-55. Stormwater management plans.</p> <p>A 1: A stormwater management plan for a land-disturbing activity shall apply the stormwater management technical criteria set forth in this part to the entire land-disturbing activity. Individual lots in new residential, commercial, or industrial developments, <u>including those parcels developed under subsequent owners</u>, shall not be considered separate land-disturbing activities.</p>
62.1-44.15:28 A 8	<p>Added language to “establish a procedure by which neither a registration statement nor payment of the Department’s portion of the statewide permit fee shall be required for coverage under the General Permit for Discharges of Stormwater from Construction Activities for single-family detached residential structures”.</p>	<p>9VAC25-880-50. General permit application (registration statement).</p> <p>A 1 c: Any operator proposing a new stormwater discharge associated with the construction of a single-family residence separately built, disturbing less than one acre and part of a larger <u>single-family detached residential structure, within or outside of a common plan of development or sale</u>, is authorized to discharge under this general permit and is not required to submit a registration statement or the department portion of the permit fee, provided that the stormwater management plan for the larger common plan of development or sale provides permanent control measures (i.e., stormwater management facilities) encompassing the single family residence.</p> <p>A 2 b: Any operator with an existing stormwater discharge associated with the construction of a single-family residence separately built <u>single-family detached</u></p>

		<p><u>residential structure</u>, disturbing less than one acre and part of a larger common plan of development...is not required to submit a registration statement or the department portion of the permit fee...</p> <p>9VAC25-870-59. Applying for state permit coverage.</p> <p>The operator must submit a complete and accurate registration statement, <u>if such statement is required</u>, on the official department form to the VSMP authority in order to apply for state permit coverage. The registration statement must be signed by the operator in accordance with 9VAC25-870-370. <u>In accordance with § 62.1-44.15:28, no registration statement is required for a single-family detached residence within or outside a common plan of development or sale.</u></p>
62.1-44.15:28 A 9	Added language related to “reciprocity with programs in other states” for the certification of proprietary BMPs.	<p>9VAC25-870-65. Water quality compliance.</p> <p>C. BMPs differing from those listed in subsection B of this section <u>or proprietary BMPs certified in other states</u> shall be reviewed and approved by the director in accordance with procedures established by the department.</p>
62.1-44.15:28 A 13	Added language related to “establishing procedures for transfer of administration of a VSMP to the Department”.	<p>To be addressed in a possible future regulatory action.</p>
62.1-44.15:34 A	Revised language related to the submission of a state VSMP permit registration statement, “if one is required”.	<p>9VAC25-870-59. Applying for state permit coverage.</p> <p>The operator must submit a complete and accurate registration statement, <u>if such statement is required</u>, on the official department form to the VSMP authority...</p> <p>9VAC25-880-70. General permit. Part II STORMWATER POLLUTION PREVENTION PLAN</p> <p>1. General information.</p> <p>a. A signed copy of the registration statement, <u>if required</u>, for coverage under the general VPDES permit...</p>
62.1-44.15:34 A	Included language related to the use of “an executed agreement in lieu of a stormwater management plan”.	<p>9VAC25-870-10. Definitions.</p> <p>9VAC25-880-30. Authorization to discharge.</p> <p>A 4 b. A stormwater management plan from the appropriate VSMP authority as authorized under the Virginia Stormwater Management Program (VSMP) Regulation (9VAC25-870), unless the operator <u>receives from the VSMP authority an "agreement in lieu of a</u></p>

		<p><u>stormwater management plan" as defined in 9VAC25-870-10 or prepares the stormwater management plan in accordance with annual standards and specifications...</u></p> <p>9VAC25-880-70. General Permit. Part II A</p> <p>3 a. New construction activities. A stormwater management plan approved by the VSMP authority as authorized under the Virginia Stormwater Management Program (VSMP) Regulation (9VAC25-870), <u>or an "agreement in lieu of a stormwater management plan" as defined in 9VAC25-870-10 from the VSMP authority,</u> or a stormwater management plan prepared in accordance with annual standards and specifications...</p>
62.1-44.15:34 A	Added language to clarify the requirements for “a locality that is not a VSMP authority” to provide a general notice of state permit requirements and report to the Department “at least monthly”.	<p>9VAC25-840-65. Reporting.</p> <p>Each VESCP authority shall report to the department, <u>at least monthly,</u> in a method such as an online reporting system and on a time schedule established by the department, a listing of each land-disturbing activity for which a plan has been approved by the VESCP authority under the Act and this chapter.</p>
62.1-44.15:34 B	Removed redundant reference to “a VSMP authority” and replaced with CBPA localities as appropriate.	<p>9VAC25-870-103. VSMP authority requirements Requirements for Chesapeake Bay Preservation Act land-disturbing activities.</p> <p>A. A VSMP authority <u>Localities subject to the Chesapeake Bay Preservation Act</u> shall regulate runoff associated with Chesapeake Bay Preservation Act land-disturbing activities...</p> <p>A 2. A <u>local or VSMP</u> authority permit, where <u>as</u> applicable, shall be issued permitting the land-disturbing activity.</p> <p>A 3. The VSMP authority <u>locality</u> shall regulate such land-disturbing activities...</p> <p>B. A locality's VSMP authority <u>locality subject to the Chesapeake Bay Preservation Act</u> shall adopt an ordinance, and other VSMP authorities shall provide program documentation, that incorporates the components of this section.</p>
62.1-44.15:44; 62.1-44.15:45; 62.1-	Removed reference to the “VSMP authority” and	9VAC25-870-118. Hearings.

44.15:46	<p>replaced with the “Department” as appropriate.</p> <p>Deleted reference to “VSMP authorities” and added language clarifying “hearing” requirements.</p> <p>Added clarifying language regarding “appeals of decisions rendered by localities” and “provisions for judicial review”.</p>	<p>The VSMP authority shall ensure that any <u>Any</u> permit applicant, permittee, or person subject to state permit requirements under the Act <u>Stormwater Management Act</u> aggrieved by any action of the VSMP authority <u>department or board</u> taken without a formal hearing, or by inaction of the VSMP authority, shall have a right to <u>may demand in writing a formal hearing</u> pursuant to § 62.1-44.15:44 of the Code of Virginia and shall ensure that all hearings held under this chapter shall be conducted in a manner consistent with § 62.1-44.26 of the Code of Virginia or as otherwise provide by law. <u>A locality holding hearings under this chapter shall do so in a manner consistent with local hearing procedures.</u> The provisions of the Administrative Process Act (§ 2.2-400 et seq.) shall not apply to decisions rendered by localities but appeals. <u>Appeals of decisions rendered by localities shall be conducted in accordance with local appeal procedures and shall include an opportunity for judicial review in the circuit court of the locality in which the land disturbance occurs or is proposed to occur. Unless otherwise provided by law, the circuit court shall conduct such review in accordance with the standards established in § 2.2-4027, and the decisions of the circuit court shall be subject to review by the Court of Appeals, as in other cases under this chapter.</u></p>
54.1-2300 et seq.	<p>For documentation in lieu of proof of septic tank pump-out every five years, amended certification requirements.</p>	<p>9VAC25-830-130. General performance criteria.</p> <p>6. <u>7.</u> On-site sewage treatment systems not requiring a Virginia Pollutant Discharge Elimination System (VPDES) permit shall:</p> <p>a. Have pump-out accomplished for all such systems at least once every five years.</p> <p>(2) Furthermore, in lieu of requiring proof of septic tank pump-out every five years, local governments may allow owners of on-site sewage treatment systems to submit documentation every five years, certified by a sewage handler permitted by the Virginia Department of Health <u>an operator or on-site soil evaluator licensed or certified under Chapter 23 (§ 54.1-2300 et seq.) of Title 54.1 as being qualified to operate, maintain or design on-site sewage systems,</u> that the septic system has been inspected, is functioning properly, and the tank does not need to have the effluent pumped out of it.</p>

A public comment period was held from April 18, 2014 to May 21, 2014. During this comment period comments were received from a total of 6 individuals, representing Dewberry; Joyce Engineering; Rappahannock County; the Culpeper Soil & Water Conservation District; Fairfax County and the Virginia Municipal Stormwater Association. A summary of the comments as well as staff responses is provided below for each of the regulatory actions:

9VAC25-830 – Chesapeake Bay Preservation Area Designation and Management Regulations

Commenter	Comment	Agency response
Paul Shirey, P.E., Director, Code Development and Compliance Division, Fairfax County	9VAC25-830-130 6 General performance criteria. Typographical error: Replace the word “Area” in “Chesapeake Bay Preservation Area” with the word “Act”.	Proposed text corrected based on comment received.

9VAC25-840-65 – Erosion and Sediment Control Regulations

Commenter	Comment	Agency response
Paul Shirey, P.E., Director, Code Development and Compliance Division, Fairfax County	9VAC25-840-65 Reporting. The reporting requirement in the proposed regulation goes beyond the statutory requirement in §62.1-44.15:34 of the act passed by the General Assembly (Chapters 303 and 598 of the 2014 Acts of Assembly). Under the statute, reporting is not required for VESCP authorities that are also VSMP authorities and reporting is required only for land-disturbing activities equal to or greater than one (1) acre. It would be redundant to require reporting from VSMP authorities which cannot approve land-disturbing activity without evidence of state permit coverage. The proposed regulation should be revised to match the requirements of the act.	The proposed change to the Erosion and Sediment Control Regulation (9VAC25-840-65) reflects the statutory change in the Virginia Stormwater Management Program (VSMP) Regulation (§62.1-44.15:34) while retaining the reporting requirements for all VESCP authorities set forth in the Erosion and Sediment Control Law (§62.1-44.15:59).

9VAC25-870 – Virginia Stormwater Management Program (VSMP) Regulations

Commenter	Comment	Agency response
Rappahannock County Board of Supervisors – John W. McCarthy – County Administrator	Encourage the adoption of proposed amendments to the Virginia Stormwater Management Regulations that allow localities to opt in to establishing a VSMP authority and to allow for an agreement in lieu of a stormwater plan for construction of a single family detached residence – Urge the adoption of these provisions.	Comment Acknowledged.
Kimberly Vanness Larkin - Dewberry	RE: 9VAC25-870-55 A 1: There appear to be implementation issues with regards to what is considered a “common plan of development” especially with individual land bays or lots within commercial developments which have been established for a number of years. This is in reference to lines 69-70 of the statutory 2014 changes. Line 70 includes the statement "including those developed	Revisions made based on statutory changes. The concept of a "common plan of development" will be further clarified through guidance.

	<p>under subsequent owners, shall not be considered separate land disturbing activities'. In many instances the new owners of the lots, may not be privy to the original Stormwater management calculations or plans. The new owner's engineers cannot certify any calculations for the common plan of development and in most instances are handling the Stormwater management for each lot on-site. Is there any way to clarify this section to alleviate this issue? I believe this was included to address sites with regional SWM basins, but since each parcel/lot/site is responsible for their own E&S plans, I'm not sure how that would be implemented either to address the VSMP requirements. A detailed guidance document would be helpful for these situations.</p>	
<p>Jenny Joyce - Joyce Engineering</p>	<p>9VAC25-870-825 and 9VAC25-870-830 - It does not appear that the Code of Virginia §62.1-44.15:28.A.5.e provides authority to revise the fee schedules included in 9VAC25-870-825 (Fees for the Modification or Transfer of Individual Permits or of Registration Statements for the General Permit for Discharges of Stormwater from Construction Activities) or 9VAC25-870-830 (State Permit Maintenance Fees). The above-referenced section of the Code is specific to the permit fee for <i>coverage</i> under the General Permit for Discharges of Stormwater for Construction Activities. Therefore, the above-referenced section of the Code appears to apply only to the fees included in 9VAC25-870-820 (Fees for an Individual Permit or Coverage under the General Permit for Discharges of Stormwater from Construction Activities). I recommend deleting the proposed changes to the fee schedules in 9VAC25-870-825 and 9VAC25-870-830.</p>	<p>Revisions made based on statutory changes. It is the interpretation of the Department that the proposed revisions to the "fee schedules" are a necessary part of the entire process for obtaining and maintaining coverage under the "General Permit", including any possible "modification"; "transfer" or "maintenance" requirements.</p>
<p>Richard Jacobs, P.E. – Culpeper Soil and Water Conservation District</p>	<p>General Comment: The listing of specific BMPs in the Regulations does not allow for flexibility to adapt to changing policy and technical guidance. The Virginia Stormwater BMP Clearinghouse Website is <u>the</u> resource for approved and up-to-date BMPs. Finally, BMP approval rests with the State and not local governments. By removing the list of BMPs from subsection B of 9VAC25-870-65, it allows the State the flexibility under subsection C to modify approved BMPs listed on the Virginia Stormwater BMP Clearinghouse Website.</p>	<p>This is outside of the scope of the current statutory changes and the current regulatory process.</p>
<p>Richard Jacobs, P.E. – Culpeper Soil and Water Conservation District</p>	<p>9VAC25-870-65 B:</p> <p>B. The BMPs listed in this subsection <u>on the Virginia Stormwater BMP Clearinghouse Website</u> are approved for use as necessary to effectively reduce the phosphorus load and runoff volume in accordance with the Virginia Runoff Reduction Method. Other</p>	<p>This is outside of the scope of the current statutory changes and the current regulatory process.</p>

	<p>approved BMPs found on the Virginia Stormwater BMP Clearinghouse Website may also be utilized. Design specifications and the pollutant removal efficiencies for all approved BMPs are found on the Virginia Stormwater BMP Clearinghouse Website.</p> <ol style="list-style-type: none"> 1. Vegetated Roof (Version 2.3, March 1, 2011); 2. Rooftop Disconnection (Version 1.9, March 1, 2011); 3. Rainwater Harvesting (Version 1.9.5, March 1, 2011); 4. Soil Amendments (Version 1.8, March 1, 2011); 5. Permeable Pavement (Version 1.8, March 1, 2011); 6. Grass Channel (Version 1.9, March 1, 2011); 7. Bioretention (Version 1.9, March 1, 2011); 8. Infiltration (Version 1.9, March 1, 2011); 9. Dry Swale (Version 1.9, March 1, 2011); 10. Wet Swale (Version 1.9, March 1, 2011); 11. Sheet Flow to Filter/Open Space (Version 1.9, March 1, 2011); 12. Extended Detention Pond (Version 1.9, March 1, 2011); 13. Filtering Practice (Version 1.8, March 1, 2011); 14. Constructed Wetland (Version 1.9, March 1, 2011); and 15. Wet Pond (Version 1.9, March 1, 2011). 	
Richard Jacobs, P.E. – Culpeper Soil and Water Conservation District	<p>9VAC25-870-65 C:</p> <p>C. BMPs differing from those listed in subsection B of this section <u>on the Virginia Stormwater BMP Clearinghouse Website or propriety BMPs certified in other states</u> shall be reviewed and approved by the director in accordance with procedures established by the department.</p>	This is outside of the scope of the current statutory changes and the current regulatory process.
Paul Shirey, P.E., Director, Code Development and Compliance Division, Fairfax County	<p>9VAC25-870-59 Applying for state permit coverage.</p> <p>Recommend adding an additional sentence to make it clear that construction of a single-family detached residential structure that requires permit coverage but does not require a registration statement is nonetheless subject to the permit.</p>	Addressed in the General Permit regulation in 9VAC25-880-30 A 3 that states that any operator governed by this general permit is authorized to discharge to surface waters of the Commonwealth of Virginia provided that "the operator complies with the applicable requirements of 9VAC25-880-70 (the General Permit requirements).
Paul Shirey, P.E., Director, Code Development and Compliance Division, Fairfax County	<p>9VAC25-870-820 Fees for an individual permit or coverage under the General Permit for Discharges of Stormwater from Construction Activities.</p> <p>The development of a single-family detached residential structure disturbing less than an acre of land outside of a common plan of development would be considered a Chesapeake Bay Act Land-Disturbing Activity. The proposed fee of \$209 for a single-family detached residential structure within or outside a common plan of development or sale from zero to five acres is not consistent with the \$290 fee charged for</p>	The wording in the "Fee Type" table in 9VAC25-870-820 has been revised to address this comment. Localities have the ability to raise or lower the identified fees as needed to fund their programs.

	Chesapeake Bay Act Land-Disturbing activities. There shouldn't be two different fees that could be applied to the same land-disturbing activity. The descriptor should be changed to apply the \$209 fee only to land-disturbing activities between one and less than five acres in accordance with §62.1-44.15:28.A.5.e in Chapter 303 of the 2014 Acts of Assembly.	
Paul Shirey, P.E., Director, Code Development and Compliance Division, Fairfax County	9VAC25-870-820 Fees for an individual permit or coverage under the General Permit for Discharges of Stormwater from Construction Activities. The phrase “except for single-family detached residential structures” needs to be added to the end of the fee type description for “General / Stormwater Management – Small Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than one acre and less than five acres)” in accordance with §62.1-44.15:28.A.5.e in Chapter 303 of the 2014 Acts of Assembly.	The revision is consistent with the statutory change. Localities have the ability to raise or lower the identified fees as needed to fund their programs.
Paul Shirey, P.E., Director, Code Development and Compliance Division, Fairfax County	9VAC25-870-825 Fees for the modification or transfer of individual permits or of registration statements for the General Permit for Discharges of Stormwater from Construction Activities. The modification/transfer fee should be eliminated for all land-disturbing activities that do not require coverage under the general permit or registration statements.	The revision is consistent with the statutory change. Localities have the ability to raise or lower the identified fees as needed to fund their programs. The revisions were made based on statutory changes. It is the interpretation of the Department that the proposed revisions to the "fee schedules" are a necessary part of the entire process for obtaining and maintaining coverage under the "General Permit", including any possible "modification"; "transfer" or "maintenance" requirements.
Paul Shirey, P.E., Director, Code Development and Compliance Division, Fairfax County	9VAC25-870-825 Fees for the modification or transfer of individual permits or of registration statements for the General Permit for Discharges of Stormwater from Construction Activities. The phrase “except for single-family detached residential structures” needs to be added to the end of the fee type description for “General / Stormwater Management – Small Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than one acre and less than five acres)” in accordance with §62.1-44.15:28.A.5.e in Chapter 303 of the 2014 Acts of Assembly.	The revision is consistent with the statutory change. Localities have the ability to raise or lower the identified fees as needed to fund their programs.
Paul Shirey, P.E., Director, Code Development and Compliance Division, Fairfax County	9VAC25-870-830 State permit maintenance fees. The phrase “except for single-family detached residential structures” needs to be added to the end of	The revision is consistent with the statutory change. Localities have the ability to raise or lower the identified fees as needed to fund their programs.

and Compliance Division, Fairfax County	the fee type description for “General / Stormwater Management – Small Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than one acre and less than five acres)” in accordance with §62.1-44.15:28.A.5.e in Chapter 303 of the 2014 Acts of Assembly.	
Randy Bartlett, President – Virginia Municipal Stormwater Association	<p>General – Provisional Approval of Local Ordinances:</p> <p>Many VAMSA Members are taking the final steps to adopt Virginia Stormwater Management Program (VSMP) ordinances prior to the July 1, 2014 implementation deadline, making it impossible for them to incorporate new regulatory text at this late stage in the process. In recognition of this situation, DEQ has agreed to issue a one-year provisional approval to localities in this position. VAMSA appreciates this flexibility, and asks that DEQ memorialize it in any correspondence it sends to impacted localities.</p>	Comment acknowledged.
Randy Bartlett, President – Virginia Municipal Stormwater Association	<p>General – Future Amendments:</p> <p>We request that the Board cap the number of times a locality must make ordinance changes each year at one. If there are statewide regulatory changes that occur after an ordinance is updated for the year, the locality should be allowed twelve months to make those additional changes.</p>	Comment acknowledged.
Randy Bartlett, President – Virginia Municipal Stormwater Association	<p>Stormwater Management Plans – 9VAC25-870-55:</p> <p>VAMSA is concerned that although the Board has proposed no changes to the existing language, the current regulatory text could be read as conflicting with newly enacted Chapters 303 and 598. Revisions to VA Code §62.1-44.15:28 state that the Board is authorized to adopt regulations that shall: "7. Establish a procedure by which a stormwater management plan that is approved for a residential, commercial, or industrial subdivision shall govern the development of the individual parcels, including those parcels developed under subsequent owners;" In contrast, the existing regulations mandate that "Individual lots in new residential, commercial, or industrial developments shall not be considered separate land-disturbing activities." VAMSA has identified two inconsistencies between the new law and existing regulations.</p> <p>First, the 2014 legislation does not use the term "new". VAMSA supports allowing individual lot</p>	Referenced concerns will be addressed in guidance. The proposed revisions, which are consistent with the statutory changes, have already been incorporated into ordinances at the local level.

	<p>owners to develop their properties under the terms of a previously approved stormwater management plan. However, the term "new," which is undefined, will cause confusion at the local level. Would a subdivision built on a redevelopment site be considered "new" such that individual lot owners would be covered by an approved plan?</p> <p>Second, the 2014 legislation uses the term "subdivision" rather than "development." "Subdivision" typically has a very specific definition at the local level, although the particulars vary among localities. It is unclear whether individual lot owners in a development that is not a formal subdivision could avail themselves of the benefit of a previously approved plan.</p> <p>VAMSA questions the use of the phrase "shall not be considered separate land-disturbing activities." Some individuals who are developing individual lots may believe based on this language that they are not conducting a "land-disturbing activity," and are thus not required to obtain a state permit, even if their lot exceeds the 1 acre threshold for state coverage.</p> <p>To address the above issues, VAMSA suggests revising the sentence to read:</p> <p><u>"Individual lots in new residential, commercial, or industrial developments subdivisions, including those developed under subsequent owners, shall not be considered separate land-disturbing activities requiring the submittal of an individual stormwater management plan to the VSMP authority."</u></p>	
<p>Randy Bartlett, President – Virginia Municipal Stormwater Association</p>	<p>State Coverage Transfer and Modification Fees – 9VAC25-870-825:</p> <p>The Board has proposed a reduced fee of \$20 for transfers of individual permits or registration statements if a locality is the VSMP authority and the transfer relates to a "single-family detached residential structure within or outside a common plan of development or sale with land-disturbance acreage less than 5 acres."</p> <p>Consistent with Chapters 303 and 598, 9VAC25-870-59 (Applying for state permit coverage) correctly provides: "In accordance with §62.1-44.15:28, no registration statement is required for the construction of a single-family detached residential structure within or outside a common plan of development or sale."</p> <p>Because no registration statement or state coverage will be required for a single-family detached residential structure or for a Chesapeake Bay land-</p>	<p>The revision is consistent with the statutory change. Localities have the ability to raise or lower the identified fees as needed to fund their programs.</p>

	<p>disturbing activity, there will never be a transfer or modification of the coverage. These fees will not be charges at the local level. Therefore, there is no need for including reduced fees in the amended regulations at 9VAC25-870-825. VAMSA recommends the deletion of the appropriate text.</p>	
<p>Randy Bartlett, President – Virginia Municipal Stormwater Association</p>	<p>State Permit Maintenance Fees – 9VAC25-870-830:</p> <p>The Board has proposed a reduced state permit maintenance fee for Chesapeake Bay Act Land-Disturbing Activity and for small construction activities (either for areas within common plans of development or sale with land-disturbance acreage less than one acre or for single family detached residential structures with land-disturbance less than 5 acres where the locality is the VSMP authority).</p> <p>Consistent with Chapters 303 and 598, the existing text of 9VAC25-870-51 (Chesapeake Bay Preservation Act land-disturbing activity) states that "After June 30, 2014, such land-disturbing activities shall not require completion of a registration statement or require coverage under the General Permit for Discharges of Stormwater from Construction Activities..."</p> <p>Because no registration statement or state coverage will be required for a single-family detached residential structure or for a Chesapeake Bay land-disturbing activity, there will never be a permit that needs maintenance. These fees will not be charges at the local level. Therefore, there is no need for including reduced fees in the amended regulations at 9VAC25-870-830. VAMSA recommends the deletion of the appropriate text.</p>	<p>The revision is consistent with the statutory change. Localities have the ability to raise or lower the identified fees as needed to fund their programs.</p>

9VAC25-880 – General Permit for Discharges of Stormwater from Construction Activities

Commenter	Comment	Agency response
<p>Rappahannock County Board of Supervisors – John W. McCarthy – County Administrator</p>	<p>Encourage the adoption of proposed amendments to the Virginia Stormwater Management Regulations that allow localities to opt in to establishing a VSMP authority and to allow for an agreement in lieu of a stormwater plan for construction of a single family detached residence – Urge the adoption of these provisions.</p>	<p>Comment acknowledged.</p>

Regulation to incorporate the corresponding TMDL wasteload allocations: Staff will ask the Board to approve portions of two TMDL Reports and adopt amendments to two sections of the Water Quality Management Planning (WQMP) regulation: 9 VAC 25-720-60.A (James River Basin) and 9 VAC 25-720-90.A (Tennessee-Big Sandy River Basin). The amendments consist of adding three 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 wasteload allocation (“WLA”), the 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 a 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”). Virginia 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 Board approval of two EPA-approved TMDL reports containing the following TMDL WLAs:

1. The Maury River, Cedar Creek, and Tributaries TMDL, located in Augusta, Bath, and Rockbridge counties and the cities of Lexington and Buena Vista, proposes sediment reductions for the Colliers Creek watershed and provides a sediment wasteload allocation of 103.4 tons/yr.
2. The Lower Clinch River TMDL, located in Russell, Scott, Tazewell, and Wise counties, proposes sediment reductions for the Laurel Creek and Thompson Creek watersheds and provides sediment wasteload allocations of 0.26 tons/yr and 0.22 tons/yr.

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

The process for amending the WQMP regulation is specified in DEQ’s “Public Participation Procedures for Water Quality Management Planning”. The amendments consist of adding three new WLAs that are included in TMDL reports previously approved by EPA. Staff will therefore propose that the Board, in accordance with §2.2-4006A.4.c and §2.24006B of the Code of Virginia, adopt the amendments to the WQMP Regulation (9 VAC 25-720).

REPORT ON FACILITIES IN SIGNIFICANT NONCOMPLIANCE: Four permittees were reported to EPA on the Quarterly Noncompliance Report (QNCR) as being in significant noncompliance (SNC) for the quarter ending December 31, 2013. The permittees, the facilities and the reported instances of noncompliance are as follows:

1. Permittee/Facility: **King George County Service Authority, Dahlgren District Wastewater Treatment Plant**
Type of Noncompliance: **Failure to Meet Interim Effluent Limit (Total Nitrogen)**
City/County: King George, Virginia
Receiving Water: Unnamed tributary to Williams Creek
Impaired Water: Williams Creek is impaired due to low dissolved oxygen and the presence of high levels of Enterococcus. The sources of the impairments are listed variously as agriculture, municipal point sources, industrial discharges, sanitary sewer overflows, loss of habitat and atmospheric deposition of Nitrogen.

River Basin: Potomac and Shenandoah River Basins
Dates of Noncompliance: 2013 Annual Limit
Requirements Contained In: Consent Order
DEQ Region: Northern Regional Office

The violation has been incorporated in a draft penalty order addressing permit violations at other treatment facilities owned and operated by the Authority. Staff of the Northern Regional Office have indicated that the draft order will be forwarded to the Authority for review and discussion in the near future.

2. Permittee/Facility: **Dupont Teijin Films Wastewater Treatment Plant**
Type of Noncompliance: **Failure to Meet Interim Effluent Limit (Biochemical Oxygen Demand) and Failure to Report Effluent Limit Data (E. coli)**

City/County Hopewell, Virginia

Receiving Water: James River

Impaired Water: This area of the James River is impaired because of inadequate submerged aquatic vegetation, low dissolved oxygen, high chlorophyll a, high E. coli, an inadequate benthic community and the presence of PCBs. The sources of the impairments are listed variously as agriculture, atmospheric deposition of Nitrogen, industrial point source discharges, loss of riparian habitat, municipal point source discharges, excessive sedimentation, nonpoint source stormwater discharges, sanitary sewer overflows and combined sewer overflows.

River Basin: James River Basin
Dates of Noncompliance: December 2012; March, April and July 2013
Requirements Contained In: Consent Order and Permit
DEQ Region: Piedmont Regional Office

A consent special order, with an administrative penalty of \$31,175.00 has been executed by Dupont and scheduled for public notice beginning June 2nd. The Biochemical Oxygen Demand violations have been addressed through elimination of the wastewater stream, the reporting violation has been addressed through review of reporting requirements.

3. Permittee/Facility: **Coeburn Norton Wise Regional Treatment Plant**
Type of Noncompliance: **Failure to Meet Interim Effluent Limit (Ammonia as Nitrogen)**

City/County Coeburn, Virginia

Receiving Water: Guest River

Impaired Water: From the Parson Branch confluence downstream to the Bad Branch confluence the Guest River benthic macroinvertebrate community is impaired because of mining, silvaculture and agricultural activities. In addition PCBs have been found in edible fish tissue although the source of the PCBs has not been identified. Finally the River is impaired due to high levels of E. coli from failing septic systems and straight pipe discharges.

River Basin: Tennessee and Big Sandy River Basin
Dates of Noncompliance: October 2013
Requirements Contained In: Consent Order
DEQ Region: Southwest Regional Office

The treatment plant is undergoing a major upgrade, as required by the order. Treatment efficiencies have been sporadically reduced because of construction activities, as evidenced by the October violation. Because the violation was a one-time occurrence regional enforcement staff have determined that enforcement action does not appear necessary to address this issue.

4. Permittee/Facility: **Greensville County Water and Sewer Authority, Three Creek Sewage Treatment Plant**

Type of Noncompliance: **Failure to Meet Permit Effluent Limit (Copper)**

City/County Greensville County, Virginia

Receiving Water: Three Creek

Impaired Water: Three Creek is impaired due to a VDH fish consumption advisory for mercury. The source of the impairment is unknown, however atmospheric deposition is suspected. Three Creek is also subject to an E. coli TMDL.

River Basin: Chowan and Dismal Swamp River Basins

Dates of Noncompliance: November and December, 2013

Requirements Contained In: VPDES Permit

DEQ Region: Piedmont Regional Office

The Authority is already subject to a consent order requiring corrective action to address copper and zinc permit effluent limit violations. The Authority has complied with the terms of the order and plant treatment efficiencies have improved but compliance with effluent limits for copper has not been fully attained.

Hardness data recently provided by the Authority indicates that the copper limits may need to be amended. In addition the Authority has offered to perform a water effects ratio study to confirm whether permit effluent limits for copper should be revised. Piedmont enforcement staff have drafted an amendment to the order, requiring that the Authority perform the study, and have forwarded the document to the Authority for signature.

McGill Environmental Systems of N.C., Inc., Waverly - Consent Special Order with Civil Charges: McGill owns and operates the Facility in Waverly, Virginia. The Facility manufactures, stores and distributes compost for profit. The Facility discharges stormwater associated with industrial activity to an unnamed tributary of the Black Swamp. McGill does not have permit coverage or a permit to discharge. On August 8, 2012, DEQ staff investigated a complaint of black colored water in the tributary to Black Swamp that borders the Facility. DEQ staff took water samples in Black Swamp downstream of the Facility, which showed elevated levels of Total Nitrogen (“N”), Total Kjeldahl Nitrogen (“TKN”), Total Phosphorus (“P”), ortho-Phosphorus (“Ortho-P”) and five day biochemical oxygen demand (“BOD₅”). On October 16, 2012, DEQ staff returned to Black Swamp and sampled three locations which included a location below the Facility. The October 16, 2012, samples showed a large contribution of N, P, total suspended solids (“TSS”), ammonia and BOD₅ being discharged from the Facility’s stormwater outfall 003, located in stormwater pond 003, to state waters. Specifically, ammonia was reported as 475 mg/L at a pH of 7.28 at outfall 003. DEQ staff also observed a significant area of dead vegetation in Black Swamp, extending from outfall 003. On December 12, 2012, DEQ staff took water samples at six locations located on the Facility. The December 12, 2012, samples showed elevated levels of N, TKN, P, ortho-P, TSS, ammonia and BOD₅ being discharged from the Facility’s stormwater pond 003, through outfall 003, to state waters. Specifically, ammonia was reported as 1250 mg/L at a pH of 7.40 at outfall 003. McGill did not report any discharges from outfall 003 to DEQ. McGill temporarily isolated, using a clay berm, the biofilter at the Facility, which was determined to be the source of the elevated discharges into Black Swamp. All water collected from the bermed area was contained within the Facility. By January 26, 2013, the biofilter and the air distribution piping under the biofilter media had been removed. By March 25, 2013, all biofilter media was being processed through the Facility and the piping to stormwater pond 003 was permanently closed. By July 28, 2013, stormwater pond 003 and outfall 003 were eliminated. McGill agreed to the Consent Special Order with DEQ to address the above described violations. The Order requires the payment of a civil charge and performance of appendix items. The appendix items require McGill to submit a sampling plan for stormwater pond 001, implement the sampling plan and submit the results to DEQ, submit a complete permit application to DEQ and if DEQ determines it to be necessary, implement a corrective action plan. Civil Charge: \$49,140.

Celebrate Virginia South, LLC for the Celebrate Virginia! South Project, Fredericksburg - Consent Special Order: The Celebrate Virginia! South Project (Site) owned by Celebrate Virginia South, LLC (Permittee) consists of the development of a mix use commercial and residential development with associated infrastructure. The project site is located in the City of Fredericksburg, Virginia. A VWP Individual Permit Number 07-0245 for impacts was authorized by DEQ on October 16, 2007, with a major modification authorized June 25, 2009 (Permit). The Permit authorized the total permanent impact of 1.68 acres of surface waters, consisting of 0.35 acre of palustrine forested wetlands, 0.03 acre of palustrine scrub-shrub wetland, 0.34 acre of palustrine emergent wetland, 0.06 acre (361 linear feet) of perennial stream channel, 0.51 acre (3,940 linear feet) of intermittent stream channels and 0.39 acre of open water. Compensation for permitted surface water impacts was to be provided through the purchase of 0.69 wetland credit from the Blackjack Wetland Mitigation Bank and 0.40 wetland credit from the Burnley Farms Wetland Mitigation Bank; on-site restoration of 1,882 linear feet of stream channel, enhancement of 1,772 linear feet of stream channel, preservation of 2,114 linear feet of stream channel, reforestation of 6.28 acres of riparian buffer and preservation of 12.48 acres of riparian buffer; and an in-lieu fee contribution to the Virginia Aquatic Resources Trust Fund. The Permittee began development of the site in October 2007. DEQ staff conducted mitigation site visits on January 6, 2010, March 18, 2010, September 22, 2010, September 22, 2011, July 31, 2012, January 1, 2013, and January 30, 2013, and conducted a compliance review of the permit file on February 12, 2013. In response to the site visits and file review, DEQ issued a warning letter (WL) to the Permittee on March 21, 2013. On April 22, 2013, DEQ

received a written response to WL but did not receive the required corrective action plan addressing the observations outlined in the WL. Based on the WL response confirming the failure to complete work on site and submit a revised CAP, DEQ issued a Notice of Violation (NOV), dated May 30, 2013, to the Permittee. The NOV cited the same violations as the WL. The violations listed in the NOV are as follows:

1. Failure to complete on-site stream compensatory mitigation activities, including approximately 6.17 acres of riparian buffer planting in Areas 1 and 2 and approximately 561 linear feet of stream restoration and 817 linear feet of stream enhancement activities in Area 3, as required by Permit Part I.K.4 (October 16, 2010).
2. Failure to complete and submit to DEQ the stream mitigation monitoring reports documenting activities and/or success in Areas 1 and 2 during years 2011 and 2012, as required by Permit Parts I.L.5 and I.L.6.
3. Failure to complete and submit to DEQ an as-built survey for Areas 1 and 2, no later than December 15, 2010, as required by Permit Part I.L.4.

On August 8, 2013, DEQ met with representatives of the Permittee and WEG to discuss the NOV and corrective action plan (CAP). At the meeting, the Permittee stated that the failure to successfully complete the mitigation activities was due to the loss of financial support from the development's bond-holders. The Permittee went on to state that separate funds were secured for the work in Areas 1 and 2 which should be complete and ready for planting in Fall 2013, as detailed in a mitigation plan, submitted to DEQ at the meeting. In addition DEQ and the Permittee discussed the option of buying credits as a substitute for the conducting the mitigation work in Area 3. As a follow-up to the meeting, DEQ inspectors conducted a site visit on August 12, 2013. On October 15, 2013, Department staff met with a representative of Celebrate Virginia and WEG to discuss the stream restoration as-built drawings, remaining compensatory mitigation, and the Consent Order process. On October 31, 2013, WEG submitted a follow-up letter to DEQ proposing that the mitigation of Area 3 impacts be satisfied through a combination of preservation, equal to 117 credits and purchase of stream credits. On November 27, 2013, WEG submitted the final as-built survey of the compensatory stream channel enhancement and restoration activities completed in Areas 1 and 2. The Consent Order requires the Celebrate Virginia to: (1) begin planting buffers for Areas 1 & 2 and (2) submit proof of purchase of 678 stream compensation credits, and (3) submit to DEQ for review and approval a preservation plan satisfying a burden of 117 credits. Civil charge: \$45,000.

Iluka Resources, Inc., Greensville County - Consent Special Order with Civil Charges: Iluka Resource Inc. mines heavy mineral sands. At the concentrator plants the facility uses process water to move and separate the mineral sands from clay. The process water is then recycled and used again at the plant. The background for each facility is provided below.

Brink Mine: Iluka owns and operates the Brink Mine facility in Greensville County, Virginia and on May 2, 2008, DEQ issued Brink Permit to Iluka for wetland and stream impacts associated with surface mining operations at Brink. The Brink Permit expires on May 1, 2023. On September 3, 2012, a representative of Iluka observed a ruptured process line on the discharge side of Booster Pump 1907 and on September 4, 2012, Iluka reported the ruptured line which resulted in an unpermitted discharge of approximately 1,400 gallons of process water which contained sixty percent solids. The process water flowed into and then beyond three in-series sediment traps, into an unnamed tributary of Fountain's Creek and adjacent wetlands. Iluka followed up with a written report on September 7, 2012. DEQ staff conducted an inspection and confirmed the estimated discharge, of 1,400 gallons, which impacted 500 linear feet of an unnamed tributary of Fountain's Creek based upon the amount of deposited clay. On September 30, 2012, a representative of Iluka observed a ruptured process line in the same location as the aforementioned September 3, 2012, incident and on October 1, 2012, Iluka reported the September 30, 2012, incident which resulted in the unpermitted discharge of approximately 162,000 gallons of water which contained 40 percent solids. Of that volume, approximately 31,400 gallons of process water which contained six percent solids overflowed the site containment features and were discharged into an adjacent stream and wetland. Wetland impacts were to 1.19 acres and stream channel impacts were to 1290 linear feet of an unnamed tributary of Fountain's Creek. Iluka followed up with a written report on October 3, 2012. By the time DEQ staff met with Iluka representatives, Iluka had undertaken corrective measures, including seeding of the wetland, pipeline repairs, design changes, as well as implementing a corrective action plan which included, design changes to Brink pipelines, change in pipeline materials, and an extensive change to operations and maintenance procedures and protocols. On January 16, 2013, a representative of Iluka observed a change in flow and pressure on the feed line. Upon further inspection the representative discovered a ruptured line on the feed line between the 1908 Booster Pump and the Brink Concentrator. Iluka reported the ruptured line which resulted in an unpermitted discharge of approximately 37,500 gallons of process water which contained less than 2 percent solids. The process water flowed into and then exited a sediment trap, into an unnamed tributary of

Fountain's Creek and adjacent wetlands. Sediment, a pollutant, collected in 4 areas, each measuring 5 feet by 3 feet with a depth of less than 0.5 inches. Iluka followed up with a written report on January 21, 2013.

Concord Concentrator: Iluka owns and operates the Concord Concentrator in Sussex County, Virginia and on August 24, 2004, DEQ issued Concord Permit to Iluka for wetland and stream impacts associated with surface mining operations at Concord. The Concord Permit was extended on May 10, 2011, and expires on August 23, 2019. On August 10, 2012, a representative of Iluka noticed a berm breach in a tailings pond which resulted in an unpermitted discharge to forested wetlands and the stream channel of Manlove Branch from the aforementioned tailings pond. A representative of Iluka reported the discharge to DEQ and a written report followed. On August 21, 2012, DEQ staff conducted an inspection and found that the unpermitted discharge occurred when tailings from pond No. 1135 migrated down the outside of the outfall pipe, which bisected the berm for volume control. Mine tailings wastewater flowed from the pond into a sediment trap. The capacity of the trap was exceeded resulting in an unpermitted discharge of sediment, a pollutant, up to a foot deep, to 0.26 acre of forested wetlands and 780 linear feet of Manlove Branch. On December 4, 2012, DEQ staff met with representatives of Iluka to discuss the violations. Iluka had undertaken corrective measures, including removal of the sediment and seeding of the wetland, had installed hay bales, pipeline repairs, design changes, as well as implementing a corrective action plan which included, design changes to Concord pipelines, change in pipeline materials, and an extensive change to operations and maintenance procedures and protocols.

Iluka agreed to the Consent Special Order with DEQ to address the above described violations. The Order requires the payment of a civil charge and performance of a Supplemental Environmental Project ("SEP") which was approved on March 12, 2014. Civil Charge: \$83,083 of which Iluka shall pay \$21,208 and satisfy the remaining \$61,875 by satisfactorily completing a SEP

Authorization of Grants from the Combined Sewer Overflow Matching Fund: Section 62.1-241.12 of the Code of Virginia established the Combined Sewer Overflow (CSO) Matching Fund (the "Fund"). The Fund was created solely for the purpose of providing grants to localities for CSO projects. The 2013 General Assembly authorized bond proceeds to be provided through the Fund for two localities and the Board must also authorize those funds in accordance with the budget language. The General Assembly authorized \$75 million of bond proceeds through the Department of Environmental Quality to the Fund to make grants to the cities of Lynchburg and Richmond to pay a portion of the capital costs for their CSO projects. In accordance with the legislation, of the \$75 million, \$30 million shall be provided to the City of Lynchburg and \$45 million shall be provided to the City of Richmond. Both cities have been progressing with development of their CSO projects to be financed through bond proceeds from the Fund and have been working with the Department to establish grant budgets and meet the requirements for the grant. The Virginia Resources Authority, the financial administrator of the Fund, has developed draft grant agreements and is prepared to move forward with award of the grants. Department staff will monitor the projects during construction to insure the funds are used and accounted for appropriately. Board authorization is necessary prior to the grant awards. Staff will recommend that the Board authorize the disbursement of grant funds in the amounts of \$30 million to the City of Lynchburg and \$45 million to the City of Richmond for the purpose of implementing their CSO projects.