

**Virginia Soil and Water Conservation Board
Thursday, July 15, 2004
Natural Resources Conservation Service
Richmond, Virginia**

Virginia Soil and Water Conservation Board Members Present

David L. Moyer, Chairman
A. Dewey Bond
Donald O. "Spec" Campen
Jean S. Packard

Joseph H. Maroon
Linda S. Campbell
Granville Maitland
M. Denise Doetzer

Virginia Soil and Water Conservation Board Members Not Present

Robert. M. Hall
W.P. Johnson

Susan Taylor Hansen

Staff

Leon E. App, DCR
David C. Dowling, DCR
Jack E. Frye, DCR
Rick Linker, OAG
Dianna Sheesley, DCR

William G. Browning, DCR
Michael R. Fletcher, DCR
Lee Hill, DCR
Mark B. Meador, DCR

Others

John L. Bailey, Lake of the Woods General Manager
Doug Chidlow, Lake of the Woods Association
Don Cope, Lake of the Woods
Jim Danoy, Lake of the Woods/AARP
John Doherty, Lake of the Woods
Daniel Elliott, Lake of the Woods Association
Lee Frame, President, Lake of the Woods Association
Ralph Hollm, Lake of the Woods
Jim Hopkins, Lake of the Woods Association
Don Jackson, Lake of the Woods
Jerry Korb, Lake of the Woods Association
Stephanie Martin, VASWCD
Robin Knepper, Fredericksburg FreeLance-Star
Harry Ridge, Lake of the Woods Association
Suzie Takacs, Lake of the Woods Association
Peter Taylor, President, Lake of the Woods Civic Club
Ginny Thoms, Lake of the Woods Association
Boyce Wray, Lake of the Woods

Call to Order

Chairman Moyer called the meeting to order and declared a quorum present.

He welcomed the guests to the meeting and noted that those wishing to speak would have the opportunity at the appropriate time.

Minutes of May 26, 2004 Meeting

MOTION: Ms. Packard moved that the minutes of the May 26, 2004 meeting be approved as submitted.

SECOND: Ms. Campbell

DISCUSSION: None

VOTE: Motion carried unanimously.

Director's Report

Mr. Maroon gave the Director's report.

Mr. Maroon gave an overview of Water Quality Improvement Fund appropriations in the FY 2005 budget. The funds total \$10,510,687. A handout detailing the funding sources and planned expenditures is available from DCR.

Mr. Maroon presented a revised copy of Attachment A of the DCR/SWCD Grant Agreement. This attachment addressed the BMP Cost-share program as a separate agreement and has been provided to districts. A copy of the document is available through the DCR offices.

Mr. Maroon noted that DCR is working with the Office of the Attorney General to file the appropriate paperwork concerning the addition of the City of Roanoke into the Blue Ridge Soil and Water Conservation District. This request must be submitted to the U.S. Department of Justice as required under the federal Voting Rights Act.

Mr. Maroon stated that as of July 1, 2004, the Chesapeake Bay Local Assistance Department has merged into DCR. The staff of that agency is now the Division of Chesapeake Bay Local Assistance within DCR.

New appointments to the Virginia Soil and Water Conservation Board have not been made. Mr. Moyer and Mr. Bond will continue to serve until appointments are made.

Leon E. App, Deputy Director will be retiring from the Department after 38 years with the Commonwealth of Virginia. He will remain with the agency until November.

Mr. Moyer thanked Mr. App on behalf of the Board.

Mr. Moyer thanked Mr. Maroon for the Director's report and recognized that Mr. Rick Linker from the Office of the Attorney General was attending the meeting with regard to the Lake of the Woods issue.

Mr. Maroon noted that he would have to leave the meeting early to attend a Governor's Roundtable meeting and that, at that time, Mr. App would assume his proxy.

Progress Report on Legislative Study Requirements

Mr. Frye presented information regarding two budget amendments affecting the Board.

Item 382 #1c restores a portion of the fiscal year 2003 budget reductions to Virginia's Soil and Water Conservation Districts to implement nonprofit source water pollution programs. The amendment also requires the Soil and Water Conservation Board to provide statistics that will be used to evaluate the effectiveness of District operations.

Item 382 #4c appropriates an additional \$7.5 million in general funds each year for nonpoint pollution prevention programs including a minimum of \$5,000,000 annually for agricultural best management practices. The amendment also mandates a review of Soil and Water Conservation District nonpoint source programs.

Dam Safety Certificates and Permits ~ Lake of the Woods Association

Chairman Moyer welcomed the guests in attendance regarding the Lake of the Woods Association owned dams. He said that the order of business would be a presentation by staff, comments by Mr. Frame, President of the Lake of the Woods Association (LOWA), questions from Board members and then public comment.

Chairman Moyer noted that at the March Board meeting Lake of the Woods was granted a four month extension both for the main dam and the Keaton's Run Dam to allow time for discussion between the LOWA and DCR staff. There have been two meetings and an ongoing dialogue since March.

Chairman Moyer called on Mr. Browning to continue.

Mr. Browning said that DCR has attempted to make this an open process with regard to actions taken by the Lake of the Woods Association. Information provided to the Department has been distributed to the Board.

Mr. Browning introduced Dianna Sheesley, Regional Dam Safety Engineer, who is responsible for Lake of the Woods.

Ms. Sheesley gave the following presentation:

Virginia Impounding Structure Regulations and the Dam Safety Program

Classes of Impounding Structures

- Size Class – Determined either by maximum impounding capacity or height, whichever gives the larger size classification.
- Hazard Potential Classification – Determined by potential loss of human life or property damage downstream from the impounding structure in the event of failure or faulty operation of the impounding structure or appurtenant facilities.

Class I Hazard Potential

- Impounding structures in the Class I hazard potential category are located where failure will cause probable loss of life OR serious damage to occupied building(s), industrial or commercial facilities, important public utilities, main highway(s) or railroad(s).

Lake of the Woods Association (LOWA)

- Main Dam
 - 65 feet high, capacity of 14,160 acre-feet
 - Medium Size Class, per Table I of Regulations
 - Class I Hazard Potential
- Keaton's Run Dam
 - 38 feet high, capacity of 402 acre-feet
 - Small Size Class, per Table I of Regulations
 - Class I Hazard Potential

LOWA Hazard Potential Classification

- In 2001, the Board issued LOWA a Class I Conditional Certificate for Keaton's Run Dam and the Main Dam.
- The Main Dam has a major highway, 33 residential buildings, 10 commercial buildings, agricultural barn, a campground and other LOWA buildings downstream in the inundation zone, subject to damage and probable loss of life.

Probable Maximum Flood (PMF)

- The flood that might be expected from the most severe combination of critical meteorologic and hydrologic conditions that are reasonable possible in the region.
- The PMF is derived from the current probable maximum precipitation (PMP) available from the National Weather Service (NOAA)
- This is the methodology used throughout the United States for dam safety design standards.
- Virginia like many other states, places a high priority on avoiding the loss of one life.

Probable Maximum Precipitation

- The PMP rainfall at Lake of the Woods is about 38 inches in 24 hours.
- Virginia has several recorded rainfall events that approach this level of storm events.
 - 1955 ~ Big Meadows, 24 inches in 24 hours
 - 1969 ~ Tyro, 27 inches in 9 hours
 - 1995 ~ Madison, 24 inches in 6 hours
 - 2003 ~ Augusta County, 22 inches in 24 hours

Main Dam Spillway Capacity

- Existing spillway capacity is 50% PMF.
- Required capacity for a Class I medium structure is the full PMF, as per Table 1 of the 2004 Impounding Structure Regulations.

Main Dam – Spillway Inadequacy

- LOWA's engineer predicts a flow of water over the top of the dam at a maximum depth of over 3 feet for nearly 6 hours during the PMF.
- Under these conditions, the grass cover on earth dams will erode to the point that it will fail, and in this case it will cause excessive property damage and probably loss of life.
- Dam failure is imminent during the PMF unless the spillway capacity at the Main Dam is substantially increased.

Main Dam – Downstream Impacts

- The floodplain downstream of the Main Dam during the full PMF has water 20 feet deep.

- If dam failure were to occur during the storm event of the full PMF, then there would be an additional 27 feet of water, for a total water depth of 47 feet.
- At these velocities and depths, the homes and commercial buildings within the inundation area will sustain major structural damage.

Main Dam – Upstream Damage

- Lake levels will rise nearly 11 feet above the normal water level if the PMF occurs today, causing some flooding and property damage to upstream homes.
- Velocities of the water upstream of the dam along the shore are much less than the swift currents downstream and while there is significant damage, most the homes will remain intact.
- The rapid drawdown of the water levels in the lake occurring at dam failure, will increase the velocities upstream, possibly resulting in more significant structural damage of some flooded structures upstream.

LOWA's Request to Wave the Regulations

- LOWA is asking the Board to wave the Virginia Impounding Structures Regulations by granting a relaxation to the design features for an emergency spillway to meet the full PMF, based primarily on an aggressive Emergency Action Plan (EAP) to serve as a warning mechanism to reduce the probability of the loss of life.
- If granted, this would be the first – ever such relaxation and would establish a broad precedent for the Commonwealth.

Emergency Action Plan

- LOWA's commitment for an aggressive EAP, including training and exercises is commendable.
- An EAP does not reduce any damage to property.
- Having an EAP is a minimum requirement of all regulated dams.

LOWA's 2/3 PMF Proposal

- LOWA proposes to increase spillway capacity from the ½ PMF to the 2/3 PMF by replacing the current weir wall with an inflatable bladder.
- Does not meet the full PMF spillway capacity as required under Table 1 of the Impounding Structure Regulations.

LOWA's Full PMF Proposal

- If required to achieve a full PMF, LOWA proposes a roller compacted concrete (RCC) auxiliary spillway, approximately 930 feet long and 5 ½ feet deep, at an estimated cost of \$3.8 million.
- No modifications to existing spillway.
- LOWA evaluated many alternatives and presented DCR Staff with alternatives developed by the Association's engineer I the \$2.2 to \$2.5 million range, which would satisfy State Regulations. These were rejected by LOWA due to aesthetic concerns in favor of higher cost options.

Main Dam – Staff Recommendations

- Staff recommends the Board accept LOWA's proposal for accommodating the full PMF.
- Issue a Conditional Class I, Operation and Maintenance Certificate (07/14/04-04/30/05) for Lake of the Woods Dam, Inventory Number 13701
- Require LOWA to proceed with the engineering design, plans and specifications for an increased spillway capacity to safely pass the full PMF in accordance with the June 22, 2004 memorandum from LOWA relating to a roller compacted concrete auxiliary spillway, 930 feet long and 5 ½ feet deep.

Benefits of Providing Full PMF Capacity for the Main Dam

- The new spillway would discharge water when two feet of water flows through the old spillway.
- The earlier release of flood water would reduce the upstream flooding during larger storm events.
- Maximum lake level of 7 ½ feet above the normal water level (top of dam) during the PMF, reducing upstream flooding during the PMF event by 3 ½ feet.
- The probably upstream and downstream impacts are greatly reduced, because the new spillway passes the flood water without breaching the dam.

Keaton's Run – Existing Conditions

- Required spillway design capacity of a small Class I structure is between ½ PMF to the full PMF.
- According to section 4VAC50-20-50 of the Regulations, and a height of 38 feet, the required spillway capacity of Keaton's Run is nearly the full PMF.
- Existing spillway capacity is 50% PMF.

- There are two major highways and 12 commercial buildings downstream, subject to flooding.

Keaton's Run – LOWA Request

- LOWA requests a reduction of the required spillway design flood to the ½ PMF under Section 4VAC50-20-130 of the Regulations, which states "the spillway design flood requirement may be reduced by the Board to the spillway discharge at which dam failure will not significantly increase the downstream hazard existing just prior to dam failure..."
- The incremental flood damage downstream during the ½ PMF storm, between with and without dam failure is approximately 1 ½ feet at the area of the commercial development.

Keaton's Run – Staff Recommendations

- Staff concurs with LOWA request.
- Issue a Regular Class I, Operation and Maintenance Certificate, with an emergency spillway capacity reduction to the ½ PMF capacity, under Section 4VAC50-20-130 of the Regulations.
- Require LOWA during their annual owner and/or owner's professional engineer inspections (Regulation §4VAC5-20-100 A & D) to provide DCR with written verification on the number and location of newly constructed and/or proposed structures within the June 29, 2004 identified downstream inundated area.

* A copy of the "2004 Virginia Impounding Structures Regulations ~ Performance Standards Required for Impounding Structures" is available from DCR offices.

Chairman Moyer called on Mr. Frame to make remarks on behalf of the Lake of the Woods Association.

Mr. Frame indicated that he would not make his original presentation as much of the information had been covered by Ms. Sheesley.

Mr. Frame said that the table indicates that it is for new impounding structures and there is no table in the regulations for existing impounding structures. He noted that the Lake of the Woods Dam has been in place for 35 years.

Mr. Frame said that the LOWA dam was a Class I because of the probable loss of life or property damage. He noted that with the proposed emergency evacuation plan the Association believes there would be no loss of life.

He said the Association is working to actively discourage further downstream development.

Mr. Frame said the Association emergency plan has been provided to the Division of Dam Safety, the Orange County Emergency Coordinator and the State Emergency Management Department.

Chairman Moyer recognized Mr. John Bailey, staff at LOWA.

Mr. Bailey noted that he had previously addressed some of the same issues Mr. Frame had covered. He noted that with regard to building in the inundation zone that no county has restrictions to prevent that. He noted that the Association recommends looking at a model flood plan and said that the state could provide leadership on developing such a plan.

Mr. Moyer recognized guests for additional public comment.

Mr. Peter Taylor noted that he is President of the Lake of the Woods Civic Club with approximately 700 members. He noted that the civic club was aware of the recommendations to upgrade the dam. He stated that the belief of the civic club was that the possibility of the occurrence of the probable maximum flood was unlikely and unreasonable.

He noted that the civic club supports the association's desire to achieve the required level for the two-thirds probable maximum flood.

Mr. Jim Danoy gave the following statement:

I am Jim Danoy and I am the Vice President of AARP Chapter 5239 (Lake of the Woods). Speaking on behalf of our members, we strongly support the Lake of the Woods Association Board of Directors concerning their recommendations of the Main Dam. The requirement to achieve a full 1.0 Probable Maximum Flood spillway capacity in our view does not meet the common sense test and would seriously impact our 350 members. The additional cost imposed on our members for meeting an unrealistic regulatory requirement would create an unnecessary financial burden on our members, many of which are on fixed and limited incomes. The lost of use of our Main Lake for a year or more would impact our quality of life and would substantially hurt real estate values for anyone needing to sell their home during that period. These costs would be understandable if there were an increase in safety for the people in the dam inundation zone, but that's not the case. The heavy precipitation situation requiring the 1.0 Probable Maximum Flood spillway is extremely rare and provides more than enough warning to evacuate at risk people before any dam failure. Other dam failure situations are not mitigated the expense required to achieve a 1.0 Probable Maximum Flood spillway. Therefore the AARP Chapter 5239 recommends that the Soil & Water Conservation Board accept the Lake of the Woods Association recommendation to achieve a 2/3 Probable Maximum Flood capacity by installing

a berm in the low are near the clubhouse and an inflatable bladder in the existing spillway.

Ms. Campbell asked for a clarification on the classification of the dam.

Ms. Sheesley noted that the main dam is a Class 1 dam based on what is downstream.

Mr. Maroon noted that the original dam was built before the regulations were in place. When the state regulations were adopted, originally the dam was classified as a Class 1. For reasons that were not clear, the dam was later reclassified as a Class 2. In 2001, the main dam was reclassified as a Class 1.

Mr. Moyer called on the next speaker, Don Cobe.

Mr. Cobe noted that he had submitted a proposal to the Board, but noted that it may not yet have been received. He noted that he lived on the lake. He noted that the plan suggested a use of technology as a help in the establishment of an emergency action plan.

Mr. Moyer recognized Harry Ridge.

Mr. Ridge noted that with 10 to 11 inches of rain New Jersey had lost 13 dams in the preceeding week. He stated that 10 inches of rain at Lake of the Woods would flood many homes as well as the clubhouse and pool area.

Mr. Ridge submitted a document that outlined two possible different solutions.

Mr. Moyer recognized Doug Chidlow.

Mr. Chidlow said that his interpretations of the regulations regarding safe operation of the impoundment is that the owner is not allowed to operate a dam that threatens life or property. He said that he disagreed with the consultants assessment that endangering life or property upstream was acceptable.

He noted that if there was a strategy to lower the lake level as a protocol that would meet a portion of the PMF requirement.

Mr. Moyer recognized Dan Elliott.

Mr. Elliott noted that he is a Lake of the Woods resident. He said that he had presented his concerns to the Board at the March meeting. He said that he felt as a lakefront property owner that the proposal offered by DCR was acceptable. He said that he did not agree with allowing the lake level to rise an additional 5 ½ feet.

Ms. Packard asked Mr. Frame to clarify the number of association members and how much each paid in annual dues.

Mr. Frame said that there are 4,259 lots and that members pay \$726 per year.

Ms. Sheesley elaborated on the proposal to add an additional 5 ½ to the top of the dam. She noted that the width of the dam was 1,000 feet from end to end. She also noted that the PMF cannot be prevented and that there will definitely be flooding if the PMF comes.

She noted that the dam owner has constructed a dam that is a major risk downstream.

Mr. Campen asked if the proposals from Mr. Ridge were considered.

Mr. Maroon noted that staff reviewed options that came to the Department in the formal submittal by the applicant. In this case, LOWA did not choose to include Mr. Ridge's recommendations in their proposal. The staff is presenting the Board with their recommendation for the best option presented to DCR by LOWA.

Mr. Linker noted that the purpose of the law is to provide that you have a safely operated and maintained dam. The DCR engineer has determined that a full PMF is what is necessary to comply. How the owner achieves that PMF is up to the owner. But it must meet the requirement.

Mr. Maroon explained that the DCR staff and the Secretary of Natural Resources Office have attempted to address the concerns of LOWA in a reasonable manner consistent with the Dam Safety law. Therefore the staff is recommending that the Board move forward on the certificate as recommended and at the same time authorize the Department to move forward with a review of the current state requirements.

MOTION: Mr. Bond moved that The Virginia Soil & Water Conservation Board issue the Lake of the Woods Association a Regular Class I, Operation and Maintenance Certificate for Keaton's Run Dam, Inventory Number 13708, with an emergency spillway capacity reduction from the full PMF to the ½ PMF capacity, under Section 4VAC 50-20-130 of the 2004 Virginia Impounding Structure Regulations (Regulations). A condition of this Certificate requires LOWA during their annual owner and/or owner's professional engineer inspections (Regulation §4VAC50-20-100 A & D) to provide DCR with written verification on the number and location of newly constructed and/or proposed structures within the June 29, 2004 identified downstream inundation area.

SECOND: Ms. Campbell.

DISCUSSION: None.

VOTE: Motion carried with Mr. Maroon abstaining.

MOTION: Ms. Campbell moved that The Virginia Soil & Water Conservation Board issue the Lake of the Woods Association (LOWA) a Conditional Class I, Operation and Maintenance Certificate (07/15/04 – 04/30/05) for Lake of the Woods Dam, Inventory Number 13701. The Conditional Certificate requires the LOWA to proceed with the engineering design, plans and specifications for an increased spillway capacity to safely pass the full PMF.

SECOND: Ms. Packard.

DISCUSSION: None.

VOTE: Motion carried with Mr. Maroon abstaining.

MOTION: Ms. Packard moved that the Virginia Soil and Water Conservation Board establish an Ad Hoc Committee for the expressed purpose of studying the Classes of Impounding Structures, §4VAC 50-20-40 and Performance Standards Required for Impounding Structures, §4VAC 50-20-50 and the attendant Table 1 established in the 2004 Virginia Impounding Structures Regulations. The Committee membership shall be set by the Director of the Department of Conservation and Recreation with concurrence of the Board Chairman. The Committee Shall complete its work by April 30, 2005.

SECOND: Mr. Maitland.

DISCUSSION: None.

VOTE: Motion carried unanimously.

Proposed Changes in Local Erosion and Sediment Program Reviews

Mr. Hill noted that DCR staff is modifying the process of Local Erosion and Sediment Program Reviews. Each of the 8 regional offices will be responsible for four reviews.

He noted that it has been problematic in that if a locality was not found 100% in compliance they were found to be out of compliance totally. The law and regulations require that localities meet minimum standards of effectiveness. He noted that localities also felt they were not receiving credit for the things they were doing.

Under new procedures localities will receive credit for work they are doing. If they meet a minimum of 70% of the criteria they will be rated as consistent with a need for improvement.

MOTION: Ms. Packard moved that the Board receive the proposed changes in program review and thank the staff for their hard work.

SECOND: Ms. Campbell.

DISCUSSION: None.

VOTE: Motion carried unanimously.

Urban Programs Report

MOTION: Ms. Packard moved that the Virginia Soil and Water Conservation Board approve the proposed Alternative Inspection Programs for Botetourt County and for Campbell County as being consistent with the requirements of the Erosion and Sediment Control Law and Regulations and that the Board request that DCR staff monitor the implementation of the alternative inspection program by the Counties to ensure compliance.

SECOND: Mr. Maitland.

DISCUSSION: None.

VOTE: Motion carried unanimously.

MOTION: Mr. Campen moved that the Virginia Soil and Water Conservation Board receive the staff update and recommendations regarding the proposed Alternative Inspection Programs (AIP) for the City of Suffolk and the City of Portsmouth and that the Board concur with staff recommendations and accept the Cities' proposed AIPs for review and action at the next Board meeting.

SECOND: Ms. Campbell.

DISCUSSION: None.

VOTE: Motion carried unanimously.

Stormwater Management Consolidation Update

Mr. Frye noted that Lee Hill has been named Urban Stormwater Program Manager to oversee that program.

The law has moved those regulations from the Board of Conservation and Recreation to the Soil and Water Conservation Board. DCR has a transition team from DEQ and the Division of Chesapeake Bay Local Assistance to work on about 15 different issues.

Approval of Stormwater Management Regulatory Motions

Mr. App presented three motions related to stormwater management regulations and the program.

Motion to transfer and update the Board's Stormwater Management Regulations:

The Board authorizes the Director of the Department of Conservation and Recreation and the Departmental Regulatory Coordinator to prepare those changes necessary to bring the Board's Stormwater Management Regulations, including any attendant forms, into conformance with changes made to the Code of Virginia including those changes necessary pursuant to Chapter 372 of the 2004 Virginia Acts of Assembly (HB1177) and any other non-discretionary changes to conform with the Virginia Acts of Assembly or with federal law and regulations enacted since the last regulatory amendment. This includes the transfer of the regulations from the Board of Conservation and Recreation to the Virginia Soil and Water Conservation Board and the transfer of certain regulations from the Virginia State Water Control Board into these regulations.

This authorization is for those changes that are exempt from the Administrative Process Act and are subject only to the Virginia Register Act.

This authorization extends to, but is not limited to, the drafting of the necessary regulatory amendments, action summary, and other necessary documents and documentation as well as the coordination necessary to gain approvals from the Department of Planning and Budget, the Secretary of Natural Resources, the Governor, the Attorney General, and the Virginia Registrar of Regulations.

The Board requests that the Director or the Regulatory Coordinator report to the Board on these actions at subsequent Board meetings.

Motion made by: Mr. Campen

Motion seconded by: Ms. Packard

Action: Motion carried unanimously.

Motion to authorize and direct the filing of a Notice of Intended Regulatory Action (NOIRA) related the Board's Stormwater Management Regulations and other associated actions:

The Board authorizes the Director of the Department of Conservation and Recreation and the Departmental Regulatory Coordinator to prepare and submit a NOIRA to consider changes and solicit recommendations related to the Board's Stormwater Management Regulations. As part of this process, the Board further authorizes that a public meeting be held by the Department not less than 30 days after publication of the NOIRA in the Virginia Register of Regulations, that a technical Advisory Committee be established to make recommendations to the Director and the Board on potential regulatory changes, that the Department hold other stakeholder group meetings as it deems necessary, and that the Department prepare a draft proposed regulation for the Board's review and consideration.

This authorization is related to those changes that are subject to the Administrative Process Act and to the Virginia Register Act. The Department shall follow and conduct actions in accordance with the Administrative Process Act, the Virginia Register Act, the Board's Regulatory Public Participation Procedures, the Governor's Executive Order 21 (2002) on the "Development and Review of Regulations Proposed by State Agencies", and other official rulemaking protocols.

This authorization extends to, but is not limited to, the drafting and filing of the NOIRA, the holding of public meetings, the development of the draft proposed regulation and other necessary documents and documentation, as well as the coordination necessary to gain approvals from the Department of Planning and Budget, the Secretary of Natural Resources, the Governor, the Attorney General, and the Virginia Registrar of Regulations.

The Board requests that the Director or the Regulatory Coordinator report to the Board on the status of these actions at subsequent Board meetings.

Motion made by: Ms. Packard

Motion seconded by: Mr. Campen

Action: Motion carried unanimously.

Motion to delegate certain authorities to the Department and its Director related the Board's Stormwater Management Regulations, Chapter 372 of the 2004 Virginia Acts of Assembly, and the implementation and operation of related programs:

Pursuant to Chapter 372 of the 2004 Virginia Acts of Assembly (HB1177), § 10.1-603.2:1. Powers and duties of the Virginia Soil and Water Conservation Board, effective July 1, 2004, the Board may, in accordance with subsection 2, "Delegate to the Department or to an approved locality any of the powers and duties vested in it by this article except the adoption and promulgation of regulations. Delegation shall not remove from the Board authority to enforce the provisions of this article."

Pursuant to this authority to delegate certain powers and duties to the Department, the Board authorizes the Department and its Director to seek Federal National Pollutant Discharge Elimination System (NPDES) Permitting Program delegation authorization related to construction activities and municipal separate storm sewer systems from the Federal Environmental Protection Agency and to take commensurate actions to transfer the State Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation programs related to construction activities and municipal separate storm sewer systems from the Virginia State Water Control Board and the Department of Environmental Quality to the Virginia Soil and Water Conservation Board and the Virginia Department of Conservation and Recreation to be operated as the Virginia Stormwater Management Program (VSMP).

The Board authorizes the Director of the Department of Conservation and Recreation to submit on behalf of the Board a delegation package to the Federal Environmental Protection Agency and to coordinate such associated actions as may be determined necessary with the Department of Environmental Quality, the Secretary of Natural Resources, the Governor, and the Attorney General.

The Board requests that the Director report to the Board on the status of these actions at subsequent Board meetings.

Motion made by: Mr. Campen

Motion seconded by: Ms. Campbell

Action: Motion carried unanimously.

Enforcement Guidelines for Regulated Dams

Mr. Browning presented a handout regarding enforcement guidelines for regulated dams. A copy of this document is available through the DCR office.

This information has been reviewed by the DCR Director and the Attorney General and is presented to the Board on an information basis.

Dam Safety Certificates and Permits

Mr. Browning presented the following Out of Compliance Recommendations:

01533	Fauber	AUGUSTA	Class I
06119	Lake Mellott	FAUQUIER	Class II
06921	Lake Isaac	FREDERICK	Class II Construction
07915	Greene Mountain	GREENE	Class II Conditional
08703	Gillie Creek	HENRICO	Class II Conditional
17907	Little Lake Arrowhead	STAFFORD	Class II
17908	Lake Arrowhead	STAFFORD	Class II Regular

MOTION: Mr. Campen moved that the Virginia Soil and Water Conservation Board authorize DCR staff to work with the Attorney General's Office on drafting a certified letter requiring the owner of Lake Isaac Dam, Inventory Number 06921, through the submission of an application for an Operation and Maintenance Certificate to close out the Class II Construction Permit issued by the Board on 1/16/92 to bring the impoundment structure into compliance with the Virginia Dam Safety Act.

SECOND: Ms. Packard

DISCUSSION: None.

VOTE: Motion carried unanimously.

Mr. Browning presented the following Operation and Maintenance Certificate Recommendations:

00304	Lower Ragged Mountain	ALBEMARLE	Class I Conditional
00356	Upper Ragged Mountain	ALBEMARLE	Class I Conditional
00379	Hillcrest	ALBEMARLE	Class III Conditional
01101	Holliday Lake	APPOMATTOX	Class III Regular
01903	Beaverdam Creek	BEDFORD	Class II Regular
01932	Lake Ridge Drive	BEDFORD	Class III Regular

03701	Roanoke Creek	CHARLOTTE	Class III Regular
07528	Rivergate Lake	GOOCHLAND	Class III Regular
07529	Stoney Pond	GOOCHLAND	Class II Regular
08502	South Anna #2	HANOVER	Class III Regular
14502	Upper Byers	POWHATAN	Class III Conditional
14718	Mottley	PRINCE EDWARD	Class III Regular
15329	North Fork Wetlands Bank	PRINCE WILLIAM	Class II Size Exempt
18705	Lake Front Royal	WARREN	Class II Regular

Mr. Browning noted that Dam # 01101, Holliday Lake is owned by the DCR Division of State Parks.

MOTION: Ms. Campbell moved that the Virginia Soil and Water Conservation Board approve the Operation and Maintenance Certificate Recommendations as presented by DCR staff with the exception of Dam #01101, Holliday Lake, and that staff be directed to communicate the Board actions to the affected dam owner.

SECOND: Ms. Packard.

DISCUSSION: None.

VOTE: Motion carried unanimously.

MOTION: Ms. Campbell moved that the Virginia Soil and Water Conservation Board approve the Operation and Maintenance Certificate Recommendation as presented by DCR staff for Dam #01101 Holliday Lake and that staff be directed to communicate Board actions.

SECOND: Mr. Maitland.

DISCUSSION: None.

VOTE: Motion carried with Mr. App (proxy for Mr. Maroon) abstaining.

Mr. Browning presented the following Permit Recommendations:

08908	Marrowbone Creek #1	HENRY	Class I Conditional
14742	Poplar Hill	PRINCE EDWARD	Class III Proposed

MOTION: Mr. Campen moved that the Virginia Soil and Water Conservation Board approve the Permit Recommendations as presented by DCR

staff and that staff be directed to communicate the Board actions to the affected dam owner.

SECOND: Ms. Packard.

DISCUSSION: None.

VOTE: Motion carried unanimously.

Mr. Browning presented the following Extension Recommendations:

01516	Upper Wallace	AUGUSTA	Class III Regular	September 2004
01905	Bedford Lake	BEDFORD	Class I Regular	December 2004
01908	Springlake	BEDFORD	Class III Regular	December 2004
01922	Ivy Hill	BEDFORD	Class I Regular	September 2004
03507	Stewarts Creek - Lovills Creek Dam #9	CARROLL	Class I Regular	September 2004
05104	White Oak Creek	DICKENSON	Class II Regular	September 2004
05902	Burke Lakes	FAIRFAX	Class I Regular	September 2004
05933	Crippen	FAIRFAX	Class II Regular	September 2004
06136	Hideaway Hills	FAUQUIER	Class III Regular	September 2004
14319	Elkhorn	PITTSYLVANIA	Class III Regular	December 2004
18501	Upper Clinch Rvr. #8	TAZEWELL	Class I Regular	September 2004

MOTION: Ms. Campbell moved that the Virginia Soil and Water Conservation Board approve the Extension Recommendations as presented by DCR staff and that staff be directed to communicate the Board actions to the affected dam owner.

SECOND: Ms. Packard.

DISCUSSION: None.

VOTE: Motion carried unanimously.

Mr. Browning informed the Board of an incident with two state owned dams in Powhatan County. Both dams were breeched. DCR is working with that agency to determine if the dams will be rebuilt. No one was injured when the dams broke.

District Director Resignations and Appointments

Mr. Frye presented the following District Director Resignations.

Tidewater

Resignation of Harrison A. Dixon, Gloucester County, effective 5/31/04, appointed director position (term of office expires 1/1/05).

Resignation of Dianne P. Jordan, Mathews County, effective 6/30/04, elected director position (term of office expires 1/1/08).

MOTION: Mr. Campen moved that the Virginia Soil and Water Conservation Board accept the resignations as presented by DCR staff and that staff be directed to communicate the Board actions to the affected individuals and their SWCDs.

SECOND: Ms. Packard.

DISCUSSION: None.

VOTE: Motion carried unanimously.

Mr. Frye noted that at the end of the year all 47 district appointed extension agents will need to be reappointed.

Partner Agency Reports

Natural Resources Conservation Service

Ms. Doetzer presented a request from John Bailey, Chairman of the Daniel Boone Soil and Water Conservation District and Benny Wampler, Director of the Virginia Department of Mines, Minerals and Energy. The request was for a grant for a water quality improvement project.

The grant process requires approval from the Board so that NRCS can request funds for remediation of the damage. The request to Congress comes from the NRCS office.

MOTION: Mr. Campen moved that the Virginia Soil and Water Conservation Board approve the request for planning assistance in the North Fork of the Powell River Watershed under the authority of the PL-566 Watershed Program.

SECOND: Mr. Maitland.

DISCUSSION: None.

VOTE: Motion carried unanimously.

Ms. Doetzer gave the report for the Natural Resources Conservation Service. Copy attached as Attachment # 1.

Department of Conservation and Recreation

Mr. Frye gave the report for the Department of Conservation and Recreation. Copy attached as Attachment # 2.

Other Business

Mr. Moyer noted that the Board needs to establish an ad hoc committee to look at PMF requirements. He noted that Ms. Campbell has agreed to chair an advisory committee on stormwater management. Appointments to that committee should be complete by September.

Also, the Dam Safety Technical Advisory Committee needs to be re-activated.

Mr. Moyer noted that the Future of District subcommittee has completed the task as assigned by the Board. He recommended that the committee be terminated. He further suggested that the Association consider funding issues and that the Board be involved in those discussions.

Mr. App presented a motion regarding the Board's Virginia Impounding Structures Regulations:

Motion to update the Board's Virginia Impounding Structures Regulations to address fees only:

The Board authorizes the Director of the Department of Conservation and Recreation and the Departmental Regulatory Coordinator to prepare those changes necessary to the Board's Virginia Impounding Structures Regulations, including an attendant forms, to implement dam safety fee modifications pursuant to Chapter 1042 of the 2003 Virginia Acts of Assembly, Item 380J. This item reads "The Department of Conservation and Recreation is authorized to develop a cost recovery system, the funds from which shall be used to support the direct costs of providing inspections, plan review, administrative review, and certifications of non-Soil and Water Conservation District dams. The system shall employ a sliding scale, if practical and shall be based on factors that directly relate to the costs of the dam inspection program. Total costs recovered from the new system shall not exceed 90 percent of the actual program cost."

The Department may also make any other non-discriminatory changes to conform with the Virginia Acts of Assembly or with federal law and regulations enacted since the last regulatory amendment.

This authorization is for those changes that are exempt from the Administrative Process Act and are subject only to the Virginia Register Act.

The Board requests that the Director or the Regulatory Coordinator report to the Board on those actions at subsequent Board meetings.

Motion made by: Ms. Packard

Motion seconded by: Mr. Campen

Action: Motion carried unanimously.

Mr. Campen expressed a desire to represent the Soil and Water Conservation Board at the Southeast Soil and Water Conservation District Meeting.

Mr. App noted that such expenditures must be approved by the Director.

MOTION: Ms. Packard moved that Mr. Campen represent the Board at the Southeast Soil and Water Conservation District meeting pending the approval of expenses by the DCR Director.

SECOND: Ms. Campbell.

DISCUSSION: None.

VOTE: Motion carried unanimously.

Next Meeting

The next meeting of the Virginia Soil and Water Conservation Board will be Thursday, September 16, 2004 at the NRCS offices in Richmond.

Adjourn

There being no further business, the meeting was adjourned.

Respectfully submitted.

David L. Moyer
Chairman

Joseph H. Maroon
Recording Secretary

Attachment # 1

**NRCS Report
Virginia Soil & Water Conservation Board
July 15, 2004
NRCS Conference Room
Richmond, VA**

International Scholars Visit Virginia

A group of international students traveled to Virginia's Northern Neck and Middle Peninsula sponsored by the Nuffield Foundation which is an exchange program for farmers in the British Commonwealth countries. Through this program, scholars travel around the world to learn about agricultural issues such as conservation, marketing, and trade agreements. The trip was coordinated by NRCS, US Fish and Wildlife Service, Virginia Department of Game and Inland Fisheries, Izaak Walton League, and a representative from Congressman Gilchrist's office. Stops included Lloyd Mundie's farm in Warsaw, where they looked at a winter livestock feeding facility, grain operation, and conservation buffers; US Fish & Wildlife Service's Rappahannock Valley Wildlife Refuge to view warm season grasses and other habitat measures for migratory birds; and Todd Henley's farm in King and Queen County to learn about organically grown corn and soybeans.

Forage Meeting Exceeds Expectations

More than 600 people attended the annual meeting of the American Forage and Grassland Council in Roanoke, VA. NRCS was one of the sponsors for of the five-day meeting organized by Virginia Tech and the Virginia Forage and Grassland Council. Congressman Goodlatte talked about key Ag issues including potential cuts in farm spending, reopening foreign markets to US products, a national animal identification program, and the new Conservation Security Program.

Dam Rehabilitation Activities Update

The Project Agreement and Land Acquisition Rights paperwork has been signed and returned for Marrowbone. A construction contract timeline was developed this week.

Preparation for the planning start on Pohick is underway with expectation for funding in the FY-2005 NRCS budget. NRCS met with the sponsors on July 14 to discuss the planning process.

The Virginia Farming TV Show Airs a No-Till Story

NRCS Conservation Agronomist Chris Lawrence joined New Kent County extension agent Paul Davis to discuss soil conservation and no-till soil management on Virginia Public Television the second week in July.

SWCD Workshop on August 19th

The Virginia Chapter of the Soil and Water Conservation Society is conducting a workshop on Managing and Protecting our Aquatic Resources, Thursday, August 19, 2004 from 9:00 a.m. to 3:30 p.m. The workshop will include presentations on Schools of Shad Public Education/Restoration project; Embrey Dam Removal on the Rappahannock River; Effect of Riparian Buffers on Fish Populations in Small Streams and a tour of the fish ladder at Boshier Dam on the James River. Register before August 4, 2004 by contacting Alyson Sappington at the Thomas Jefferson SWCD in Charlottesville, VA.

Reorganization of Area Offices

Following a NRCS national policy directive for a direct line and staff organization, I am changing our organizational structure. We will be adding three Assistant State Conservationists for Field Operations for a total of four. These positions will be located in Harrisonburg, Christiansburg, Farmville and Smithfield. These four Assistants for Field Operations will supervise all the District Conservationists within their respective area and the technical staff assigned to each of the area offices. The current Supervisory District Conservationists will resume a full time role as District Conservationists. Increased workload as a result of Farm Bill programs and lack of staff to provide oversight and quality review, has led us to restore the area office organization. We believe that improvements in customer service and quality of work will occur by this change. Our goal is to have this conversion fully implemented by mid-November.

Attachment # 2

**Department of Conservation and Recreation
Report to the VA SWC BOARD July 14, 2004**

DCR/SWCD Grant Agreements for FY05 Operational Funding:

New grant agreements have been sent to districts following the General Assembly Veto Session June 16. Districts are signing and returning the agreement prior to receiving FY 05 funding. As of July 13, 2004 CDCs have issued letters requesting disbursement of July monthly funds for approximately half of the 47 SWCDs.

For the fiscal year (FY05), total operational funding for all districts is \$4,052,240 which reflects a slight increase above FY04 operational funding that totaled \$3, 932,240. However, FY05 funding is still roughly 6% less than the peak funding level experienced by districts in FY01 (\$4,301,000).

Agricultural BMP Cost-Share Program:

The separate agreement between DCR and districts for the Agricultural Best Management Practice Cost-Share Program funds has been issued to all districts. The grant agreement provides guidance to districts to apply methods for better targeting of agricultural cost-share funds and attracting new participants to the state cost-share program. Statewide, \$6,233,062 will be available through WQIF and related sources this fiscal year. Of this amount \$3,739,837 will be dedicated to the Chesapeake Bay SWCDs and \$2,493,255 will be shared among SWCDs within the Southern Rivers. Total program funding in the next program year (FY06) will be slightly less.

Conservation Reserve Enhancement Program (CREP):

WQIF dollars are being directed to accelerate the Chesapeake Bay portion of CREP, achieve the statewide wetlands goal, and support the 5,000 acre expansion of the Southern Rivers CRFEP. The new agreements between VA and USDA to expand the Southern Rivers CREP by 5,000 acres and add an additional practice to the Bay are still working through the approval process. \$2,230,000 will be directed to CREP in FY05.

Other WQIF Actions:

There will be \$1,250,000 in competitive NPS grants for projects to public and private entities during the fiscal year (FY05). In addition, the VA Department of Forestry will have available \$250,000 for their management of projects that meet state water quality objectives, fulfill WQIF criteria requirements and support Tributary Strategies.

SWCD Audit Services:

The accounting firm of Robinson, Farmer, Cox and Associates (RFCA) will again be auditing SWCDs this year beginning in August. Twenty-five (25) SWCDs will be audited. By increasing the quantity of districts audited last year and this year, a two-year audit cycle is being achieved. Previously the audit schedule provided a three-year cycle

of audits. The two-year cycle will better protect districts and identify any problems in a more timely manner.

Nonpoint Source Grants:

DCR administers four grant programs that address nonpoint source pollution. The largest of these grants is the Clean Water Act Section 319 grant. This grant provides approximately \$4.5 million annually for implementation of the state's nonpoint source management programs. In particular, it provides critical support for agency staffing and for restoring impaired waters. The Environmental Protection Agency (EPA) administers Section 319 at the federal level. EPA also administers the Chesapeake Bay Implementation Grant. Virginia receives approximately \$2.5 million per year through this grant program. This grant is the primary funding program for the state's Chesapeake Bay restoration program, including implementation of tributary strategies. The National Oceanic and Atmospheric Administration awards the state approximately \$500 thousand annually for implementing the Coastal Nonpoint Source Program. These funds are typically focused on technical support and capacity building at the local government level. As noted above, the Water Quality Improvement Fund is the primary state funded program for nonpoint source pollution management. The funding level for this grant program varies depending upon appropriations and budget surpluses. These funds are typically used for on the ground implementation activities.

Stormwater Management:

DCR has promoted Lee Hill as the Urban Stormwater Management Program Manager to head up our efforts to consolidate state stormwater programs. We are currently in the process of filling additional key positions to staff these expanded responsibilities.

Nutrient Management Regulatory Actions:

DCR has begun holding the technical advisory committee (TAC) meeting to receive advice for changes to the regulations. The first meeting was June 17 and the next will be July 26 in Charlottesville. This is the beginning of actions that will include considering how Virginia will manage phosphorus applications and consider additional issues concerning nitrogen.

Miscellaneous Topics of Interest:

The financial loss experienced by the Prince William SWCD due to employee theft has been largely restored. Surety bond coverage provided through a policy administered by DCR has enabled the district to receive an initial check in the amount of \$100,000. The documented loss of district funds totaled approximately \$109,000 however, further penalties and obligations cause the district to file a claim of \$137,000. A final settlement by the insurance company has not yet been resolved. The district must absorb the policy deductible of \$5,000. Whether the claim will impact policy coverage that extends to all 47 SWCDs has not yet been determined.