

TENTATIVE AGENDA AND MINIBOOK
STATE WATER CONTROL BOARD MEETING
 MONDAY, SEPTEMBER 30, 2013

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

CONVENE – 9:30 A.M.

			TAB
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II.	Permits		
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	Virginia Pollutant Discharge Elimination System (VPDES) Permit Program Regulation (9VAC25-31)	Graham	D
IV.	Fast-Track Regulations		
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X.	Future Meetings (Confirm December 9-10)		

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.

VPDES Permit No. VA0092274, Rohoic Creek WWTP, Dinwiddie County: BACKGROUND: On October 31, 2012, DEQ received an application from Dinwiddie County Water Authority (DCWA) for re-issuance of VPDES permit number VA0092274 for the Rohoic Creek Wastewater Treatment Plant (WWTP). This permit was originally issued for the first time on August 22, 2008 and expired on August 21, 2013. The permittee submitted a complete application more than 180 days prior to expiration of the permit; therefore, the permit has been administratively continued. During the original 2008 issuance process, notification was made to 5 riparian land owners downstream of the project. Staff received one phone call from a citizen as a result of the riparian land owner notification and provided the citizen with a copy of draft permit and fact sheet in 2008 during the public comment period. No public comments were received during the public notice phase of the original permit. The 2008 permit authorized the permittee to discharge treated municipal wastewater from a treatment facility with design capacity of 4.0 million gallons per day (MGD) into Hatcher Run in the Chowan River basin. The proposed outfall location is at the Route 1 bridge, directly downstream of the Jordan Lake dam. At the proposed outfall point, the receiving water body is a free-flowing stream. At the time of the 2008 permit issuance, the receiving waters were designated as Class III waters. Hatcher Run and its tributaries from its confluence with Rowanty Creek to river mile 19.27, excluding Picture Branch, have been reclassified as Class VII swamp waters, defined in the Virginia Water Quality Standards 9VAC 25-260-5 to be waters with naturally occurring low pH and low dissolved oxygen caused by (i) low flow velocity that prevents mixing and re-aeration of stagnant, shallow waters and (ii) decomposition of vegetation that lowers dissolved oxygen concentrations and causes tannic acids to color the water and lower the pH. This 2013 permit and fact sheet have been revised to reflect the change in classification.

As of the date of this memorandum the treatment facility has not been built, and no Certificate to Construct (CTC) has been issued to the facility. Currently DCWA owns 2.3 MGD of the 23 MGD wastewater treatment capacity at the South Central Wastewater Authority (VPDES permit number VA0025437). The current amount of the 2.3 MGD wastewater capacity being used by Dinwiddie County customers is approximately 0.9 MGD. DCWA is maintaining the Rohoic Creek WWTP VPDES permit to provide an additional 4.0 MGD of wastewater treatment capacity for future development in Dinwiddie County. This capacity will be used for residential, commercial and industrial development. The County has suggested that the WWTP may be built in stages as development warrants, in which case the permit would be modified to authorize alternative flow tiers less than 4.0 MGD.

The application for re-issuance of this VPDES discharge permit requested that the current permitted design capacity of 4.0 MGD be carried forward to the re-issued permit cycle. The proposed draft permit for re-issuance contains most of the same limitations and conditions of the existing permit, with minor exceptions added or removed to address new agency requirements and procedures promulgated since the initial issuance of this permit. These include a revision of the Total Residual Chlorine limitation in Part I.B. that is applicable if chlorination is used as an alternative form of disinfection and a revision to the Whole Effluent Monitoring condition to reflect swamp water discharge end points. In the 2008 permit, a monitoring frequency of once per day was used in the statistical analysis to derive the TRC limitation. Since then, agency guidance has been revised to recommend a monitoring frequency of 1 per 2 hours for facilities with a design capacity of greater than 2.0 MGD. Upon analysis with the revised monitoring frequency during this 2013 reissuance, a more stringent limitation is necessary to protect water quality.

The proposed draft permit for re-issuance will limit the following parameters:

Carbonaceous Biological Oxygen Demand (cBOD ₅)	9 mg/l (140 kg/day) monthly average
Total Suspended Solids (TSS)	30 mg/l (450 kg/day) monthly average
Total Kjeldahl Nitrogen (TKN)	3.0 mg/l (45 kg/day) monthly average
Dissolved Oxygen	5.0 mg/l minimum
<i>E. coli</i> bacteria	126 N/100 ml monthly geometric mean

pH

6.0 S.U. minimum; 8.0 S.U. maximum

Total Residual Chlorine*

7.0 µg/l monthly average

*The permittee has proposed ultraviolet disinfection; however, a TRC limitation is included should the permittee choose to use chlorination and dechlorination.

Members of the State Water Control Board were notified and no meeting of the Board was requested to review the Director's decision to grant a hearing or to delegate the permit to the Director for his decision. Consequently, the Department proceeded with scheduling this hearing and notifying interested parties. Public notice of this hearing was published in the July 3 and 10, 2013 editions of the *Dinwiddie Monitor* newspaper. The comment period closed at 11:59 p.m. on August 22, 2013.

A Public Hearing was held at the Dinwiddie County Middle School in Dinwiddie County, Virginia on August 7, 2013 at 7:00 pm. Mr. Thomas Van Auken served as the Hearing Officer, and DEQ staff present included Michael Murphy, Kyle Winter, Emilee Adamson, and Jaime Bauer. Public attendance included 31 citizens, of whom 10 presented oral comments opposing the proposed permit re-issuance. One letter was received by email (with duplicate copies received via fax and US Postal Mail) during the comment period between July 3, 2013 and August 22, 2013. Summary of Comments Received at the August 7, 2013 Public Hearing for the Proposed Rohoic Creek Wastewater Treatment Plant Permit Reissuance (VA0092274) and in written form between July 3, 2013 and August 22, 2013

1) Issue: Impact of additional sediment and flow from treatment plant on Steers Millpond Dam

Comment: Steers Millpond and dam are located downstream of the proposed discharge location. The 1920 concrete dam cannot handle the stress from additional flow. The pond will see depths decrease due to increased sediment. The additional flow will flood people's land and contribute to soil erosion. Who will be responsible for periodic dredging activities?

Commenters: Donald Bishop, Evelyn Whitehead, Howard Somers, Addison Verner, Herbert Kirks.

Staff Response: *There are two issues with these questions; the first is whether the increased flow represents an additional flooding hazard or is capable of hydraulically overloading the Steers Millpond Dam; the second is whether the additional solids loading from the discharge will necessitate more frequent dredging of Steers Millpond.*

The Steers Millpond Dam is approximately 20' high and 220' in length, with a 20' section cut 2" below the height of the remaining length in order to direct flow to the mill wheel. The watershed draining to Steers Millpond covers over 21,000 acres; assuming a weighted runoff coefficient of 0.33 to account for the largely agricultural and silvicultural land uses in the watershed, and using an annual average rainfall of 42", the average daily flow over the dam should approximate 22 MGD. Under drought conditions, the 4.0 MGD might constitute the entire flow through that notch; under other than drought conditions, the 4.0 MGD should not impose any more hydraulic load on the dam than it was originally designed to receive. Please note that the 4.0 MGD is the ultimate design flow of the plant; this presumes that a) the plant is ever built; b) that the economy enables sufficient residential, commercial or industrial development to generate 4.0 MGD over the next 30 years, and c) other demands for water do not make reclamation and reuse of this flow a preferable alternative to discharge.

Steers Millpond consists of approximately 19 acres of open water and approximately 8 acres of marsh at the extent of backwater; during a 25-year, 24-hour storm (6"), approximately 4.4 million gallons of water will flow over the dam just from the rain falling directly on the pond, and the runoff from the entire watershed would cause over 1100 MG to flow over the dam during the several days following the storm. Under flood conditions, the 4.0 MGD from the proposed discharge would not increase the height of the water over the dam by more than 1/2". Photos of the dam show that the dam was designed for considerably higher water levels than are currently experienced.

DEQ staff reviewed stream data collected from the Hatcher Run watershed; 14 samples showed an average total solids concentration of 80 mg/l, of which approximately 29 mg/l were "volatile", or subject to decomposition, and 51 mg/l were "fixed", or more stable. By comparison, the proposed discharge is limited to 30 mg/l solids, of which approximately 10 mg/l will be "volatile" and 20 mg/l will be "fixed". A rough comparison of the proposed WWTP's 4.0 MGD at 20 mg/l to Hatcher Run's 22 MGD at 51 mg/l shows that at design flow and the current TSS limit of 30 mg/l, the proposed discharge would constitute roughly 7% of the annual sediment load flowing into Steers Millpond. In reality, facilities required to meet a cBOD₅ of 10 mg/l discharge TSS at levels substantially lower than 30 mg/l; were the TSS effluent limit reduced to 10 mg/l (and the permittee has not voiced opposition to this), the contribution to the sediment load entering Steers Millpond would be essentially eliminated since most of the solids remaining in the effluent would be "volatile".

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

2) Issue: Riparian owners' property rights

Comment: Steers Millpond is privately owned and therefore, property owners remain in control of the riparian rights. Hatcher Run is not listed as a navigable creek or river by the EPA, Virginia Department of Inland Fisheries, or the US Army Corp of Engineers.

Commenters: Howard Somers, Addison Varner

Staff Response: § 62.1-44.3. of the Code of Virginia defines "State waters" as "...all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands." § 62.1-44.4.(1) of the Code of Virginia, while addressing the right to continue existing quality degradation in any state water, states "The right and control of the Commonwealth in and over all state waters is hereby expressly reserved and reaffirmed."

Steers Millpond, and its tributaries, are considered "state waters"; unless the riparian owners can demonstrate that the proposed discharge impacts one or more of the beneficial uses of these waters, the proposed discharge does not constitute, prima facie, a violation of their property rights.

It should be noted that § 62.1-44.3. of the Code of Virginia also defines "beneficial use" as "both instream and offstream uses. Instream beneficial uses include, but are not limited to, the protection of fish and wildlife resources and habitat, maintenance of waste assimilation, recreation, navigation, and cultural and aesthetic values. The preservation of instream flows for purposes of the protection of navigation, maintenance of waste assimilation capacity, the protection of fish and wildlife resources and habitat, recreation, cultural and aesthetic values is an instream beneficial use of Virginia's waters. Offstream beneficial uses include, but are not limited to, domestic (including public water supply), agricultural uses, electric power generation, commercial, and industrial uses."

The draft permit is written in accordance with the Code of Virginia and Virginia Water Quality Standards contained in 9VAC 25-260 et seq. to protect the beneficial uses; therefore, DEQ staff recommends that no change to the proposed permit is necessary in response to these comments.

3) Issue: Increased flow from the treatment plant will flood properties

Comment: What is the flow rate of Hatcher Run? What will be the effect on Hatcher Run in the event of a hurricane? Some areas may be able to handle 4 MGD of water, but others will not. Roads and bridges flood during heavy rain events. The additional flow is going to flood people's property. Painted turtles migrate onto riparian properties each year to lay eggs and an increase in flow from the treatment plant will destroy the eggs or eliminate the habitat.

Commenters: Evelyn Whitehead, Howard Somers, Herbert Kirks, Claiborne Fisher

Staff Response: *Using nearby stream gages, DEQ staff were unable to calculate an annual average flow at Steers Mill Pond Dam because of the multiple dams and periods of low flow in the watershed, but staff were able to calculate several other flows; during the months of January-April, the lowest flows over 30 consecutive days in a 10-year period should approximate 6.7 MGD, and it would be presumed that the stream channel more than accommodates this flow. During the months of May-December, the lowest flows over 30 consecutive days in a 10-year period approximate 0.1 MGD; the proposed discharge would actually ensure water in the creek during periods of low flow during these months. During periods of high flow, assuming a stream velocity of 1 ft/second, the 4.0 MGD proposed discharge would increase the depth within the channel by between 2.5" (where the creek is 30' wide) to 7" (where the creek is 10' wide). When precipitation is sufficient for the creek to breach the banks, the relative contribution of the discharge to water depth is negligible as the width of the flood plain may exceed 100'.*

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

4) Issue: Impact of the proposed discharge on water quality of Hatcher Run

Comment: The discharge of wastewater into Hatcher Run will increase bacteria levels and it will no longer be safe for swimming or fishing. The permit does not address cyanide, heavy metals, nutrients, or pharmaceuticals. If Hatcher Run is impaired for mercury due to atmospheric deposition, then Lake Chesdin, the water supply for Dinwiddie County should also be impaired. Therefore, if the water supply has a mercury problem, the mercury impairment of Hatcher Run will become worse. Would the proposed treatment plant impact existing fish or proposed aquaculture in Steers Mill Pond?

Commenters: James Cornett, Burton Davis, J.W. Crumpler, Howard Somers, Addison Varner

Staff Response: *The Virginia Water Quality Standards (9VAC 25-260-5) define what is needed to maintain ambient water quality for fish and wildlife habitat, and primary and secondary contact recreational uses. The permit requires the disinfection of the wastewater to 126 n/Cml (geometric mean) for E. coli, which is acceptable for primary contact.*

During permit development, a multistep process is conducted to determine if limitations are needed for parameters for which Water Quality Standards exist and which may have a reasonable potential to cause or contribute to an excursion of the water quality standards. The evaluation is performed using actual effluent monitoring data in most cases. For existing plants, this evaluation is performed prior to permit reissuance. Because the Rohoic Creek Wastewater Treatment Plant has not been built and no discharge yet exists, there is no evidence in the form of monitoring data to support including metals limitations in the permit. However, the permit requires the permittee to provide effluent monitoring data within 180 days of discharge commencing. Staff will use the actual effluent data to evaluate if the discharge will cause or contribute to a water quality standard excursion and modify the permit to include limitations if necessary. This process will be repeated at permit development every 5 years when the permit is reissued.

The proposed permit discharges to the Chowan River Basin and ultimately the Albemarle Sound in North Carolina. Nutrient standards, removal technology, and offsets similar to those required for discharges to the Chesapeake Bay have not been established for the Chowan River or Albemarle Sound watersheds; therefore, the permit does not contain limitations for total nitrogen or total phosphorus. If in the future nutrient standards, reduction and removal requirements or any other standards are promulgated by Virginia and/or North Carolina for free flowing streams or the Albemarle Sound, those requirements will be incorporated into the permit as applicable.

Contaminants of emerging concern such as pharmaceuticals, caffeine, and other chemicals have been found in a variety of water bodies throughout the world. Failing septic systems, illicit discharges of domestic wastewater, and illicit dumping of septage could contribute to the detection of these chemicals in water bodies not associated with permitted discharges. Various studies are being performed and reviewed to better understand the environmental occurrence and potential effects of contaminants of emerging concern. However, at this time, there are no federal or state Water Quality Standards associated with these chemicals and the Department does not have the regulatory authority to require limitations on these chemicals. If in the future, Water Quality Standards are developed for these chemicals, a reasonable potential analysis will be performed on the effluent monitoring data and limitations established if appropriate.

Additionally, the permit contains pretreatment program and Whole Effluent Toxicity monitoring requirements. The pretreatment program requires the permittee to have a thorough understanding of the types of wastewaters entering the treatment plant and concentration of pollutants in the incoming wastewater. If necessary to prevent pass through of pollutants, interference with the treatment process or violations of the Water Quality Standards, the permittee will be able to regulate the quantity and quality of influent wastewater received from industries and businesses that discharge to the collection system. The Whole Effluent Toxicity monitoring will test the effluent to determine if there are any adverse effects on test species at various strengths of the wastewater. If no adverse effect is noted, it can be reasonably determined that the wastewater supports the water quality standards and the intended uses of the receiving stream.

Hatcher Run was designated as impaired in the Virginia 2010 305(b)/303(d) Water Quality assessment due to a VDH issued Fish Consumption Advisory for mercury, not due to excursions of the Water Quality Standard for mercury. The advisory was based on high levels of mercury found in fish tissue. While the source of the mercury is unknown it is believed to be caused by atmospheric deposition. VDH has not issued a Fish Consumption Advisory for mercury for Lake Chesdin. It is likely that atmospheric deposition of mercury is occurring in the Lake Chesdin watershed, but the chemical reaction differs from that of Hatcher Run. The acidic (low pH) water of Hatcher Run reacts with the atmospherically deposited mercury causing a transformation of mercury into an organic form (known as mercury methylation) that is more likely to bioaccumulate in fish tissue. The pH of Lake Chesdin is more neutral, therefore, the reaction may not occur, and higher concentrations of mercury are not observed in tissue of fish from that water body.

In addition to various limitations, monitoring and other special condition requirements, the permit also contains several "reopeners" that authorize the Department to modify the permit, should new information become available that warrants new or more stringent water quality-based effluent limitations or to address impairments.

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

5) Issue: Use of Hatcher Run as a Public Water Supply

Comment: Hatcher Run may be the last creek in Dinwiddie County that could be used for Public Water Supply.

Commenters: Burton Davis

Staff Response: *At this time, Hatcher Run is not designated as a Public Water Supply in the Water Quality Standard regulation. If in the future it is re-designated as a Public Water Supply, the permit may be modified to impose more stringent requirements and limitations, depending on the distance from the discharge point to the water intake and the size of the water body affected.*

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

6) Issue: Impact of the proposed discharge on aquatic life and wildlife

Comment: 15-20 years ago there was a "round fish" in the creek that is no longer present.

Commenters: James Cornett, Evelyn Whitehead

Staff Response: *Without additional information regarding the "round fish" as identified by the citizens, staff is unable to further investigate the disappearance of the "round fish". However, the permit has been written in accordance with the Virginia Water Quality Standards to protect the beneficial uses of the receiving water which includes aquatic life use.*

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

7) Issue: Various issues related to local government decisions

Comment: There are various projects, existing and proposed, that Dinwiddie County is getting that no one else wants, such as the high speed rail, rock quarry, and Route 460 extension. The wastewater treatment plant is just a stepping stone for future industry to come into the area. What will all of these projects do to the property values in the county?

Commenters: Addison Verner, Herbert Kirks

Staff Response: Local government issues such as zoning, land use, and project approvals are outside of the scope of DEQ's regulatory authority.

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

8) Issue: Terminology of "sewage" versus "wastewater"

Comment: The permit says that "sewage" is going to be discharged to Hatcher Run. That needs to be changed in the permit to "wastewater."

Commenters: Charles Lowery

Staff Response: The public notice that appeared in the newspaper contained the statement that the permittee is proposing to release "treated sewage wastewaters" and "treated sewage" into the receiving water. The terms "sewage" and "wastewater" are often used interchangeably. The permit only authorizes the discharge of treated sewage or wastewater and the treatment plant must be designed and operated in accordance with the Sewage Collection and Treatment Regulations as contained in 9VAC 25-790 et seq.

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

9) Issue: Soil and Water Conservation Board Involvement

Comment: What is the role of the Soil and Water Conservation Districts in reviewing the project? One of their board members said he didn't know anything about it.

Commenters: J.W. Crumpler

Staff Response: Soil and Water Conservation Districts are non-regulatory organizations that work to assist the citizens in their districts to control and prevent non-point source pollution.

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

10) Issue: Designation of Hatcher Run as Swamp Waters

Comment: Hatcher Run should not be classified as Swamp Waters Designation.

Commenters: Addison Verner

Staff Response: The Swamp Waters designation of Hatcher Run is part of the Virginia Water Quality Standard regulation (9VAC 25-260-470). The classification is based on chemical characteristics of the water body and is not dependent on whether the waters are free-flowing or stagnant. It is applicable to waters as determined by DEQ with naturally occurring low pH and low dissolved oxygen caused by (i) low flow velocity that prevents mixing and re-aeration of stagnant, shallow waters and (ii) decomposition of vegetation that lowers dissolved oxygen concentrations and causes tannic acids to color the water and lower the pH.

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

11) Issue: Chowan River Basin and North Carolina Standards

Comment: Since North Carolina has imposed a variety of requirements on facilities discharging to the Chowan Basin, why isn't this a concern for Virginia? The Chowan River is designated by North Carolina as one of the most scenic and clean rivers. North Carolina is tightening up on hog farms that discharge wastewaters with similar types of pollutants. If the Chesapeake Bay can't accept this discharge, why put it in Hatcher Run?

Commenters: J.W. Crumpler, Burton Davis

Staff Response: It is DEQ's obligation to evaluate permit applications it receives specific to the receiving stream as proposed by the permittee to determine the impact to State waters in accordance with the Virginia Water Quality Standards, and to assign effluent limitations to a facility in order to maintain these Standards. The permittee has proposed a discharge location of Hatcher Run in the Chowan River Basin and the draft permit has been developed in accordance with the Code of Virginia and Virginia Water Quality Standards applicable to Hatcher Run.

Several facilities in Virginia already discharge large volumes of wastewater to the Chowan River or its tributaries; to this point, North Carolina has not objected to those discharges as long as it can be demonstrated that Virginia's water quality standards have been supported in the affected receiving streams. If in the future any standards are promulgated by Virginia and/or North Carolina for the Chowan River, its tributaries, or the Albemarle Sound, those requirements will be incorporated into the permit as applicable.

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

12) Issue: Environmental Impact Statement

Comment: Has an environmental impact statement had been conducted for the proposal like the one that was required for the high speed rail?

Commenters: J.W. Crumpler

Staff Response: Environmental Impact Reports are required for state owned projects for which the total cost of construction, expansion, or land acquisition is expected to exceed \$500,000. The National Environmental Policy Act requires environmental impact statements or environmental assessments for certain classes of federal projects and actions. Other types of state reviews coordinated by the Office of Environmental Impact Review include permits for

operation or expansion of public airports or landing fields; exploration for and extraction of minerals on state-owned lands; and application for drilling permits in the Tidewater area. Similarly, the Office of Environmental Impact Review coordinates, at the request of the State Corporation Commission, environmental reports for proposed power plants and associated appurtenances. The proposed Rohoic Creek Wastewater Treatment Plant is not a federal or state project and does not fall into any of the categories that require an environmental impact report.

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

LEGAL BASIS/RECOMMENDATION: The VPDES discharge permit for the Rohoic Creek WWTP (VA0092274) has been prepared in accordance with all applicable statutes, regulations and agency practices; the effluent limits and conditions in the permit have been established to protect instream beneficial uses and fish and wildlife resources and to maintain all applicable water quality standards; and all public comments relevant to the permit have been considered and therefore, staff recommends that the Board approve re-issuance of the permit.

Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Discharges Resulting from the Application of Pesticides to Surface Waters (9VAC25-800): This general permit regulation is being reissued to allow pesticide operators to continue permit coverage for application of chemical pesticides that leave a residue in water and all biological pesticide applications that are made to surface waters. This regulatory action is also needed to incorporate appropriate changes from the federal National Pollutant Discharge Elimination System Pesticide General Permit. The staff will ask the board to adopt the regulation reestablishing the General VPDES Permit for Discharges Resulting from the Application of Pesticides to Surface Waters. Background: On November 27, 2006, EPA issued a final regulation to codify its interpretation of the Clean Water Act as not requiring NPDES permits for application of pesticides to or over, including near, waters of the United States, if the applications were consistent with relevant Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) requirements. After the rule was published, petitions for review were filed in 11 Circuit Courts. On January 7, 2009, the Sixth Circuit Court of Appeals ruled in *National Cotton Council, et al. v. EPA* to vacate EPA's 2006 interpretation of the Clean Water Act. On June 8, 2009, the Court granted the Department of Justice's request for a stay of the decision to provide EPA and the States time to develop and issue NPDES permits. The State Water Control Board's VPDES permit was effective October 31, 2011 and expires December 30, 2013. The current Virginia pesticide permit was adopted as a two-year permit rather than a five year permit because at the time of adoption, EPA's pesticide permit had not finalized yet. The two-year permit allowed DEQ to evaluate EPA's final permit to include the parts of EPA's permit that could be useful to Virginia. Notice of Public Comment: The Board approved a Notice of Public Comment (NOPC) at their March 14, 2013 meeting. The NOPC was published for 60 days on April 8, 2013 and a public hearing was held on May 17, 2013 at the Piedmont Regional Office. One person attended the public hearing. Three entities commented during the NOPC (City of Suffolk, Northern Virginia Regional Commission and Dominion).

Commenter	Comment	Agency response
City of Suffolk L.J. Hansen, P.E., Dept. of Public Works	Although the definition of "Surface Waters" identifies wastewater ponds and lagoons as exempt, it does not clearly define whether or not BMP's utilized for storm water treatment would be included.	BMPs utilized for storm water may or may not be identified as wastewater ponds or lagoons. It depends on whether or not the BMP (storm water management structure) is permitted under a VPDES or VSMP permit. A storm water structure with a VPDES or VSMP permit is not surface water. All other storm water structures are surface waters. If unsure, we advise operators to count it in their acreage calculations. DEQ does not want to alter the definition of surface waters as it is based on the federal definition. However, additional guidance will be added to the fact sheet with examples.
Northern Virginia Regional Commission Aimee Vosper, Director, Environmental & Planning Services	The removal of <i>invasive</i> species as targets for pesticide application is not supported by NVRC. Invasive species pose significant threats and should be controlled.	DEQ revised the definitions to align with the EPA pesticide permit definition which eliminated the use of the words <i>invasive</i> and <i>nuisance</i> plants and replaced them with the phrase <i>weeds, algae and pathogens that are pests</i> . <i>Pests</i> are further defined as <i>deleterious organisms</i> and plants are specifically defined as <i>deleterious</i> if they are <i>growing where not wanted</i> . DEQ thinks and fully intends to cover pesticide applications to surface water for <i>invasive</i> and <i>nuisance</i> plants because they are <i>deleterious and growing where not wanted</i> .

<p>Northern Virginia Regional Commission Aimee Vosper, Director, Environmental & Planning Services</p>	<p>IN the PDMP, NVRC recommends that in addition to <i>Problem Identification</i>, operators also include an <i>Area Descriptions</i>, as previously required. An <i>Area Description</i> contains relevant information about surrounding vegetation and environmental factors which could inform the optimal pest control strategy while ensuring minimal environmental damage.</p>	<p>This section has been renamed from <i>Pest management area description</i> to <i>Problem identification</i> to better describe the purpose of this section which was to describe the problem, set action levels and have a general area (location) map. The purpose of the section has not changed. DEQ never intended this section to require relevant information about surrounding vegetation and environmental factors which could inform the optimal pest control strategy while ensuring minimal environmental damage. No change was made to the language, which DEQ thinks is much clearer and based on the EPA pesticide permit.</p>
<p>Northern Virginia Regional Commission Aimee Vosper, Director, Environmental & Planning Services</p>	<p>Require operators to review the PDMP at least once per year as per the previous permit to enforce documented review of changing factors such as the problem, local ecology and climate, technology and available products, and available information on environmental impacts.</p>	<p>The request is for an annual minimum review of the PDMP has been reinstated.</p>
<p>Northern Virginia Regional Commission Aimee Vosper, Director, Environmental & Planning Services</p>	<p>NVRC recommends the DEQ consider some restriction on mosquito control as it related to bee population health. Certain mosquito control measures cause significant harm to bee populations. Some measures to include could be restricting mosquito pesticide application to dawn and dusk, limiting application of toxic chemicals known to damage bee colonies, avoid pesticide application while target plants are in bloom and required advance notice to local beekeepers before mosquito pesticides are applied. References to this topic were included.</p>	<p>The purpose of this permit and the authority of the SWCB is to protect state water uses. Including these types of requirements exceeds the authority granted to the SWCB. However, the information and references provided will be added to the Fact Sheet.</p>
<p>Dominion Pamela F. Faggert</p>	<p>Supports the exemption for submission of a registration statement and allowing for automatic coverage.</p>	<p>Noted.</p>
<p>Dominion Pamela F. Faggert</p>	<p>A linear treatment threshold should be added for aerial pest control activities for vegetation control along transmission and distribution rights of way. Furthermore a fifth use pattern to include intrusive vegetation control for roads and utility rights of way where the pesticide will unavoidably be applied over and deposited into surface waters should be added.</p>	<p>DEQ agrees and has moved the utility transmission and distribution line pest control to the new use pattern of <i>Intrusive vegetation</i> control and 20 linear miles of treatment areas was added for this use pattern.</p>

Significant Changes Since Proposed

The most significant change made in response to public comment was the addition of a fifth pesticide use category (intrusive vegetation pest control). After receiving public comment that the forestry pest control to include aerial utility pest control was not broad enough for utilities vegetative pest control, DEQ staff elected to add a fifth category to ensure coverage where intrusive vegetative pest control along roads, ditches, canals, waterways and utility rights of way would reach surface waters.

Final Exempt Action: Amendments to the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (9VAC25-31): This final exempt regulatory action is being taken to implement changes to federal regulations. This memo provides the Board with background information and the substance of the amendments to the regulations. These are final amendments to the existing regulation. Staff intends to ask the Board for adoption of the amendments to the VPDES permit regulation governing permit applications and special VPDES permit programs; specifically, concentrated animal feeding operations or CAFOs (9VAC25-31, Part II) with an effective date consistent with the Administrative Process Act. The substantive changes to the VPDES permit regulation required by 77 FR 44494, dated July 30, 2012 and implemented in these amendments include:

1. Removal of language referring to permit requirements for CAFO facilities that "propose to discharge."
2. A clarification that CAFO owners and operators are prohibited from discharging unless the discharge is authorized by a VPDES permit;
3. A clarification that CAFO owners or operators are required to apply for either an individual VPDES permit or a VPDES general permit to get that discharge authorization;
4. A clarification that CAFO owners or operators are required to have that permit discharge authorization at the time of any discharge;
5. Removal of the permit exclusion for CAFOs if the owner or operator certifies to the board that the CAFO does not discharge, and the removal of all of the no discharge certification option requirements;
6. Removal of separate CAFO VPDES discharge permit deadlines; and
7. Removal of separate continuing permit coverage requirements for CAFOs and exceptions to those requirements.

The VPDES permit regulation governs the authorization to manage pollutants from various sources, including concentrated animal feeding operations (CAFO). The State Water Control Board has the authority to administer the federal National Pollutant Discharge Elimination System (NPDES) program within the Commonwealth, and as such, the program is called the Virginia Pollutant Discharge Elimination System (VPDES). Operations that meet the federal definition of CAFO found in 40 CFR 122.23(b) must seek coverage under a NPDES permit if the operation discharges or proposes to discharge. Concentrated Animal Feeding Operations currently covered under these regulations are required to be covered under the VPDES permit regulation (9VAC25-31) or VPDES general permit regulation (9VAC25-191) if they discharge or propose to discharge.

The existing Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (9VAC25-31) has been amended, where applicable, to reflect changes to 40 CFR 122.23 published in the Federal Register in 77 FR 44494, dated July 30, 2012. These amendments remove the requirement to apply for and obtain a VPDES permit if the CAFO "proposes to discharge." Operations that meet the federal definition of CAFO are still required to obtain a permit prior to discharging.

Fast-Track Rulemaking Proposal – Water Quality Management Planning Regulation Amendments (9 VAC 25-720): Staff will ask the Board to approve recommended amendments to the Water Quality Management Planning Regulation (9 VAC 25-720), and authorize use of the Fast-Track process for this rulemaking. Justification for use of the Fast-Track process is that the amendments are either:

- expected to be noncontroversial, as provided under the Administrative Process Act (§2.2-4012.1), or
- exempt actions (TMDL-related) under the Administrative Process Act (§ 2.2-4006, 4.c.: “*Necessary to meet the requirements of federal law or regulations...*”).

Under the Fast-Track procedure, if the Board approves the recommended amendments and authorization to proceed is granted by the Governor, the revisions will be public-noticed for 30 days and complete the Fast-Track process (becoming effective 15 days after close of the public comment period), unless:

- DEQ finds it necessary to make any changes to the proposal, or
- An objection is received from any member of the General Assembly, any member of the Joint Commission on Administrative Rules, or 10 or more members of the public.

If either occurs, then the Fast-Track publication will serve as the Notice of Intended Regulatory Action and the standard rulemaking process would be used for promulgation.

In late 2005 the Board adopted amendments to the Water Quality Management Planning (WQMP) Regulation that set annual total nitrogen (TN) and total phosphorus (TP) Waste Load Allocations (WLAs) for Significant Dischargers in the Chesapeake Bay watershed. Included in those amendments were numerous footnotes establishing a deadline for certain facilities to secure a Certificate to Operate for expanded design capacity, upon which their WLAs would be based if the deadline was met. Due to passing of the deadline for “footnoted” facilities, as well as several appeals and settlements under the WQMP Regulation, adoption of EPA’s Chesapeake Bay Total Maximum Daily Load (TMDL; Dec. 2010) and reissuance in 2012 of the Chesapeake Bay Nutrient Discharge Watershed General Permit (9 VAC 25-820-10, et.seq.), there are several Significant Dischargers that must have their WLAs amended in 9 VAC 25-720.

Another revision affecting the Alexandria Sanitation Authority facility (doing business as “Alexandria Renew Enterprises”) will make expression of their WLAs consistent with two other facilities that also have combined sewer systems.

Substance of Amendments: In the Water Quality Management Plan Regulation (9 VAC 25-720):

- Delete obsolete footnotes.
- Revise TN and/or TP Waste Load Allocations for several facilities as the result of:
 - WQMP Regulation appeals/settlements.
 - EPA adoption of the Chesapeake Bay TMDL. These are exempt actions (TMDL-related) under the Administrative Process Act (§ 2.2-4006, 4.c.: “Necessary to meet the requirements of federal law or regulations...”).
- Make expression of WLAs consistent for all facilities served by combined sewer systems.
- Technical “housekeeping” revisions (e.g., changes to facility name, consolidation of dischargers into a regional system, revised discharge permit numbers).

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change(s), intent, rationale, and likely impact of proposed requirements
9VAC25-720-50.C		<p><u>North Fork Regional WWTP</u> (1) VPDES Permit #VA0090328 TN WLA = 9,137 lbs/yr TP WLA = 685 lbs/yr</p> <p>NOTE (1): <u>Shenandoah Co. - North Fork Regional WWTP</u> waste load allocations (WLAs) based on a design flow capacity of 0.75 million gallons per day (MGD). If plant is not certified to operate at 0.75 MGD design flow capacity by 12/31/10, the WLAs will be deleted and facility removed from Significant Discharger List.</p>	<p>Delete facility from Section listing. Plant not expanded; still 0.1 MGD design capacity and, therefore, does not meet the definition of Significant Discharger.</p> <p>WLAs become “Unallocated Reserve” in new table listing; no change to basin totals.</p>
9VAC25-720-50.C		<p>Note (2): <u>Harrisonburg-Rockingham Regional S.A.-North River STP</u>: waste load allocations (WLAs) based on a design flow capacity of 20.8 million gallons per day (MGD). If plant is not certified to operate at 20.8 MGD design flow capacity by 12/31/11, the WLAs will decrease to TN = 194,916</p>	<p>Delete note; Certificate to Operate for expanded design capacity issued 12/8/10.</p>

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change(s), intent, rationale, and likely impact of proposed requirements
		lbs/yr; TP = 14,619 lbs/yr, based on a design flow capacity of 16.0 MGD.	
9VAC25-720-50.C		Note (3): <u>Mount Jackson STP</u> : waste load allocations (WLAs) based on a design flow capacity of 0.7 million gallons per day (MGD). If plant is not certified to operate at 0.7 MGD design flow capacity by 12/31/10, the WLAs will decrease to TN = 7,309 lbs/yr; TP = 548 lbs/yr, based on a design flow capacity of 0.6 MGD.	Delete note; Certificate to Operate for expanded design capacity issued 4/13/09.
9VAC25-720-50.C		Note (4): <u>Purcellville-Basham Simms STP</u> : waste load allocations (WLAs) based on a design flow capacity of 1.5 million gallons per day (MGD). If plant is not certified to operate at 1.5 MGD design flow capacity by 12/31/10, the WLAs will decrease to TN = 12,182 lbs/yr; TP = 914lbs/yr, based on a design flow capacity of 1.0 MGD.	Delete note; Certificate to Operate for expanded design capacity issued 9/16/10.
9VAC25-720-50.C		Note (5): <u>Loudoun Co. S.A.-Broad Run WRF</u> : waste load allocations (WLAs) based on a design flow capacity of 11.0 million gallons per day (MGD). If plant is not certified to operate at 11.0 MGD design flow capacity by 12/31/10, the WLAs will decrease to TN = 121,822 lbs/yr; TP = 3,046 lbs/yr, based on a design flow capacity of 10.0 MGD.	Delete note; Certificate to Operate for expanded design capacity issued 5/26/10.
9VAC25-720-50.C		Note (6): <u>Dale Service Corp.- Section 1 WWTF</u> : waste load allocations (WLAs) based on a design flow capacity of 4.6 million gallons per day (MGD). If plant is not certified to operate at 4.6 MGD design flow capacity by 12/31/10, the WLAs will decrease to TN = 36,547 lbs/yr; TP = 2,193 lbs/yr, based on a design flow capacity of 4.0 MGD.	Delete note; Certificate to Operate for expanded design capacity issued 6/29/10.
9VAC25-720-50.C		Note (7): <u>Dale Service Corp.- Section 8 WWTF</u> : waste load allocations (WLAs) based on a design flow capacity of 4.6 million gallons per day (MGD). If plant is not certified to operate at 4.6 MGD	Delete note; Certificate to Operate for expanded design capacity issued 6/29/10.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change(s), intent, rationale, and likely impact of proposed requirements
		design flow capacity by 12/31/10, the WLAs will decrease to TN = 36,547 lbs/yr; TP = 2,193 lbs/yr, based on a design flow capacity of 4.0 MGD.	
9VAC25-720-50.C		Note (8): <u>Frederick-Winchester Service Authority - Parkins Mill STP</u> : waste load allocations (WLAs) based on a design flow capacity of 5.0 million gallons per day (MGD). If plant is not certified to operate at 5.0 MGD design flow capacity by 12/31/10, the WLAs will decrease to TN = 36,547 lbs/yr; TP = 2,741 lbs/yr, based on a design flow capacity of 3.0 MGD.	Delete note; Certificate to Operate for expanded design capacity issued 1/20/10.
9VAC25-720-50.C		<u>North Fork (SIL) WWTF</u> : VPDES Permit #VA0090263 TN WLA = 23,390 lbs/yr TP WLA = 1,754 lbs/yr	Rename facility <u>Broadway Regional WWTF</u> : Same VPDES Permit # TN WLA = 29,481 lbs/yr TP WLA = 2,211 lbs/yr Revised WLAs due to consolidation with New Market STP (now offline).
9VAC25-720-50.C		<u>New Market STP</u> : VPDES Permit #VA0022853 TN WLA = 6,091 lbs/yr TP WLA = 457 lbs/yr	Delete facility from Section listing. Flows have been diverted to Broadway Regional WWTF and plant is now offline.
9VAC25-720-50.C		<u>Alexandria SA WWTF</u> : VPDES Permit #VA0025160 TN WLA = 493,381 lbs/yr TP WLA = 29,603 lbs/yr	Rename facility <u>Alexandria Renew Enterprises</u> . WLAs remain unchanged. Add note: <u>Waste load allocations for localities served by combined sewers are based on dry weather design flow capacity. During wet weather flow events the discharge shall achieve a TN concentration of 4.0 mg/l and a TP concentration of 0.18 mg/l.</u>
9VAC25-720-50.C		<u>Leesburg WPCF</u> : Permit # MD0066184	Revise permit number to VPDES #VA0092282.
9VAC25-720-50.C		<u>King George Co. Service Authority-Fairview Beach</u> : Permit # MD0056464	Revise permit number to VPDES #VA0092134.
9VAC25-720-50.C			Insert new row in WLA Table above "TOTALS": <u>Unallocated Reserve WLA</u> : TN WLA = 9,137 lbs/yr

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change(s), intent, rationale, and likely impact of proposed requirements
			TP WLA = 685 lbs/yr
9VAC25-720-60.C		<u>R. J. Reynolds:</u> VPDES Permit #VA0002780	Rename facility <u>The Sustainability Park, LLC</u>
9VAC25-720-60.C		<u>Clifton Forge STP:</u> VPDES Permit #VA0022772 TN WLA = 36,547 lbs/yr TP WLA = 3,046 lbs/yr	Delete facility from Section listing. Flows have been diverted to Lower Jackson River STP and plant is now offline.
9VAC25-720-60.C		<u>Lower Jackson River STP:</u> VPDES Permit #VA0090671 TN WLA = 27,410 lbs/yr TP WLA = 2,284 lbs/yr	Revise WLAs to: TN WLA = 63,957 lbs/yr TP WLA = 5,330 lbs/yr Revised WLAs due to consolidation with Clifton Forge STP (now offline).
9VAC25-720-70.C		Note (1): <u>Town of Culpeper WWTP</u> waste load allocations (WLAs) based on a design flow capacity of 4.5 million gallons per day (MGD). If plant is not certified to operate at 4.5 MGD design flow capacity by 12/31/10, the WLAs will decrease to TN = 36,547 lbs/yr; TP = 2,741 lbs/yr, based on a design flow capacity of 3.0 MGD.	Delete note; Certificate to Operate for expanded design capacity of 6.0 MGD issued 4/22/10. Revise WLAs to: TN WLA = 73,093 lbs/yr TP WLA = 5,483 lbs/yr Revised WLAs due to consolidation with a portion of WLAs assigned to Culpeper Co.-Mountain Run STP, which will not be constructed. Mountain Run was to be a 2.5 MGD facility; 1.5 MGD of this capacity has been consolidated into Culpeper STP.
9VAC25-720-70.C		Note (2): <u>Culpeper Co.-Mountain Run STP:</u> waste load allocations (WLAs) based on a design flow capacity of 2.5 million gallons per day (MGD). If plant is not certified to operate at 2.5 MGD design flow capacity by 12/31/10, the WLAs will decrease to TN = 18,273 lbs/yr; TP = 1,371 lbs/yr, based on a design flow capacity of 1.5 MGD.	Delete facility from Section listing. Facility will not be built and a portion of the WLAs assigned to this discharge (based on 1.5 MGD of a total 2.5 MGD design capacity) have been consolidated into the Town of Culpeper STP. Balance of WLAs (1.0 MGD of unbuilt capacity) becomes part of "Unallocated Reserve" in new table listing; no change to basin totals.
9VAC25-720-70.C		Note (3): <u>Fauquier Co. W&SA-Remington STP:</u> waste load allocations (WLAs) based on a design flow capacity of 2.5 million gallons per day (MGD). If plant is not certified to operate at 2.5 MGD design flow capacity by 12/31/10, the WLAs will decrease to TN =	Delete note; facility not expanded. Revise WLAs to: TN WLA = 24,364 lbs/yr TP WLA = 1,827 lbs/yr Balance of WLAs (0.5 MGD of unbuilt capacity) becomes part of

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change(s), intent, rationale, and likely impact of proposed requirements
		24,364 lbs/yr; TP = 1,827 lbs/yr, based on a design flow capacity of 2.0 MGD.	"Unallocated Reserve" in new table listing; no change to basin totals.
9VAC25-720-70.C		Note (4): <u>Culpeper Co.-Clevengers Corner STP</u> : waste load allocations (WLAs) based on a design flow capacity of 0.9 million gallons per day (MGD). If plant is not certified to operate at 0.9 MGD design flow capacity by December 31, 2010, the WLAs will decrease to TN = 7,309 lbs/yr; TP = 548 lbs/yr, based on a design flow capacity of 0.6 MGD.	Delete note; Certificate to Operate for expanded design capacity issued 8/26/10. Rename facility <u>Clevengers Village WWTP</u>
9VAC25-720-70.C		Note (5): <u>Haymount STP</u> : waste load allocations (WLAs) based on a design flow capacity of 0.96 million gallons per day (MGD). If plant is not certified to operate at 0.96 MGD design flow capacity by 12/31/10, the WLAs will decrease to TN = 7,066 lbs/yr; TP = 530 lbs/yr, based on a design flow capacity of 0.58 MGD.	Delete note; 0.96 MGD design capacity not constructed. Revise WLAs to minimum allowance: TN WLA = 7,066 lbs/yr TP WLA = 530 lbs/yr Balance of WLAs (0.38 MGD of unbuilt capacity) becomes part of "Unallocated Reserve" in new table listing; no change to basin totals.
9VAC25-720-70.C		<u>Spotsylvania Co.-Massaponax STP</u> : VPDES Permit #VA0025658 TN WLA = 97,458 lbs/yr TP WLA = 7,309 lbs/yr	TN WLA = 114,505 lbs/yr TP WLA = 8,405 lbs/yr Revised WLAs due to consolidation with a portion of WLAs assigned to Spotsylvania Co.-FMC STP, which was not expanded. FMC STP was to be a 5.4 MGD facility (up from 4.0 MGD). The proposed 1.4 MGD expansion has been consolidated into Massaponax STP, instead.
9VAC25-720-70.C		<u>Spotsylvania Co.-FMC STP</u> : VPDES Permit #VA0068110 TN WLA = 65,784 lbs/yr TP WLA = 4,934 lbs/yr	TN WLA = 48,737 lbs/yr TP WLA = 3,655 lbs/yr Figures revised due to consolidation of a portion of WLAs with Spotsylvania Co.-Massaponax STP. FMC STP was not expanded from 4.0 to 5.4 MGD as proposed; the 1.4 MGD expansion has been constructed at Massaponax STP.
9VAC25-720-70.C			Insert new row in WLA Table above "TOTALS": <u>Unallocated Reserve WLA</u> : TN WLA = 22,904 lbs/yr

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change(s), intent, rationale, and likely impact of proposed requirements
			TP WLA = 1,900 lbs/yr
9VAC25-720-110.C		Note (1): <u>Cape Charles STP</u> : waste load allocations (WLAs) based on a design flow capacity of 0.5 million gallons per day (MGD). If plant is not certified to operate at 0.5 MGD design flow capacity by 12/31/10, the WLAs will decrease to TN = 3,046 lbs/yr; TP = 228 lbs/yr, based on a design flow capacity of 0.25 MGD.	Delete note; facility not expanded. Revise WLAs to: TN WLA = 3,046 lbs/yr TP WLA = 228 lbs/yr Balance of WLAs (0.25 MGD of unbuilt capacity) becomes “Unallocated Reserve” in new table listing; no change to basin totals.
9VAC25-720-110.C		Note (2): <u>Onancock STP</u> : waste load allocations (WLAs) based on a design flow capacity of 0.75 million gallons per day (MGD). If plant is not certified to operate at 0.75 MGD design flow capacity by 12/31/11, the WLAs will decrease to TN = 3,046 lbs/yr; TP = 228 lbs/yr, based on a design flow capacity of 0.25 MGD.	Delete note; Certificate to Operate for expanded design capacity issued 8/23/11.
9VAC25-720-110.C			Insert new row in WLA Table above “TOTALS”: <u>Unallocated Reserve WLA:</u> TN WLA = 3,045 lbs/yr TP WLA = 229 lbs/yr
9VAC25-720-120.C		<u>Caroline Co. STP</u> : TP WLA = 1,066 lbs/yr	Revise TP WLA to 609 lbs/yr in accordance with EPA Chesapeake Bay TMDL. <u>Action exempt from Administrative Process Act - necessary to meet the requirements of federal law or regulations.</u>
9VAC25-720-120.C		<u>Gordonsville STP</u> : TP WLA = 2,004 lbs/yr	Revise TP WLA to 1,145 lbs/yr in accordance with EPA Chesapeake Bay TMDL. <u>Action exempt from Administrative Process Act – necessary to meet the requirements of federal law or regulations.</u>
9VAC25-720-120.C		<u>Ashland WWTP</u> : TP WLA = 4,264 lbs/yr	Revise TP WLA to 2,436 lbs/yr in accordance with EPA Chesapeake Bay TMDL. <u>Action exempt from Administrative Process Act – necessary to meet the requirements of federal law or regulations.</u>
9VAC25-720-120.C		<u>Doswell WWTP</u> : TP WLA = 2,132 lbs/yr	Revise TP WLA to 1,218 lbs/yr in accordance with EPA

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change(s), intent, rationale, and likely impact of proposed requirements
			Chesapeake Bay TMDL. <u>Action exempt from Administrative Process Act – necessary to meet the requirements of federal law or regulations.</u>
9VAC25-720-120.C		<u>Bear Island Paper Co.:</u> TP WLA = 12,791 lbs/yr	Revise TP WLA to 10,233 lbs/yr in accordance with EPA Chesapeake Bay TMDL. <u>Action exempt from Administrative Process Act – necessary to meet the requirements of federal law or regulations.</u>
9VAC25-720-120.C		<u>Giant Yorktown Refinery:</u> TP WLA = 22,111 lbs/yr	Rename facility <u>Plains Marketing, L.P. – Yorktown</u> Revise TP WLA to 17,689 lbs/yr in accordance with EPA Chesapeake Bay TMDL. <u>Action exempt from Administrative Process Act – necessary to meet the requirements of federal law or regulations.</u>
9VAC25-720-120.C		<u>HRSD-York STP:</u> VPDES Permit #VA0081311 TN WLA = 274,100 lbs/yr TP WLA = 31,978 lbs/yr	TN WLA = 275,927 lbs/yr TP WLA = 18,395 lbs/yr Revised TN WLA due to consolidation with HRSD-Mathews Courthouse STP (now offline). Revised TP WLA due to consolidation with HRSD-Mathews Courthouse STP (now offline), then further revised to 18,395 lbs/yr in accordance with EPA Chesapeake Bay TMDL. <u>Action exempt from Administrative Process Act - necessary to meet the requirements of federal law or regulations.</u>
9VAC25-720-120.C		<u>Parham Landing WWTP:</u> TP WLA = 4,264 lbs/yr Note (1): <u>Parham Landing WWTP:</u> waste load allocations (WLAs) based on a design flow capacity of 2.0 million gallons per day (MGD). If plant is not certified to operate at 2.0 MGD design flow capacity by	Revise TP WLA to 2,436 lbs/yr in accordance with EPA Chesapeake Bay TMDL. <u>Action exempt from Administrative Process Act - necessary to meet the requirements of federal law or regulations.</u> Delete note; Certificate to

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change(s), intent, rationale, and likely impact of proposed requirements
		12/31/10, the WLAs will decrease to TN = 10,416 lbs/yr; TP = 1,215 lbs/yr, based on a design flow capacity of 0.57 MGD.	Operate for expanded design capacity issued 12/20/10.
9VAC25-720-120.C		<u>Smurfit Stone – West Point:</u> TP WLA = 70,048 lbs/yr	Rename facility <u>RockTenn CP LLC – West Point</u> Revise TP WLA to 56,038 lbs/yr in accordance with EPA Chesapeake Bay TMDL. <u>Action exempt from Administrative Process Act – necessary to meet the requirements of federal law or regulations.</u>
9VAC25-720-120.C		<u>Totopotomoy WWTP:</u> TP WLA = 21,319 lbs/yr	Revise TP WLA to 12,182 lbs/yr in accordance with EPA Chesapeake Bay TMDL. <u>Action exempt from Administrative Process Act – necessary to meet the requirements of federal law or regulations.</u>
9VAC25-720-120.C		<u>West Point STP:</u> TP WLA = 1,279/yr	Revise TP WLA to 731 lbs/yr in accordance with EPA Chesapeake Bay TMDL. <u>Action exempt from Administrative Process Act – necessary to meet the requirements of federal law or regulations.</u> Rename facility <u>HRSD-West Point STP</u>
9VAC25-720-120.C		<u>HRSD-Mathews Courthouse STP:</u> VPDES Permit #VA0028819 TN WLA = 1,827 lbs/yr TP WLA = 213 lbs/yr	Delete facility from Section listing. Flows have been diverted to HRSD-York STP and plant is now offline.
9VAC25-720-120.C		<u>TOTALS:</u> <u>TN WLA = 1,060,939 lbs/yr</u> <u>TP WLA = 173,469 lbs/yr</u>	No change to TN WLA Total. To conform with EPA-approved Chesapeake Bay TMDL, revise TP WLA Total to: <u>TP WLA = 123,112 lbs/yr</u>

Transfer of Stormwater Regulations - Additional Matters: Purpose: The purpose of this agenda item is to address remaining regulatory actions initiated by the Soil and Water Conservation Board before July 1, 2013. Background: At the Board's August 26-27, 2013, meeting, the Board took several actions to implement transfer of certain stormwater management programs from the Soil and Water Conservation Board to the State Water Control Board. During the meeting staff also advised the Board that other regulatory actions were underway and additional actions may be necessary. Discussion: At this Board meeting the following matters will be presented:
Certification of Non-Point Source Nutrient Credits: This rulemaking is for the adoption of a regulation to establish statewide standards and procedures for the certification of nonpoint nutrient credits. This rulemaking was initiated by the Soil and Water Conservation Board. Staff is currently working with a Regulatory Advisory Panel (RAP) to develop a

proposal for the Board's consideration and will propose this as a separate regulation - 9VAC25-900. Staff believes this rulemaking should proceed and we expect to bring a proposal to the Board for authorization to proceed to public comment at the Board's December meeting.

Procedures for Reviewing and Approving Design Specifications and Pollutant Removal Credits for Best Management Practices (BMPs): This rulemaking is a Fast-Track amendment to the Virginia Stormwater Management Regulations that was adopted by the Virginia Soil and Water Conservation Board. The regulation establishes fees and procedures for reviewing and approving BMPs, and incorporates a testing protocol for proprietary BMPs. While staff recognizes the need for a mechanism to review and approve new BMPs and a testing protocol, additional time to consider this regulation to ensure that the procedures are appropriate, efficient and cost effective is necessary. Staff believes that establishing interim procedures in guidance while initiating a separate regulatory process to establish a long-term mechanism is the best course of action at this time. Proceeding in this manner will allow for the approval of new BMPs and for further discussions with interested stakeholders on the appropriate long-term process.

General Permit for Discharges of Stormwater from Construction Activities: At the last meeting, the Board authorized the rulemaking initiated by the Virginia Soil and Water Conservation Board to reissue the General Permit for Discharges of Stormwater from Construction Activities to proceed. This was necessary in order to have a general permit available on July 1, 2014. The public comment period on the proposed regulation has closed and staff has been reviewing the proposal and the public comments received. Staff is considering recommending additional amendments to the regulation when presented to the Board for final adoption. However, staff intends to announce a public comment period on the additional amendments prior to presentation to the Board for final adoption. Staff expects to announce the comment period in the near future and present final amendments for the Board's consideration at the December meeting. More information on the additional amendments will be provided at this meeting.

Staff will recommend that the Board authorize the regulatory action to adopt a new regulation on the Certification of Non-Point Source Nutrient Credits to proceed and withdraw the Soil and Water Conservation Board's Fast-Track action for 4VAC50-60 – Procedures for Reviewing and Approving Design Specifications and Pollutant Removal Credits for Best Management Practices.

Development of Virginia's FY 2014 Clean Water Revolving Loan Funding List: Title VI of the Clean Water Act requires the yearly submission of a Project Priority List and an Intended Use Plan in conjunction with Virginia's Clean Water Revolving Loan Fund (VCWRLF) Federal Capitalization Grant application. Section 62.1-229 of Chapter 22, Code of Virginia, authorizes the Board to establish to whom loans are made, loan amounts, and repayment terms. In order to begin the process, the Board needs to consider its FY 2014 loan requests, tentatively adopt a FY 2014 Project Priority List based on anticipated funding, and authorize the staff to receive public comments.

On May 31, 2013 the staff solicited applications from the Commonwealth's localities and wastewater authorities as well as potential land conservation applicants and Brownfield remediation clientele. July 19, 2013 was established as the deadline for receiving applications. Based on this solicitation, DEQ received eighteen (18) wastewater improvement applications requesting \$127,244,588, two (2) applications for land conservation projects (totaling \$10,449,000), and one (1) stormwater management application for an additional \$1,664,750, bringing the total amount requested to \$139,358,338.

Due to the very low interest rate environment that has existed over this past year, a number of VCWRLF borrowers have refinanced loans and exercised their option to prepay their outstanding balances. This results in a significant amount of funding available for new loans. In addition, last year's FY 2013 Project Priority List was an unusually low dollar amount, allowing more of the Fund's balances to carry forward into this fiscal year. Therefore, even with the likely reduction in federal appropriations expected this year, the accumulation of monies that have and will occur in the Fund through loan prepayments, loan repayments, interest earnings, and de-allocation from leverage accounts should result in enough funding being available during the FY 2014 funding cycle to fund all the applications received.

The staff believes it is prudent to move forward with the initial targeting of Virginia's proposed FY 2014 clean water revolving loan funding list for public review based on this projected availability. Final Board approval of the list will not be requested until the December meeting.

All 18 wastewater applications were evaluated in accordance with the program's Funding Distribution Criteria. In keeping with the program objectives and funding prioritization criteria, the staff reviewed project type and impact on state waters, the locality's compliance history and fiscal stress, and the projects' readiness-to-proceed. The two land conservation applications were reviewed using the Board's evaluation criteria and the staff also received input from the Department of Conservation and Recreation in accordance with the Board guidelines and state law. Based on this review and input, the staff believes that both projects would provide for the protection of land that is valuable from a water quality perspective and should be funded. The one stormwater application was reviewed in accordance with the Board's

Priority Ranking Criteria for Stormwater projects. All applications are considered to be of good quality and should provide significant water quality and environmental improvement. The recommended project funding list shown below provides funding for all the applications received. It is based on the best information and assumptions currently available to staff from the applications received, existing Fund balances, federal budget projections, and discussions between DEQ and the Virginia Resources Authority. Several activities will be occurring over the next few months to help clarify these factors and provide additional input to the process including the following: (1) DEQ will hold individual meetings with targeted recipients to verify the information in the applications, especially schedules; (2) finalization of the federal budget for 2014 should determine the federal appropriation for the Clean Water SRF, and (3) staff will provide public notification of the proposed project list and hold a public meeting.

The staff is recommending that the list be tentatively adopted, subject to the verification of information in the loan applications and public review and comment. The final list will be brought back to the Board in December.

Conclusion: The VCWRLF program solicited applications for FY 2014 funding assistance and evaluated the 21 requests received totaling \$139,358,338. After an evaluation of funding availability, priority consideration, and review of anticipated construction schedules, Virginia’s FY 2014 Project Priority List includes all 21 projects totaling \$139,358,338. Based on current and projected cash resources, the Board should have sufficient funds available to honor these requests at the amounts shown.

	Applicant	Project Type	Requested Amount
1	Town of Front Royal	Wastewater	\$50,000,000
2	Town of Clifton Forge	Wastewater	\$750,000
3	City of Norfolk	Wastewater	\$10,000,000
4	Town of Saltville	Wastewater	\$971,290
5	Rivanna WSA	Wastewater	\$37,262,000
6	City of Waynesboro	Wastewater	\$1,658,989
7	Dickenson County PSA	Wastewater	\$499,400
8	Wise County PSA	Wastewater	\$1,038,234
9	Castlewood WSA	Wastewater	\$4,682,800
10	Washington County SA	Wastewater	\$884,895
11	Town of Stuart	Wastewater	\$1,280,600
12	Town of Boones Mill	Wastewater	\$856,295
13	Town of Independence	Wastewater	\$470,500
14	Town of Hillsville	Wastewater	\$149,000
15	Henry County PSA	Wastewater	\$1,773,200
16	Lee County PSA	Wastewater	\$1,032,785
17	Wythe County	Wastewater	\$2,103,600
18	Blacksburg-VPI SA	Wastewater	\$11,833,000
19	City of Waynesboro	Stormwater	\$1,664,750
20	The Trust for Public Land	Land Conservation	\$10,000,000
21	Meadowview Bio Res Station	Land Conservation	\$449,000
		Total =	\$139,358,338

Approval of Stormwater Local Assistance Fund (SLAF) Guidelines: The Virginia General Assembly included Item 360 in Chapter 860 of the Acts of Assembly (the Commonwealth’s 2013-2014 Budget) which created and set forth specific parameters for the administration of the Stormwater Local Assistance Fund (SLAF). The legislation authorized \$35 million in bond proceeds as an initial appropriation to the SLAF and directed the Board to issue guidelines for the distribution of moneys from the SLAF. DEQ staff have developed those guidelines, presented them to the public and received public comment, developed responses to the public comments as well as associated revisions, and is recommending approval of the revised guidelines for implementation. (The guidelines can be found beginning on page 32.)

Background: In order to reduce non-point source pollution from stormwater runoff, the 2013 Virginia General Assembly included language in the appropriations bill which created and set forth parameters for the administration of the

Stormwater Local Assistance Fund (SLAF). The purpose of the SLAF is to provide matching grants to local governments for the planning, design, and implementation of stormwater best management practices that address cost efficiency and commitments related to reducing water quality pollutant loads. The Board was directed to issue guidelines for the distribution of moneys from the Fund and the legislation required a 60 day public notice and comment period for the draft guidelines.

In July of this year, after consultation with a number of stakeholders, DEQ drafted a set of program guidelines and provided them to the public for their review and comment. The guidelines follow a format similar to the Board's Clean Water Revolving Loan Fund and cover the following topic areas: Enabling Legislation, Application/Award Process, Eligible applicants/project types, Grant percentage and amounts, Eligible and Ineligible Costs, Program Requirements, and a Priority Ranking System. The Priority Ranking System included points for Pollution Reduction, Cost Effectiveness, Proximity/Impact on Impaired Waters, Fiscal Stress, and Readiness to Proceed.

The public notice period started on July 19th and ran through September 18th. On August 14th a Public Meeting was held at DEQ for the purpose of discussing the guidelines, providing clarification, and answering questions, as well as to receive public input. 8 members of the public attended, 5 of which asked questions or provided comments. Written comments were received from 10 commentors by the September 18th deadline. In addition, one comment was received after the public comment period deadline. A summary of all the comments received as well as DEQ's response to each is below.

The comments included questions and requests for clarifications as well as requests for revisions to the guidelines. As a result of the comments, numerous changes have been made to the guidelines including: requirement for the posting of the authorized project priority list, establishment of a construction start date for project eligibility, and several revisions to the Program Requirements, Phosphorous Reduction Calculation Methodology, and Grant Funding Priority Ranking. The Priority Ranking section was revised to rebalance the points for Pollution Reduction and Cost Effectiveness, clarify and provide more detailed breakout of the points for Impaired Waters and Readiness To Proceed, and add points for Fiscal Stress and a new Phase II (Small) MS4 category.

A number of the commentors took issue with the Guidelines' use of only total phosphorous in the proposed methodology for determining pollution reduction in the Priority Ranking system. They requested that other pollutants such as nitrogen, sediment, and bacteria also be included. Total Phosphorous has been chosen as the representative pollutant for stormwater runoff in Virginia and its use as a surrogate for other pollutants of concern in these Guidelines is consistent with the Virginia Stormwater Management Program Regulations and the Virginia Stormwater Management Handbook. The proposed methodology uses established total phosphorous removal efficiencies for a wide variety of stormwater best management practices and can be applied statewide, ensuring consistency between all applications submitted to DEQ. Attempting to include nitrogen, sediment, bacteria and/or other pollutants into the pollution reduction criteria (with their differing water quality impacts, units of measurement, less established removal efficiencies, etc.) would require a significant level of effort to accomplish and add substantial complexity to the evaluation process. We believe it would also increase the likelihood of inconsistency and error in the priority ranking process. We will be willing to consider more comprehensive methodologies in the future as they are demonstrated to be applicable, sensible, and reliable but believe it is appropriate to move forward with total phosphorous only at this time.

Conclusion: The 2013 Virginia General Assembly created a new Stormwater Loan Assistance Fund (SLAF) to provide matching grant funds for the installation of Stormwater Best Management Practices. The legislation directed the Board to issue guidelines for the SLAF after receiving public review comments on a draft. Draft guidelines were issued on July 19th, a Public Meeting was held on August 14th, and the public comment period ended on September 18th. DEQ staff have developed responses to all comments received and made associated revisions to the draft guidelines. Once approved, DEQ anticipates soliciting applications for the SLAF in early October with authorization of a project funding list in December.

Stormwater Local Assistance Fund Draft Guidance - Public Comments and DEQ Responses

#1 David S. Nunnally, Senior Environmental Planner
Caroline County Planning & Community Development
P. O. Box 424, Bowling Green, VA 22427

1. Could the funds be used for shoreline stabilization projects, particularly to demonstrate the "living shoreline approach?"

RESPONSE:

No, shoreline stabilization projects are not currently included in the list of eligible project types in either Attachment A or in either of the referenced Expert Panel Reports. The intent is to initially only fund project types with established pollutant

removal efficiencies. We will consider adding shoreline stabilization in the future if/when pollutant removal efficiency becomes established for that project type.

2. In response to the Chesapeake Bay TMDL, many localities have already implemented stormwater quality improvements projects. Due to limited funding, projects may have been phased accordingly. Could there be consideration of these projects (and expenditures) in terms of matching funds to complete the overall project?

RESPONSE:

The Fund was created to provide funding for new projects (or new phases of projects) . For clarification we have added a start date of July 1, 2013 (beginning of the current fiscal year) to the Guidelines and any projects (or phase of projects) which started construction after that date would be considered new and eligible for funding. Prior costs for planning or design for these new projects (or phases) would be considered eligible for funding (or as match) but any costs associated with projects (or phases) that started construction prior to that date will not be considered eligible for funding or match.

3. Could the finds be used to support a local program for additional incentives for water quality improvements specifically for lands under conservation easements? In other words, to sweeten the deal if the property owner agrees to implement conservation practices as part of the conservation easement. Ex/payment or tax incentive for restoring converted wetlands, conservation practices for steep slopes, highly erodible soils, etc. For every pound of N or P, or ton of sediment reduction, they would get an additional tax incentive. Currently, there are no real incentives for these properties and owners who are considering conservation easements.

RESPONSE:

No. The language in the appropriation clearly limits this funding solely for capital projects only.

#2 Charles A. Mumaw, P.E., Deputy Director
Department of Public Works, Town of Leesburg
25 West Market Street, Leesburg, Virginia 20176

1. In the priority ranking criteria, the guidelines indicate that the applications will be prioritized on a statewide basis. Is there any thought to trying to ensure smaller jurisdictions have a fair chance of getting funding? If the main criteria (40% of the total points possible) is the calculated reduction of total phosphorous, clearly bigger projects are going to get the bulk of the funding.

RESPONSE:

With limited funding available and large pollutant reductions required in Virginia, we believe the most important criteria for this funding should be pollutant removal and cost effectiveness. In response to this and other comments we have reduced the Pollution Reduction category to 150 points and increased the Cost Effectiveness category to 150 points. Also note that the guidelines state “DEQ may reduce grant eligibility, and/or the scope and size of a project to ensure the greatest financial and environmental benefit to as many communities as possible”. DEQ’s funding programs have a long history of maximizing the distribution of funds fairly throughout the Commonwealth and we intend to continue to operate using that philosophy with this program.

2. A list of “priority water bodies” in the state needs to be readily available, either in an attachment to the grant guidelines or on the DEQ website. I searched the website for about 15 minutes and couldn’t find anything. Also, within the list of priority water bodies, do some get greater priority than others?

RESPONSE:

The list is included in the Draft 2012 305(b)/303(d) Water Quality Assessment Integrated Report which can be found on the DEQ website at <http://www.deq.virginia.gov/Programs/Water/WaterQualityInformationTMDLs/WaterQualityAssessments/2012305b303dIntegratedReport.aspx>

3. Points for “Readiness to Proceed” – if we could proceed immediately, we wouldn’t need grant funding! This criteria needs to have a range of points awarded for specific benchmarks for readiness (completion of design, land/easement acquisition, identified in a local Capital Improvement Program, etc.).

RESPONSE:

We agree that there needs to be a range of points for specific benchmarks and intend to use the following:

V. READINESS TO PROCEED (MAXIMUM 50 points)

Because it is important that grant recipients proceed quickly with their proposed projects, applicants that can proceed immediately with their proposed projects, or demonstrate an advanced state of readiness, will be given the highest points under this category.

Design has been submitted, reviewed, and approved 40 pts.
Design submitted/under review 35 pts.

Reasonable assurance design will be completed/submitted within 4 months 30 pts.
Project identified in current year Capital Improvement Plan or annual budget 20 pts
Project included in Stormwater or Watershed Management Plan 10 pts
Additional 10 points will be awarded if land necessary for the project has already been acquired.

4. DEQ should be required to publish a list of grant recipients, how much funding each received, and their scores.

RESPONSE:

We agree that DEQ should do this and have revised the guidelines accordingly.

5. Is this the first time that this grant has been made available? If not, can you provide a list of past recipients?

RESPONSE:

Yes this is a new program created by the General Assembly in 2013.

#3 Jacob Powell, Policy and Campaigns Manager
Virginia Conservation Network
422 East Franklin Street, Suite 303, Richmond, Virginia 23219

1. On page 4 it talks about the Fiscal Stress as part of the ranking process. Perhaps this is generally understood, but it's unclear to me how this index will be used. Will "high stress" or "low stress" localities receive more points?

RESPONSE:

The 50 points for this category will be prorated to applicants with those having the highest fiscal stress index receiving the greatest numbers of points and those with the lowest fiscal stress index receiving the lowest number of points. Also note that we have added an additional 25 points to this category for localities that have established a dedicated local funding/revenue mechanism to install and maintain stormwater capital projects.

#4 Shereen Hughes
Wetlands Watch
1121 Graydon Avenue, Norfolk, Virginia 23507

Page 4 of 6: replace "to" with "the" in paragraph #4 of Program Requirements, second line, 8th word. The rest of the comments all relate to the Stormwater Clearinghouse BMPs, practice numbers 11 – 17:

Correction made.

1. Recently "Living Shorelines" were added to VAST – since Virginia is trying to promote the use of living shorelines – shouldn't they be added as a BMP?

RESPONSE:

No, shoreline stabilization projects are not currently included in the list of eligible project types in Attachment A or in either of the referenced Expert Panel Reports. The intent is to initially only fund project types with established pollutant removal effectiveness. We will consider adding shoreline stabilization in the future if/when pollutant removal effectiveness becomes established for that project type.

2. Also, what about "Urban Nutrient Management" as a BMP?

RESPONSE:

This is not eligible as it is not a capital project as required by the legislation.

3. Are forest buffers ag or urban"?

RESPONSE:

Just urban.

4. If I recall, Grass Buffers as a land use change under Urban Land Use result in No nutrient reduction over just plain turf, for instance – why include this at all?

RESPONSE:

In EPA's CBPO model there is no benefit for grass buffers applied to urban land uses because in that modeling EPA assumes the land use change is pervious urban converted to pervious urban. This does not mean that installations of grassed riparian buffers produce no benefit in real world situations. Since in reality localities are implementing riparian grass buffers in urban settings DEQ is recognizing this and is providing a means to account for plans to implement this BMP in the ranking of proposals.

#5 Randy Bartlett, P.E., VAMSA President
Virginia Municipal Stormwater Association
P. O. Box 51, Richmond, Virginia 23218

Page 2 recommended additions/changes

Number of Benefitted Localities – VAMSA recommends (for the initial round) that DEQ consider a policy of not making multiple grant awards to a single locality unless & until all other applicants with eligible projects receive a grant.

RESPONSE:

Since an application could include multiple projects, and grants are limited to no more than \$5 million each, we don't see any benefit to limiting the number of awards per locality. However, we certainly understand this concern and will keep it in mind when invoking the section of the Guidelines which states: "DEQ may reduce grant eligibility, and/or the scope and size of a project to ensure the greatest financial and environmental benefit to as many communities as possible". We have also added language to the Allowable Grant Amount section to clarify that the maximum total grant amount any locality can receive is \$5 million. DEQ has years of experience in distributing grant/loan funds and believe we can do so in a fair and equitable manner.

Maximum Grant Award – VAMSA recommends (for first year and up to 3 years) a stated preference for projects with a maximum grant amount of \$1,000,000. (purpose of this is to increase the potential participation level)

RESPONSE:

Not knowing what the initial demand level for the Fund will be, we do not think it is prudent to include such a stringent limit to the maximum grant amount at this time. However as previously stated we will keep this concern in mind when invoking the section of the Guidelines which states: "DEQ may reduce grant eligibility, and/or the scope and size of a project to ensure the greatest financial and environmental benefit to as many communities as possible".

Reimbursement Frequency – VAMSA requests allowing disbursements as much as once a month, but allowing for a longer frequency if the locality wants to wait.

RESPONSE:

The Guidelines do not limit or prescribe the frequency of reimbursement requests in any way. Disbursement may be requested monthly or less frequently at the recipient's discretion.

Prior Costs – VAMSA recommends that DEQ add a start date of 1 July 2013 and any construction that begins prior to this date be excluded from reimbursement. Planning and design expenses that predate the start date are still eligible (as long as the construction has not begun) and at a minimum, should be credited to the locality as part of its 50% match.

RESPONSE:

We agree with this comment and have revised the Guidelines accordingly.

Program Requirements – VAMSA asks that "Substantial Compliance with VSMP Regulations and E & S Control Regulations" be deleted for the following reasons:

1. There will inevitably be some level of noncompliance, especially the new VSMP Regulations and this criterion could be counterproductive in the early years;
2. In the event of noncompliance, those other programs have their own effective mechanisms;
3. In the event of noncompliance, if a mutually agreed consent order is necessary, it may be more difficult to resolve the noncompliance if there is collateral adverse consequences for the permittee's grant eligibility;
4. This could overly complicate the grant program; and
5. VAMSA believes that DEQ lacks the statutory authority to expand the statutory penalty authority under the VSMP and E & S statutes to impose grant eligibility consequences.

RESPONSE:

We agree and have deleted this requirement from the Guidelines.

Page 3 recommended additions/changes

Criterion I (Pollution Reduction) and Criterion II (Cost-Effectiveness) – VAMSA recommends deleting the Pollutant Reduction criterion {they believe it favors large projects over small projects} and increasing the Cost Effectiveness criterion to 200 points in order to maximize the amount of pollutants removed, regardless of the size of the grant.

RESPONSE:

We have reduced the Pollution Reduction category to 150 points and increased the Cost Effectiveness category to 150 points.

New Criterion (MS4 Permit TMDL Waters = 100 points) – VAMSA recommends replacing the pollution reduction criterion with this one because it better aligns the pre-existing DEQ priority of a TMDL Action Plan with DEQ's own regulatory timing requirements to show progress over time. <suggested language: "MS4 Permit TMDL Waters – 100 points: Points will be based on location and impact of the proposed project in relation to TMDL action Plan required pursuant to an MS4 Permit">

RESPONSE:

We have added 25 points for small MS4s to address their specific reference in the appropriation language.

Page 4 recommended additions/changes

Criterion III (Priority Water Bodies) – clarify this criterion includes priorities based on the 305(b)/303(d) Integrated Report.

RESPONSE:

We agree and have made this clarification.

Attachment A Methodology – VAMSA recommends that DEQ not rely too heavily on CBP modelers and their modeling assumptions, rather than engineers and real project information.

RESPONSE:

We believe it is appropriate to use a consistent and established methodology for pollutant reductions. It should be noted that the methodology does not rely solely on CBP modeling to calculate loadings or establish efficiencies.

Item 2 in “Proposed BMPs must be selected from Attachment A” should be deleted for inconsistency reasons, specifically 3.b., which is a detailed procedure for determining the TP load reduction for a BMP not listed in Attachment A.

RESPONSE:

We agree and have deleted Item 2 and renumbered.

#6 J. Douglas Fritz, Senior Water Resources Planner
GKY & Associates, Inc.
4229 Lafayette Center Drive, Suite 1850, Chantilly, Virginia 20151

GKY & Associates requests that DEQ consider the following:

1. The Budget directs that the money placed in the Fund be obligated for four (4) specific uses including “*water quality requirements related to permitting of small municipal stormwater sewer systems [MS4s].*” However, the Grant funding Priority Ranking (Ranking) does not include any method for prioritizing small MS4 water quality requirements. Please consider providing a method of awarding priority points to applicants who are operators of small MS4s in order to be consistent with the Budget.

RESPONSE:

We agree and have added 25 points for small (Phase 2) MS4s.

2. The Budget specifies that moneys be spent to address water quality impairments identified in the Chesapeake Bay TMDL and “local impaired stream TMDLs.” In these cases, the pollutants have been identified “as a problem.” As such, it is appropriate to address those pollutants directly and not through the use of a generic surrogate. For example, over sixty (60%) of the applicable “local impaired stream TMDLs” listed in the April 2013 Small MS4 General Permit Fact Sheet are bacteria-related. The use of Phosphorus as the sole pollutant is determining pollutant reductions in the draft Ranking does not provide an adequate, or appropriate, method for prioritizing stormwater projects that are designed to address the specific pollutant identified in the majority of “local impaired stream TMDLs.”

Please consider developing a Ranking that awards priority points to projects designed to address pollutants specifically identified in “local impaired stream TMDLs.”

RESPONSE:

Pollution Reduction Methodology: For purposes of project prioritization, DEQ believes it is important to establish a standardized and reasonably simple methodology for calculating pollution reduction for projects so that all applications can be fairly and consistently evaluated. Total Phosphorous has been chosen as the representative pollutant (total phosphorous shares the general characteristics of most other urban pollutants) for stormwater runoff in Virginia and its use as a surrogate for other pollutants of concern in these Guidelines is consistent with the Virginia Stormwater Management Program Regulations and the Virginia Stormwater Management Handbook. The proposed methodology uses established total phosphorous removal efficiencies for a wide variety of stormwater best management practices and can be applied statewide, ensuring consistency between all applications submitted to DEQ. Attempting to include nitrogen, sediment, bacteria and/or other pollutants into the pollution reduction criteria (with their differing water quality impacts, units of measurement, less established removal efficiencies, etc.) would require a significant level of effort to accomplish and add substantial complexity to the evaluation process. We believe it would also increase the likelihood of inconsistency and error in the priority ranking process. While the proposed approach may not be perfect, DEQ believes it is appropriate to move forward with the established methodology for the initial funding cycle. DEQ is willing to consider more comprehensive methodologies in the future as they are demonstrated to be applicable, sensible, and reliable.

3. The Chesapeake Bay TMDL has established wasteload allocations for Nitrogen, Sediment and Phosphorus. Thus, all three pollutants have been identified “as a problem.” The VA WIP and MS4 permit conditions are based on a 20% reduction in Sediment from the 2009 progress load on impervious regulated lands but only a 16% reduction in Phosphorus. In addition, as Sediment loading rates are much higher than those of Phosphorus, MS4 operators may find that pollutant reduction strategies identified in their TMDL Action Plan will require them to concentrate on Sediment. As such, local governments may select certain BMPs to more effectively address Sediment constantly with the Chesapeake

Bay TMDL, WIP and MS4 permit; however, the BMP may not reduce Phosphorus in such a manner to adequately score in the draft Ranking to receive funding.

Please consider developing a scoring mechanism that addresses the specific pollutants identified in the Bay TMDL and takes into account the idiosyncrasies of the WIP and MS4 permits.

RESPONSE:

See Pollution Reduction Methodology Response on page 6.

#7 Ann F. Jennings, Virginia Executive Director
Chesapeake Bay Foundation
1108 East Main Street, Suite 1600, Richmond, VA 23219

Chesapeake Bay Foundation requests that DEQ consider the following:

1. CBF recommends that DEQ rank projects based upon reduction in total phosphorus (TP), total nitrogen (TN), and total suspended solids (TSS) to provide greater consistency with the goals of Virginia’s Chesapeake Bay TMDL Watershed Implementation Plan and requirements placed on regulated local governments (pursuant to a Phase 1 or a Phase 2 ‘MS4’ permit).

RESPONSE:

See Pollution Reduction Methodology Response on page 6.

2. DEQ should calculate TP, TN, and TSS reductions in a manner fully consistent with the draft “Guidance for the Chesapeake Bay TMDL Action Plans” intended for use by regulated local governments.

RESPONSE:

See Pollution Reduction Methodology Response on page 6.

3. DEQ should prioritize projects proposed by local governments seeking to meet MS4 permit requirements or to meet clearly defined pollution reduction goals established in a local Watershed Implementation Plan.

RESPONSE:

We have added 25 points for small MS4s to address their specific reference in the appropriation language. Beyond that we are already giving points for Chesapeake Bay TMDL as well as local TMDLS (same as local WIPS).

4. Additional points should be provided to local government projects that are designed to address additional, “non”-TP, TN, and TSS reductions for other local pollutants of concern.

RESPONSE:

See Pollution Reduction Methodology Response on page 6.

5. DEQ should also rank projects based on a calculation of cost effectiveness for TP, TN, and TSS reductions. This approach would provide greater consistency with local government permit requirements and Virginia’s Chesapeake Bay TMDL Watershed Implementation Plan. It may also provide greater insight on stormwater practices to prioritize in local Chesapeake Bay TMDL Action Plans and future revisions to Virginia’s Chesapeake Bay TMDL Watershed Implementation Plan.

RESPONSE:

See Pollution Reduction Methodology Response on page 6.

6. Additional “cost effectiveness” points should be provided for infiltration practices. These are practices that, if carefully designed and constructed, can have the highest runoff reduction capability of any stormwater practice. As currently drafted, CBF believes that the draft guidelines may, in fact, serve as a disincentive for infiltration practices.

RESPONSE:

The extra pollution removal benefits of infiltration practices due to runoff volume reduction are already taken into account in the increased pollutant removal efficiencies provided or referenced in Attachment A for those practices. We believe those extra pollutant removals provide sufficient incentive to encourage those practices at sites where they can be used.

7. For priority water bodies, the draft guidelines should specifically reference the Chesapeake Bay watershed. Other comments are offered if reductions in TN, TSS, and local pollutants of concern are not prioritized under “pollution reduction.”

RESPONSE:

The section on Priority Water Bodies has been revised as shown below:

II. IMPAIRED WATER BODIES (MAXIMUM 100 points)

Points will be based on the location and impact of the proposed project in relation to impaired water bodies in the state.

Note: These categories (a-b) are additive.

- a. *Project is directly related to the requirements of the Chesapeake Bay TMDL* 60 pts
- b. *Project is directly related to requirements of a local impaired stream TMDL* 40 pts

or

Project directly related to a local impaired stream without a TMDL 20 pts

8. For fiscal stress, DEQ should increase the total available points to 75 and provide 25 of the 75 points to localities that have established some form of dedicated local funding mechanisms for stormwater capital projects.

RESPONSE:

We agree and have revised the Guidelines accordingly.

#8 Adrienne F. Kotula, Policy Specialist
James River Association
9 South 12th Street, 4th Floor, Richmond, Virginia 23219

1. TP, TN and TSS reductions should be calculated and used in the prioritization, not just TP. The soon to be released 2013 State of the James River Report reveals that nitrogen and sediment reductions lag far behind those for phosphorus. In order to calculate these reductions, we recommend that the methodology identified in the *Chesapeake Bay Program Urban Expert Panel Report on Stormwater Retrofits* be used. If the BMP identified is a land use change, the Virginia Assessment Scenario Tool can be used to estimate reductions.

RESPONSE:

See Pollution Reduction Methodology Response on page 6.

2. Cost-effectiveness should be based on TP, TN and TSS, not just TP. Given that nitrogen and sediment reductions are lagging behind those of phosphorus, as well as the fact that many practices target specific pollutants, it is important that the overall benefits of a practice be captured as a part of the const-effectiveness calculation. Additionally, local governments are required to address TP, TN, and TSS as a part of their Chesapeake Bay TMDL requirements and this program should be consistent with those goals.

RESPONSE:

See Pollution Reduction Methodology Response on page 6.

3. Provide preference to low impact development design – specifically infiltration practices. This is consistent with §62.1-44.15:28 which encourages the use of low impact development designs and that post-development runoff rate of flow replicate, as nearly as practicable, the existing predevelopment runoff characteristics and site hydrology, or improve upon them. According to Chesapeake Stormwater Network, infiltration has the highest runoff reduction capability of any stormwater practice, and probably come closest to replicating predevelopment hydrology.

RESPONSE:

The extra pollution removal benefits of infiltration practices due to runoff volume reduction are already taken into account in the increased pollutant removal efficiencies provided or referenced in Attachment A for those practices. We believe those extra pollutant removals provide sufficient incentive to encourage those practices at sites where they can be used.

4. Specify the Chesapeake Bay as a priority water body. The budget language establishing this fund states that meeting the Chesapeake Bay TMDL and the WIP are purposes of the fund. As such, JRA believes that projects within the Bay should be specifically provided points. Water bodies impaired for other pollutants should also be provided priority.

RESPONSE:

The section on Priority Water Bodies has been revised as shown below:

II. IMPAIRED WATER BODIES (MAXIMUM 100 points)

Points will be based on the location and impact of the proposed project in relation to impaired water bodies in the state.

Note: These categories (a-b) are additive.

a. *Project is directly related to the requirements of the Chesapeake Bay TMDL* 60 pts

b. *Project is directly related to requirements of a local impaired stream TMDL* 40 pts

or

Project directly related to a local impaired stream without a TMDL 20 pts

5. Provide priority to localities that have established plans to address their stormwater pollution impacts, to include a dedicated stormwater funding mechanism and MS4s. Local governments that have adopted stormwater management plans, dedicated stormwater funding mechanisms and have pollution reduction commitments within stormwater funding mechanisms and have pollution reduction commitments within permits have strong programs that are capable of operating and maintaining the capital projects that are envisioned for this fund. Accordingly, JRA believes that such programs should be given priority.

RESPONSE:

We agree and have increased the total available points for Fiscal Stress to 75 and provide 25 of the 75 points to localities that have established some form of dedicated local funding mechanisms for stormwater capital projects.

#9 Dan Frisbee, Stormwater Program Coordinator
City of Charlottesville, Department of Public Works
305 4th Street NW, Charlottesville, Virginia 22903

1. Can SLAF funds be used for installation of stormwater management facilities that are part of a VSMP regulated new development or redevelopment project?

RESPONSE:

Yes for publicly funded construction projects only.

2. Can SLAF funds be used for installation of stormwater management facilities on private property, as part of a public-private partnership between a locality and a private property owner, provided an appropriate easement for long-term operation and maintenance is obtained?

RESPONSE:

Yes

The City of Charlottesville requests that DEQ consider the following:

3. Enabling Legislation: The enabling legislation includes language that directs moneys in the SLAF shall be used for four specific purposes, including “water quality requirements related to the permitting of small municipal stormwater sewer systems”, “obligations related to the Chesapeake Bay total maximum daily load (TMDL) requirements”, and “requirements for local impaired stream TMDLs”. However, there is no corresponding language in the guidance, and more importantly, the Grant Funding Priority Ranking does not provide any method for prioritizing small MS4 waster quality projects or projects that address the Chesapeake Bay or local impaired stream TMDLs.

Please include a methodology for prioritizing these projects in accordance with the enabling legislation.

RESPONSE:

We agree and have added 25 points for small (Phase 2) MS4s.

Also, the section on Priority Water Bodies has been revised as shown below:

II. IMPAIRED WATER BODIES (MAXIMUM 100 points)

Points will be based on the location and impact of the proposed project in relation to impaired water bodies in the state.

Note: These categories (a-b) are additive.

- a. *Project is directly related to the requirements of the Chesapeake Bay TMDL* 60 pts
- b. *Project is directly related to requirements of a local impaired stream TMDL* 40 pts

or

Project directly related to a local impaired stream without a TMDL 20 pts

4. Allowable Grant Amount: There are many projects at a lower cost threshold for which localities, particularly smaller localities, need funding assistance and that achieve valuable and cost effective pollutant reductions.

Please consider lowering the minimum grant amount from \$100,000 to \$50,000, such that projects must have at least \$100,000 in eligible projects costs instead of \$200,000.

RESPONSE:

Multiple smaller projects can be included in one application to meet the \$100,000 threshold, which we believe is appropriate to achieve meaningful pollutant reductions while maintaining a manageable grants administration workload for DEQ.

5. Program Requirements: Number 3 under the Program Requirements section of the guidance reads, “Stormwater best management practices (BMPs) listed on the Virginia Stormwater BMP Clearinghouse website shall be designed and constructed in accordance with all applicable standards and specifications provided by the Virginia Stormwater BMP Clearinghouse.” The Clearinghouse standards and specifications are tailored for BMPs in the context of regulated new development and redevelopment scenarios. However, most stormwater BMP retrofits built to treat existing developed areas with no stormwater management will have a very difficult time meeting all the technical standards and specifications for facilities in the BMP Clearinghouse, particularly some of the requirements for sizing and runoff depth treated. To accommodate this retrofit reality, the Chesapeake Bay Program’s *Recommendations of the Expert Panel to Define Removal Rates for Urban Stormwater Retrofit Projects (October 2012)* created a set of adjustor curves, which determine pollutant reductions based on the type of retrofit practice, the amount of runoff treated, and the amount of runoff reduction achieved.

We recommend that the language in this section be clarified to make it clear that a retrofit BMP is not required to meet all the Clearinghouse design standards and specifications, particularly those for sizing and runoff depth treated, in order to be eligible for SLAF funding.

RESPONSE:

We agree and have revised the Guidelines to provide that clarification.

6. Grant Funding Priority Ranking

Criterion I – Pollution Reduction: The effect of attributing 200 of 500 possible points to the amount of total phosphorus reduced is to heavily prioritize large projects with large corresponding phosphorus reductions over small projects, even if the small project is more cost effective. Additionally, using phosphorus as the sole pollutant by which a project’s pollution reduction is measured does not adequately take into account the nitrogen and sediment reduction requirements of the Chesapeake Bay TMDL or TMDLs for local streams impaired for other pollutants such as bacteria or sediment.

We recommend reducing the weight of this ranking criterion.

RESPONSE:

We have reduced the Pollution Reduction category to 150 points and increased the Cost Effectiveness category to 150 points.

Criterion II – Cost Effectiveness:

The City recommends that the weight of this criterion be increased to prioritize those projects that most cost-effectively reduce pollutant loads.

RESPONSE:

We have reduced the Pollution Reduction category to 150 points and increased the Cost Effectiveness category to 150 points.

Criterion III – Priority Water Bodies: This should include those water bodies listed on the 305(b)/303(d)

Integrated Report.

Please clarify which water bodies in the state are considered “priority water bodies”.

RESPONSE:

The Guidelines have been revised as shown above to clarify the “impaired” water bodies category.

7. Attachment A – Methodology for Calculating Total Phosphorus Reduction: Certain practices, such as stream restoration, may achieve significant sediment reduction efficiencies but not correspondingly high phosphorus reductions, not rank highly for SLAF funding as a result, but still meet requirements for Chesapeake Bay and local impaired streams TMDLs. This represents a conflict between the purpose of the SLAF as espoused in the enabling legislation and the grant funding priority ranking.

The City recommends other pollutants, especially nitrogen and sediment, should be taken into account when determining a project’s pollutant reduction and cost effectiveness.

RESPONSE:

See Pollution Reduction Methodology Response on page 6.

Number 3(a)and (b) of the methodology lay out two different scenarios for calculating phosphorus load reductions, one if the BMP is on the Attachment A list of BMPs, and one if it is not. But, as described in our comment number 5 above, this approach does not adequately account for stormwater BMP retrofits on existing developed land with no stormwater management, which may come in the form of one of the BMPs on the list, but which will have a very difficult time meeting all the technical standards and specifications for facilities in the BMP Clearing house, particularly some of the requirements for sizing and runoff depth treated.

The City proposes that number 3 of the methodology be revised to clarify that if the BMP being installed is on the Attachment A list of BMPs *and it meets the standards and specifications of the Virginia Stormwater BMP Clearinghouse*, then it should use the phosphorus removal efficiency in the table. If the BMP being installed or remediated is not listed in Attachment A *or does not meet the standards and specifications of the Virginia Stormwater BMP Clearinghouse*, then it should use the specified performance curves.

RESPONSE:

We agree and have revised the Guidelines to provide that clarification.

Number 4 of the methodology cautions applicants that remediating or upgrading an existing pond or BMP that was in place on or before June 30, 2009 may not be eligible for credit against Chesapeake Bay TMDL requirements. It is the City’s understanding that in that scenario, credit can be claimed for the incremental pollutant removal achieved by the remediation or upgrade, regardless of the date the original BMP was installed. The baseline condition for the Chesapeake Bay TMDL would have counted the original pollutant removal achieved by the BMP, but the incremental pollutant removal achieved by the remediation or upgrade should be eligible for credit. This line of thought is consistent with the Chesapeake Bay Program’s *Recommendations of the Expert Panel to Define Removal Rates for Urban Stormwater Retrofit Projects (October 2012)*.

RESPONSE:

We agree and have revised the Guidelines to provide clarification.

The Attachment A list of BMPs lists 0.068 for the Total Phosphorus Mass Load Removal (TR, as %) for urban stream restoration. Is the 0.068 more accurately expressed as 0.068 pounds/liner foot versus % removal?

RESPONSE:

You are correct and the guidelines have been revised accordingly.

#10 Jacob Powell, Policy and Campaigns Manager
Virginia Conservation Network

422 Ease Franklin Street, Suite 303, Richmond, Virginia 23219

[letter submitted on behalf of: Alliance for the Chesapeake Bay, Virginia Office; Clean Water Action; Friends of the Rivers of Virginia; National Wildlife Federation’s Mid-Atlantic Regional Center; Piedmont Environmental Council; Potomac Conservancy; Potomac Riverkeeper; Prince William Conservation Alliance; Rivanna Conservation Society; Shenandoah Valley Network; and Virginia Conservation Network.]

1. Operations and maintenance funding: Following the installation of a stormwater management project, the local government will be required to operate and maintain it. Frequently this can be a significant cost and failure to maintain these projects can inhibit or even negate the water quality benefits otherwise realized.

We recommend the language in “Program Requirements” item #4, second sentence be amend to read: *These provisions shall include, at a minimum, a description of the requirements for maintenance of the stormwater management facilities, a recommended schedule of inspection and maintenance, the identification of a person or persons who will be responsible for maintenance, and a demonstration of the ability to fund personnel and activities required to adequately operate and maintain the project.*

RESPONSE:

The current language is consistent with the Virginia Stormwater Management Program Permit regulations. We believe that adding this additional requirement would be difficult for DEQ to evaluate as well as being beyond our authority.

2. Nitrogen, phosphorus, and sediment should be used to assess pollution reduction and cost effectiveness: As a keystone pollutant, we understand the justification behind using total phosphorus for simplicity. However, local governments are very focused on sediment reduction, as it will be the largest challenge for most local governments to address.

We recommend that all three of these pollutants be used in the pollution reduction and cost effectiveness determinations.

RESPONSE:

See Pollution Reduction Methodology Response on page 6.

3. Preference in the priority ranking to low impact development design, localities with specific plans for reducing polluted runoff, and localities that have established a dedicated local stormwater funding mechanism: There is a direct link between amount of impervious cover an the biological and physical condition of downstream receiving waters. Low impact development reduces the amount of impervious cover and increased infiltration. When these practices replicate the existing predevelopment runoff characteristics, as nearly as practicable, it is the most effective way to reduce runoff. Of all the urban/suburban practices Virginia committed to in the Chesapeake Bay Watershed Implementation Plan, these are the practices that Virginia is most behind on implementing.

If priority were given to these practices in this guidance, the fund would present a unique opportunity to help address that shortfall.

RESPONSE:

The extra pollution removal benefits of infiltration practices due to runoff volume reduction are already taken into account in the increased pollutant removal efficiencies provided or referenced in Attachment A for those practices. We believe those extra pollutant removals provide sufficient incentive to encourage those practices at sites where they can be used.

It is incumbent upon everyone to protect the streams and rivers within their sphere of influence and we support the eligibility criteria set forth here. However, localities that have developed locally specific watershed implementation plans, and localities with permitted municipal separate storm sewer systems are under additional pressure to reduce polluted runoff.

We feel that based upon these pressures, a preference for these localities is warranted in the priority ranking.

RESPONSE:

We have added 25 points for small MS4s to address their specific reference in the appropriation language.

As mentioned above, the cost to operate and maintain these projects after construction can frequently be significant. Those localities that have taken proactive steps to establish a method of funding the local stormwater program will be in a much better position to bear the financial burden of ensuring the project continues to deliver the pollution reductions that the commonwealth is paying for.

Using this factor in combination with the composite fiscal stress index would offer a balance by selecting for localities that have the most need, and those that would not be over burdened by the additional operation or personnel costs associated with the project.

RESPONSE:

We agree and have increased the total available points for Fiscal Stress to 75, providing 25 of the 75 points to localities that have established some form of dedicated local funding mechanisms for stormwater capital projects.

One comment was received **after** the end of the public comment period from:

Chris French, Stormwater Regulatory Manager
Filtterra Bioretention Systems
11352 Virginia Precast Road
Ashland, VA 23005

Current SLAF guidelines focus on BMPs listed on the BMP Clearinghouse website and selected BMPs recognized by the Chesapeake Bay Program. This list excludes other BMPs that are currently recognized in the 1999 Virginia Stormwater Management Handbook VSMH and subsequent technical bulletins. As DEQ envisions the SLAF to be implemented prior to the implementation of the new stormwater regulations (beginning July 1, 2014), it is appropriate that all current stormwater BMPs recognized by the Commonwealth be allowed as part of the SLAF. This would provide programmatic consistency and eliminate a conflict that was not likely intended.

RESPONSE:

The state has determined, through Stormwater Management regulations effective September 2011 with an implementation deadline of July 1, 2014, that BMPs to meet water quality criteria in Virginia need to go through an approval process via the Virginia BMP Clearinghouse. This means that BMPs in the 1999 handbook and associated technical bulletins which were approved for use to meet the previous state standard and methodologies are not included. The 2011 regulations are designed to be protective of water quality to a greater extent than the previous regulations. In these Guidelines, DEQ allows for the acceptance of approved projects under the Virginia Stormwater Management Program that are eligible to follow the previous standards and methodologies (including the 1999 Handbook and technical bulletins). However the SLAF Guidelines ranking for removal efficiency of new BMP projects requesting SLAF grant funding utilizes the 2011 methodologies and more recently approved Chesapeake Bay Program methodologies. This allows for a level playing field upon which to rank projects while utilizing the most recently approved methodologies. Under this approach, all Manufactured Treatment Devices (MTDs) that have not gone through the Virginia BMP Clearinghouse and had removal efficiencies confirmed are treated equally in the ranking system. In the future, the SLAF Guidelines may be revised to include additional BMPs and MTDs that have gone through the Virginia BMP Clearinghouse.

STORMWATER LOCAL ASSISTANCE FUND PROGRAM GUIDELINES

September 30, 2013

STORMWATER LOCAL ASSISTANCE FUND - ENABLING LEGISLATION

In order to reduce non-point source pollution from stormwater runoff, the Virginia General Assembly included Item 360 in Chapter 860 of the Acts of Assembly (the Commonwealth's 2013-2014 Budget) which created and set forth specific parameters for the administration of the Stormwater Local Assistance Fund (SLAF). With the consolidation of water quality programs with the State Water Control Board (SWCB) through HB 2048 (2013) and SB 1279 (2013), administration of the SLAF resides with the SWCB and the Department of Environmental Quality (DEQ).

The following is the text of Item 360:

N.1. There is hereby established in the state treasury a special nonreverting fund to be known as the Stormwater Local Assistance Fund, hereby referred to as the "Fund." The Fund shall be established on the books of the State Comptroller and shall consist of bond proceeds from bonds authorized by the General Assembly and issued pursuant to Item C-39.40 of this act, sums appropriated to it by the General Assembly and other grants, gifts, and moneys as may be made available to it from any other source, public or private. Interest earned on the moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund.

2. The purpose of the Fund is to provide matching grants to local governments for the planning, design, and implementation of stormwater best management practices that address cost efficiency and commitments related to reducing water quality pollutant loads. Moneys in the Fund shall be used to meet: i) obligations related to the Chesapeake Bay total maximum daily load (TMDL) requirements; ii) requirements for local impaired stream TMDLs; iii) water quality requirements of the Chesapeake Bay Watershed Implementation Plan (WIP); and iv) water quality requirements related to the permitting of small municipal stormwater sewer systems. The grants shall be used solely for capital projects meeting all pre-requirements for implementation, including but not limited to: i) new stormwater best management practices; ii) stormwater best management practice retrofits; iii) stream restoration; iv) low impact development projects; v) buffer restoration; vi) pond retrofits; and vii) wetlands restoration.

3. The Virginia Soil and Water Conservation Board shall issue guidelines for the distribution of moneys from the Fund. The process for development of guidelines shall, at a minimum, include (a) a 60-day public comment period on the draft guidelines; (b) written responses to all comments received; and (c) notice of the availability of draft guidelines and final guidelines to all who request such notice.

O. The grants shall be used solely for capital projects meeting all pre-requirements for implementation, including but not limited to: i) new stormwater best management practices; ii) stormwater best management practice retrofits; iii) stream restoration; iv) low impact development projects; v) buffer restoration; vi) pond retrofits; and vii) wetlands restoration. Such grants shall be in accordance with eligibility determinations made by the Virginia Soil and Water Conservation Board under the authority of the Department of Conservation and Recreation.

DEQ's Clean Water Financing and Assistance Program, on behalf of the SWCB, has developed these guidelines and will administer the Stormwater Local Assistance Fund (SLAF). These Guidelines and the grant agreements awarding funds from the SLAF are supplemental to the State Water Control Law, Chapter 3.1, Title 62.1 of the Code of Virginia (1950), as amended, and do not limit in any way the other water quality restoration, protection and enhancement, or enforcement authority of the State Water Control Board, the Department of Environmental Quality (DEQ), or the Director of DEQ.

FUNDING AVAILABILITY

From the appropriation and bond authorization provided in Item 360 of the Commonwealth's 2013-2014 Budget, up to \$35,000,000 of the bond proceeds shall be provided to the SLAF. The bond proceeds, along with any interest earnings thereon, must be used to provide matching grants from the Fund for stormwater best management practices. Additional funds may be appropriated in future fiscal years. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund.

GRANT APPLICATION/AWARD PROCESS

Applications for SLAF grants will be solicited once each year that a state appropriation is provided. The completed application form and all necessary support documentation should be mailed to:

Clean Water Financing and Assistance Program
Department of Environmental Quality
629 East Main Street
P.O. Box 1105
Richmond, Virginia 23218

Applications will be reviewed and ranked in accordance with the priority ranking criteria provided in these guidelines. Based on that ranking process, the DEQ Director will authorize a project funding list. The authorized funding list (including recipient name, grant amount, and priority point totals) will be posted on the DEQ website. DEQ will then issue Letters of Commitment to all recipients on the authorized project funding list so that they may proceed with their projects with the certainty of a funding commitment. DEQ staff will work with the authorized grant recipients as they complete the program requirements and advertise for construction bids. Upon the receipt of construction bids and the development and approval of a final project budget based on as-bid or contractual costs, the grants will be awarded individually to each recipient.

ELIGIBLE APPLICANTS

Local governments, meaning any county, city, town, municipal corporation, authority, district, commission, or political subdivision created by the General Assembly or pursuant to the Constitution or laws of the Commonwealth, are eligible to apply for cost-share from the SLAF.

ELIGIBLE PROJECTS:

Capital projects for reducing and treating stormwater runoff as identified in Attachment A.

GRANT PERCENTAGE

The Director of the Department of Environmental Quality will authorize grants in the amount of 50% of the eligible costs of planning, design, and installation of stormwater best management practices. The recipient must be able to demonstrate the availability of the 50% local match. The Virginia Clean Water Revolving Loan Fund can be used as a source for the local match under the guidelines issued for that program.

ALLOWABLE GRANT AMOUNT

The minimum grant amount per local government is \$100,000 and the maximum grant amount per local government is \$5,000,000. This means that projects must have at least \$200,000 in eligible project costs to be considered and any project that exceeds \$10,000,000 in eligible project costs will receive no more than \$5,000,000.

GRANT ELIGIBLE EXPENSES

The SLAF program allows for any reasonable and necessary costs associated with the stormwater management project, including all associated planning, design, and construction costs. Grant proposals must be supported by a need which addresses an existing stormwater pollution problem or prevents a future environmental problem due to stormwater runoff. Grant requests received which are solely supported by the economic development needs of an area or an entity may be excluded from funding participation. DEQ may reduce grant eligibility, and/or the scope and size of a project to ensure the greatest financial and environmental benefit to as many communities as possible. Only projects which started construction on or after July 1, 2013 will be considered eligible for funding. Planning and design expenses incurred on an approved project prior to the execution of a grant agreement are eligible costs provided they are necessary and directly attributable to the project, and any services or contracts are secured in accordance with State procurement requirements.

INELIGIBLE GRANT COSTS

The following expenses cannot be included when determining the allowable amount of a SLAF grant:

1. Salaries and other expenses of municipal employees are not allowable expenses for reimbursement under the program. In addition, the cost of Force Account Labor is ineligible.
2. Administrative costs such as supplies, rent, grant administration, and/or travel.
3. Changes in the approved project scope without DEQ concurrence, change orders not attributable to the stormwater project, or involving duplication of effort or work will be disallowed construction costs. Any cost or expenditure that is determined to be unnecessary and/or unreasonable will be disallowed.
4. Costs to operate or maintain the project.
5. Any interest costs associated with funds borrowed for the planning, design, or construction of the project.

REIMBURSEMENT

Disbursement of grant funds will be made on a periodic reimbursement basis. Invoices must be submitted which fully substantiate all requests for disbursement of grant funds. All reimbursement requests must be reviewed and approved by DEQ staff prior to actual disbursement of funds. An original signed reimbursement request must be submitted to DEQ's Clean Water Financing and Assistance Program and one copy submitted to the appropriate DEQ regional office.

PROGRAM REQUIREMENTS- The following requirements are applicable to all projects funded through the Stormwater Local Assistance Fund:

1. Procurement of all funded goods/services must be made in conformance with the requirements of the Virginia Public Procurement Act, regardless of population size.
2. Stormwater best management practices (BMPs) listed on the Virginia Stormwater BMP Clearinghouse website shall be designed and constructed in accordance with all applicable standards and specifications provided by the Virginia Stormwater BMP Clearinghouse. Stormwater management facilities accepted for use by the USEPA Chesapeake Bay Program shall be designed and constructed in accordance with all applicable standards and specifications provided by the Chesapeake Bay Program. If the BMP is a retrofit that cannot fully meet the applicable design specifications, then it must meet them to the degree feasible, given space and other limitations. However, cost should not be a limiting factor.

3. Provisions for the long-term responsibility and maintenance of the stormwater management facilities and other techniques specified to manage the quantity and quality of runoff, including an inspection and maintenance schedule, shall be developed and implemented for all projects funded through the SLAF. These provisions shall include, at a minimum, a description of the requirements for maintenance of the stormwater management facilities, a recommended schedule of inspection and maintenance, and the identification of a person or persons who will be responsible for maintenance. Long-term responsibility and maintenance requirements for stormwater management facilities located on private property shall be set forth in an instrument recorded in the local land records and shall be consistent with 4VAC50-60-112 of the Virginia Stormwater Management Program (VSMP) Permit Regulations.

GRANT FUNDING PRIORITY RANKING

DEQ will prioritize applications for grant assistance on a statewide basis. Applications for stormwater projects which are expected to provide the greatest water quality benefit will be given the highest funding priority. The funding priority of applications for stormwater projects is determined by demonstration of recognizable reduction in nonpoint source pollution of Virginia waters.

HIGHEST TOTAL POSSIBLE SCORE = 550 PTS

I. POLLUTION REDUCTION (MAXIMUM 150 points)

Points will be based on the calculated reduction of total phosphorous (TP) as a result of the proposed project. The established methodology for calculating the TP reduction is outlined in Attachment A.

III. COST EFFECTIVENESS (MAXIMUM 150 points)

Points will be based on the projected cost of the project divided by the calculated amount of TP reduction.

IV. IMPAIRED WATER BODIES (MAXIMUM 100 points)

Points will be based on the location and impact of the proposed project in relation to priority water bodies in the state. . **Note: These categories (a – b) are additive.**

a. Project is directly related to the requirements of the Chesapeake Bay TMDL 60 pts.

b. Project is directly related to requirements of a local impaired stream TMDL 40 pts.

or

Project is directly related to a local impaired stream without a TMDL 20 pts.

IV. FISCAL STRESS-(COLG Composite Stress Index) (MAXIMUM 75 points)

50 of the points for county and city applicants will be based on the latest available Commission on Local Government composite fiscal stress index. Town applicants will be assigned the points of the surrounding county. Any applicant with a project serving more than one jurisdiction (such as public service authorities or towns located in two counties) will be assigned a weighted average from the component scores. An additional 25 points will be awarded to applicants that have established a dedicated local funding/revenue mechanism for stormwater capital projects

V. READINESS TO PROCEED (MAXIMUM 50 points)

Because it is important that grant recipients proceed quickly with their proposed projects, applicants that can proceed immediately with their proposed projects, or demonstrate an advanced state of readiness, will be given the highest points under this category.

Design has been submitted, reviewed, and approved 40 pts.

Design submitted / under review 35 pts.

Reasonable assurance design will be completed / submitted within 4 months 30 pts.

Project identified in current year Capital Improvement Plan or annual budget 20 pts.

Project included in Stormwater or Watershed Management Plan 10 pts.

VI. PHASE II (SMALL) MS4 (MAXIMUM 25points)

Applicants that are regulated under the General Permit for the Discharge of Stormwater from Small Municipal Separate Storm Sewer Systems will receive 25 points.

Attachment A
METHODOLOGY FOR CALCULATING TOTAL PHOSPHORUS REDUCTION

For the purpose of determining pollution reduction rankings, applicants shall submit expected reductions of Total Phosphorus (TP) only. TP is the representative pollutant for stormwater in the Commonwealth and serves as a surrogate for other pollutants of concern. This shall be calculated as follows:

1. Initial TP loads for the site shall be calculated on the Site Data tab of the Virginia Runoff Reduction Method Spreadsheet (compliance calculator). Once the land cover data for the site is entered into the appropriate spreadsheet cells, the spreadsheet automatically and instantly makes a series of calculations and displays the total TP load for the site at the bottom of the page, in cell B-51. Instructions for using the Spreadsheet can be found in Chapter 12 of the *Virginia Stormwater Management Handbook* (2nd Edition, 2013).
2. TP load reductions (in pounds) shall be determined using the applicable one of the following methods, as specified:
 - a. If the BMP being installed is on the Attachment A list of BMPs (the most recent version is attached and also posted on the Virginia Stormwater BMP Clearinghouse website as well as other BMPs currently accepted by the USEPA Chesapeake Bay Program), then the TP load reduction shall be calculated using the TP removal efficiency assigned to the selected BMP in the table.
 - b. If the BMP being installed or remediated is *not* listed in Attachment A or if a retrofit cannot fully meet the design specifications for either an Attachment A BMP or a Bay Program BMP, then the TP load reduction shall be determined using performance curves developed in either of the following Expert Panel reports, as applicable after estimating the initial TP loadings as directed in paragraph 2-a above:
 - *Recommendations of the Expert Panel to Define Removal Rates for New State Stormwater Performance Standards*, October 2012, on the Chesapeake Bay Program website at: <http://chesapeakestormwater.net/bay-stormwater/baywide-stormwater-policy/urban-stormwater-workgroup/performance-standards/> (applies to new development and redevelopment project BMPs).
 - *Recommendations of the Expert Panel to Define Removal Rates for Urban Stormwater Retrofit Projects*, October 2012, on the Chesapeake Bay Program website at: <http://chesapeakestormwater.net/bay-stormwater/baywide-stormwater-policy/urban-stormwater-workgroup/retrofits/> (applies to retrofit BMPs and remediated BMPs).
 - c. If the BMP constitutes a land use change (e.g., planting trees where impervious surface once existed, etc.), then the TP load reduction shall be calculated using the Site Data tab of the Virginia Runoff Reduction Method Spreadsheet (compliance calculator). The initial TP load calculated using this tab of the Spreadsheet shall be compared to the TP load calculated after reflecting the changes in the land cover cells (i.e., more forest cover, which uses a much lower runoff coefficient, thus generating a lower runoff volume and TP load).
 - d. If the selected BMP is *Urban Stream Restoration*, the TP load reduction will be determined by using the appropriate methodology specified in the USEPA Chesapeake Bay Program guidance document entitled *Recommendations of the Expert Panel to Define Removal Rates for Individual Stream Restoration Projects*, May 2013, on the Chesapeake Bay Program website at: http://chesapeakestormwater.net/wp-content/uploads/downloads/2013/05/Final_CBP_Approved_Expert_Panel_Report_on_Stream_Restoration_LONG.pdf) or the default value indicated on the Attachment A BMP list.
3. If an applicant proposes to remediate or upgrade an existing pond or other BMP that was in place on or before June 30, 2009 (the baseline date for the Chesapeake Bay TMDL load allocations), it should be clear that the application may score highly against other applications but only the incremental increase in pollution reduction will be eligible for scoring for this grant process and reporting to the Chesapeake Bay Program office for credit against TMDL pollutant load allocations or reduction targets. This is because BMPs in existence prior to that date have already been counted as part of the baseline condition for the TMDL.

Virginia Stormwater Clearinghouse BMPs (1 - 10)			
Practice Number	Practice		Total Phosphorus Mass Load Removal (TR, as %)
1	Vegetated Roof 1		45
	Vegetated Roof 2		60
2	Permeable Pavement 1		59
	Permeable Pavement 2		81
3	Infiltration 1		63
	Infiltration 2		93
4	Bioretention 1		55
	Bioretention 2		90
	Urban Bioretention		55
5	Dry Swale 1		52
	Dry Swale 2		76
6	Wet Swale 1		20
	Wet Swale 2		40
7	Filtering Practice 1		60
	Filtering Practice 2		65
8	Constructed Wetland 1		50
	Constructed Wetland 2		75
9	Wet Pond 1		50 (45) ³
	Wet Pond 2		75 (65) ³
10	Extended Detention Pond 1		15
	Extended Detention Pond 2		31
Chesapeake Bay Program BMPs (11 - 18)			
Practice Number	Practice		Total Phosphorus Mass Load Removal (TR, as %)
11	Impervious Urban Surface Reduction		Land Use Change ⁴
12	Forest Buffers		Land Use Change ⁴
13	Grass Buffers		Land Use Change ⁴
14	Tree Planting		Land Use Change ⁴
15	Dry Detention Ponds and Hydrodynamic Structures		10
16	Dry Extended Detention Ponds		20
17	Urban Stream Restoration		0.068 lbs./linear ft.
Chesapeake Bay Program BMPs Hydrogeomorphic Region impacted efficiencies			
Practice Number	Practice	Hydrogeomorphic Region(s)	Total Phosphorus Mass Load Removal (TR, as %)
18	Wetland Restoration	Appalachian Plateau Siliciclastic	12
	Wetland Restoration	Coastal Plain Dissected Uplands; Coastal Plain Uplands; Coastal Plain Lowlands	50
	Wetland Restoration	Blue Ridge; Mesozoic Lowlands; Piedmont Crystalline; Piedmont Carbonate; Valley and Ridge Siliciclastic; Valley and Ridge Carbonate	26
Notes 1 or 2 follow recommendations VA Stormwater BMP Clearinghouse supporting information (http://www.vwrrc.vt.edu/swc/) ³ Lower nutrient removal in parentheses apply to wet ponds in coastal plain terrain. ⁴ Use Runoff Reduction Methodology spreadsheet tool to estimate initial and post land use change loadings.			