

REVISED TENTATIVE AGENDA AND MINIBOOK
STATE WATER CONTROL BOARD MEETING
THURSDAY, APRIL 14, 2011
FRIDAY, APRIL 15, 2011

Department of Environmental Quality
2nd Floor Training Room
629 East Main Street
Richmond, Virginia

THURSDAY, APRIL 14, 2011 - CONVENE - 9:30 A.M.

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II.	Permits		
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III.	Regulations		
	General VPDES Permit Regulation for Total Nitrogen and Total Phosphorus Discharge and Nutrient Trading in the Chesapeake Bay Watershed – Proposed	Brockenbrough	D
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	Northern Regional Office Francis M. Barlow, Jr./Frog Level Farm 614 (Caroline Co.)		
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VIII.	Public Forum		
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	Proposed Settlement Agreement – Chesapeake Bay Foundation and Waterman’s Association v. SWCB re: Merck Co.	Pollock	I

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- X. Tour:** Meeting will recess for lunch at 12:15 p.m. and reconvene at the Henrico Water Reclamation Facility and reconvene by 1:30 p.m. for a tour of the facility and a biosolids agricultural application demonstration. No actions are planned during the tour and no discussion of particular permit actions will take place. Members of the public that would like to join the Board will need to (1) advise the staff contact person listed below no later than 4:00 p.m. on Thursday, April 7, 2011, and (2) provide their own transportation to the Henrico Water Reclamation Facility.

FRIDAY, APRIL 15, 2011 - CONVENE - 9:30 A.M. – IF NECESSARY

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.

Briefing Memorandum for Issuance of a Virginia Water Protection (VWP) Individual Permit Part I – Surface Water Construction Related Impacts, draft VWP Permit No. 10-1256 Unit 3 at Dominion’s North Anna Power Station Louisa County, Virginia:

Project Description

The applicant, Virginia Electric & Power Company dba Dominion Virginia Power, proposes to construct a new nuclear unit (Unit 3) at the existing North Anna Power Station (NAPS) site to provide additional baseload electric service to meet a growing demand. The NAPS site is located at 1022 Haley Drive in Louisa County, Virginia.

The applicant submitted three VWP permit applications corresponding to the three parts of the project, which are summarized below:

- Part I – Surface Water Construction Related Impacts, draft VWP Permit No. 10-1256. Part I of the project proposes surface water impacts related to construction activities. The Joint Permit Application (JPA) included the proposed 3 increase in the normal target pool elevation of Lake Anna; however, the applicant requested on December 20, 2010, that this activity be moved from Part I to Part III to allow additional time to address citizen comments received during the application process. This part of the project is the subject of this memorandum.
- Part II – Minor Surface Water Withdrawal for Construction Activities, draft VWP Permit No. 10-1496. Part II of the project proposes a minor surface water withdrawal for construction related activities such as dust suppression and for soil moisture control.
- Part III – Major Surface Water Withdrawal for Operational Activities and Lake Level Rise, JPA No. 10-2001. Part III of the project proposes a major surface water withdrawal associated with the operational activities of Unit 3 and a temporal change to shoreline wetlands as a result of a permanent increase of 3 inches in the normal target pool elevation of Lake Anna and the water level in the Waste Heat Treatment Facility (WHTF). This application is currently under review.

Part I of the project (proposed VWP Permit No. 10-1256) proposes surface water impacts related to construction activities. The activities associated with this part are grouped into the following categories: construction related activities of Unit 3 and large component transport route.

Proposed Impacts

The proposed activities will result in the total impact of 6.36 acres of surface waters, consisting of 5.13 acres of permanent impacts and 1.22 acres of temporary impacts. Permanent impacts are to 4.14 acres of palustrine forested wetland, 0.40 acre of palustrine emergent (PEM) wetland, 0.26 acre of open water (of which 0.24 acre is associated with dredging 637 cubic yards) and 0.33 acre (6,380 linear feet) of stream channel. Temporary impacts are to 0.06 acre of PEM wetland, 0.18 acre of tidal emergent wetland, 0.51 acre of open water, and 0.47 acre (308 linear feet) of stream channel.

Proposed Compensation

Compensation requirement of 8.94 credits for permanent wetland and open water impacts shall be provided through one or a combination of the following: purchase of wetland credits from an approved wetland mitigation bank located within the same U.S.G.S. Hydrologic Unit Code (HUC) or adjacent HUC within the same river watershed as the permitted wetland and open water impacts and/or an in-lieu fee payment to the Virginia Aquatic Resources Trust Fund (VARTF).

Compensation for permanent stream channel impacts shall be provided through the following: on-site preservation of 11,775 linear feet of stream channels with riparian buffers approximately 200 feet in width along either side of the channel, and the remaining compensation requirement of 5,624 as determined by the Unified Stream Methodology shall be provided through one or a combination of the following: purchase of stream credits from an approved stream mitigation

bank located within the same U.S.G.S. HUC or adjacent HUC within the same river watershed as the permitted impacts and/or an in-lieu fee payment to the VARTF.

Authorization to Convene a Public Hearing

In response to the joint riparian landowner notification for Parts I and II of the project, staff received 33 inquires and comments from 11 citizens/organizations. Staff met with citizen groups, such as the Lake Anna Civic Association. Staff understood citizens were concerned about the proposed activities, and staff was also aware citizens intended to provide comments formally during the public comment period.

Due to the level of public interest staff encountered during the application process, staff anticipated significant public interest and increased public participation during the public comment period. Staff also anticipated receiving requests for a public hearing on the proposed draft permits. Therefore, staff requested authorization to proceed with joint public notices of the draft permit and public hearing for both Part I (draft VWP Permit No. 10-1256) and Part II (draft VWP Permit No. 10-1496).

The Director of DEQ authorized staff to convene public hearings regarding the proposed permit issuances on January 4, 2011.

Draft Permit and Hearing Public Notice

The public notices for each of the proposed draft permits (Parts I and II) were published in the following newspapers: January 12, 2011 in the *Tidewater Review* and the *Country Courier*, January 13, 2011 in *The Central Virginian*, January 14, 2011 in the *Fredericksburg Free Lance-Star* and the *Richmond Times-Dispatch*, and January 15, 2011 in the *Lake Anna Observer*.

Notification of the draft permits and public hearings and copies of the public notices were sent to the localities in which activities are proposed, all riparian landowners notified of the receipt of the applications for Parts I and II, and to State Water Control Board members.

Public Hearing

The public hearings were held jointly on February 17, 2011, from 7:00 p.m. to 9:00 p.m. in the Auditorium of Louisa County Middle School in the Mineral, Virginia. Mr. Robert Dunn served as the Hearing Officer. An informal briefing session was held prior to the hearings from 6:00 p.m. to 7:00 p.m. in the same location. During the hearing, there were 16 speakers of which 14 provided comments.

Public Comment Period Comments

The public comment period was from January 12, 2011, to March 4, 2011. During the public comment period, staff received 85 written and oral comments, of which represented 103 persons and 9 non-profit organizations and/or local government. Comments received were on one or all of the three parts of the project (draft VWP Permit Nos. 10-1256 and 10-1496 and JPA No. 10-2001). The non-profit organizations and/or local government represented were Blue Ridge Environmental Defense League (BREDL), Friends of Lake Anna (FOLA), Lake Anna Civic Association (LACA), Lake Anna Chamber of Commerce (LACC), Louisa County Board of Supervisors, Louisa County Water Authority, People's Alliance for Clean Energy (PACE), Virginia Chapter of Sierra Club, and Waterside Property Owners Association (WPOA). Of the comments submitted, 67 comments were in support of the project, 29 comments voiced concerns

and 5 comments requested denial of the permits for Parts I and II. Staff also received 25 requests for information.

Status of USACE Individual Permit

U.S. Army Corps of Engineers (USACE) is reviewing activities within their purview under JPA No. 10-1256. The USACE public noticed JPA No. 10-1256 on January 6, 2011.

II. SUMMARY OF COMMENTS DURING PUBLIC COMMENT PERIOD (comment and responses begin on page 21)

The comments received during the comment period for Part I regard the following:

- Concerned with the transport of large components using public roads.
- Concern of surface waters proposed for impact within the York River watershed.
- Request more specificity of the dredging activities in regards to sampling and operations, and that it should occur in the dry to provide assurance to public.
- Concern of the advancement of permits without an impact study of the Lake Anna watershed or finalization of the decision to construction Unit 3.
- Concern of how public can monitor activities located on a private facility.
- Requests for shorter permit term.
- Request for permit contingency to initiate activities based upon other approvals.
- Questions regarding the processing timeframes.
- Concern of authorized impacts being initiated prior to a final decision to construct Unit 3.

Although staff is reviewing the application for Part III for a Major Surface Water Withdrawal and Lake Level Rise (JPA No. 10-2001) and has not drafted a VWP permit at this time, the concerns that citizens have expressed thus far are summarized below.

- Concern regarding the volume of water proposed for the operational activities and doubts of whether the watershed can provide for the volume requested.
- Concern regarding differences in the volume for the major water withdrawal for operations from various documents.
- Dry cooling should be used to reduce water use, and the change in reactor types has resulted in an increased need for water.
- Concern of the advancement of permits without an impacts study of the Lake Anna watershed or finalization of the decision to construction Unit 3. Request for modeling data used in DEQ's modeling of Lake Anna.
- Request for a comprehensive study of the Lake Anna watershed to determine total water available and compare against existing, proposed and future uses due to concern of water permits being piecemealed for the watershed.
- Comments on the Instream Flow Incremental Methodology study regarding requests for inclusion of future withdrawals and that it did not consider fluctuations of the Waste Heat Treatment Facility (WHTF).
- Request for withdrawal permits not to proceed until proof that a three-inch rise will dissipate heat.
- Concern the three inch rise is insufficient.

- Recommend easier means to maintain water elevations in Lake Anna, WHTF and for dam releases.
- The proposed activities will impact surface waters.
- Concerned Unit 3 activities will negatively affect recreation due to the potential to affect lake level and temperature.
- The Lake Level Contingency Plan (LLCP) and the operation of Unit 3 should be keyed to a better
- Requests for shorter permit term.
- Concern about the permits being based upon a computer model.
- Concerns about an increase in water temperatures as a result of Unit 3 operations and needs for more monitoring.
- Concerns with the nuclear aspects of a new reactor.
- Concerns regarding erosion and sediment controls during construction of Unit 3.

III. SUMMARY OF CHANGES TO DRAFT PERMIT IN REPOSENSE TO CITIZEN COMMENTS

Staff included the following permit conditions in the draft VWP permit to address citizen concerns:

- Part I.G.4. The permittee shall submit to DEQ for review and approval a sampling plan of the material to be dredged to determine if the material is free of toxic contaminants. If materials are determined to contain toxic contaminants, the disposal of the dredged material shall occur in an approved disposal area. The sediment sampling plan shall include the following:
 - a. A minimum of 3 core samples, taken to the depth of dredge.
 - b. The method of analysis that will be conducted and the parameters to be evaluated. At a minimum, the permittee shall test for the following parameters: Arsenic (As), Barium (Ba), Cadmium (Cd), Chromium (Cr), Lead (Pb), Mercury (Hg), Selenium (Se), Silver (Ag), Zinc (Zn), Copper (Cu), and Polychlorinated Biphenyls (PCBs).
 - c. Sediment samples shall be tested at one foot intervals from each core sample.
 - d. Submittal of sediment sampling results in the Dredging Plan required by Part I.G.5.
- Part I.G. 5. A Dredging Plan shall be submitted and approved by DEQ prior to commencement of any dredging activities. The plan shall include the following, at a minimum:
 - a. The following information pertaining to dredging under dry conditions: the location of cofferdams; how the water will be pumped out of contained area; narrative of how dredging will proceed under the dry conditions; the location of any sediment control measures; a plan to remove the dams; and an action plan that can be implemented in the event the cofferdams fail.
 - b. Dredge material management plan for the designated upland disposal site.

- c. A timeline of when dredging will commence and when any associated work will be completed.
- d. The results and analysis of sediment testing required by Part I.G.4.
- e. Contingency procedures if sediment sampling determines the materials to be dredged contain toxic contaminants. These procedures should include coordination with DEQ

Staff revised the following draft permit conditions for clarification and/or to address citizen concerns.

- Part I.G.1. Dredging shall be accomplished under dry conditions via the method approved by DEQ in the Dredging Plan required by Part I.G.5.
- Part I.G.2. Dredging shall be accomplished in a manner to minimize disturbance of the bottom and minimize turbidity levels in the water column.
- Part I.H.2.b. The permittee shall submit written notification at least ten calendar days prior to the initiation of activities in permitted areas associated with construction activities to support Unit 3 (including the construction of the water intake structure for Unit 3), prior to initiation of dredging activities associated with the intake structure for Unit 3, and prior to initiation of activities in permitted areas associated with the Large Component Transport Route. The notifications shall include a projected schedule for initiating and completing work at each permitted impact area.

Briefing Memorandum for Issuance of a Virginia Water Protection (VWP) Individual Permit Part II – Minor Surface Water Withdrawal for Construction Activities, draft VWP Permit No. 10-1496 Unit 3 at Dominion’s North Anna Power Station Louisa County, Virginia:

I. PROJECT BACKGROUND

Project Description

The applicant, Virginia Electric & Power Company dba Dominion Virginia Power, proposes to construct a new nuclear unit (Unit 3) at the existing North Anna Power Station (NAPS) site to provide additional baseload electric service to meet a growing demand. The NAPS site is located at 1022 Haley Drive in Louisa County, Virginia.

The applicant submitted three VWP permit applications corresponding to the three parts of the project, which are summarized below:

- Part I – Surface Water Construction Related Impacts, JPA No. 10-1256. Part I of the project proposes surface water impacts related to construction activities.
- Part II – Minor Surface Water Withdrawal for Construction Activities, JPA No. 10-1496. Part II of the project proposes a minor surface water withdrawal for construction related activities such as dust suppression and for soil moisture control. This part of the project is the subject of this memorandum.

- Part III – Major Surface Water Withdrawal for Operational Activities and Lake Level Rise, JPA No. 10-2001. Part III of the project proposes a major surface water withdrawal associated with the operational activities of Unit 3 and a temporal change to shoreline wetlands as a result of a permanent increase of 3 inches in the normal target pool elevation of Lake Anna and the water level in the Waste Heat Treatment Facility (WHTF). This application is currently under review. Part II of the project (draft VWP Permit No. 10-1496) proposes a surface water withdrawal from two intakes located at two points along the shoreline of Lake Anna to support construction related activities associated with the construction a new nuclear unit (Unit 3) at the existing NAPS site.

Proposed Water Withdrawal Amounts

This surface withdrawal is proposed to be used for dust control, moisture control, cleaning of rock surfaces prior to inspection, irrigation to establish vegetative erosion and sediment control measures, construction equipment cleaning, and fire protection. Other reasonable construction related uses may be approved by DEQ prior to implementation. The proposed maximum daily withdrawal volume from Lake Anna is 750,000 gallons per day.

No permanent impacts to surface waters are proposed for the installation of the intake structures.

Authorization to Convene a Public Hearing

In response to the joint riparian landowner notification for Parts I and II of the project, staff received 33 inquires and comments from 11 citizens/organizations. Staff met with citizen groups, such as the Lake Anna Civic Association. Staff understood citizens were concerned about the proposed activities, and staff was also aware citizens intended to provide comments formally during the public comment period.

Due to the level of public interest staff encountered during the application process, staff anticipated significant public interest and increased public participation during the public comment period. Staff also anticipated receiving requests for a public hearing on the proposed draft permits. Therefore, staff requested authorization to proceed with joint public notices of the draft permit and public hearing for both Part I (draft VWP Permit No. 10-1256) and Part II (draft VWP Permit No. 10-1496).

The Director of DEQ authorized staff to convene public hearings regarding the proposed permit issuances on January 4, 2011.

Draft Permit and Hearing Public Notice

The public notices for each of the proposed draft permits (Parts I and II) were published in the following newspapers: January 12, 2011 in the *Tidewater Review* and the *Country Courier*, January 13, 2011 in *The Central Virginian*, January 14, 2011 in the *Fredericksburg Free Lance-Star* and the *Richmond Times-Dispatch*, and January 15, 2011 in the *Lake Anna Observer*.

Notification of the draft permits and public hearings and copies of the public notices were sent to the localities in which activities are proposed, all riparian landowners notified of the receipt of the applications for Parts I and II, and to State Water Control Board members.

Public Hearing

The public hearings were held jointly on February 17, 2011, from 7:00 p.m. to 9:00 p.m. in the Auditorium of Louisa County Middle School in the Mineral, Virginia. Mr. Robert Dunn served as the Hearing Officer. An informal briefing session was held prior to the hearings from 6:00 p.m. to 7:00 p.m. in the same location. During the hearing, there were 16 speakers of which 14 provided comments.

Public Comment Period Comments

The public comment period was from January 12, 2011, to March 4, 2011. During the public comment period, staff received 85 written and oral comments, of which represented 103 persons and 9 non-profit organizations and/or local government. Comments received were on one or all of the three parts of the project (draft VWP Permit Nos. 10-1256 and 10-1496 and JPA No. 10-2001). The non-profit organizations and/or local government represented were Blue Ridge Environmental Defense League (BREDL), Friends of Lake Anna (FOLA), Lake Anna Civic Association (LACA), Lake Anna Chamber of Commerce (LACC), Louisa County Board of Supervisors, Louisa County Water Authority, People's Alliance for Clean Energy (PACE), Virginia Chapter of Sierra Club, and Waterside Property Owners Association (WPOA). Of the comments submitted, 67 comments were in support of the project, 29 comments voiced concerns and 5 comments requested denial of the permits for Parts I and II. Staff also received 25 requests for information.

Status of USACE Individual Permit

It is staff's understanding that the U.S. Army Corps of Engineers (USACE) does not expect to issue a permit for the activities proposed under Part II of the project.

II. SUMMARY OF COMMENTS DURING PUBLIC COMMENT PERIOD (comment and responses begin on page 31)

The comments received during the comment period for Part II regarded the following:

- Requests for restriction of volume for minor surface water withdrawal to conserve water.
- Concern of the volume of water proposed for the minor water for construction activities and potential affect on water levels.
- Request for a comprehensive study of the Lake Anna watershed to determine total water available and compare against existing, proposed and future uses due to concern of water permits being piecemealed for the watershed.
- Request for clarification of the end of the proposed activity.
- Request for withdrawal permits not to proceed until proof that a three-inch rise will dissipate heat.
- Request for real-time monitoring of withdrawals and upgrades to water level and temperature monitoring.
- Concern of the advancement of permits without an impacts study of the Lake Anna watershed or finalization of the decision to construction Unit 3.
- Concern of how public can monitor activities located on a private facility.
- Requests for shorter permit term.
- Request for permit contingency to initiate activities based upon other approvals.

- Questions regarding the processing timeframes.

Although staff is reviewing the application for Part III for a Major Surface Water Withdrawal and Lake Level Rise (JPA No. 10-2001) and has not drafted a VWP permit at this time, the concerns that citizens have expressed thus far are summarized below.

- Concern regarding the volume of water proposed for the operational activities and doubts of whether the watershed can provide for the volume requested.
- Concern regarding differences in the volume for the major water withdrawal for operations from various documents.
- Dry cooling should be used to reduce water use, and the change in reactor types has resulted in an increased need for water.
- Concern of the advancement of permits without an impacts study of the Lake Anna watershed or finalization of the decision to construction Unit 3. Request for modeling data used in DEQ's modeling of Lake Anna.
- Request for a comprehensive study of the Lake Anna watershed to determine total water available and compare against existing, proposed and future uses due to concern of water permits being piecemealed for the watershed.
- Comments on the Instream Flow Incremental Methodology study regarding requests for inclusion of future withdrawals and that it did not consider fluctuations of the Waste Heat Treatment Facility (WHTF).
- Request for withdrawal permits not to proceed until proof that a three-inch rise will dissipate heat.
- Concern the three inch rise is insufficient.
- Recommend easier means to maintain water elevations in Lake Anna, WHTF and for dam releases.
- The proposed activities will impact surface waters.
- Concerned Unit 3 activities will negatively affect recreation due to the potential to affect lake level and temperature.
- The Lake Level Contingency Plan (LLCP) and the operation of Unit 3 should be keyed to a better
- Requests for shorter permit term.
- Concern about the permits being based upon a computer model.
- Concerns about an increase in water temperatures as a result of Unit 3 operations and needs for more monitoring.
- Concerns with the nuclear aspects of a new reactor.
- Concerns regarding erosion and sediment controls during construction of Unit 3.

III. SUMMARY OF CHANGES TO DRAFT PERMIT IN REPOSE TO CITIZEN COMMENTS

Note: Staff noticed the numbering of the conditions under Part I.C of the permit were incorrect and therefore, corrected the error on January 31, 2011.

Staff included the following permit condition in the draft VWP permit to address citizen concerns:

- Part I.D.13. The permittee shall notify DEQ 10 days following completion of construction activities associated with Unit 3 and ceasing the authorized water withdrawal activity.

Staff revised the following draft permit conditions for clarification and/or to address citizen concerns.

- Part I.A.1. This permit authorizes the installation and operation of a surface water withdrawal from two intakes located at two points along the shoreline of Lake Anna to support the construction of a new nuclear unit (Unit 3) at the existing North Anna Power Station. The authorized surface water withdrawal activity shall cease upon the commercial operation date for the new nuclear unit and is not authorized after that date.
- Part I.B.1. This permit is valid for fifteen (15) years from the date of issuance. A new permit shall be necessary for the continuance of the authorized activities, including water withdrawals, or any permit requirement that has not been completed, including compensation provisions.
- Part I.B.2. The permittee shall notify DEQ in writing at least 120 calendar days prior to the expiration of this permit if reissuance of this permit is required.
- Part I.D.1. Surface water withdrawn from Lake Anna and authorized under this permit is authorized to be used for the following activities to support the construction of Unit 3: dust control, moisture control, cleaning of rock surfaces prior to inspection, irrigation to establish vegetative erosion and sediment control measures, construction equipment cleaning, fire protection. Any other reasonable construction related uses associated with the construction of Unit 3 not listed may be approved by DEQ prior to implementation.
- Part I.D.3. The maximum daily withdrawal volumes as it relates to the water elevation of Lake Anna shall be authorized in accordance with the table below. Withdrawal shall cease once lake levels decrease below 244.0 feet msl.

Water Elevation (feet msl)	Max. Daily Withdrawal (gpd)
≥ 248.0	750,000
<248.0 and ≥ 247.0	500,000
<247.0 and ≥ 246.0	250,000
<246.0 and ≥ 245.0	125,000
<245.0 and ≥ 244.0	62,500

- Part I.D.6. When a drought emergency is declared by the Commonwealth of Virginia in the Northern Piedmont Drought Evaluation Region of Louisa, Orange and/or Spotsylvania Counties, the permittee shall implement the mandatory conservation measures applicable to the proposed uses of the withdrawn water, as detailed in Attachment A of this permit in addition to complying with restrictions on the permitted withdrawal volume and implementation of the conservation management plan required under this section. The permittee shall be responsible for determining when drought emergencies are declared. DEQ may require documentation that mandatory conservation

measures were implemented during declared drought emergencies. Drought status may be found on DEQ's website under the Virginia Drought Status web page (<http://www.deq.virginia.gov/waterresources/drought/homepage.html>).

- Part I.D.12. The permittee shall submit a water withdrawal monitoring report to DEQ monthly. The report shall be submitted within 20 days following a monthly monitoring period via the Virginia Water Withdrawal Reporting System. In the event that the system is not available, the permittee shall submit the report by electronic mail. The report shall be made available to the public via posting on a public accessible website. The monitoring shall be conducted in accordance with DEQ approved methodologies in accordance with Part I.D.10. The report shall include the following information in addition to the information listed in Part I.D.11.
 - a. The permittee's name and address;
 - b. The permit number;
 - c. The source (s) from which water is withdrawn;
 - d. The location (latitude and longitude) of each point of water withdrawal;
 - e. The cumulative volume (million gallons) of water withdrawn each month of the calendar year;
 - f. In the report for each December, include the largest single day withdrawal volume (million gallons) that occurred in the year and the month in which it occurred; and
 - g. The method of measuring each withdrawal.
- Attachment A. In addition to complying with restrictions on the permitted withdrawal volume and required conservation management plan referenced in Part I.D of the permit, the permittee shall also comply with the restrictions of this section.

Reissuance of the General VPDES Watershed Permit Regulation for Total Nitrogen and Total Phosphorus Discharge and Nutrient Trading in the Chesapeake Bay Watershed in Virginia (9 VAC 25-820): The current general permit that governs facilities holding individual VPDES permits that discharge or propose to discharge total nitrogen or total phosphorus to the Chesapeake Bay or its tributaries will expire on December 31, 2011, and the regulation establishing this general permit is being amended to reissue another five-year permit. The Board authorized the staff to hold a public hearing on the proposed regulation at their September 27, 2010 meeting.

However as explained at that meeting, staff held off on holding public hearings until EPA completed the Chesapeake Bay TMDL so that any changes required by the TMDL could be incorporated in the proposed regulation. Following completion of the TMDL, revisions to the proposed regulation were made and one additional Technical Advisory Meeting was held.

The staff intends to bring this proposed regulation amendment before the Board at their April 2011 meeting to present the TMDL related changes and request reauthorization to hold public hearings.

The staff has reviewed the current permit and the draft regulation takes into consideration the recommendations of a technical advisory committee formed for this regulatory action. Minor changes to the general permit are proposed for reissuance.

If the Board authorizes the public hearing, it would be held in late spring or early summer. The staff would then bring a final regulation to the Board for adoption at the September, 2011 Board meeting. This should allow the reissuance of the permit before the existing one expires on December 31, 2011.

The Office of the Attorney General is currently reviewing the proposed regulation for certification of statutory authority. The U.S. Environmental Protection Agency must also review and approve the general permit prior to adoption.

Summary of Proposed Changes to 9 VAC 25-820-10 et seq. – General VPDES Watershed Permit Regulation for Total Nitrogen and Total Phosphorus Discharges and Nutrient Trading in the Chesapeake Bay Watershed in Virginia

1. Deletion of sections dealing with initial compliance plans and a schedule of compliance. Nutrient limits are scheduled to go into effect as of 1/1/11 and these sections are no longer necessary. Sections are held as “reserved” to maintain the section references included in credit exchange contracts previously executed by members of the The Virginia Nutrient Credit Exchange Association.
2. Miscellaneous changes meant to correct inaccuracies introduced by previous requirements to calculate loads based on flows expressed to the nearest 0.01 MGD and to round nutrient loads to the nearest whole pound on a daily basis. These two procedures introduced errors into calculations provided by smaller facilities.
3. A change to the definition of “expansion” to recognize that production changes or the use of treatment additives at industrial facilities could result in increased nutrient loads to be addressed under the watershed general permit.
4. Inclusion of a new definition of “local water quality based limitations”; a term used in the existing permit.
5. A new definition of “quantification level” to match that used by the Division of Consolidated Laboratory Services.
6. Provisions to implement a number of bills addressing nutrient trading that have become effective since the original regulation was adopted. These provisions include:
 - a. Allowance for VPA treatment systems in existence as of 7/1/2005 that need to replace their system with a discharging system to petition the Board for a wasteload allocation for coverage under the watershed general permit.
 - b. A requirement that new municipal treatment systems with a design flow between 1,000 and 40,000 gpd that are not discharging as of 1/1/2011 must offset all nutrient loads and register for coverage.
 - c. Allowance for permitted facilities on the Eastern Shore to acquire compliance credits from the Potomac and Rappahannock basins.
7. Clarification of analytical and reporting requirements.

8. A requirement that offsets required for the full 5-year term of the permit be provided at the time of registration.
9. Updated prices of TN and TP credit purchases from the Water Quality Improvement Fund
10. Establishing a baseline condition for offsets generated by new stormwater BMPs..
11. Deletion of the Ortho Phosphorus monitoring requirement as enough data was generated in the first permit cycle to characterize the discharges for modeling purposes.

Changes to 9 VAC 25-820-10 et seq. Made in Response to the EPA Chesapeake Bay TMDL

- 1.
2. Add reduced TN and TP wasteload allocations for the HRSD facilities on the James River and reduced TP allocations for all facilities in the York Basin along with appropriate schedules of compliance.
3. Add aggregate, Chlorophyl a-based TN and TP wasteload allocations for the significant James River dischargers with a compliance deadline of January 1, 2023.
4. Push the registration deadline back one month to November 1, 2011.
5. Add provisions allowing for coverage under the general permit to be administratively continued, if necessary.

Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Discharges Resulting from the Application of Pesticides to Surface Waters (9VAC25-800): The staff will ask the Board to affirm the Director's suspension of the effective date of 9VAC 25-800, the Virginia Pollutant Discharge Elimination System (VPDES) General Permit For Discharges Resulting From the Application of Pesticides to Surface Waters. The suspension was done in accordance with § 2.2-4015 A 4 of the Administrative Process Act (APA) which allows exceptions by the agency to the effective date of a regulation for reasons it deems necessary or appropriate.

The staff will ask the Board to amend and readopt 9VAC25-800 to revise the effective date to October 31, 2011, and the expiration date to December 31, 2013. This request for readoption is in accordance with § 2.2-4015 B of the APA which further requires that whenever the regulatory process has been suspended for any reason, any action by the agency that either amends the regulation or does not amend the regulation but specifies a new effective date shall be considered a readoption of the regulation for the purposes of appeal.

The staff will also ask the Board to direct the Director to suspend the effective date of the general permit regulation should the 6th Circuit Court of Appeals further delay implementation of their decision.

Further, the staff will also ask the Board to direct the Director to withdraw the general permit regulation if congressional action repeals or negates authority for the rule. This is recommended in light of recent Congressional activity of HB872 which seeks to exempt pesticides from Clean Water Act NPDES Permits.

Background

On April 4, 2011, the Director suspended the effective date of 9VAC25-800, the Virginia Pollutant Discharge Elimination System (VPDES) General Permit For Discharges Resulting From the Application of Pesticides to Surface Waters. This regulation was adopted by the State Water Control Board on February 4, 2011, with an effective date of April 10, 2011. It was published in the Virginia Register on February 28, 2011.

On November 27, 2006, EPA issued a final rule 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 are consistent with Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) requirements. On January 7, 2009, the 6th Circuit Court of Appeals vacated the EPA rule requiring NPDES permits be issued for all biological pesticide applications and chemical pesticide applications that leave a residue in water when such applications are made in or over, including near, waters of the U.S. On June 8, 2009, the Court granted the Department of Justice's request for a two-year stay of the decision, until April 9, 2011, to provide EPA and states time to develop and issue NPDES permits.

The Virginia VPDES general permit pesticides regulation was developed to comply with the 6th Circuit Court's ruling. On March 28, 2011, the 6th Circuit Court of Appeals granted EPA's request for a further extension of the effective date of the Court's ruling and deadline for when permits will be required for pesticide discharges from April 9, 2011 to October 31, 2011. The suspension by the Director of the regulation's effective date until October 31, 2011 is consistent with the 6th Circuit Court's ruling.

The proposed amendment to the regulation will revise the effective date to October 31, 2011, and the expiration date to December 31, 2013.

Chesapeake Grain Company, Inc., City of Chesapeake - Consent Special Order with a civil charge: Chesapeake Grain Company, Inc. ("Chesapeake Grain") owns and operates a Facility in the City of Chesapeake, Virginia, for the handling and storage of grain in bulk. Storm water discharges from the Facility are subject to the Permit through Registration No. VAR051797, which was effective July 1, 2009, and expires June 30, 2014. Chesapeake Grain's coverage under the Permit was effective October 1, 2009. The Permit authorizes Chesapeake Grain to discharge to surface waters storm water associated with industrial activity under conditions outlined in the Permit. As part of the Permit, Chesapeake Grain is required to provide and comply with a Storm Water Pollution Prevention Plan ("SWP3") for the Facility. On March 29, 2010, and April 7, 2010, DEQ compliance staff conducted inspections of the Facility that revealed the following: failure to maintain the Facility in a clean, orderly manner; allowing an unauthorized non-storm water discharge (i.e, vehicle washing) at the Facility; failures to perform benchmark monitoring of storm water discharges for one monitoring period and quarterly visual examinations of storm water quality for three quarters during qualifying rain events; failure to record benchmark monitoring results on Discharge Monitoring Reports ("DMRs") for one annual monitoring period; recording only three of the nine required indicators of storm water pollution in quarterly visual examinations of storm water quality for three quarters; failure to conduct monthly inspections of the grain storage and handling areas for four months; and failure to comply with SWP3 requirements by not updating the SWP3 to include new Permit requirements, not noting corrective actions taken in response to deficiencies noted during three quarterly Facility inspections, and not including an evaluation summary in one annual comprehensive site compliance evaluation ("CSCE"). On August 10, 2010, DEQ issued a Notice of Violation ("NOV") advising Chesapeake Grain of the deficiencies revealed during the Facility inspections conducted on March 29, 2010, and April 7, 2010. A representative of Chesapeake Grain responded to the NOV by letter dated September 29, 2010 (and received October 4, 2010), which included CSCEs performed on June 4, 2010, and September 30, 2010; a revised SWP3 dated September 2010; the quarterly visual examination of storm water quality for the 2nd Quarter calendar year 2010; Facility inspections for June, July and August 2010; and (unsigned) DMRs for the calendar year 2009 and 2010 benchmark monitoring sampling events.

The September 2010 CSCE indicated that repairs had been made to the antiquated conveying and chaff collection systems to reduce the amount of grain that spills from the systems; that a concrete pad had been installed between several of the storage tanks to facilitate the recovery of spilled grain; and that an additional employee had been hired to assist with housekeeping. These representations were confirmed by a site visit by DEQ staff on October 5, 2010. The Consent Special Order (“Order”) requires Chesapeake Grain to pay a civil charge within 30 days of the effective date of the Order. To ensure that Chesapeake Grain comes into and remains in compliance with the Permit and the SWP3 the Order requires Chesapeake Grain to submit by April 10, 2011, a certification that vehicle-washing operations have ceased at the Facility; to submit documentation of routine inspections and visual examinations of storm water quality for four calendar quarters, with the first submittal also due by April 10, 2011; to submit to DEQ by June 1, 2011, for review and approval a corrective action plan for substantially reducing the amount of waste grain, chaff and other solids that enter state waters and eliminating one of the four permitted outfalls as it captures storm water flow from areas outside the Facility; within 90 days of the completion of the approved corrective action to submit to DEQ a revised SWP3 that incorporates the approved corrective action; and to perform additional benchmark monitoring of storm water discharges at the three remaining permitted storm water outfalls during calendar year 2011. Civil charges: \$4,116 civil charge.

Courtland USA, LLC., Southampton County - Consent Special Order with a civil charge: Courtland USA, LLC (“Courtland USA”) owns and operates an automobile salvage yard (“Facility”) in Southampton County, Virginia, at which used motor vehicles are dismantled for the purpose of selling and recycling used automobile parts and/or scrap metal. Storm water discharges from the Facility are subject to the Permit through Registration No. VAR050281, which was effective July 1, 2009, and expires June 30, 2014. The Permit authorizes Courtland USA to discharge to surface waters storm water associated with industrial activity under conditions outlined in the Permit. As part of the Permit, Courtland USA is required to provide and comply with a Storm Water Pollution Prevention Plan (“SWP3”) for the Facility. On September 28, 2010, DEQ compliance staff conducted an inspection of the Facility that revealed the following: not protecting industrial materials and activities from exposure to rain and runoff; failure to perform quarterly visual examinations of storm water quality for four quarters, quarterly Facility inspections for four quarters, and an annual comprehensive site compliance evaluation (“CSCE”); an incomplete Discharge Monitoring Report (“DMR”) recording results of annual benchmark monitoring of storm water discharges; and failure to comply with SWP3 requirements by not updating the SWP3 to incorporate new Permit requirements and by not including a summary of training received by employees in storm water pollution prevention. On November 8, 2010, DEQ issued a Notice of Violation (“NOV”) advising Courtland USA of the deficiencies revealed during the Facility inspection conducted on September 28, 2010. A representative of Courtland USA responded by undated letter (received at DEQ on November 9, 2010) indicating that the housekeeping deficiencies had been corrected and requesting compliance assistance. The representative met with DEQ staff on November 23, 2010, to discuss the NOV. DEQ staff outlined the requirements of the General Permit and provided the representative with copies of forms for his use in completing quarterly Facility inspections, quarterly visual examinations of storm water quality, annual training, and the annual CSCE. He was also given a directory of local environmental consultants who are familiar with the requirements of the General Permit. The representative stated that he was planning to stop automobile scrapping and recycling and limit his business to the sale of used automobiles. The Consent Special Order (“Order”) requires Courtland USA to pay a civil charge within 30 days of

the effective date of the Order. As noted above, Courtland USA has received compliance assistance with a view toward addressing all Permit deficiencies. To ensure that Courtland USA comes into and remains in compliance with the Permit and the SWP3 the Order also requires Courtland USA by June 1, 2011, to either notify DEQ that automobile dismantling and recycling activities have ceased at the Facility or submit an updated SWP3 that contains all elements required by the Permit and to submit documentation of routine inspections and visual examinations of storm water quality for five calendar quarters, with the first submittal due by July 10, 2011. The Order also requires Courtland USA to perform benchmark monitoring of storm water discharges twice during calendar year 2011. Civil Charge: \$5,740 civil charge.

Virginia Peninsulas Public Service Authority, Yorktown - Consent Special Order with a civil charge: The Virginia Peninsulas Public Service Authority (“VPPSA”) is a regional public service authority providing solid waste management services to the cities of Hampton and Poquoson and the county of York. VPPSA owns and operates a Yard Waste Compost Facility (“Facility”) located at 145 Godwin Neck Road in Yorktown, Virginia. On January 28, 2010, DEQ compliance staff conducted an inspection of the Facility that revealed an unpermitted discharge from the Facility’s storm water detention basin flowing into the unnamed tributary of Chisman Creek. VPPSA did not have a permit to discharge storm water from its composting operation into state waters and failed to notify DEQ of the unpermitted discharge. On February 18, 2010, DEQ issued a Notice of Violation (“NOV”) to VPPSA for an unpermitted discharge to state waters. The Order requires VPPSA to pay a civil charge within 30 days of the effective date of the Order. As noted above, DEQ acknowledged VPPSA’s registration under the general storm water industrial permit on July 21, 2010. VPPSA was assigned registration number VAR051957. The Order was executed on January 13, 2011 by VPPSA. Civil Charge: \$10,920.

Francis M. Barlow, Jr. / Frog Level Farm 614, Caroline County - Consent Special Order with civil charge- Issuance: Mr. Francis M. Barlow Jr. (Mr. Barlow) owns and operates Frog Level Farm 614 (Property) located in Caroline County, Virginia. Mr. Barlow is an agricultural landowner who has a history of wetland disturbances on his property. On May 23, 2006 Mr. Barlow and the United States Department of Agricultural-Natural Resource Conservation Service (USDA-NRCS) entered into an agreement to restore 5.2 acres of wetlands he had disturbed for agricultural production without authorization. As of the April 30, 2009 inspection conducted by the USDA-NRCS, the restoration of those specific areas had not been completed and the terms of the agreement had not been satisfied as demonstrated in an April 30, 2009 inspection report provided to DEQ by the USDA-NRCS. On May 7, 2009, DEQ received notification from the US Army Corps of Engineers (USACE) of land clearing and filling activities resulting in unauthorized impacts to surface waters at the Property. On May 14, 2009, with USACE staff, DEQ staff inspected the property for compliance with the requirements of the State Water Control Law and the Regulations. The inspection was conducted after a review of previous inspection reports and site maps made by USDA-NRCS staff. The DEQ inspector observed impacts to approximately 2.5 acres of surface waters, in the form of wetlands, arising from the clearing, grubbing, excavation, and grading to create additional fields. DEQ determined that this activity was not normal agricultural activity, and therefore an agricultural exemption did not apply (9 VAC 25-210-60 A (8)). Fill material was observed in a part of the approximately 2.5 acres to create a roadbed along a proposed fence line. Based upon the site inspection, a review of the NRCS inspection report, the USACE Cease and Desist letter, and review of aerial photography, DEQ staff determined that the impacted surface waters had been palustrine forested wetlands (PFO). In response to the observations made by DEQ during the

May 14, 2009, inspection, a Notice of Violation (NOV) was issued to Mr. Barlow on June 30, 2009. The NOV detailed the violation of Va. Code § 62.1-44.5 and 9 VAC 25-210-50 by the unauthorized impact of approximately 2.4 acres of PFO within Tract 1611. On August 5, 2009, DEQ staff met with Mr. Barlow and his consultant to discuss the violations, including the need for restoration of the surface waters on his property. Mr. Barlow claimed at the meeting that the impact to the wetlands was an unintentional result of clearing his pasture land for new crops. After further investigation DEQ has determined that no stream impacts were taken and the actual wetland impact acreage was approximately 2.5 acres. Based upon the site inspection conducted on May 14, 2009, and in concurrence with the USDA-NRCS and USACE, DEQ staff determined restoration of the surface waters is appropriate and if completely successful, will mitigate the impacts to surface waters. In order to bring Mr. Barlow into compliance, resolve the violations and facilitate the restoration effort, the projects and monitoring of the restored areas will be incorporated into the Appendix A items in a Consent Order (Order). The Order requires the restoration of the impacted PFO areas in accordance with a corrective action plan (CAP) approved by DEQ and USACE. The CAP shall be sufficient to achieve no net loss of existing wetland acreage and no net loss of functions in all surface waters. After the restoration work is completed, Mr. Barlow shall conduct an as-built ground survey of the area to verify the work. The cost associated with returning to compliance, including Appendix A of the Order, is estimated at \$70,000. Civil Charge: \$19,500.

Ammar's, Inc., Bluefield - Issuance of a Consent Special Order: Ammar's, Inc. operates a number of discount department stores, known as Magic Marts, with offices and warehouses in Bluefield, Virginia. At approximately 8:30 p.m. on Sunday, July 4, 2010, DEQ SWRO staff received a report from the Virginia Department of Emergency Management's ("VDEM"'s) Emergency Operations Center ("EOC") of a possible diesel fuel discharge in Bluefield, Virginia. A resident had reported a sheen on the stream and the odor of diesel fuel. DEQ staff contacted the Bluefield, Virginia Fire Chief, who confirmed the discharge to the stream of an estimated 50 to 75 gallons of diesel fuel, due to overfill of an AST at the Ammar's Location. Booms and pads had been deployed by the Fire Department and Ammar's. Ammar's also called Marshall Miller and Associates ("MM&A"), a local environmental contractor, to assist with cleanup. Per the Fire Chief, MM&A was on site, pumping out the fuel sump and addressing any issues related to the adjacent stream (Beaverpond Creek). After receiving another call from the EOC the following morning (July 5, 2010) regarding a report of a sheen and distressed wildlife, DEQ staff went to the site and met with one of the owners. It had been determined that the discharge was caused by a hole in the product piping for a 4,000 gallon diesel AST, not from a tank overfill as originally reported. It was determined that, while MM&A had been on site the previous evening and had pumped the tank sump, they had not been contracted to do other release response work. The general purpose booms and pads installed initially had not been maintained and were saturated. On Monday, July 5, 2010, MM&A replaced the general purpose items with absorbent booms and pads on site and along Beaverpond Creek and the Bluestone River. Product entered Beaverpond Creek, flowed to its confluence with the Bluestone River (approximately one mile), then flowed down the Bluestone River for approximately 5.5 miles. The last containment booms were installed at the Dolph-Nemours Road location in Nemours, West Virginia. On August 5, 2010, the DEQ issued a confirmed release letter to Ammar's. On August 6, 2010, the Department issued NOV No. NOV-015-0810-WA to Ammar's for a discharge of oil to the environment, failure to report the discharge and tank registration issues. On August 20, 2010, DEQ received an Initial Abatement Report ("IAR"), submitted by MM&A on behalf of Ammar's. Ammar's reported that a total of approximately 1,143 gallons of diesel fuel were

discharged during the incident. Per the IAR, 929 gallons of diesel fuel were recovered, either directly from the piping sump, or from three product recovery sumps, from excavated soils and from capture by absorbent booms and pads. DEQ staff agrees that several hundred gallons of diesel fuel were recovered, but do not necessarily agree with the figure in the IAR. Per results of direct push soil borings, an estimated total of approximately 163 cubic yards of impacted soils were removed for proper disposal. Civil Charge: \$14,276.18

Pilot Travel Centers, LLC, Botetourt and Roanoke Counties - Consent Special Order with a Civil Charge:

Botetourt County Facility

On June 5, 2008, a truck not owned/operated by Pilot hit a diesel dispenser and a release resulted (PC# 2008-2080). The shear valve and line leak detector did not work correctly and the release continued until the pump was manually turned off about 45 minutes after the incident.

Apparently, staff waited for the manager to arrive and turn off the pump. The rate and amount of the release is in question. Product reached an unknown tributary of Buffalo Creek and moved downstream into Buffalo Creek. Excavation of the canopy drain line revealed large amounts of product at the site. On June 18, 2008, DEQ staff went to the Facility to follow up on the June 5, 2008 incident and to perform a UST compliance inspection. On June 26, 2008, DEQ issued NOV 08-06-WCRO-005 for failing to: perform cathodic protection and release detection and maintain records of each, submit a timely Initial Abatement Measures Report and a Corrective Action Plan (CAP) for various pollution complaints, failing to manually turn off the pump for 45 minutes after a shear valve and line leak detector did not work correctly resulting in free phase product being released.

Roanoke Facility

On May 28, 2005, DEQ was notified of the presence of gasoline vapors within the sanitary sewer system serving two businesses immediately adjacent to the Facility. Gasoline vapors were detected and recorded on May 28-30, 2005 at several access points within the sewer on the adjacent property. During a site visit on May 31, 2005, DEQ staff observed that 1) gasoline vapors were still present in the sewer; and 2) the spill prevention device for the plus unleaded tank contained gasoline product and contaminated water. Tank tightness tests were done and it was noted that the plus unleaded tank was leaking. The line that failed the test was then repaired. DEQ sent a confirmed release letter to Pilot on May 31, 2005, requesting a Site Characterization Report (SCR). At Pilot's request, DEQ granted several extensions for submittal for reports; specifically on July 28, 2005 for the SCR, on November 12, 2005 for the SCR Addendum (SCRA) No. 1, and on January 18, 2006, March 24 2006, and September 14, 2006 for the SCRA No. 2. Pilot failed to meet the due dates; therefore, DEQ issued a Warning Letter (WL) on April 6, 2007. Pilot responded with a SCRA No. 2 on April 23, 2007, and DEQ "returned" the SCRA No. 2 on April 27, 2007, stating the report was insufficient. DEQ received a revised SCRA No. 2 in May 2007, which was considered incomplete. DEQ then requested a Corrective Action Plan (CAP), due August 10, 2007. On July 31, 2007, Pilot's consultant requested an extension and a September 10, 2007, deadline was set. The CAP was not submitted on time and a Warning Letter (WL) was issued on January 4, 2008. DEQ received a CAP on January, 15, 2008, which was incomplete. A second CAP was received on April 15, 2008, which was also found to be "substantially incomplete". On June 24, 2008, Notice of Violation (NOV) 08-06-WCRO-004 was issued to Pilot for failure to timely submit a Site Characterization Report and submit an approvable CAP and to take corrective action to the gasoline release that occurred on May 28, 2005. A CAP Permit was issued on November 10, 2008.

Civil Charge: \$48,700.

Final Approval of Stormwater Loan Program Guidelines: During their 2010 session, the Virginia General Assembly amended *Chapter 22* of the *Code of Virginia* by adding §62.1-229.4. The new code section further expanded the activities of the Virginia Clean Water Revolving Loan Fund by allowing the State Water Control Board to authorize low interest loans from the Fund for construction of facilities or structures or implementation of best management practices that reduce or prevent pollution of state waters caused by stormwater runoff from impervious surfaces. Further, the legislation authorized the Board to develop guidelines for the administration of those stormwater loans. Staff is now recommending that the Board approve the Stormwater Loan Program Guidelines for implementation. At its December 2010 meeting, the Board authorized the staff to present the draft Stormwater Loan Program Guidelines to the public for their review and comment. A public meeting was convened on February 16th. Notice of the meeting was mailed to the entire Virginia Clean Water Revolving Loan Fund mailing list and was also advertised in six newspapers across the state. The only comments received during the comment period were from the Department of Conservation and Recreation (DCR). Their comments primarily involved recommendations regarding language clarifications and the substitute of the Effectiveness of Stormwater Controls for the Readiness to Proceed ranking criteria. The staff agrees with all of DCR's recommendations and has incorporated them into the final version being recommended for approval.

The staff developed draft Stormwater Loan Program Guidelines in conformance with the recent revision to state code authorizing the use of the Virginia Clean Water Revolving Loan Fund to finance stormwater projects. As authorized by the Board, staff presented those draft Guidelines to the public for their review and comment. The only comments received were from the Department of Conservation and Recreation and their recommendations have all been incorporated into the final version being brought to the Board. We anticipate that stormwater projects will become an important part of our program in order to meet the upcoming challenges of TMDL implementation throughout the Commonwealth. At this time we are seeking Board approval of the Stormwater Loan Program Guidelines for implementation.

Summary of Staff Responses to Public Comments

Proposed Issuance of Virginia Water Protection Individual Permit No. 10-1256

Part I – Surface Water Construction Related Impacts Unit 3 at Dominion’s North Anna Power Station

Comments received that voiced concerns or opposition to Part I of the project (draft VWP Permit No. 10-1256) are provided below the first section of this document.

Large Component Transport Route

1. *Questioned why existing rail lines were not proposed to transport large components to the North Anna Power Station site instead of public roads.*

The applicant reviewed several alternatives for the transportation route. One of the alternatives considered included transporting the equipment by tractor trailer to Ruther Glen and then transferring the equipment to railcar for further transportation to the North Anna Power Station (NAPS) site. A study was conducted of the rail line to determine the clearances of any obstructions present and if the rails could support the weight of the equipment.

The study determined rail transportation was not a practicable alternative due to logistical problems and safety concerns, including the rails were not designed to accommodate the weight of the proposed reactor. Additionally, the last 7 miles of rail to the NAPS site was determined to have deteriorated. The applicant selected the proposed route as the chosen alternative as it proposes fewer environmental impacts, less overhead obstructions, and less required road work. The majority of the selected route was also used during the transport of large components for the construction of the existing Units 1 and 2.

Construction of structures at the NAPS site is anticipated to last 4 to 5 years. The applicant estimates 2 to 3 heavy hauls per year from the off-loading area at the Walkerton site in King William County to the North Anna Power Station in Louisa County. Each haul will take approximately 2 weeks to complete the trip.

Surface Water Impacts Proposed

2. *The proposed activities will impact surface waters abutting lake and within the York River watershed.*

The proposed activities associated with Part I of the project proposes impacts to surface waters at the NAPS site and Route 700 parcels in Louisa County and on the Mattaponi River near Walkerton Landing in King William County.

The applicant took steps in the planning of the project to avoid and minimize proposed impacts to surface water impacts to the maximum extent practicable. Below describes

the avoidance and minimization measures associated with each portion of the proposed project.

Construction Related Activities of Unit 3

The applicant considered impacts to surface waters in the layout of the proposed structures for Unit 3. The cooling towers were located to avoid and minimize surface water impacts to maximum extent practicable while still considering proximity to the reactor for proper function and safety. The selected layout avoids and minimizes surface waters impacts to the maximum extent practicable while still meeting the necessary design and safety standards.

Four alternatives for the stormwater management (SWM) ponds associated with the cooling tower were reviewed for potential impacts to surface waters. The applicant chose the selected alternative as the layout avoids impacts to stream channels, minimizes impacts to wetlands and provides the necessary stormwater management treatment. Overall, the proposed layout for the SWM ponds avoids approximately 600 linear feet of stream channel and 1.67 acres of wetlands.

The applicant also reviewed activities associated with site separation for avoidance and minimization of impacts to surface waters. Impacts to wetlands were minimized by splitting a proposed parking lot from one large lot to two smaller lots. The applicant was unable to completely avoid impacts to wetland caused by the parking lot due to constraints such as topography and location of adjacent surface waters on the other side of the proposed lot.

The majority of surface water impacts proposed are associated with the Route 700 Parcels site for the placement of excess soils. The impacts associated with this activity are to 3.21 acres of palustrine forested (PFO) wetland, 0.04 acre of palustrine emergent (PEM) wetland, and 3,809 linear feet of stream channel. The applicant reviewed alternative sites for the placement of approximately 2 million cubic yards of excess soil. The Route 700 Parcel site was selected due to fewer traffic and safety concerns, the site is located adjacent to NAPS and owned by the applicant and the site proposes fewer surface waters impacts. Minimization of surface waters impacts within the site was determined not to be practicable due to the amount of soil to be placed and staff determined that placement of soil around surface waters would result in secondary impacts.

Large Component Transport Route

Impacts associated with the Large Component Transport Route were avoided at all but one location, the off-loading site near Walkerton Landing in King William County. The applicant reviewed two off-loading locations, one near West Point and the selected location. The Walkerton site was selected due to fewer environmental impacts and fewer overhead obstructions. The selected off-loading site is located within the vicinity of the original off-loading site used for Units 1 and 2.

The applicant avoided surface water impacts at the North Anna River crossing at Route 30 by locating the crossing upstream of the existing Route 30 Bridge where wetlands are

not present and proposing to span the river using a structure that does not require footings or riprap within the channel.

Transmission Line

The applicant avoided surface water impacts associated with the proposed transmission line as the new line will be placed within an existing right-of-way and all structures will be located outside of surface waters.

The activities proposed with Part I of the project propose to impact a total of 6.36 acres of surface waters, consisting of 5.14 acres of permanent impacts and 1.22 acres of temporary impacts. Permanent impacts are to 4.15 acres of PFO wetland, 0.40 acre of PEM wetland, 0.26 acre of open water and 0.33 acre (6,380 linear feet) of stream channel. Temporary impacts are to 0.06 acre of PEM wetland, 0.18 acre of tidal emergent wetland, 0.51 acre of open water, and 0.47 acre (308 linear feet) of stream channel. Based upon staff's review of the proposed activities associated with Part I of the proposed project, impacts to surface waters have been avoided and minimized to the maximum extent practicable and the proposed plan is the least environmentally damaging and practicable alternative.

3. *Concern of the advancement of permits without an impact study for the residents and users of Lake Anna.*

Surface water impacts proposed under Part I of the project are associated with construction related activities associated with the construction of the proposed Unit 3. The proposed impacts have been reviewed for avoidance and minimization in accordance with the Virginia Water Protection (VWP) Permit Program's applicable laws, regulation and guidance.

In issuing a draft permit, staff has determined there is reasonable assurance that the activity, as proposed to be authorized by the draft permit, will protect beneficial uses, will not violate applicable water quality standards, and will not cause or contribute to significant impairment of state waters or fish and wildlife resources, provided the applicant complies with all permit conditions.

Activities associated with Part III for the Major Surface Water Withdrawal for Operational Activities and a Lake Level Rise (JPA No. 10-2001) and citizens' concerns with those activities are being reviewed under the application for that part of the project.

Dredging Activities

4. *Requested that dredge activities occur in the dry and more than one silt fence used.*

The applicant proposes to conduct activities associated with the installation of the water intake structure for Unit 3 in the dry through the use of a sheet pile cofferdam and silt curtain. Staff revised Part I.G.1 of the draft permit to clarify that these activities are to occur in the dry.

5. *Requested specifics to dredge sampling to include several core samples be taken down to 230 feet mean sea level (msl) and sampled at every foot for contaminants. Requested the*

sampling results be submitted to DEQ and revise the dredging plan as necessary. Commented no dredging should be allowed until sampling is complete.

Dredge sampling, of soil and water column, is crucial to occur before, during and after the activity because of potential contaminants.

In response to this comment, staff revised the draft permit as follows. Inclusion of a sampling plan of the material to be dredged (Part I.G.4) that requires a minimum of three core samples taken to the depth of dredge and sampled at one foot intervals, specific parameters to be evaluated, and the submittal of the sampling results in the dredging plan, approval of which is required prior to initiating dredge activities.

Staff determined sampling of dredge material during and following dredge activities is not necessary as sampling prior to dredging will require a core sample taken to depth of dredge with sampling at one foot interval, thus the characteristics of the soil will be known and will not change throughout the dredge activity. Additionally, staff determined that sampling the water column prior, during and after dredging activities is not necessary as the dredge activities are to occur in the dry.

6. *Requested that permit include a requirement for notification of dredging activities two weeks prior to initiation of the activity.*

Staff revised the draft permit (Part I.H.2.b) to include the additional notification requirement.

7. *Requested some assurance be provided to the public that problems with previous dredging activities on Lake Anna do not occur with the Part I proposed dredging activities. Recommended a bond.*

Based upon staff's review of the proposed dredge activity, there should be minimal impact to Lake Anna, provided the applicant abides by the permit conditions. VWP Permit Program regulations do not provide regulatory authority to require performance bonds for the dredging proposed in the Part I application.

Staff forwarded this comment to the applicant for their consideration. The applicant provided the following response:

Dominion will employ appropriate BMPs with respect to sediment removal, storage, sampling, transport, and disposal. Dredging will occur "in the dry"(i.e. behind a cofferdam), which should minimize the possibility of adversely impacting surface water quality. In addition, the total quantity of proposed dredged material is relatively small (approximately 637 cubic yards) when compared to other lake dredging projects (e.g. marinas). In addition, the Louisa County land disturbance permit for construction will require Dominion to provide a bond with respect to erosion & sediment control measures. Dominion does not believe that it is necessary to provide a specific bond with respect to the proposed dredging activities.

8. *Questioned where the dredged material will be disposed.*

The dredged material will be disposed in an upland location on the NAPS site. Part I.G.5 of the permit requires a dredge material management plan for the designated upland disposal site be submitted as part of the dredging plan, which is required to be submitted and approved by DEQ prior to initiating dredge activities.

9. *Dredging proposed will disturb polychlorinated biphenyls (PCBs).*

The permit requires the material to be dredged be tested prior to initiating the dredge activity to determine if the material contains toxic contaminants and that dredging activities occur in the dry. The sampling plan requires that one of the parameters tested for is PCBs. The permit also requires that the results of the sampling be submitted prior to the initiation of dredge activities as part of the dredging plan, which will be reviewed by DEQ, and appropriate methods will be required to minimize distribution of the contaminant.

VWP Permit Related

10. *What requirements, such a bond, is there for the restoration of any surface water impacts, impacts to safety and recreation taken following issuance of a permit but before a final decision to construction Unit 3, if the final decision is not to proceed with Unit 3?*

The permit requires compensation requirements for authorized surface water impacts be completed prior to initiating those impacts. DEQ does not have authority to require restoration of surface water impacts taken on projects that are canceled after permit issuance if compensation requirements for those impacts were completed in accordance with permit conditions. Additionally, VWP Permit Program regulations do not provide regulatory authority to require bonds for this activity.

11. *How does the public monitor any proposed changes to this project since the site is not publicly accessible?*

The public may contact staff to request information regarding the proposed activities.

12. *Opposed to the construction of Unit 3 and request denial of permits or delay of decision until the project is reviewed holistically.*

Questioned why Dominion is moving ahead and why DEQ is willing to issue permits for an expensive and environmentally unsound project.

Questioned how DEQ could make decisions when Dominion has not committed to building Unit 3.

Permits for Parts I and II should not be issued without a contingency of receiving a permit for Part II and a Combined Operating License from NRC. No reason for Dominion to start the project if they may later decide not to move forward for economic reasons. Construction of the original Units 3 and 4 were canceled due to economic reasons.

Submittal of a VWP permit application is entirely at the discretion of the application and DEQ must address each application as it is received.

Surface water impacts proposed for activities proposed under Part I of the project are associated with construction related activities associated with the construction of the proposed Unit 3. The proposed impacts have been reviewed for avoidance and minimization in accordance with the Virginia Water Protection (VWP) Permit Program's applicable laws, regulation and guidance.

Based upon staff's review of the permit application for Part I, the proposed activities are the least environmentally damaging and practicable alternative and all impacts are adequately mitigated through the proposed compensation. In issuing a draft permit, staff has determined there is reasonable assurance that the activity, as proposed to be authorized by the draft permit, will protect beneficial uses, will not violate applicable water quality standards, and will not cause or contribute to significant impairment of state waters or fish and wildlife resources, provided the applicant complies with all permit conditions.

Issuance of a VWP permit for Part I of the project does not imply or assure the applicant of obtaining a permit for Part II for a Minor Surface Water Withdrawal for Construction Related Activities (proposed VWP Permit No. 10-1496) or Part III for Major Surface Water Withdrawal for Operational Activities and Lake Level Rise (JPA No. 10-2001) of the project. VWP Permit Program regulations do not require an applicant obtain other approvals before obtaining a VWP permit. It is at the applicant's own risk to proceed without obtaining all necessary approvals for their respective project.

13. *Questioned why DEQ is putting the processing of the permits for Parts I and II on the fast track for State Water Control Board (SWCB) approval. Requested public have at least 2 months after the preparation of a final draft to submit to the SWCB to allow citizens adequate time to prepare for the SWCB.*

In accordance with Section 62.1-44.15.21.E of the Code of Virginia, within 120 days of receipt of a complete application "the Board shall issue the permit, issue the permit with conditions, deny the permit, or decide to conduct a public meeting or hearing. If a public meeting or hearing is held, it shall be held within 60 days of the decision to conduct such a proceeding, and a final decision as to the permit shall be made within 90 days of the completion of the public meeting or hearing."

The pertinent application processing dates pertaining to Section 62.1-44.15.21.E of the Code of Virginia are as follows. The Part I application, received on July 16, 2010, was determined to be complete on September 28, 2010. The decision to conduct a hearing was made on January 4, 2011, prior to the 120-day deadline of January 25, 2011. The draft permit was issued to the applicant on January 10, 2011, and the public comment period began on January 12, 2011. The public hearing was held on February 17, 2011, and staff will present the draft permit for Part I to the SWCB during their next meeting, on April 14, 2011.

The draft permits have been available for review for approximately 3 months from the date of issuance of a final draft permit to the SWCB meeting. The only changes staff proposes to the public noticed draft permit are in response to citizen comments received during the public comment period.

- 14. All water permits related to the construction of the 3rd reactor should be limited to a 5 year permit term.*

In accordance with Section 62.1-44.15.5(a) of the Code of Virginia, VWP permits are allowed a maximum permit term of 15 years. This section of the law also states that the permit term shall be based upon the duration of the project, the length of any monitoring, project operations or any permit conditions. Therefore, applicants typically request a permit term length that allows sufficient time to complete the proposed permitted activities. For Part I, the applicant requested a 15 year permit term to complete surface water impacts related to construction activities and compensation requirements. The proposed permit term is acceptable.

- 15. The applicant should be required to submit a new VWP permit after the 15 year permit term allotted for the original permit issuance concludes instead of a permit extension.*

In accordance with Section 62.1-44.15.5(a) of the Code of Virginia, VWP permits are allowed a maximum permit term of 15 years. VWP permit terms may not be extended beyond the original 15 year permit term. If at the end of the 15 year permit term, the permittee needs continuance of the authorized activities or any permit requirement that has not been completed, including compensation provisions, they must apply for a permit reissuance.

- 16. Reference the notification of the hearing for Part II on one website and notification of the hearing for Part I on another website. Requests re-notice and re-opening of the public comment period for the draft permits due to confusion.*

The activities within the purview of the VWP Permit Program for the proposed Unit 3 are proposed to be covered under three VWP Permits corresponding to the three parts of the project. The applicant submitted a Joint Permit Application for each part. The three parts of the project are summarized below:

- Part I – Surface Water Construction Related Impacts, VWP Permit No. 10-1256. Part I of the project proposes surface water impacts related to construction activities.
- Part II – Minor Surface Water Withdrawal for Construction Activities, VWP Permit No. 10-1496. Part II of the project proposes a minor surface water withdrawal for construction related activities.
- Part III – Major Surface Water Withdrawal for Operational Activities and Lake Level Rise, Joint Permit Application No. 10-2001. Part III of the project

proposes a major surface water withdrawal associated with the operational activities of Unit 3 and a temporal change to shoreline wetlands as a result of a permanent increase of 3 inches in the normal target pool elevation of Lake Anna and the water level in the WHTF.

Draft permits were prepared for two of the three VWP permit applications submitted for the proposed Unit 3, which were for Part I and Part II. Public notices for each draft permit were published separately in six local newspapers and also on DEQ's website and on the Virginia Town Hall's website. Staff decided to hold a joint hearing for both draft permits on February 17, 2011, rather than hold a hearing for each permit on separate nights. This was done for the public's convenience so they only had to attend one evening to voice comments on both draft permits. Re-publication and re-opening of the comment period for the draft permits for Part I and Part II is not deemed necessary.

Comments Received in Support of the Proposed Project

The comments summarized below are those in support of Part I (draft VWP Permit No. 10-1256) within the purview of the VWP Permit Program. Staff did not provide responses for comments in support of the project.

1. The proposed impacts to surface water impacts seem reasonable for a project of this size.
2. The amount of proposed dredging is minimal.

General Comments Applicable to All Parts of the Proposed Project

3. Supports issuance of the VWP permits for the proposed Unit 3 project.

Lake Anna lot owner with no reservations with the proposed construction and operation of Unit 3.

Water impacts that may occur have been given the utmost attention and are addressed in the plan.

Confidence that the environmental issues described in the public notices will be adequately addressed.

4. Construction of Unit 3 is needed to meet growing demands for electricity, aid to gain energy independence and help to reduce the overall cost of electricity.

The assurance of uninterrupted electrical service with the additional unit will provide safety for our children for many years to come.

Lake Anna was constructed to support nuclear generation of power and was originally designed for four units.

5. Dominion supports the community and has always been mindful of their environment and will continue to do so.

Dominion has been open regarding the proposed construction of Unit 3.

6. Appreciates the methods planned to protect the quality of both bodies of water (Lake Anna and WHTF).

Summary of Staff Responses to Public Comments

Proposed Issuance of Virginia Water Protection Individual Permit No. 10-1496

Part II – Minor Water Withdrawal for Construction Activities Unit 3 at Dominion’s North Anna Power Station

Comments received that voiced concerns or opposition to Part II of the project (draft VWP Permit No. 10-1496) are provided below the first section of this document.

Withdrawal Volumes

1. *Support the withdrawal of water for construction purposes except during extended periods of low rainfall.*

At the request of staff, the applicant analyzed their proposed maximum daily withdrawal volume of 750,000 gallons per day (gpd) over a 105 month period, which is the timeframe for which construction withdrawal activities are proposed. The analysis was done to determine the potential affect the withdrawal may have on flow releases from the Lake Anna Dam and on the water elevation of Lake Anna. The 105 month timeframe reviewed was April 1, 1998 to December 31, 2006, which includes the drought that occurred in 2002. The analysis was conservative as it assumed a maximum daily withdrawal volume of 750,000 gpd every day for the entire period reviewed. The applicant does not anticipate operating at peak volumes for the entire length of the project as their water use is dependent upon the stage of construction and weather conditions.

Based upon the analysis, the construction water withdrawal operating at peak volumes over the entire 105 month period would decrease lake level on average annually 0.24 inch or an average of 0.12 to 0.24 inch monthly from the existing condition. Releases from the Lake Anna Dam would decrease within a range of 0.2-1.5 percent each month on average. Based upon the analysis, the results indicate that the construction water withdrawal will have a negligible impact on lake levels and Lake Anna Dam releases, even during periods of low rainfall.

The draft Virginia Water Protection (VWP) permit includes conditions that require the applicant to reduce their water withdrawals in relation to the water elevation to conserve water. In response to citizen comments on the draft permit, the draft was revised to prohibit the construction withdrawal when the lake level is less than 244.0 msl. The revised Part I.D.3 condition includes the following restrictions:

The maximum daily withdrawal volumes as it relates to the water elevation of Lake Anna shall be authorized in accordance with the table below.

Water Elevation (feet msl)	Max. Daily Withdrawal (gpd)
≥ 248.0	750,000
<248.0 and ≥ 247.0	500,000

<247.0 and ≥ 246.0	250,000
<246.0 and ≥ 245.0	125,000
<245.0 and ≥ 244.0	62,500

Part I.D.5 of the draft VWP permit requires the applicant to submit a conservation management plan that outlines the specific measures that will be implemented when the elevation of Lake Anna decreases below 248.0 feet msl. In addition, Part I.D.6 of the draft VWP permit requires that in the event a drought emergency is declared in the Northern Piedmont Drought Evaluation Region of Louisa, Orange and/or Spotsylvania Counties, the permittee shall implement additional mandatory conservation measures applicable to the proposed uses of the withdrawn water, which are detailed in Attachment A of the draft permit.

The conditions in the draft VWP permit will adequately conserve water during periods of low lake level, which typically corresponds with extended periods of low rainfall.

2. *Concern about what will happen when the water level is low.*

No water withdrawals, other than current uses, should occur if lake level drops 2 feet below in either main reservoir or the Waste Heat Treatment Facility (WHTF). Otherwise, there will be more boating hazards, water will get hotter faster, less water to fight fires, increase shoreline stabilization problems and negatively impact lake businesses. Concerns will increase in summer months due to poor water management by Dominion.

As discussed under No. 1 above, the analysis conducted by the applicant on the proposed withdrawal, assuming withdrawing peak volume over the entire construction period, the lake level would decrease on average annually 0.24 inch or an average of 0.12 to 0.24 inch monthly from the existing condition. The draft VWP permit includes conditions that restrict the volume of water that may be withdrawn once the elevation of Lake Anna falls below 248.0 feet above msl and that withdrawal shall cease when lake level drops below 244.0 feet msl. The conditions in the draft VWP permit will adequately conserve water during periods of low lake level.

3. *Requested justification for the volume of water proposed, including justification for the volume proposed for each construction activity and the associated the time frame. Requested that each of the activities be justifiable by the public with monetary damages specified if Dominion exceeds permit conditions.*

Request for reduction or elimination of wasteful water use and zero consumptive water use at North Anna Power Station (NAPS).

Due to the many variables associated with the proposed construction water withdrawal because of the variety of construction uses for the water, weather considerations and unanticipated project contingencies, the applicant based the proposed daily maximum withdrawal volume on information collected from similar construction activities. The estimated water usage for dust control was based upon ash hauling operations at Dominion’s Chesterfield Power Station for the time period of January through August 2010. This data was extrapolated to the NAPS site and estimated the proposed area to be

disturbed as being between 50 and 100 percent. The values obtained ranged from 545,000 gpd to 1,100,000 gpd. Additionally, the applicant contacted personnel at the Southern Company to obtain information on the company's construction water usage during construction of two nuclear units at the Vogtle Electric Generating Plant near Waynesboro, Georgia. This construction project was determined to be comparable with the proposed Unit 3 project, although the Vogtle project is larger. Based upon their experience, Southern Company personnel estimated their construction water demand was approximately 1,000,000 gpd. Based upon this information, the applicant determined their overall maximum daily demand is 750,000 gpd.

The applicant did not separately determine the specific contribution of each individual use to the total volume because the demand for each of these uses will vary throughout construction based on the specific activities occurring and weather conditions at any time. The applicant made the following general assumptions regarding the relative construction water use throughout site separation and construction of the proposed Unit 3.

- Dust control: The majority of the water will be utilized for this purpose. The use will begin during site separation and will continue throughout construction of the proposed Unit 3. The volume of water for dust control is related to the amount of land that is cleared at any time and the area of construction roads being used.
- Moisture Control: Water used for this use will be limited during site separation, but will increase during the construction of buildings and infrastructure for the proposed Unit 3 as water will be needed to ensure proper soil compaction. Upon completion of the foundations for the majority of Unit 3 infrastructure, water for this use will decrease.
- Irrigation of vegetation for erosion and sediment control: This water use will increase as final grades associated with site separation activities are achieved, which require vegetative stabilization.
- Cleaning of rock surfaces: Water use for the cleaning of rock surfaces will likely occur at similar times as water use for moisture control.

The potential affect of the proposed water withdrawal was reviewed based upon the total volume of water proposed to be withdrawn and the draft VWP permit limits the total maximum daily volume of 750,000 gpd. Any noncompliance with the permit will be assessed by staff in accordance with the permit and applicable laws, regulations and guidance. The public may request information from staff on the compliance status of the permit.

4. *Request for a comprehensive Lake Anna impact study that would include all withdrawals anticipated, including those proposed for Unit 3, water needs for a proposed new or expanded sewage treatment plant for Unit 3 and Louisa County's request to use Lake Anna as a source of public drinking water. The citizen identified nine items that the study should consider that included economic impacts, temperature impacts, results of litigation over designation of WHTF, impact on recreation, and variations if Dominion uses more dry cooling.*

Concern of the advancement of permits without an impact study for the residents and users of Lake Anna.

As part of a comprehensive study of Lake Anna, options should be developed to mitigate the impact of lower water levels, including drought conditions, on Lake Anna prior to the issuance of any future water permits related to Unit 3.

Requested better, more accurate water level and temperature measurements of the lake to ensure improved compliance with conditions dependent on lake elevation. Requested that the measurements are up-to-date electronic read-outs. Requested the draft permit include a water management plan that states when and what Dominion would do to update this type of monitoring.

A lake management plan should be developed and should routinely include maintaining same water levels on Lake and WHTF, updating stop log system at Dike 3, and tracking water releases from the dam to keep water levels closer to the original designed water levels.

The VWP Permit Program reviews an application for a proposed water withdrawal in light of the existing watershed conditions, including any existing water withdrawals and downstream users. A VWP permit for a water withdrawal is only issued after the study concludes the amount authorized will not adversely affect existing beneficial uses and will not cause or contribute to significant impairment of state waters or fish and wildlife resources. The permit application review does not require the applicant to predict the maximum amount of withdrawal that could be allowed before a watershed would not be able to recover or require an applicant to complete a study that includes potential future applications beyond their control. Should the applicant receive a permit for their withdrawal, all future requests for withdrawals will need to account for the applicant's withdrawal.

The minor surface water withdrawal for construction activities was reviewed in light of the study conducted for the major water withdrawal for operational activities, the Instream Flow Incremental Methodology (IFIM) study, and an analysis conducted for this withdrawal that analyzed the proposed maximum daily withdrawal volume of 750,000 gpd over a 105 month period, which is the timeframe for which construction withdrawal activities are proposed.

The IFIM study for the proposed major water withdrawal included the existing condition of Lake Anna and reviewed all existing water withdrawals and discharges to the North Anna and Pamunkey Rivers within a distance of 70 miles downstream of the Lake Anna Dam. The 105 month analysis also reviewed the potential affect to dam releases and lake levels. The information from these studies was used to evaluate the potential affect of the minor surface water withdrawal on existing beneficial uses. Staff determined the proposed minor water withdrawal for construction related activities will have a negligible impact on lake level and Lake Anna Dam releases and a negligible impact on existing beneficial uses of Lake Anna and reaches downstream of the dam.

Staff has determined that the current standard operating procedures for determining lake level is sufficient to determine compliance with the applicable permit conditions for the minor surface water withdrawal for construction activities.

Revisions to the management of the lake are being considered during the review of the application for the Part III application for a Major Surface Water Withdrawal for Operational Activities and Lake Level Rise (JPA No. 10-2001), which is a more significant consumptive water use.

5. *Requested revision to draft permit restrictions on maximum daily withdrawal volumes that correlate to water level. Requested that first reduction in water usage occur when lake level decreases below 249.0 feet msl instead of 248.0 feet msl. Requests withdrawal activity cease below 244 feet msl.*

Citizens also request that the restrictions on the maximum daily withdrawal volume begin at 249.0 feet msl instead of 248.0 feet msl. Staff did not revise the draft permit to include this restriction as the applicant has demonstrated need for the withdrawal for construction purposes. Staff determined the conservation measures required in the draft permit are sufficient to limit water use during times of low lake levels and that withdrawal volume will have a negligible impact on Lake Anna, reaches downstream of the Lake Anna Dam and the existing beneficial uses

As discussed in No. 1, staff determined the construction withdrawal will have a negligible impact on lake level and releases from the dam. However, staff coordinated this request with the applicant, who indicated they were agreeable to a condition that would require they cease the construction water withdrawal when lake levels decrease below 244.0 feet msl. Therefore, Part I.D.3 of the draft permit was revised to incorporate the limitation.

Monitoring Requirements

6. *Referenced the annual reporting requirement to DEQ's Office of Surface and Groundwater Supply Planning. Requested permit require real-time monitoring via water meters so real-time action by DEQ could be taken if permit violated and allow public to allow monitor activity.*

The permit requires the applicant monitor and record construction water withdrawals daily or each time they withdraw water (if the activity does not occur daily). A report containing the data is required to be submitted quarterly to VWP Permit Program staff. The requirement for annual reporting is an additional reporting requirement required by 9 VAC 25-200-10 et seq, which requires withdrawal data be reported annually to DEQ's Office of Surface and Groundwater Supply Planning.

Staff revised the draft permit to increase the frequency of reporting from quarterly to monthly (Part I.D.12) to address the concern. Staff combined the annual reporting requirement for Office of Surface and Groundwater Supply Planning and quarterly (now monthly) for DEQ-NRO to reduce confusion on the reporting requirements in the draft

permit. Also, in response to citizen comments, staff revised the draft permit to require the posting of the monthly report on publicly accessible website.

Permit Related

- 7. How is the public ensured that no water withdrawal occurs until a final decision to construction Unit 3 is made?*

The minor surface water withdrawal for construction activities is proposed to be used for construction activities associated with the proposed Unit 3, which include site separation activities. Staff understands that the applicant intends to proceed with site separation activities prior to a final decision to construct Unit 3 and that site separation activities in the uplands has commenced. Upon issuance of a VWP permit, a permittee is authorized to initiate the authorized activity in compliance with the permit conditions.

- 8. DEQ should not continue to piecemeal water permits for the Unit 3 construction withdrawal, Unit 3 operational withdrawal and expansion or creation of a new sewage treatment plant for Unit 3 and water needs for Louisa and Hanover Counties. Public needs to know bottom line of amount of water available in Lake Anna and total volume of water proposed to be withdrawn for all proposed activities. Requests summary of each be presented to the public prior to proceeding with any proposed permit. Also, requests copies of last 10 years of annual withdrawal reporting for the existing Units 1 and 2.*

Process seems to promulgate and support a “give Dominion what it wants” approach without truly understanding the environmental impact to Lake Anna and homeowners.

Submittal of a VWP permit application is entirely at the discretion of the applicant and DEQ must address each application as it is received. Staff reviews an application in light of the existing circumstances of the watershed, which includes existing uses and withdrawals. Staff does not determine the total amount of water available in a watershed to determine maximum volume withdrawn a watershed can handle. However, staff does determine if the watershed can support the proposed withdrawal volume in light of existing water uses.

A summary of the proposed activities associated the proposed Unit 3 that are to be regulated by either the VWP Permit Program or the Virginia Pollution Discharge Elimination System (VPDES) Program is provided as Attachment A to this document.

- 9. Questioned why DEQ is putting the processing the permits for Parts I and II on the fast track for SWCB approval. Requested public have at least 2 months after the preparation of a final draft to submit to the SWCB to allow citizens adequate time to prepare for the SWCB.*

In accordance with Section 62.1-44.15.21.E of the Code of Virginia, within 120 days of receipt of a complete application “the Board shall issue the permit, issue the permit with conditions, deny the permit, or decide to conduct a public meeting or hearing. If a public meeting or hearing is held, it shall be held within 60 days of the decision to conduct such

a proceeding, and a final decision as to the permit shall be made within 90 days of the completion of the public meeting or hearing.”

The pertinent application processing dates pertaining to Section 62.1-44.15.21.E of the Code of Virginia are as follows. The Part II application, received on September 9, 2010, was determined to be complete on October 29, 2010. The decision to conduct a hearing was made on January 4, 2011, prior to the 120-day deadline of February 25, 2011. The draft permit was issued to the applicant on January 10, 2011, and the public comment period began on January 12, 2011. The public hearing was held on February 17, 2011, and staff will present the draft permit for Part II to the State Water Control Board (SWCB) during their next meeting, on April 14, 2011.

The draft permits have been available for review for approximately three months from the date of issuance of a final draft permit to the SWCB meeting. The only changes staff proposes to the public noticed draft permit are in response to citizen comments received during the public comment period.

10. *Request that any Lake Anna water withdrawal permit be limited to 5 years instead of 15 years, and reviewed after the 1st year of operation and then annually thereafter to revise the permit to account for changes in the watershed during that time period. This should apply to all water permits for Unit 3 and any other permits, including the current withdrawal from the existing two units.*

A 15 year permit term is inappropriate as much changes in that timeframe. A 5 year permit should be the maximum term allowed.

In accordance with Section 62.1-44.15.5(a) of the Code of Virginia, VWP permits are allowed a maximum permit term of 15 years. This section of the law also states that the permit term shall be based upon the duration of the project, the length of any monitoring, project operations or any permit conditions. Therefore, applicants typically request a permit term length that allows sufficient time to complete the proposed permitted activities. For the minor surface water withdrawal for construction related activities, the applicant requested a 15 year permit term to allow sufficient time to complete the construction activity. The proposed draft permit term is acceptable.

If after issuance of a VWP permit substantial, documented environmental consequences are realized from the permitted activity, the permit may be reopened to address the issue. VWP regulation 9 VAC 25-210-110.G states that a permit may be reopened to modify conditions to meet new regulatory standards or if special studies conducted by the SWCB or permittee indicate or circumstances on which the permit was issued have since materially or substantially changed.

The water withdrawals for the existing Units 1 and 2 are excluded from VWP permitting in accordance with VWP regulation 9 VAC 25-210-60.B.1., which states that any surface water withdrawal in existence on July 1, 1989 is excluded from the requirement of obtaining a VWP permit unless a new Section 401 certification is required to increase a withdrawal. No changes to Units 1 and 2 are proposed as part of these applications; therefore, the exclusion remains valid and the water withdrawals for Units 1 and 2 are not

be included in the VWP permit application for the operational water withdrawal for Unit 3. However, the potential affect of Unit 3 on fish habitat and recreation was evaluated in light of the exiting water withdrawals for Units 1 and 2 during the IFIM study.

- 11. The applicant should be required to submit a new VWP permit after the 15 year permit term for the original permit issuance ends instead of a permit extension.*

In accordance with Section 62.1-44.15.5(a) of the Code of Virginia, VWP permits are allowed a maximum permit term of 15 years. VWP permit terms may not be extended beyond the original 15 year permit term. If at the end of the 15 year permit term, the permittee needs continuance of the authorized activities or any permit requirement that has not been completed, including compensation provisions, they must apply for a permit reissuance.

Staff revised Part I.B.1 and 2 of the draft permit to clarify this requirement.

- 12. All water withdrawal permits from Lake Anna should include the Lake Level Contingency Plan (LLCP).*

The LLCP is currently in the VPDES permit for the facility and is proposed to be transferred to the VWP permit for the major surface water withdrawal (JPA No. 10-2001). It is not viable to require that each water withdrawal permit include the LLCP as the applicant, Dominion Virginia Power, owns and operates the Lake Anna Dam, and thus another entity does not have authority over the dam's operations. Additionally, staff reviews an application for a surface water withdrawal in light of the existing watershed, including any existing water withdrawals, downstream and lake users, in light of any minimum instream flow requirements. Staff has determined this change to the draft permit is not needed.

- 13. Questioned why the withdrawal volume Dominion is requesting is viewed as insignificant but Dominion is against other's withdrawing from the lake, and why DEQ has not indicated a problem with that.*

The minor surface water withdrawal for construction activities was reviewed in light of the study conducted for the major water withdrawal for operational activities, the IFIM study, and an analysis conducted for this withdrawal that analyzed the proposed maximum daily withdrawal volume of 750,000 gallons per day (gpd) over a 105 month period, which is the timeframe for which construction withdrawal activities are proposed. Staff determined the proposed minor water withdrawal for construction related activities will have a negligible impact on lake level and Lake Anna Dam releases and a negligible impact on existing beneficial uses of Lake Anna and reaches downstream of the dam.

Staff does not hold opinion on the applicant's view of the use of Lake Anna for other withdrawals purposes.

- 14. Attachment A of the Part II permit should be revised to include the construction water withdrawal to the section regarding dust control during construction of highways and roads.*

Attachment A of the draft permit provides additional water use restrictions to those in the permit in times when a drought emergency is declared in the area in which the water withdrawal is operated. Staff revised Part I.D.6 and Attachment A of the draft permit to clarify this intention.

15. *Request for specificity in permit regarding the end of construction, when the water withdrawal activities shall cease.*

Staff determined this comment has merit and revised Part I.A.1 of the draft permit to clarify the end of the withdrawal activity. Also, staff included a requirement for that the permittee notify staff upon the completion of construction related activities with Unit 3 and ceasing the authorized water withdrawal activity (Part I.D.13).

16. *Opposed to the construction of Unit 3 and request denial of permits or delay of decision until the project is reviewed holistically.*

Do not allow withdrawal permits to move forward until there is proof that the 3-inch rise will safely dissipate the additional heat burden.

The minor surface water withdrawal for construction related activities proposed under Part II of the project are associated with the construction of the proposed Unit 3. The proposed withdrawal was reviewed in accordance with the VWP Permit Program's applicable laws, regulation and guidance. In issuing a draft permit, staff has determined there is reasonable assurance that the activity, as proposed to be authorized by the draft permit, will protect beneficial uses, will not violate applicable water quality standards, and will not cause or contribute to significant impairment of state waters or fish and wildlife resources, provided the applicant complies with all permit conditions.

The increase in lake level rise of three inches is proposed to mitigate the consumptive withdrawal of the major water withdrawal for operational activities (JPA No. 10-2001), not to dissipate additional heat. The proposed three inch rise is currently being reviewed under the Part III application (JPA No. 10-2001).

The discharge of effluent and thermal heat is not within the purview of the VWP Permit Program, but is regulated by the VPDES Program. The discharge aspects of the proposed Unit 3 will be addressed via the facility's VPDES permit.

17. *Permits for Parts I and II should not be issued without a contingency of receiving a permit for Part II and a Combined Operating License from NRC. No reason for Dominion to start the project if they may later decide not to move forward for economic reasons. Construction of the original Units 3 and 4 were canceled due to economic reasons.*

Questioned how DEQ could make decisions when Dominion has not committed to building Unit 3.

Issuance of a VWP permit for Part II of the project does not imply or assure the applicant of obtaining a permit for Part I for Surface Water Construction Related impacts

(proposed VWP Permit No. 10-1256) or Part III for Major Surface Water Withdrawal for Operational Activities and Lake Level Rise (JPA No. 10-2001) of the project. VWP Permit Program regulations do not require an applicant obtain other approvals before obtaining a VWP permit. It is at the applicant's own risk to proceed with a project without obtaining all necessary approvals for their respective project.

18. Reference the notification of the hearing for Part II on one website and notification of the hearing for Part I on another website. Requests re-notice and re-opening of the public comment period for the draft permits due to confusion.

The activities within the purview of the VWP Permit Program for the proposed Unit 3 are proposed to be covered under three VWP Permits corresponding to the three parts of the project. The applicant submitted a Joint Permit Application for each part. The three parts of the project are summarized below:

- Part I – Surface Water Construction Related Impacts, VWP Permit No. 10-1256. Part I of the project proposes surface water impacts related to construction activities.
- Part II – Minor Surface Water Withdrawal for Construction Activities, VWP Permit No. 10-1496. Part II of the project proposes a minor surface water withdrawal for construction related activities.
- Part III – Major Surface Water Withdrawal for Operational Activities and Lake Level Rise, Joint Permit Application No. 10-2001. Part III of the project proposes a major surface water withdrawal associated with the operational activities of Unit 3 and a temporal change to shoreline wetlands as a result of a permanent increase of 3 inches in the normal target pool elevation of Lake Anna and the water level in the WHTF.

Draft permits were prepared for two of the three VWP permit applications submitted for the proposed Unit 3, which were for Part I and Part II. Public notices for each draft permit were published separately in six local newspapers and also on DEQ's website and on the Virginia Town Hall's website. Staff decided to hold a joint hearing for both draft permits on February 17, 2011, rather than hold a hearing for each permit on separate nights. This was done for the public's convenience so they only had to attend one evening to voice comments on both draft permits. Re-publication and re-opening of the comment period for the draft permits for Part I and Part II is not deemed necessary.

Comments Received in Support of the Proposed Project

The comments summarized below are those in support of Part I (draft VWP Permit No. 10-1496) within the purview of the VWP Permit Program. Staff did not provide a response to comments of support for the project.

7. Support DEQ's issuance of a permit to allow Dominion to withdrawal water for construction purposes.
8. The withdrawal volume proposed for the construction water withdrawal is small compared to the amount available in Lake Anna.

The construction water withdrawal volume will not impact the existing uses of the lake, lake levels or downstream flows.

Lake Anna can support the construction water withdrawal.

9. Utilizing water from the lake avoids the use of groundwater resources for construction purposes.
10. The proposed construction water withdrawal is necessary and responsible use of the water resource.
11. The DEQ permit includes requirements to ensure the withdrawal is reduced to conserve water during dry periods.
12. Dominion will monitor and report the water withdrawal and lake level throughout the construction process. They will make the information available to the public so there's no uncertainty that Dominion is meeting DEQ's requirements.

General Comments Applicable to All Parts

13. Supports issuance of the VWP permits for the proposed Unit 3 project.

Lake Anna lot owner with no reservations with the proposed construction and operation of Unit 3.

Water impacts that may occur have been given the utmost attention and are addressed in the plan.

Confidence that the environmental issues described in the public notices will be adequately addressed.

14. Construction of Unit 3 is needed to meet growing demands for electricity, aid to gain energy independence and help to reduce the overall cost of electricity.

The assurance of uninterrupted electrical service with the additional unit will provide safety for our children for many years to come.

Lake Anna was constructed to support nuclear generation of power and was originally designed for four units.

15. Dominion supports the community and has always been mindful of their environment and will continue to do so.

Dominion has been open regarding the proposed construction of Unit 3.

16. Appreciates the methods planned to protect the quality of both bodies of water (Lake Anna and WHTF).