Virginia Soil and Water Conservation Board
September 8, 2011
House Room C
General Assembly Building
Richmond, Virginia

Virginia Soil and Water Conservation Board Members Present

Raymond L. Simms, Vice Chair
C. Frank Brickhouse, Jr.
Gary Hornbaker
Daphne W. Jamison
Frank Blake, Jr.
Herbert L. Dunford, Jr.
Jerry L. Ingle

Ex Officio Members Present

David A. Johnson, Director, Department of Conservation and Recreation
John A. Bricker, State Conservationist, NRCS

Virginia Soil and Water Conservation Board Members Not Present

Susan Taylor Hansen, Chair
Stephen R. Lohr

DCR Staff Present

Jeb Wilkinson, Chief Deputy Director
Charley Banks
David C. Dowling
Michael Foreman
Reese Peck
Christine Watlington
Robert Bennett
Michael R. Fletcher
Stephanie Martin
Virginia Snead
Elizabeth Andrews, Office of the Attorney General

Others Present

Brent Fults, Chesapeake Bay Nutrient Land Trust, LLC
Adrienne Kotula, James River Association
W. Leslie Kilduff, Jr., Northumberland County Attorney
Chris Polmeroy, AquaLaw PLC
Peggy Sanner, Chesapeake Bay Foundation
Roy Mills, Virginia Department of Transportation
Scott Reed, Chesapeake Bay Nutrient Land Trust, LLC
Wilmer Stoneman, Virginia Farm Bureau
E. Luttrell Tadlock, Northumberland County Assistant County Administrator
Shannon Varner, Troutman Sanders

Call to Order and Introductions

Mr. Simms called the meeting to order. He noted that Ms. Hansen was unable to attend the meeting. A quorum was declared present.

Approval of Minutes from May 24, 2011

MOTION:	Ms. Jamison moved that the minutes of the May 24, 2011 meeting of the Virginia Soil and Water Conservation Board be approved as submitted by staff.
SECOND:	Mr. Hornbaker
DISCUSSION:	None
VOTE:	Motion carried unanimously

Director's Report

Mr. Johnson gave the Director's report. He said that many things had happened since the last meeting.

Mr. Johnson said that legislation passed in the 2011 General Assembly made a change in the Board composition. He said that as of July 1, 2011 the DCR Director is no longer a voting member of the Board. He also noted that three new at-large positions were created.

Mr. Johnson said that the three new positions had not yet been filled. He said that Ms. Dalbec had been replaced and that the new member, Herb Dunford, Jr. would be joining the Board later in the meeting. Mr. Dunford is a former Soil and Water Conservation District Director and previously served two terms on the Board.

Mr. Johnson said that the Department had also moved ahead with reorganization actions. He introduced Reese Peck as the Director of the Division of Stormwater Management. He noted that Mr. Peck would introduce division staff.

Mr. Johnson said that the Department had also been actively working to roll out the revised Stormwater Management Regulations. He said that the work to produce a final product was a monumental effort. He said that remarkably the response to the final adoption was rather quiet. He said that was a testimony to the work that had gone into the process to ensure the Regulations were science based and practical.

Mr. Johnson noted that on the agenda was one item for the Board to look at a small modification to the Regulations. He said this was a matter of cleanup.

Division Director's Reports

Reese Peck, Director, Division of Stormwater Management

Mr. Peck gave the report for the Division of Stormwater Management. A copy of the Division report is included as Attachment #1.

Mr. Peck gave an update regarding the reorganization of the Division of Stormwater Management. He introduced Ginny Snead, Regulatory Programs Manager and Darryl Glover, Regional Operations Manager.

Robert Bennett, Division of Dam Safety and Floodplain Management

Mr. Bennett gave the report for the Division of Dam Safety and Floodplain Management.

Mr. Bennett noted that the August earthquake caused concern regarding dams in Virginia. He said that fortunately there had been no serious dam failures.

Mr. Bennett said that following the earthquake, the Division had sent out an email newsletter to let all dam owners know that it was important that they inspect their dams.

Mr. Bennett said that on an unregulated dam in Louisa County some of the logs had moved but that it was not a high hazard dam and there was no failure. He said that there was some slippage at Elk Garden Dam in Bedford County. Part of the slope actually moved down. Regional engineers are working to protect this dam and to complete necessary repairs.

Mr. Bennett said that a number of dams were impacted by Hurricane Irene. One was Birds Mill Pond in Caroline County. Some damage to dams and roads with road closures has been reported.

Mr. Bennett said that staff is working on the dam break early warning system. He said that there had been an extended procurement process. He said that within thirty days there should be a signed contract. This system will measure seismic activity as well as rainfall in the watershed of the dam.

Mr. Bennett said the hope is to get about 600 high hazard dams into this system. DCR is working with the Virginia Department of Emergency Management with regard to getting out notifications.

Mr. Bennett said that at the end of September, the American Association of Dam Safety Officials is having their conference in Washington, DC. All DCR regional engineers will be attending. He said that about 1,500 dam safety engineers will come together and talk about the latest technology experience in the field.

Mr. Bennett said that one of the other innovations staff is working on is referred to as a Dam Dragnet. In 2001 the General Assembly expanded the definition of what a regulated dam should be with regard to size. He said that significant efforts had been made over the past ten years, but not all regulated dams are currently in the system. Virginia is using a graphic information network to scan the state and find water bodies that are potentially regulated dams. The goal is to have all dams identified in the next twelve months.

Mr. Bennett said that the Governor's study of all regulated dams is moving forward. The study will give the total numbers so that the legislature will be able to see that bond money or low interest loans are needed to bring dams up to minimum safety standards.

Mr. Bennett said that DCR now has five regional dam safety engineers. He distributed contact information for the engineers. He also provided a map outlining the regions. A copy of this information is available from DCR.

Dam Safety Compliance Update

Mr. Bennett gave the dam safety compliance update.

Mr. Bennett said that in previous actions the Board had directed that the water level for Rainbow Forest Dam #02303 be lowered until such time as the dam repairs were made. An administrative order was issued and the dam was lowered. Mr. Bennett provided pictures of the water level lowered to seven feet below normal pool as of August 8, 2011.

Mr. Bennett presented the Summary Report on the Status of Regulated High Hazard Dams. A copy of this summary is available from DCR.

Ms. Jamison noted that there were dams listed as new construction. She asked if DCR could work with localities to ensure that those building dams were aware of the regulations.

Mr. Bennett said that often the first response from the owner is that the locality did not inform them regarding permits. However he said that it was also likely that no questions had been asked concerning permits.

Mr. Bennett said that in the dam dragnet effort to locate unidentified dams DCR has been talking with the Virginia Association of Soil and Water Conservation Districts regarding a cooperate effort to check some of these dams. He said that DCR has some resources to assist with that and that cooperative efforts are crucial.

Mr. Bennett said that regarding Lower and Upper Ragged Mountain Dams, Mr. John Martin from Albemarle was present to speak to the Board.

John Martin, Albemarle

Mr. Martin spoke regarding Lower and Upper Ragged Mountain Dams. He said that he had been attending Board meetings for about a year because of concern regarding the water supply process and the need to replace Ragged Mountain Dam.

Mr. Martin said that he was in an August 23 meeting of the water authority when the earthquake hit. He said that the first question was who would check on the status of Ragged Mountain Dam. Fortunately, the dam was fine.

Mr. Martin said things were going well with the water supply project. The final design for the earthen dam has been submitted. A public hearing is scheduled regarding the DEQ permit. A draft state water supply plan has been issued which is separate from the local plan.

Mr. Martin said that support for the plan is held together by a 3-2 majority on the City Council. He thanked the Board for their input and said that the December meeting would be critical.

Recommendation and action related to establishing fees for Specific Annual Standards and Specification Reviews.

Mr. Dowling presented the staff recommendation and action regarding the establishment of fees for Specific Annual Standards and Specification Reviews.

Authority to Establish Specified Fees for Services

Legislative Action

Chapter 721 of the Virginia Acts of Assembly (HB1495) Erosion and sediment control; allows authorities to file specifications and the Board to establish fees.
HB1495 Chief Patron: Ware, O.

- Amended § 10.1-563 of the Code of Virginia relating to the filing of general erosion and sediment control specifications in order to allow public service authorities the option to file annual standards and specifications for the construction, installation and maintenance of water and sewer lines in lieu of submitting erosion and sediment control plans to the Virginia Soil and Water Conservation Board for review and approval.
- Included a fee authorization provision:
    - Allows the Board to "*charge fees equal to the lower of (i) $1,000 or (ii) an amount sufficient to cover the costs associated with standard and specification review and approval, project inspections, and compliance*". This allows a fee to be applied to all electric, natural gas and telephone companies, interstate gas pipeline companies, railroad companies, and public service authorities that

the Department of Conservation and Recreation on behalf of the Board reviews general erosion and sediment control specifications for.

Background on Fees for Review of General Erosion and Sediment Control Specifications

§ 10.1-563. Regulated land-disturbing activities; submission and approval of control plan.

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D. Electric, natural gas and telephone utility companies, interstate and intrastate natural gas pipeline companies, and railroad companies shall, and authorities created pursuant to § 15.2-5102 may, file general erosion and sediment control specifications annually with the Board for review and approval. The specifications shall apply to:

1. Construction, installation or maintenance of electric transmission, natural gas and telephone utility lines and pipelines, and water and sewer lines; and

2. Construction of the tracks, rights-of-way, bridges, communication facilities and other related structures and facilities of the railroad company.

The Board shall have 60 days in which to approve the specifications. If no action is taken by the Board within 60 days, the specifications shall be deemed approved. Individual approval of separate projects within subdivisions 1 and 2 of this subsection is not necessary when approved specifications are followed. Projects not included in subdivisions 1 and 2 of this subsection shall comply with the requirements of the appropriate local erosion and sediment control program. The Board shall have the authority to enforce approved specifications and charge fees equal to the lower of (i) $1,000 or (ii) an amount sufficient to cover the costs associated with standard and specification review and approval, project inspections, and compliance.

E. Any person engaging, in more than one jurisdiction, in the creation and operation of wetland mitigation or stream restoration banks, which have been approved and are operated in accordance with applicable federal and state guidance, laws, or regulations for the establishment, use, and operation of wetlands mitigation or stream restoration banks, pursuant to a mitigation banking instrument signed by the Department of Environmental Quality, the Marine Resources Commission, or the U.S. Army Corps of Engineers, may, at the option of that person, file general erosion and sediment control specifications for wetland mitigation or stream restoration banks annually with the Board for review and approval consistent with guidelines established by the Board.

The Board shall have 60 days in which to approve the specifications. If no action is taken by the Board within 60 days, the specifications shall be deemed approved. Individual approval of separate projects under this subsection is not necessary when approved specifications are implemented through a project-specific erosion and sediment control plan. Projects not included in this subsection shall comply with the requirements of the appropriate local erosion and sediment control program. The Board shall have the authority to enforce approved specifications. Approval of general erosion and sediment control specifications by the Board does not relieve the owner or operator from compliance with any other local ordinances and regulations including requirements to submit plans and obtain permits as may be required by such ordinances and regulations.

§ 10.1-564. State agency projects.

A. A state agency shall not undertake a project involving a land-disturbing activity unless (i) the state agency has submitted annual specifications for its conduct of land-disturbing activities which have been reviewed and approved by the Department as being consistent with the state program or (ii) the state agency has submitted a conservation plan for the project which has been reviewed and approved by the Department.

§ 15.2-5102. One or more localities may create authority.

A. The governing body of a locality may by ordinance or resolution, or the governing bodies of two or more localities may by concurrent ordinances or resolutions or by agreement, create a water authority, a sewer authority, a sewage disposal authority, a stormwater control authority, a refuse collection and disposal authority, or any combination or parts thereof. The name of the authority shall contain the word "authority." The authority shall be a public body politic and corporate and a political subdivision of the Commonwealth. The ordinance, resolution or agreement creating the authority shall not be adopted or approved until a public hearing has been held on the question of its adoption or approval, and after approval at a referendum if one has been ordered pursuant to this chapter.

Annual Standards and Specifications Cost Estimate

DCR's 2010 Costs per Type of Annual Standards and Specifications

Annual Specification Type	Staff Hours	Staff Cost@$36/hr.	Travel
VDOT	520	$18,720	$1,500
Utility & Railroad	30	$1,080	$100
Wetland & Stream Bank	55	$1,980	$600
Non-VDOT State Agencies	65	$2,340	$100

DCR's 2010 Costs for Annual Standards and Specifications

Annual Specification Type	Number of Types	Total Costs
VDOT	1 @ $20,220	$20,220
Utility & Railroad	24 @ $1,180	$28,320
Wetland & Stream Bank	5 @ $2,580	$12,900
Non-VDOT State Agencies	10 @ $2,440	$24,400

Grand Total	**40**	**$85,840**

Average cost per Annual Standard & Spec Type = $2,146

Observations

- The cost estimate numbers outlined above represent an estimate of time spent by staff to conduct specification reviews and inspections (including travel).
- This estimate is probably on the conservative side. An increasing emphasis on compliance will likely result in more inspections thus driving Agency costs higher.
- We expect that the costs involved with public service authority linear projects to be similar to the current costs associated with the review of utility and railroad annual standards and specifications.
- In all cases, **the costs are well above the maximum amount that the new E&S Law change would allow DCR to charge** for annual specification review, project inspection, and compliance activities.

Note: Authority to assess similar fees for erosion and sediment control specifications for wetland mitigation or stream restoration banks or for state agency annual specifications for conducting land-disturbing activities likely will be addressed in pending legislation.

Mr. Ingle asked why these numbers were considered conservative.

Mr. Dowling said that these numbers do not include the costs associated with increased compliance actions and that the costs would not be any lower.

Mr. Blake clarified that the entities that had to pay this fee had to annually submit their specifications.

Mr. Dowling said that this was not a change in practice, but a measure to allow DCR to recoup some of the costs associated with reviewing the annual specifications.

MOTION: Ms. Jamison moved the following:

Motion for the Board to authorize the immediate establishment of a $1,000 fee for the review of annual standards and specifications pursuant to § 10.1-563 D of the Code of Virginia.

In accordance with Chapter 721 of the Virginia Acts of Assembly (HB1495), §10.1-563 D of the Erosion and Sediment Control Law has been amended, effective July 1, 2011, to authorize that "[t]he Board shall have the authority to enforce approved specifications and charge fees equal to the lower of (i) $1,000 or (ii) an amount sufficient to cover the

costs associated with standard and specification review and approval, project inspections, and compliance".

Pursuant to this authority, the Virginia Soil and Water Conservation Board authorizes the immediate establishment of a $1,000 fee for the review of annual standards and specifications. This fee shall be retroactive to all standards received for review and approval since the effective date of the law on July 1, 2011.

SECOND: Mr. Brickhouse

DISCUSSION: None

VOTE: Motion carried unanimously

Erosion and Sediment Control

Mr. McCutcheon presented the erosion and sediment control actions.

2011 Annual Standards and Specifications for Norfolk Southern Railroad and Virginia Water Authority

MOTION: Mr. Blake moved the following two motions:

Norfolk Southern Railroad

The Virginia Soil and Water Conservation Board receives the staff update concerning the review of the 2011 annual standards and specifications for electric, natural gas, telecommunications, and railroad companies. The Board concurs with staff recommendations for conditional approvals of the 2011 specifications and the request for variances for Norfolk Southern Railroad in accordance with the Erosion and Sediment Control Law. The Board requests the Director to have staff notify the railroad of the status of the review and the conditional approval of the annual standards and specifications and the requests for variances.

The four items for conditional approval are:

1. A revised list of all proposed projects planned for construction in 2011 must be submitted by October 7, 2011. The following information must be submitted for each project:

    - Project name (or number)
    - Project location (including nearest major intersection)
    - On-site project manager name and contact information

- Project description
- Acreage of disturbed area for project
- Project start and finish dates

2. Project information unknown prior to October 7, 2011 must be provided to DCR two (2) weeks in advance of land disturbing activities by e-mail at the following address linearprojects@dcr.virginia.gov.

3. Notify DCR of the Responsible Land Disturber (RLD) at least two (2) weeks in advance of land disturbing activities by e-mail at the following address linearprojects@dcr.virginia.gov. The information to be provided is name, contact information and certification number.

4. Install and maintain all erosion and sediment control practices in accordance with the 1992 Virginia Erosion and Sediment Control Handbook.

5. Minimum Standard 16.a: The project may have more than 500 linear feet of trench length opened at one time provided that all trenches in excess of 500 feet in length are adequately backfilled, seeded and mulched at the end of each work day and adjacent property and the environment are protected from erosion and sediment damage associated with the regulated land disturbing activity.

Western Virginia Water Authority

The Virginia Soil and Water Conservation Board receives the staff update concerning the review of the 2011 annual standards and specifications for public service authorities. The Board concurs with staff recommendations for conditional approvals of the 2011 specifications for the Western Virginia Water Authority in accordance with the Erosion and Sediment Control Law. The Board requests the Director to have staff notify the authority of the status of the review and the conditional approval of the annual standards and specifications.

1. A revised list of all proposed projects planned for construction in 2011 must be submitted by October 7, 2011. The following information must be submitted for each project:

    - Project name (or number)
    - Project location (including nearest major intersection)
    - On-site project manager name and contact information
    - Project description
    - Acreage of disturbed area for project
    - Project start and finish dates

2. Project information unknown prior to October 7, 2011 must be provided to DCR two (2) weeks in advance of land disturbing activities by e-mail at the following address linearprojects@dcr.virginia.gov.

3. Notify DCR of the Responsible Life Land Disturber (RLD) at least two (2) weeks in advance of land disturbing by e-mail at the following address linearprojects@dcr.virginia.gov. The information to be provided is name, contact information and certification number.

4. Install and maintain all erosion and sediment control practices in accordance with the 1992 Virginia Erosion and Sediment Control Handbook.

SECOND: Ms. Jamison

DISCUSSION: None

VOTE: Motions carried unanimously

Approval of Washington County Alternative Inspection Program

Mr. McCutcheon presented the background for Washington County.

At the last meeting of the Virginia Soil and Water Conservation Board, the Board accepted the proposed Alternative Inspection Program for Washington County for consideration. Staff has reviewed the proposed Alternative Inspection Program and finds it to be within the recommended guidelines, therefore staff recommends approval as submitted.

MOTION: Mr. Hornbaker moved that the Virginia Soil and Water Conservation Board approve the proposed Alternative Inspection Program for Washington County as being consistent with the requirements of the Erosion and Sediment Control Law and Regulations. The Board requests the Department of Conservation and Recreation staff to monitor the implementation of the alternative inspection program by the County to ensure compliance with the approved program.

SECOND: Mr. Ingle

DISCUSSION: None

VOTE: Motion carried unanimously

Recognition – Town of West Point Erosion and Sediment Control Program

Mr. McCutcheon gave the background for the Town of West Point.

The Town of West Point's CAA time for completion was extended to complete the Plan Review requirements of its original CAA. The Town needed to implement an "Agreement in Lieu of a Plan" system for single family dwellings but there have not been any permits applied for until recently. The Town successfully implemented an agreement in lieu of a plan in its permit and plan review process. Staff recommends that the Board find the Town of West Point consistent with the state ESC program.

MOTION: Mr. Brickhouse moved that the Virginia Soil and Water Conservation Board finds and commends the Town's Erosion and Sediment Control Program for becoming fully consistent with the requirements of the Virginia Erosion and Sediment Control Law and Regulations, thereby providing better protection for Virginia's soil and water resources.

SECOND: Mr. Blake

DISCUSSION: None

VOTE: Motion carried unanimously

Mr. McCutcheon said that this was a significant milestone as the Town of West Point had one of the longest corrective action agreements put together. He said that the Town did a top to bottom rework of their program.

Greensville County CAA extension

Mr. McCutcheon gave the background for Greensville County.

The time for completion of Greenville County's CAA was extended for the program to complete the Inspection requirements of its original CAA. Since the last CAA review Greensville County hired an inspector who has been enrolled in DCR's ESC certification program. The County is also preparing an Alternative Inspection Program to further help the program meeting the required inspection frequency. Staff recommends the Board grant a three-month extension to Greensville County's CAA and have staff report back to the Board at the next meeting on the progress toward completion.

MOTION: Ms. Jamison moved that the Virginia Soil and Water Conservation Board accept the staff recommendations and grant the County of Greensville a three-month extension until December 10, 2011 to fully comply with the outstanding CAA. The Board also requests that the Director of DCR and his staff continue to evaluate the

County's compliance with the outstanding CAA and provide a report at the December 2011 Board meeting.

SECOND: Mr. Blake

DISCUSSION: None

VOTE: Motion carried unanimously

Northumberland County's CAA Extension

Mr. McCutcheon presented the background for Northumberland County.

At its May 2011 meeting the Board approved an administrative extension of the time for completion of Northumberland County's CAA. The purpose of this extension was to allow staff to gather further documentation on the Inspection component of the County's program. Staff visited the County on July 14th and again on August 19th to review the County's progress on completing the CAA. During these visits staff discovered two unresolved complaints resulting from past projects that were started and completed without an approved erosion and sediment control plan. One project which has repeated violations of the approved plan and Minimum Standards has not had any enforcement action taken by the County. Staff has updated the existing CAA to show the Enforcement component of Northumberland's program which was previously corrected, is once again not consistent with the original CAA approved by the Board. Staff worked with Northumberland County to develop milestones to complete the CAA and achieve a consistent status in six months.

E. Luttrell Tadlock, Northumberland County Administrator spoke on behalf of the County. He introduced County Attorney W. Leslie Kilduff.

Mr. Tadlock referred to a letter provide in the Board packet. He said that regarding the vacant position, applications were due to the County yesterday. Mr. Tadlock reviewed the steps the County was proposing to take to correct the deficiencies in the County's Erosion and Sediment Control Program.

MOTION: Ms. Jamison moved that the Virginia Soil and Water Conservation Board accept the milestones presented by Northumberland County to bring the County's erosion and sediment control program into a consistent status with the Virginia Erosion and Sediment Control Law and grant a final six-month extension to Northumberland's CAA to be completed by March 8, 2012. The Board also requests that the Director of DCR and his staff continue to evaluate the County's compliance with the outstanding CAA and milestones presented and provide a report at the next Board meeting.

SECOND: Mr. Blake

DISCUSSION: None

VOTE: Motion carried unanimously

Transfer of Erosion and Sediment Control Program Authority from the Town of Woodstock to Shenandoah County

Mr. McCutcheon gave the background for the transfer.

Staff received a request from the Town of Woodstock to transfer the erosion and sediment control program authority responsibilities to Shenandoah County. Staff has been provided copies of the letters of agreement between the Town and Shenandoah County who agrees to accept the erosion and sediment control program authority and responsibilities. The Board recognized the Shenandoah County Erosion and Sediment Control Program as consistent with state Erosion and Sediment Control Law in September 2007 as a result of the last program review.

MOTION: Mr. Ingle moved that the Virginia Soil and Water Conservation Board accept the request from the Town of Woodstock to transfer the erosion and sediment control program authority to Shenandoah County and that the Board thank the Town of Woodstock for its past efforts providing protection for Virginia's soil and water resources.

SECOND: Mr. Hornbaker

DISCUSSSION: None

VOTE: Motion carried unanimously

Mr. McCutcheon said that with this approval that brought the number of approved local programs to 163. This is a 98% compliance rate.

Mr. Ingle asked if in the future information provided regarding these programs could be included in the Board mailing.

Mr. McCutcheon said that he would make sure that happens in the future.

Mr. Simms said that it would be helpful for the Board to have as much information as possible ahead of time.

Mr. Johnson said that for future meetings, Board members would receive background information two weeks in advance of the meetings.

Virginia Stormwater Management Program (VSMP) Permit Regulations: Part XIV; General Stormwater Management Program (VSMP) Permit for Discharge of Stormwater from Construction Activities – Authorization to Initiate a Regulatory Action

Mr. Dowling presented this recommended Board action.

Action Overview

Today we are seeking the Board's authorization to initiate a regulatory action to amend the Board's Construction Activities General Permit regulation. The General Permit is a regulation of the Virginia Soil and Water Conservation Board found in Part XIV of the Virginia Stormwater Management Program (VSMP) Permit Regulations.

This General Permit when completed will only be the second developed by the Virginia Soil and Water Conservation Board and DCR since we took over administration of the consolidated NPDES stormwater program in January of 2005.

This action is authorized under the federal Clean Water Act (33 USC § 1251 et seq.) and the Virginia Stormwater Management Act (§10.1-603.1 et seq.). It is necessary at least every five years to update and reissue the General Permit and we will need to have a new permit in place by the June 30, 2014 expiration date of the Board's current permit.

A significant component of this action will be to amend the Board's Construction Activities General Permit regulation to incorporate the final Virginia Stormwater Management Program (VSMP) Permit Regulations that the Board approved at the May 24, 2011 meeting and that are scheduled to be effective on September 13, 2011. Via this general permit, the new technical criteria applicable to stormwater discharges from construction activities including post development requirements will be implemented with the new permit on July 1, 2014 and through local ordinances that are at least as stringent as the new VMSP General Permit for Discharges of Stormwater from Construction Activities.

[NOTE: The Board took a similar action at the May 24th meeting where it authorized the amendment of the Board's Small Municipal Separate Storm Sewer System (MS4) General Permit regulation [Part XV] which we will begin action on this fall.]

Regulatory Amendment Process and Next Steps

Regulatory actions are typically comprised of three primary steps: the Notice of Intended Regulatory Action, the Proposed Regulations, and the Final Regulations. Routinely under the Administrative Process Act (APA) this takes about 2 years.

However, amendments to this General Permit are exempt from the full APA (§2.2-4006 subsection A8 of the Code of Virginia). As such, a slightly abbreviated APA process is

required. We still go through the NOIRA, Proposed, and Final regulatory steps, public input processes remain; however, the administrative review process is reduced.

The General Permit shall be exempt from the APA if the Board:

- Provides a Notice of Intended Regulatory Action (NOIRA).
- Forms a regulatory advisory panel composed of relevant stakeholders to assist in the development of the General Permit (following the passage of 30-days from the publication of the NOIRA)
- Provides notice in the Virginia Register of Regulations and receives oral and written comment.
- Conducts at least one public hearing on the proposed General Permit.
- Publishes in the Register both the proposed and final regulations.
- At least two days in advance of the Board meeting where the regulation will be considered, a copy of the regulation shall be provided to members of the public that request a copy.
- A copy of that regulation shall be made available to the public attending the Board meeting.

The permits are also subject to additional federal NPDES requirements relevant to the promulgation of general permits. These include:

- Notifications to permit holders of the NOIRA (regulatory action).
- Development of a fact sheet.
- EPA formal 30 to 90-day review of the proposed General Permit regulation and fact sheet.
- Mailing of the draft permit, public notice document describing commenting procedures and hearings, and fact sheet to:
    1. Members of the RAP
    2. All current general permit coverage holders
    3. Neighboring states
    4. State and federal agencies (incl. DEQ, VDH, DHR, VIMS, DGIF, Corps, USFWS)
    5. All individuals and entities requesting to be placed on a list to be notified
    6. All localities that contain an MS4
- Publishing a public notice twice in newspapers with statewide coverage more than 30-days in advance of the close of the public comment period
- EPA concurrence with the final General Permit regulation.

We anticipate publishing the NOIRA and conducting the associated public comment period this winter/spring. After the conclusion of next year's General Assembly Session, we will formulate the regulatory advisory committee and begin development of the proposed regulations for the Board's consideration.

<u>Board Action</u>

The Department respectfully requests the Board to consider adoption of the attached motion.

Mr. Hornbaker asked if this had gone out for public notice. He said this was the first time he had seen this.

Mr. Dowling said that this was the first time the matter was being brought before the Board. He said that all staff was requesting at this point was for the Board to authorize DCR to start an action. He said that all recommended changes and regulations would come before the Board. He said this action was required by federal law.

Mr. Blake asked when the last permit was approved.

Mr. Dowling said that the permit expires on June 30, 2014 and that the action was taken in 2009.

Mr. Dowling said that this permit must be in place because model ordinances localities are required to adopt must mirror this permit. This will give sufficient time for localities to adopt the model ordinances.

Mr. Johnson noted that when the Board passed the Stormwater Management Regulations in May that the need for this permit was mentioned verbally. He noted that the requested action was procedural at this point.

Ms. Jamison asked how large the technical committee of stakeholders would be.

Mr. Johnson said that the committee could be as large as the recent stormwater Regulatory Advisory Panel, around thirty members. He said that the expertise of the RAP was helpful and that he would like to have the same perspective.

Ms. Jamison asked if this would involve the same people.

Mr. Johnson said there would be some overlap.

MOTION: Mr. Blake moved the following:

Motion to authorize and direct the filing of a Notice of Intended Regulatory Action (NOIRA) related to the Part XIV of the Board's Virginia Stormwater Management Program (VSMP) Permit Regulations and other related sections:

The Board authorizes the Director of the Department of Conservation and Recreation and the Departmental Regulatory Coordinator to prepare and submit a NOIRA to consider changes and solicit recommendations related to the Part XIV of the Board's Virginia Stormwater Management Program Permit Regulations **[entitled General Virginia Stormwater Management Program (VSMP) Permit for Discharges of Stormwater**

from Construction Activities] and other necessary related sections, including but not limited to, Part I definitions, the VSMP General Permit Registration Statement – Construction Activity Stormwater Discharges (DCR-01) form, or other forms which are incorporated by reference. The changes may include, but not be limited to, compliance with water quality and quantity standards setout in Part II of these regulations, compliance with Part III local program technical criteria of these regulations, compliance with the technical and administrative requirements setout in Technical Criteria and Permit Application Requirements for State Projects [Part IV], compliance with the general requirements setout in VSMP General Program Requirements Related to MS4s and Land-Disturbing Activities [Part VI], compliance with the requirements setout in VSMP Permit Applications [Part VII], compliance with the general permit conditions setout in VSMP Permit Conditions [Part VIII], Stormwater Pollution Prevention Plan requirements including water quality and quantity standards, consistency requirements with other regulations such as for erosion and sediment control, incorporating water quality requirements for impaired waters and TMDLs including the Chesapeake Bay, timing of effective date of permit coverage, registration statement requirements, timing of registration submittal and other registration processes, procedures for permit termination and transfer, operation and maintenance of construction site controls and procedures, natural resource protection considerations, and monitoring processes.

As part of this exempt process, and in accordance with § 2.2-4006 A8, the Board further authorizes that following the passage of 30 days from the publication of the Notice of Intended Regulatory Action form, a technical committee composed of relevant stakeholders be established to make recommendations to the Director and the Board on potential regulatory changes, that the Department hold other stakeholder group meetings as it deems necessary, and that the Department prepare a draft proposed regulation for the Board's review and consideration.

In implementing this authorization, the Department shall follow and conduct actions in accordance with the Administrative Process Act exemption requirements specified in § 2.2-4006 A8, the Virginia Register Act, and other technical rulemaking protocols that may be applicable.

This authorization extends to, but is not limited to, the drafting and filing of the NOIRA, the holding of public meetings if determined to be necessary, the development of the draft proposed regulation and other necessary documents and documentation, as well as the coordination necessary to gain approvals from the Attorney General, the Virginia Registrar of Regulations, and the U.S. Environmental Protection Agency.

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

SECOND: Mr. Brickhouse

DISCUSSION: None

VOTE: Motion carried unanimously

Approval of Fast-Track Regulatory Action to amend Section 4VAC50-60-54E (related to TMDL approvals) of the Virginia Stormwater Management Program (VSMP) Permit Regulations.

Mr. Dowling presented the recommended Fast-Track Regulatory Action.

Introductory remarks

Before the Board today for consideration is a motion to adopt an amendment to a single subsection (4VAC50-60-54 E) of the Board's recently readopted Virginia Stormwater Management Program Permit Regulations (effective September 13, 2011) to address a constituent concern, and to authorize the Department to file an amendment to this section utilizing a fast-track regulatory action.

Issue

Following readoption of the regulations at the May 24th meeting, the Director received a letter on August 5, 2011 stating the following:

> "On behalf of Chesapeake Bay Foundation, James River Association, and Southern Environmental Law Center, we write to follow up on the concerns we recently expressed to you. These concerns focus on the significant changes that were made to the stormwater management regulation between the time it was circulated to the public for comment and when it was submitted to the Soil and Water Conservation Board ("Conservation Board") for approval.
>
> We believe the changes made during that period would enshrine regulatory language on TMDL implementation that may be at odds with Virginia practice. Further, with the changes at issue, the regulation may impair the ability of Virginia to meet the commitments it made in the Chesapeake Bay TMDL Watershed Implementation Plan (WIP) and would, therefore be inconsistent with the General Assembly's directive for a stormwater regulation that complies with the Chesapeake Bay TMDL. For these reasons, which are set out more fully below, the changes have "substantial impact." *See* Va. Code § 2.2-4-007.06."

Versions of the language for comparison and reasons for further amending

Language from March 28, 2011 Version that Went out for Public Comment:

Part II B: Technical Criteria for Regulated Land-Disturbing Activities

4VAC50-60-63. Water quality design criteria requirements.

[A.] In order to protect the quality of state waters and to control ~~nonpoint source pollution~~ [the discharge of] stormwater pollutants [from regulated activities] , the following minimum [~~technical~~ design] criteria and statewide standards for stormwater management shall be applied to the site of a land-disturbing activity. ~~The local program shall have discretion to allow for application of the criteria to each drainage area of the site. However, where a site drains to more than one HUC, the pollutant load reduction requirements shall be applied independently within each HUC unless reductions are achieved in accordance with a comprehensive watershed stormwater management plan in accordance with 4VAC50-60-96.~~

1. New development. The total phosphorus load of new development projects shall not exceed ~~0.28~~ [~~0.45~~ 0.41] pounds per acre per year, as calculated pursuant to 4VAC50-60-65 [. ~~, except:~~]

~~a. The total phosphorus load of a new development project disturbing greater than or equal to one acre in the Chesapeake Bay watershed shall not exceed 0.28 pounds per acre per year, as calculated pursuant to 4VAC50-60-65.~~

~~b. Within~~ [~~a. Should the board establish by regulatory action a standard more stringent than 0.45 pounds per acre per year in the Chesapeake Bay watershed, then a qualifying local program may establish a standard of no greater than 0.45 pounds per acre per year to be applied within urban development areas designated pursuant to § 15.2-2223.1 of the Code of Virginia~~] ~~in the Chesapeake Bay watershed a qualifying local program may establish a phosphorus standard between 0.28 and 0.45 pounds per acre per year~~ [~~for projects greater than or equal to one acre in order to encourage compact development that achieves superior water quality benefits. The qualifying local program shall provide to the board for approval a justification for any standards established~~] ~~if greater than 0.28~~ [~~and shall define the types of projects within a UDA that would qualify for the~~] ~~relaxed~~ [~~standards. The standard shall be based upon factors including, but not limited to, number of housing units per acre for residential development, floor area ratio for nonresidential development, level of imperviousness, brownfield remediation potential, mixed-use and transit oriented development potential, proximity to the Chesapeake Bay or local waters of concern, and the presence of impaired waters. This provision shall not apply to department-administered local programs.~~]

~~c. Localities~~ [~~b. Should the board establish by regulatory action a standard more stringent than 0.45 pounds per acre per year in the Chesapeake Bay watershed, localities that have lands that drain to both the Chesapeake Bay watershed and other non-Chesapeake Bay watersheds may choose to apply the~~] ~~0.28 pounds per acre per year~~ [~~more stringent phosphorus standard for the Chesapeake Bay watershed to land-disturbing activities that discharge to watersheds other than the Chesapeake Bay watershed.~~

~~c. Upon the completion of the Virginia TMDL Implementation Plan for the Chesapeake Bay Nutrient and Sediment TMDL approved by EPA, the board shall by regulatory action establish a water quality design criteria for new development activities that is consistent with the pollutant loadings called for in the approved Implementation Plan.~~]

2. Development on prior developed lands.

a. [~~The total phosphorus load of projects a project occurring on prior developed lands and~~] ~~distributing~~ [For land-disturbing activities] disturbing greater than or equal to one acre [that result in no net increase in impervious cover from the predevelopment condition, the total phosphorus load] shall be reduced [~~to an amount~~] at least 20% below the predevelopment total phosphorus load.

~~However, the~~ b. [~~The total phosphorus load of a project occurring on prior developed lands and~~ For land-disturbing activities] disturbing less than one acre [that result in no net increase in impervious cover from the predevelopment condition, the total phosphorus load] shall be reduced [~~to an amount~~] at least 10% below the predevelopment total phosphorus load.

c. [For land-disturbing activities that result in a new increase in impervious cover over the predevelopment condition, the design criteria for new development shall be applied to the increased impervious area. Depending on the area of disturbance, the criteria of subdivisions a or b above, shall be applied to the remainder of the site.

d. In lieu of subdivision (c), the total phosphorus load of a linear development project occurring on prior developed lands may be reduced 20%.

e.] The total phosphorus load shall not be required to be reduced to below ~~0.28 pounds per acre per year~~ the applicable standard for new development unless a more stringent standard has been established by a [~~qualifying~~] local [stormwater management] program.

[~~3.~~B.] Compliance with [~~subdivisions 1 and 2 of this section~~ subsection A above] shall be determined in accordance with 4VAC50-60-65 ~~shall constitute compliance with subdivisions 1 and 2 of this section~~.

[~~4.~~C.] TMDL. In addition to the above requirements, if a specific WLA for a pollutant has been established in a TMDL and is assigned to stormwater discharges from a construction activity, necessary control measures must be implemented by the operator to meet the WLA in accordance with the requirements established in the General Permit for Discharges of Stormwater from Construction Activities or an individual permit [~~, which~~ . Such control measures must] address both construction and post construction discharges.

[D. Upon completion of the 2017 Chesapeake Bay Phase III Watershed Implementation Plan, the department shall review the water quality design criteria standards.

~~5.~~E.] Nothing in this section shall prohibit a [~~qualifying~~ local stormwater management] program from establishing [~~a~~] more stringent [~~standard~~ water quality design criteria requirements].

- We received a number of questions during the public comment period regarding how TMDLs would be implemented.
- We re-examined the language outlined above and noted that it would only be applicable to future construction projects and determined that the language needed to be moved from Part IIB to Part IIA overview section to make sure it applicable to all projects.

- We also felt the language could be improved to provide greater certainty regarding the implementation of additional control measures in a TMDL situation.
- We generally mimicked the language utilized elsewhere in the stormwater General Permits regarding TMDLs.

Language from May 24, 2011 Board Readopted Version:

Part II A: General Administrative Criteria for Regulated Land-Disturbing Activities

[4VAC50-60-54. Stormwater pollution prevention plan requirements.

A. A stormwater pollution prevention plan shall include, but not be limited to, an approved erosion and sediment control plan, an approved stormwater management plan, a pollution prevention plan for regulated land-disturbing activities, and a description of any additional control measures necessary to address a TMDL pursuant to subsection E.

B. An erosion and sediment control plan consistent with the requirements of the Virginia Erosion and Sediment Control Law and regulations must be designed and implemented during construction activities. Prior to land disturbance, this plan must be approved by either the local erosion and sediment control program or the department in accordance with the Virginia Erosion and Sediment Control Law and attendant regulations.

C. A stormwater management plan consistent with the requirements of the Virginia Stormwater Management Act and regulations must be designed and implemented during construction activities. Prior to land disturbance, this plan must be approved by the stormwater program administrative authority.

D. A pollution prevention plan that identifies potential sources of pollutants that may reasonably be expected to affect the quality of stormwater discharges from the construction site and describe control measures that will be used to minimize pollutants in stormwater discharges from the construction site must be developed before land disturbance commences.

E. In addition to the above requirements, if a specific WLA for a pollutant has been established in a TMDL and is assigned to stormwater discharges from a construction activity, additional control measures must be identified and implemented by the operator so that discharges are consistent with the assumptions and requirements of the WLA in a State Water Control Board approved TMDL.

F. The stormwater pollution prevention plan must address the following requirements, to the extent otherwise required by state law or regulations and any applicable requirements of a VSMP permit:

1. Control stormwater volume and velocity within the site to minimize soil erosion;

2. Control stormwater discharges, including both peak flow rates and total stormwater volume, to minimize erosion at outlets and to minimize downstream channel and stream bank erosion;

3. Minimize the amount of soil exposed during construction activity;

4. Minimize the disturbance of steep slopes;

5. Minimize sediment discharges from the site. The design, installation and maintenance of erosion and sediment controls must address factors such as the amount, frequency, intensity and duration of precipitation, the nature of resulting stormwater runoff, and soil characteristics, including the range of soil particle sizes expected to be present on the site;

6. Provide and maintain natural buffers around surface waters, direct stormwater to vegetated areas to increase sediment removal and maximize stormwater infiltration, unless infeasible;

7. Minimize soil compaction and, unless infeasible, preserve topsoil; and

8. Stabilization of disturbed areas must, at a minimum, be initiated immediately whenever any clearing, grading, excavating or other earth disturbing activities have permanently ceased on any portion of the site, or temporarily ceased on any portion of the site and will not resume for a period exceeding 14 calendar days. Stabilization must be completed within a period of time determined by the stormwater program administrative authority. In arid, semiarid, and drought-stricken areas where initiating vegetative stabilization measures immediately is infeasible, alternative stabilization measures must be employed as specified by the stormwater program administrative authority.

G. The SWPPP shall be amended whenever there is a change in design, construction, operation, or maintenance that has a significant effect on the discharge of pollutants to state waters and that has not been previously addressed in the SWPPP. The SWPPP must be maintained at a central location onsite. If an onsite location is unavailable, notice of the SWPPP's location must be posted near the main entrance at the construction site.

- However, the language utilized above speaks to a "State Water Control Board approved TMDL". In the past this has presented no problems. However, there are now two TMDLs, one being the Chesapeake Bay TMDL, that the EPA has approved but the State Water Control Board has not approved as of yet.
- It is this issue upon which the conservation organizations have expressed concern. Again they are concerned that as written "[t]hese changes will have the substantial impact of allowing construction operators in several situations to avoid responsibilities in implementing controls to meet TMDL WLAs".
- We have listened to these concerns, have met with the Department of Environmental Quality, and have spoken with stakeholders and believe we have consensus around the following amendments:

4VAC50-60-54. Stormwater pollution prevention plan requirements.

E. In addition to the above requirements, if a specific WLA for a pollutant has been established in ~~a~~ an approved TMDL and is assigned to stormwater discharges from a construction activity, additional control measures must be identified and implemented by the operator so that discharges are consistent with the assumptions and requirements of the WLA ~~in a State Water Control Board approved TMDL~~.

We are seeking to advance this noncontroversial amendment through a fast-track regulatory action.

Fast-track Regulatory Process

- The Fast-track Process is **appropriate when an action is expected to be noncontroversial**. A rulemaking is deemed noncontroversial if no objections are received from (1) certain members of the General Assembly or (2) ten or more members of the public.

- After approval of the draft final language by the Board and subsequent review by the Administration (DPB, SNR, and Governor), a notice of a proposed fast-track rulemaking will be published in the *Virginia Register of Regulations* and will appear on the Virginia Regulatory Town Hall. This will be followed by a public comment period of at least 30 days.

- If, during the public comment period, an objection to the fast-track regulation is received from:
  - Any member of the applicable standing committee of the Senate,
  - Any member of the applicable standing committee of the House of Delegates,
  - Any member of the Joint Commission on Administrative Rules (JCAR), or
  - 10 or more members of the public,

  then publication of the fast-track regulation will serve as the Notice of Intended Regulatory Action (NOIRA) and standard rulemaking process is followed to promulgate the regulation.

- If there are no objections as described above, the regulation will become effective 15 days after the close of the public comment period, unless the regulation is withdrawn or a later effective date is specified by the Board.

In accordance with the attached motion, we respectfully request the Board to approve these final regulatory amendments to section 4VAC50-60-54 E and to authorize and direct the filing of the amendments as a fast-track regulatory amendment action. With that overview, I am happy to answer any questions, or turn it back to you Mr. Chairman for public comment and subsequent Board action.

Mr. Dowling said that there were members of the public wishing to comment.

Peggy Sanner of the Chesapeake Bay Foundation said that she wanted to thank DCR staff on behalf of the Foundation for the careful work to fix what was considered to be a problem. She said that CBF agreed with the proposed language change and considered to be a fix. She said that CBF would support the recommendation Mr. Dowling brought forward.

MOTION: Mr. Hornbaker moved the following:

Motion to adopt specified amendments to 4VAC50-60-54 E of the Board's recently readopted Virginia Stormwater Management Program Permit Regulations as they will become effective on September 13, 2011, and to authorize and direct the filing of the amendment as a fast-track regulatory amendment action:

The Board adopts the following final regulatory language:

> **4VAC50-60-54. Stormwater pollution prevention plan requirements.**
>
> E. In addition to the above requirements, if a specific WLA for a pollutant has been established in ~~a~~ an approved TMDL and is assigned to stormwater discharges from a construction activity, additional control measures must be identified and implemented by the operator so that discharges are consistent with the assumptions and requirements of the WLA ~~in a State Water Control Board approved TMDL~~.

Further, the Board authorizes the Director of the Department of Conservation and Recreation and the Departmental Regulatory Coordinator to submit as a fast-track action the Board's final amendment to section 4VAC50-60-54 E of the Board's Virginia Stormwater Management Program (VSMP) Permit Regulations to the Virginia TownHall and upon approval by the Administration to the Registrar of Virginia.

The Department shall follow and conduct these actions in accordance with: the fast-track processes within the Administrative Process Act, the Virginia Register Act, the Board's Regulatory Public Participation Procedures, the Governor's Executive Order 14 (2010) on the "Development and Review of Regulations Proposed by State Agencies", and other applicable technical rulemaking protocols.

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

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

SECOND: Ms. Jamison

DISCUSSION: None

VOTE: Motion carried unanimously

Introduction of New Board Member

Mr. Johnson said that new Board member Herb Dunford had arrived and introduced Mr. Dunford to the Board. Mr. Dunford joined the Board on the dais for the remainder of the meeting.

Update on Legislative Initiative to Integrate Erosion and Sediment Control, Stormwater Management and Chesapeake Bay Preservation Act Programs and to update the Stormwater Management Act

Mr. Dowling gave the following presentation:

Virginia Stormwater Management Program: A Status Report

Background

- Stormwater program changes began in 2004:
  - Moved from DEQ to DCR and Virginia Soil and Water Conservation Board (HB 1177)
- 2005 DCR received Clean Water Act authorization from EPA:
  - DCR responsible for construction and MS4 permitting

Background – Regulatory Process

- Authorization for regulator action July 2005:
  - Part II Stormwater Management Program technical criteria (water quality and quantity); Part III Local Program criteria; Part I Definitions.
  - 100+ public meetings; design charrettes.
  - Developed Runoff Reduction Methodology and new practice design specs.
  - Established BMP Clearinghouse.

- 2010 legislation ties new stormwater regulations to new Chesapeake Bay TMDL:
  - EPA established the TMDL on December 29, 2010.

2010 Legislation

- Called for a regulatory advisory panel (RAP):
  - 35-members (home builders, consultants, engineers, local governments, state and federal agencies, environmental organizations, agriculture, offset bank, commercial real estate).
- Much of the work was done in five standing subcommittees:
  - Grandfathering
  - Water Quality

    - Local Program Delegation
    - Water Quantity
    - Offsets
- Board voted to amend and readopt final regulations May 24, 2011.

Final Regulations Strike a Balance

- General consensus.
- Established on a sound scientific basis.
- Advance water quality protections.
- Responsibly regulate land disturbing activities.
- Establish "one-stop-shopping":
    - Integrate local and state.
    - Greater efficiency/consistency.

Moving toward Implementation

- Executive Office review completed and published on Aug. 29th.
- Regulations effective on September 13th.
- Local governments voluntarily adopting program to notify DCR within six months (likely by March 2012).
- Between October 2011 and July 2014, localities develop and adopt programs and local ordinances.
- Implementation begins July 2014:
    - VSMP construction general permit
    - Local program ordinances.

Mr. Dowling noted that implementation of stormwater management programs at the local level is key to our collective success. He showed a map depicting those localities that in accordance the Code of Virginia are required to adopt a local stormwater management program and those that may elect to adopt a local stormwater management program. He emphasized that should a locality elect not to operate a program, that stormwater management will be implemented through a DCR-run program, likely contracted out.

Fees and Program Implementation

- Program must be funded by permit fees.
- This is not an unfunded mandate.
- Fees set to support local programs. Localities can adjust.
- Grants for program development available at no cost.
- Localities do not have to operate a program on their own.
  Potential partners with:
    - Soil and Water Conservation Districts
    - PDCs

- Adjacent localities
- Others

Benefits for local government adopting a local stormwater management program

- Complements existing Erosion and Sediment Control program.
- Local control:
  - Speed of plan review and approval.
  - Economic Development Advantage.
  - Address local issues.
- Streamlined "one-stop-shopping" for development community.
- Priority points for Virginia Clean Water Revolving Loan Fund.
- Receive most of stormwater fees; cost-share with others for services.

Next Steps

- Local program submittal/approval.
- Localities implementation workgroup of localities:
  - "Day-to-day" administrative operations; guidance development.
  - Model ordinance(s)
- DCR Enterprise website.
- Construction general permit regulatory action.
- Adoption by opt-in localities.
- Training local governments, contractors, engineers, state agencies.
- Expand BMP Clearinghouse:
  - Nonproprietary BMPs.
  - Proprietary/TARP.
  - BMP quick review/adoption.
- Complete stormwater management handbook.

Next Steps: Consolidation Process

- Integrate erosion and sediment control, Chesapeake Bay Preservation Act, stormwater management program.
- DCR reorganized to administer and existing water quality programs.
- Draft 2012 legislation:
  - Will not expand Bay Act.
  - Streamline program administration.
  - Consider requiring all localities to assume a program.
  - Work with VML and VACo on approach.
- Regulatory consolidation.
- DCR to consolidate local program reviews.
- Local level program integration and permit consolidation.

- Integrated local training; increased technical assistance.

Mr Dowling noted that in keeping with our internal reorganization, and in seeking greater efficiency and consistency in program administration (streamlining), the Department is considering legislation for the 2012 Session that will further integrate the various erosion and sediment control and Chesapeake Bay Preservation Act program provisions with the Stormwater Management program provisions.

Consolidation Benefits

- Customer time savings through "one-stop shopping."
- Uniformity of information; greater understanding; developers and engineers will appreciate one set of standards.
- Facilitates uniform program oversight and enforcement.
- Reduces program confusion and friction; differences in interpretation minimized.
- Less redundancy and overlap with localities.
- Increased compliance and efficiency.
- Allows DCR to focus on technical and customer service, training and oversight; not implementation.
- Program consolidation helps localities streamline efforts of limited staff.

Mr. Dunford asked what the timeframe was for the completion of the BMP handbook.

Mr. Dowling said that he did not have a specific completion date, but that the work was about 95% complete. The hope had been for the work to be done before the regulations moved forward. The handbook is online but there will be further refinements now that the regulations are complete.

<u>Regulatory Update: Resource Management Plans</u>

Ms. Watlington gave an update regarding resource management plans.

Resource Management Plan Regulations

2011 Legislative Session

- House Bill 1830 established resource management plans (RMPs)
- Delegate Scott chief patron
- Heavily utilized by Virginia in Chesapeake Bay Phase I Watershed Implementation Plan (WIP)
- Regulations must
    - Be technically achievable
    - Take into consideration the economic impact to the owner or operator

Key Provisions

- Agricultural landowner or operator who fully implement and maintain a RMP shall be deemed fully compliant with any load allocation in a TMDL, requirements of the Chesapeake Bay Phase I WIP, and any applicable state water quality requirements for nutrients and sediment.
- Utilizing an RMP does not preclude or prevent the enforcement of required permits or other applicable laws.
- Agriculture landowners and operators are eligible for matching grants through the cost-share program for implementing and maintaining a RMP.

Criteria of regulations

- Regulations must include:
    - Determinations of persons qualified to develop RMPs and to perform on-farm assessments
    - Plan approval or review procedures if necessary
    - Allowable implementation timelines and schedules
    - Effective lifespan of RMPs
    - Factors necessitating renewal or new plan development
    - Means to determine full implementation and compliance including reporting and verification
    - Development of a process for on-farm assessment of all reportable best management practices (BMPs)
    - Include BMPs sufficient to address TMDLs and the Chesapeake Bay WIP
    - Specify that all components of a RMP be based on an individual on-farm assessment.

Regulatory Process

- Abbreviated Administrative Process Act process
- Virginia Soil and Water Conservation Board initiated regulatory action on March 10, 2011
- Legislation requires formation of stakeholder advisory group
- Board proposes regulations; Department of Planning and Budget prepares economic impact analysis
- 60 day public comment period with 1 public hearing
- Board adopts final regulations
- 15 days after publication, regulation becomes final

Regulatory Advisory Panel

- Full RPA met June 29, 1011

- Three subcommittees formed
  - Assessment
  - Plan development
  - Compliance
- All 3 subcommittees have met once; next meetings planned for late September
- Full RAP meeting planned for October

Goal timeline

- Regulations presented to Board at December 2011 meeting
  - Consensus on regulations by RAP
    - Subcommittees meet, recommendations presented
- Regulations effective by July 1, 2012
  - Economic impact by DPB
  - Public comment period – 60 days
  - Final adoption by Board

Ms. Jamison asked how this tied in with the voluntary BMP assessment.

Ms. Martin explained that this is a voluntary program. There are currently six pilot programs using the assessment and gathering data. The hope is to gather information to bring back to the RAP.

Mr. Hornbaker asked how this would be enforced.

Ms. Watlington said that was still under discussion. She said that at the moment the compliance subcommittee was leaning toward making DCR the enforcing agent bu that this may be subject to change.

Mr. Hornbaker said that in Loudoun County alone there were thousands of agricultural landowners.

Ms. Martin said that the program is voluntary and landowners may choose to participate. If landowners choose to participate there is a regulatory process.

Mr. Dowling said that part of the reason for making this a regulatory process was so that procedures and accounting are handled consistently. This is not meant to be punitive if landowners do not participate.

<u>Local Soil and Water Conservation District Operations</u>

District Director Resignations and Appointments

Ms. Martin presented the District Director Resignations and Appointments.

Blue Ridge

Resignation of Timothy Johnson, Franklin County, effective 3/28/11, appointed Extension Agent director position (term of office expires 1/1/13).

Recommendation of Sheri Dorn, Roanoke County, to fill unexpired Extension Agent term of Timothy Johnson (term of office to begin 10/8/11 – 1/1/13).

Colonial

Resignation of Harry G. Hager, M.D., York County, effective 5/23/11, elected director position (term of office expires 1/1/12).

Daniel Boone

Resignation followed by death of Ernest L. Whitt, effective 6/9/11, appointed director position (term of office expires 1/1/15).

Recommendation of Robert (Bobby) V. Burchett, Lee County, to fill appointed director position term of Ernest L. Whitt (term of office to begin on 10/8/11 – 1/1/15).

Shenandoah Valley

Resignation of Amber Vallotton, Rockingham County, effective 9/30/11, appointed Extension Agent director position (term of office expires 1/1/13).

Recommendation of Matthew Yancey, Rockingham County, to fill unexpired Extension Agent term of Amber Vallotton (term of office to begin 10/8/11 – 1/1/13).

Tri-County/City

Recommendation of Andrew Vella, City of Fredericksburg, to fill elected director position term of Anne G. Little* (term of office to begin on 10/8/11 – 1/1/12).

Recommendation of Lewis Gordon Linkous, City of Fredericksburg, to fill elected director position of Kathleen C. Harrigan* (term of office to begin on 10/8/11 – 1/1/12).

* The Board accepted resignations of Ms. Little and Ms. Harrigan at the Board's May 24, 2011 meeting which resulted in vacant director positions on this SWCD Board.

MOTION: Mr. Hornbaker moved that the Virginia Soil and Water Conservation Board approve the list of District Director Resignations and Appointments as presented by staff.

SECOND: Mr. Brickhouse

DISCUSSION: Ms. Jamison said that the Blue Ridge District would request that the term of office beginning date for Sheri Dorn be amended to September 26, pending the oath of office.

Mr. Hornbaker and Mr. Brickhouse agreed to the amendment.

VOTE: The motion carried as amended.

Partner Reports

Natural Resources Conservation Service

Mr. Bricker gave the report for the Natural Resources Conservation Service. A copy of that report is included as Attachment # 2.

Virginia Association of Soil and Water Conservation District Directors

Dr. Chaffin represented he Virginia Association of Soil and Water Conservation District Directors.

Mr. Chaffin said that the Association recently completed their annual Graves Mountain Training. This is an important way for staff and district directors to learn what is happening across the state.

The winner of the 2011 Envirothon was Fort Defiance High School from the Headwater District. They went on to the International Envirothon in Canada and took 7th place in that competition. Each of the students who participated received a scholarship.

Mr. Chaffin invited Board members to the Association Board of Directors meeting on September 15th at the Henricopolis Soil and Water Conservation District.

The Association annual meeting will be held in December at the Richmond Omni. The Virginia Soil and Water Conservation Board will meet at the Omni on December 7 at the conclusion of the VASWCD meeting.

Public Comment

There was no further public comment.

Election of Officers

MOTION: Ms. Jamison moved that the current slate of officers be reelected for another term with Ms. Hansen as Board Chair and Mr. Simms as Vice Chair.

SECOND: Mr. Hornbaker

DISCUSSION: There were no further nominations.

VOTE: Motion carried unanimously.

New Business

There was no additional new business.

Adjourn

There was no further business and the meeting was adjourned.

Respectfully submitted,

Raymond L. Simms
Vice Chair

David A. Johnson
DCR Director

Attachment #1

Department of Conservation and Recreation
Division of Stormwater Management

Report to the Virginia Soil and Water Conservation Board
September 8, 2011

1. DCR/SWCD Operational Funding: Grant agreements with DCR were issued in May, 2011 for operational funding this fiscal year (FY12). Each of the 47 SWCDs has returned a fully endorsed agreement to their CDC and each has or will be issued 25% of the approved operational funding for FY12.

2. Conservation Partner Employee Development: The conservation partners continue to work through the Joint Employee Development or "JED" system which relies on 4 regional teams (coordinated through a separate state level JED team) to address training and development of SWCD and other partner agency field staff. The last quarterly meeting of the state JED group was held on August 2nd, 2011. The next meeting of the JED state team will be held in November.

3. SWCD Dams: The SWCD dam owner work group comprised of representatives from the 12 SWCDs that own dams, DCR NRCS and others, continues to meet approximately every 4 months. The group voted to change to 3 meetings per year, on session is focused on Emergency Action Plans (EAPs), another meeting addresses routine annual maintenance of district dams and the remaining meetings address the topics identified by the group. The group last met on July 21, 2011 and included SWCDs, NRCS, and DCR. The group will meet again on November 17, 2011 in Charlottesville.

4. VA Agricultural BMP Cost Share (VACS) Program: The VA Agricultural BMP Cost Share Program Technical Advisory Committee (TAC) met August 18th and focused on program revision. Subcommittees will examine suggested changes and bring recommendations to the next TAC meetings October 25, 2011. Monthly revenues from land recordation fees are deposited for cost share program use; through June 2011, DCR collected $8,509,725, a shortfall from the projected $9.1 million.

CREP: Signup continues statewide with large numbers of projects. Slightly less than 1,600 acres are available in the Southern Rivers drainage and just over 9,200 acres of CREP remain available for enrollment in the Chesapeake Bay drainage basin.

5. Nutrient Management: Two continuing education meetings were held to provide updates to the state cost share program, upcoming changes to the NutMan software, and requirements to become a Technical Service Provider for NRCS.

6. DCR TMDL Activities: In addition to working on current TMDL implementation plans, DCR is providing input on the proposed 2012 DEQ TMDL development schedule and several implementation plans that address bacteria and aquatic life impairments.

DCR will pilot cost-sharing on a pasture management BMP (SL-10T) with three Districts in PY12 in TMDL implementation project areas. Currently DCR is managing 25 TMDL Implementation projects: 15 funding agricultural practices through WQIF/VNRCF and 10 funded mainly by federal 319 funds.

DCR will be issuing an RFP for new TMDL Implementation Projects. $1.4-$2.5 million of state (VNRCF) and federal (319) funds will be used to support new TMDL Implementation projects. Projects will be selected throughout the Commonwealth.

7. Chesapeake Bay TMDL: Phase 1 of Virginia's Watershed Implementation Plan (WIP) was approved by EPA. Phase 2 requires plans on a smaller segment scale. DCR staff will coordinate development of the Phase 2 WIP with the goal of preparing a draft plan by the close of this calendar year. DCR has been meeting with the PDCs and localities in VA's Chesapeake Bay Watershed. Most of the PDCs will collaborate with localities to holding meetings, gather and verify BMP data and discuss any potential regional strategies to implement additional BMPs to meet the Bay TMDL load reduction goals.

8. Stormwater Management Program: The revised Stormwater regulations were released by the Governor and have gone through public comment on the Town Hall. They will become effective September 13. DCR staff has issued coverage to 1001 projects qualifying for the General Permit for Discharges of Stormwater from Construction Activities for the period of March 2, 2011 through September 8, 2011.

9. Healthy Waters Initiatives in Virginia – DCR received special allocation funds from EPA Region 3 through Section 319 grants, to fund Healthy Water Initiative activities throughout the Commonwealth. EPA provided $50,000 for a project in the Clinch-Powell watershed in Southwestern Virginia with the Daniel Boon SWCD and The Nature Conservancy. Its goal is to implement on-the-ground BMP and protection activities to protect valuable habitat conservation zones. A second project has received $151,000 to implement projection and assessment work in the Chowan Watershed and in the Albemarle-Pamlico Estuary in the Southeaster part of Virginia. This project will attempt to create one of the nation's first Healthy Water Protection and Implementation Plans.

Attachment #2

NRCS REPORT
VA Soil and Water Conservation Districts Board Meeting
VA General Assembly Building
September 8, 2011

FARM BILL PROGRAMS

Financial Assistance Programs:

CBWI and EQIP - We were allocated a total of $27,817,709 in these two funds and have obligated 98% of the funds. We have developed 870 contracts with landowners and have 22 more to be finalized in the next few weeks. We have a backlog of eligible applications totaling $13.8 million.

WHIP – We were allocated $545,436 and have obligated 98% of the WHIP funds in 76 contracts. Additional funds have been requested and received for 12 more contracts totaling $95,949.

CSP

- Allocation = $1,240,168
- New contracts = 89 for $1,141,244 on 46,510 acres

CCPI

- New River- Highlands RC&D (EQIP) = $990,020
- Chesapeake Bay Foundation (EQIP) = $50,000
- Fish America (EQIP) = $1,220,971
- Forestry Foundation (CBWI) = $119,963
- Shenandoah RC&D (CBWI) = $667,947
- Trout Unlimited (CBWI) = $27,925
- VA Dept. of Game and Inland Fisheries (WHIP) = $40,604
- Trout Unlimited (WHIP) = $1,467

National CIG = $1,811,210

- National Fish and Wildlife Foundation (DE, MD, PA, VA, WV) under CBWI = $848,424. Project Title: “Using excess manure to generate farm income in the Chesapeake’s phosphorus hot spots”.
- The American Chestnut Foundation (KY, OH, PA, VA, WV) under National category = $541,136. Project title: “Use chestnut to establish forest plantings on reclaimed mine sites in Appalachia, develop an online trees database to store, share and track data, run workshops to evaluate mined sites for plantings”.
- Eastern Shore RC&D Council (Virginia only) under CBWI category = 421,650. Project title: “On-farm demonstration of energy generation and phosphorus recycling as an alternative to land application of poultry litter on the Delmarva”.

State CIG = $248,704

- Colonial SWCD for Green Seeker Implementation = $15,804
- Colonial SWCD for Zone Based Nitrogen Management in Corn = $50,000
- VA Tech for Precision Fertilizer Management = $75,000
- VA Tech for Large Animal Mortality = $2,900
- VA Tech for Reducing Phosphorus Excretions in Grazing = $30,000
- Local Food Hub for Comprehensive Outreach and Marketing = $75,000

Additional CTA Funding Proposals = $315,800

- Extend VDGIF Agreement for 2 years for Private Lands Biologists
- Renew DOF Agreement for EQIP and CSP Technical Support
- Renew DOF Agreement for Forestry Training
- Renew CBF Agreement for Technical Support in Shenandoah Valley

WRP

- FY-11 Allocation is $1,155,642. Total obligated is $1,150,213 for 6 permanent easements on 284 acres and one 10-year easement on 3.4 acres.
- Restoration ongoing on 6 sites totaling 94.4 acres.
- Held 3 day training course on wetland restoration on August 23-25, 2011.
- Contracting for new Market Analysis to develop new Geographic Area Rate Caps.

GRP

- FY-11 allocation is $694,027. 100% obligated on 2 permanent easements on 200.17 acres and three 10-year and one 15-year rental agreements on 473.33 acres.
- Contracting for new Market Analysis to develop new Geographic Area Rate Caps.

FRPP

- FY-11 allocation is $1,587,170. Obligated $746,200 on 3 easements totaling 548.75 acres.

SMITH CREEK WATERSHED UPDATE

Smith Creek, Virginia's Chesapeake Bay Showcase Watershed. 22 new Farm Bill contracts totaling $763,369 have been completed with CBWI funds this year. To date, 98 farm resource inventories have been completed on 9,422 acres in this watershed. Additional assistance includes conducting outreach (one-on-one meetings with farmers); developing newsletters; and help with field days, such as the Smith Creek Landowners Breakfast, which was attended by 40 people and the Virginia Forage and Grassland Council's Summer Tour in the watershed.

WATERSHED OPERATIONS - Congress has zeroed out funding for the Watershed Operations Program and will continue to be zeroed out in 2012. We will keep you posted on this issue as we know more.

North Fork Powell River Watershed – Five sites have been completed using ARRA funds to remediate abandoned mine land sites in this Watershed. The project was sponsored by the Lee County Board of Supervisors, the Daniel Boone SWCD, and the Virginia Department of Mines, Minerals and Energy.

DAM REHABILITATION - Dam Rehabilitation was reduced to $18 million nationwide and may be zeroed out in the 2012 budget.

Pohick Creek Site 3 (Woodglen Lake) in Fairfax County – This project has been completed and we are finalizing all the paperwork to close out the project.

Pohick Creek Site 2 (Lake Barton) in Fairfax County – Construction has been completed. Tree and shrub planting will be completed this fall.

Pohick Creek Site 8 (Huntsman Lake) in Fairfax County – A final plan has been completed and we will obtain the Sponsors approval by the end of FY-11.

South River Site 10A (Mills Creek) in Augusta County – NRCS is currently working on the final design for this project. A request for construction funding was submitted for 2012.

Upper North River 10 (Todd Lake) in Augusta County – NRCS staff is assisting the Headwaters SWCD and Augusta County to develop a rehabilitation plan for this dam. The final plan will not be completed until 2012.

Assessments for High Hazard Dams – All nine assessments have been completed for Virginia.

EWP – NRCS completed assistance to Washington County through emergency watershed program dollars to remove debris from stream channels, resulting from the Spring heavy winds and tornadoes. We also completed 2 stream restoration projects of cobble and debris removal in the Town of Narrows. Our field staff is completing inventories and assessments of damages from Hurricane Irene but no eligible sites have yet been identified in these eastern Virginia counties.

DAM INSPECTIONS FOR QUAKE DAMAGE

NRCS worked with local Sponsors to have all 150 NRCS assisted flood control structures inspected after the 5.8 magnitude earthquake on August 23. Within 3 days of the earthquake, 88% of the High hazard structures, 48% of the Significant hazard structures and 68% of the Low hazard structures had been inspected. All 150 structures have been inspected by the Sponsors and/or NRCS, and no problems as a result of the earthquake were reported.

9th ANNUAL SMALL FARM FAMILY CONFERENCE

VSU will present its 9th Annual Small Farm Family Conference on November 1-2, 2011, at the Institute for Advanced Learning and Research, 150 Slayton Avenue in Danville, Virginia. Various workshops will be presented.

HUGH HAMMOND BENNETT MARKER DEDICATION

NRCS Chief Dave White paid tribute to the late Hugh Hammond Bennett, the first chief of USDA's Soil Conservation Service, during a July 15, 2011, historical marker dedication ceremony in Louisa County. Bennett was working with a partner doing soil surveys in Louisa when he experienced what he called an "epiphany" regarding the need to conserve the soil. White joined local partners to help unveil the marker and present official proclamations from Virginia's governor, Louisa County and the Town of Louisa to Bennett family members: Hugh Hammond Bennett, III, his wife Nina, and his brother, Robert. The program also celebrated the completion of Virginia's initial soil survey mapping.

NUFFIELD SCHOLARS' WORLDWIDE TOUR

Virginia NRCS and the Center for Rural Culture hosted this year's Nuffield Scholars delegation, a travelling scholarship program for farmers throughout the British Empire, from June 18th through the 24th. During the week they learned about oyster growing, harvesting, and processing; toured a Pittsylvania dairy farm, anaerobic digester, Chatham Ag Development Complex, and several farms in Goochland County. They also visited historic Jamestown and Williamsburg. They ended their visit by engaging in a dialogue with VA policy makers, and a tour of the VA State Capital.

STATE FAIR OF VIRGINIA 2011

NRCS will be participating in this year's Fair at the Meadow Park Event from September 29th to October 9th. A joint display with Farm Service Agency and Rural Development will be located in

the Commonwealth Building. The theme for this year will be "Partners and Protecting the Environment." The booth will be staffed by Agency volunteers and

will include an energy model showing wind power, a Soils display with monoliths and run-off boxes, and a buffer exhibit featuring native species.

WOMEN & LAND WORKSHOPS

The Virginia Department of Forestry is working with NRCS, Shenandoah Valley RC&D, and the Appomattox and Shenandoah SWCDs to host two ***Women and Land*** workshops in September. The programs will be held from 4 to 8 p.m. on September 22 (Petersburg) and September 29 (Harrisonburg).

This series is designed for women who own forest or agricultural land with their families but who may or may not be the primary managers of that land. The workshops will focus on the importance of having a written management plan and introduce participants to the various types of plans available. Speakers will include female forestry and agricultural natural resource professionals. For more information, email Heather Dowling or contact her by phone at 804-467-7343

DISCRIMINATION CLAIMS BY HISPANIC AND WOMEN FARMERS

As part of continued efforts to close the chapter on allegations that discrimination occurred at USDA in past decades, this past February, Agriculture Secretary Tom
Vilsack and Assistant Attorney General Tony West announced the establishment of a process to resolve the claims of Hispanic and women farmers and ranchers who assert that they were discriminated against when seeking USDA farm loans. Under Secretary Vilsack's leadership, USDA is addressing civil rights complaints that go back decades.

In conjunction with this announcement, USDA has launched an outreach effort to potential claimants. We are asking our partners to help us communicate to individuals who feel they have been improperly denied farm loan benefits between the years 1981 and 2000 that they may want to register to receive a claims package by calling the Farmer and Rancher Call Center at 1-888-508-4429 or access the following website; www.farmerclaims.gov.