

**Virginia Soil and Water Conservation Board  
Friday, January 20, 2006 – 9:30 a.m.  
Natural Resources Conservation Service  
Richmond, Virginia**

**MINUTES**

**Virginia Soil and Water Conservation Board Members Present**

Linda S. Campbell, Chair	Benjamin H. Graham
Robert M. “Bobby” Hall	Susan Taylor Hansen
Granville M. Maitland, Vice Chair	Joseph H. Maroon, Director, DCR
Richard E. McNear	Jean R. Packard
Michael J. Russell	Ray Simms
Ray Dorsett For M. Denise Doetzer, NRCS, Ex Officio	

**DCR Staff Present**

Al Albiston, Office of the Attorney General	William G. Browning
David C. Dowling	Michael R. Fletcher
Jack E. Frye	Lee Hill
Mark B. Meador	Jim Robinson

**Others Present**

John Bailey, Lake of the Woods Association  
Wade Biddix, NRCS  
Tyler Bishop, McGuire-Woods  
Neil Buttimer, Lake of the Woods Association  
Jim Byrne, VASWCD  
Lee Frame, Lake of the Woods, Lake of the Woods Association  
Robin Knepper, Fredericksburg Freelance Star  
Doug Rogers, Lake of the Woods Association  
Don Weinert, Lake of the Woods Association  
Barbara White, Department of Forestry

**Call to Order**

Vice Chairman Maitland called the meeting to order. He thanked NRCS for the use of the building and thanked members for attending.

**Introductions**

Mr. Maitland asked members, staff and guests to introduce themselves.

**Minutes of November 21, 2005 Meeting**

- MOTION: Ms. Packard moved that the minutes of the November 21, 2005 meeting of the Virginia Soil and Water Conservation Board be approved as submitted.
- SECOND: Ms. Campbell
- DISCUSSION: None
- VOTE: Motion carried unanimously.

**Director's Report and Legislative Update**

Mr. Maroon gave the Director's report. He referenced a legislative and budget summary provided in member packets. (Attachment #1)

Mr. Maroon reviewed in detail the following bills.

- **HB 596 Flood Prevention and Protection Assistance Fund; Fund includes dam safety and its companion SB 624.**
- **HB 597 Dam safety; penalties**
- **SB 274 Stormwater management; certain localities required to adopt program related thereto.**

Ms. Hansen asked if it would be beneficial for the Board to express support of the first three bills reviewed by Mr. Maroon.

Mr. Maroon said that the Board supported these bills conceptually at their July meeting.

Ms. Hansen noted that if individual Board members contacted the legislators, it would be more effective.

Mr. Graham expressed concern about endorsing the legislation without having seen the full text of the bill.

Staff made arrangements to provide copies of these bills later in the meeting for further consideration by the Board.

Mr. Maroon announced that Governor Kaine had appointed former Delegate L. Preston Bryant, Jr. of Lynchburg to serve as Secretary of Natural Resources. He also reported that Nikki

Rovner, formerly with The Nature Conservancy been appointed Deputy Secretary and Jeff Corbin, formerly with the Bay Foundation, had been appointed Assistant Secretary.

### **Dam Safety Certificates and Permits**

Mr. Maroon said that, for the purposes of allowing the new Secretary of Natural Resources to become more familiar with the Board process for addressing dam safety certificates and permits, Secretary Bryant had asked that the Board defer action on these matters until their next meeting. He noted that the Board could move forward with routine actions and issue extensions to the remaining items that were submitted for approval.

The Board discussed the request. As a result of a question, Mr. Browning said that he did not believe a two-month deferral of action would have any adverse impact. He did note that it would be helpful for staff to be able to interact with dam owners, particularly those who are planning construction or modifications. He said it would be helpful for the Board to clarify that if an owner was ready to move with an alteration or construction permit, that staff would issue the approval and the Board would sanction the action at the next Board meeting.

Mr. Maroon said that staff would recommend that the Board take the following actions:

- 1) Approve the 6 dams that need regular six-year certificates.
- 2) Recommend that the remaining permits and certificates be given an extension until the next Board meeting. Mr. Browning said that in consultation with legal counsel from the Attorney General's Office, the Board would be retaining the same posture with regard to these dam permits.
- 3) Authorize the Department to allow any dam owner the ability to move forward with a contractor by providing them with an alteration or construction permit.
- 4) Address enforcement issues at the next Board meeting.

Mr. Browning reviewed the Dam Safety Certificate and Permit Recommendations:

#### *Out of Compliance*

Mr. Browning said that no actions were needed with regard to the Out of Compliance Dams. He introduced Mr. Al Albiston from the Office of the Attorney General to give an update with regard to Lake Mellot Dam in Fauquier County, Inventory #06119.

Mr. Albiston noted that the Department has been working to bring this dam into compliance for several years. There are two owners of the dam. After several extended efforts attempting to get an appropriate response from the owners and the property association, a bill of complaint was filed in Fauquier County Circuit Court on December 27, 2005. This action is asking the

circuit court to direct compliance with what DCR has documented. That includes lowering the lake level and making changes to the intake structure. This request is accompanied by complaints from a downstream landowner who experiences periodic flooding.

The owners were served notice on January 11. An answer is due on January 25. If there is no answer, the Office of the Attorney General will contact the owners verbally and explain clearly what actions might be needed.

In response to a question, Mr. Albiston said that both owners have limited financial funds to deal with the necessary actions. He noted that the homeowner's association has expressed an interest in taking the lead on the necessary corrections.

No actions were needed on the Out of Compliance Dams.

*Operation and Maintenance Certificates*

Mr. Browning asked the Board to consider action on 6 of the recommendations for Regular Operation and Maintenance Certificates.

MOTION: Ms. Packard moved that the Virginia Soil and Water Conservation Board approve the operation and maintenance certificates for the following six dams as presented by staff, and that staff be directed to communicate the Board actions to the affected dam owners:

Homewood Estates Lake – Amherst County  
Inventory #00923  
Class III Regular 1/31/12

Great Creek Watershed Structure 6A– Brunswick County  
Inventory #02507  
Class I Regular 1/31/12

Pendleton Irrigation Lake I – Caroline County  
Inventory #03351  
Class III Regular 1/31/12

Boxwood Hunt Club #1 – Henry County  
Inventory #08911  
Class III Conditional 1/31/12

Boxwood Hunt Club #2 – Henry County  
Inventory #08916  
Class III Conditional 1/31/12

Spring Creek Golf Course Irrigation Lake – Louisa County

Inventory #10937  
Class II Regular 1/31/12

SECOND: Ms. Campbell

DISCUSSION: None

VOTE: Motion carried

Mr. Browning requested that the Board grant extensions to the remainder of the dams listed on the Operation and Maintenance Certificates report. Those dams would receive an extension of their current status until March 16, 2006.

00387 Broadmoor Lake	ALBEMARLE COUNTY	Class II Conditional
10126 Central Crossing	KING WILLIAM COUNTY	Class II Conditional
12714 Patriots Landing Pond 3	NEW KENT COUNTY	Class II Conditional
12715 Patriots Landing Pond 4	NEW KENT COUNTY	Class II Conditional
13701 Lake of the Woods	ORANGE COUNTY	Class I Conditional
14304 Burton	PITTSYLVANIA COUNTY	Class III Conditional
15302 T. Nelson Elliott	PRINCE WILLIAM COUNTY	Class I Conditional

MOTION: Ms. Packard moved that the Virginia Soil and Water Conservation Board extend the operation and maintenance certificates for the above mentioned dams until March 16, 2006 and that staff be directed to communicate the Board actions to the affected dam owners.

SECOND: Mr. Hall

DISCUSSION: None

VOTE: Motion carried unanimously

*Permit Recommendations*

MOTION: Ms Campbell moved that the Virginia Soil and Water Conservation Board authorize the Department of Conservation and Recreation to issue alteration and construction permits that may be time sensitive and necessary prior to the Board's next regularly scheduled meeting.

SECOND: Ms. Packard.

DISCUSSION: None

VOTE: Motion carried unanimously

Mr. Browning presented the Board with the following updates:

At the November meeting the Board issued a Conditional Certificate to Hidden Lake Dam in Grayson County. Mr. Browning has received a letter expressing concerns with the conditions of the Certificate. Mr. Browning and staff will be working with the dam owner to address his concerns.

Staff has been working with Hidden Lake Dam homeowners and Stafford County on ways to make repairs to Hidden Lake Dam. On January 4, the Stafford County Board of Supervisors approved the creation of Hidden Lake Service District. The Service District will be the mechanism to generate the funding for dam maintenance and repairs.

### **Regulatory Update**

Mr. Dowling gave the regulatory update. He noted that copies of the three NOIRAs pertaining to Dam Safety and Stormwater Management issues were provided in member packets. Copies of these NOIRAs are available from DCR. The 60-day public comment period will close on February 24.

Tentative dates and locations for the public hearings are:

- Dam Safety, Charlottesville, Thursday, February 9 at 2:00 p.m.
- Stormwater Management
  - Roanoke, Thursday, February 16
  - Richmond, Friday, February 17

Mr. Maroon noted that this was the beginning of the process and allowed the public opportunity to comment with regard to what issues should be considered. Once the public comment period closes, DCR will have 180 days to have proposed regulations crafted and submitted to the Department of Planning and Budget for review.

Mr. Dowling noted that a final copy of the Nutrient Management Training and Certification Regulations was provided in member packets. A copy of these Regulations is available from DCR.

Ms. Hansen asked about the process for notifying the public of these meetings.

Mr. Dowling said that individuals who have expressed an interest in these issues have been notified. In addition, notice was mailed to the names in the dam safety database.

Ms. Hansen asked what notification was provided to individuals downstream from dams.

Mr. Maroon said the Department would commit to finding additional ways to notify downstream property owners.

### **Stormwater Management Program Update**

Mr. Hill gave the update on the stormwater management program.

Mr. Hill said that the Department has been working with EPA to audit five large and one small MS4 programs. They are, Norfolk, Hampton, Henrico, Arlington, Portsmouth and Hanover.

With the exception of Portsmouth, the draft reports have been sent to EPA for review and comments. The Portsmouth review should be completed soon. The next step will be to meet with the localities.

In terms of the issuance of construction permits, Mr. Hill said that from July 1, 2005 until January 18, 2006, the Department had issued 1,111 general permits. From January 29, 2005 through the end of June 2005 the Department issued 704 permits.

### **Erosion and Sediment Control Program Actions**

Mr. Hill presented the proposed Erosion and Sediment Control Program Actions.

MOTION: Ms. Packard moved that the Virginia Soil and Water Conservation Board receive the staff update concerning the review of the 2006 annual standards and specifications for electric, natural gas, telecommunications and railroad companies. The Board concurs with staff recommendations for approvals of the 2006 specifications with conditions and the request for the variances for the utility companies listed below in accordance with the Erosion and Sediment Control Law. The Board requests the Director to have staff notify said companies of the status of the review and the approval of the annual standards and specifications with conditions and the request for variances.

The four conditions for approval are:

1. A revised list of all proposed projects planned for construction in 2006 must be submitted by February 24, 2006. 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 February 24, 2006 must be provided to DCR two (2) weeks in advance of land disturbing activities by email at the following address:  
[LinearProjects@dcr.state.va.us](mailto:LinearProjects@dcr.state.va.us).
3. Notify DCR of the Responsible Land Disturber (RLD) at least two (2) weeks in advance of land disturbing activities by email at the following address [LinearProjects@dcr.state.va.us](mailto:LinearProjects@dcr.state.va.us). The information to be provided is name, contact information and certification number.
4. Install and maintain all erosion control practices in accordance with the 1992 Virginia Erosion and Sediment Control Handbook.

Variances were requested for Minimum Standard 16.a and Minimum Standard 16.b. The responses to the requests for the variances are as follows:

1. 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.
2. Minimum Standard 16.b: The variance to this criteria is not necessary due to Minimum Standard 16.f which allows applicable safety regulations to supercede the Virginia Erosion and Sediment Control Regulations.

Companies recommended for approval with the 4 conditions are:

Electric: Dominion Virginia Power Electric Transmission; Holcomb Rock Company

Gas: Columbia Gas Transmission/NiSource

Railroad: Commonwealth Railway

Companies recommended for approval with the 4 conditions and the variance requests for Minimum Standard 16.a and 16.b are:

Telecommunications Virginia Telecommunications Industry Association (VITA)

SECOND: Ms. Hansen

DISCUSSION: None

VOTE: Motion carried unanimously

**District Director Resignations and Appointments**

Mr. Meador presented the District Director Resignations and Appointments.

*Chowan Basin*

Recommendation of James S. Ferguson, Greensville County, to fill unexpired elected term of George C. Holloway, Jr. (deceased) (term of office to begin on or before 2/19/06 – 1/1/08).

*Headwaters*

Resignation of Thomas Stanley, Augusta County, effective 2/1/06. Extension Agent director position (term of office expires 1/1/09).

Recommendation of Brian Jones, Augusta County, to fill unexpired Extension Agent term of Thomas A. Stanley (term of office to begin on or before 2/19/06 – 1/1/09).

*John Marshall*

Recommendation of Tim Mize, Fauquier County, to fill unexpired Extension Agent term of Keith R. Dickinson (term of office to begin on or before 2/19/06 – 1/1/09).

*Northern Virginia*

Resignation of David L. Bulova, Fairfax County, effective 1/1/06, elected director position (term of office expires 1/1/08).

Recommendation of John W. Peterson, Fairfax County, to fill unexpired elected term of David L. Bulova (term of office to begin on or before 2/19/06 – 1/1/08).

*Piedmont*

Recommendation of Michael C. Gunn, Nottoway County, to fill unexpired elected term of Elizabeth W. Irby (term of office to begin on or before 2/19/06 – 1/1/08).

*Virginia Dare*

Resignation of Greg Allen, City of Virginia Beach, effective 12/9/05, elected director position (term of office expires 1/1/08).

Recommendation of George W. Schaefer, City of Virginia Beach, to fill unexpired elected term of Greg Allen (term of office to begin on or before 2/19/06 – 1/1/08).

SECOND: Mr. Simms  
DISCUSSION: None  
VOTE: Motion carried unanimously

**Election to Fill Unexpired Term of Chairman (January – June)**

Mr. Maitland turned the meeting over to Mr. Maroon for the purpose of the election to fill the unexpired term of the Chairman. Mr. Simms was appointed to replace Mr. Moyer on December 1, 2005. He noted that typically the Board would elect a Chairman at the July meeting.

MOTION: Ms. Packard nominated Ms. Campbell to fill the unexpired term of Chairman.  
SECOND: Ms. Hansen  
DISCUSSION: There were no further nominations.  
VOTE: Motion carried with Ms. Campbell abstaining

The Board recessed briefly for lunch.

**Legislative Discussion**

Ms. Campbell reconvened the meeting and returned to the legislative discussion. Copies of HB 586, HB 597 and SB 274 had been provided to members.

MOTION: Ms. Hansen moved that the Virginia Soil and Water Conservation Board unanimously endorse and support House Bill 596 and companion Senate Bill 624, House Bill 597 and Senate Bill 274.  
SECOND: Mr. Maitland  
DISCUSSION: None  
VOTE: Motion carried with Mr. Maroon abstaining.

### **District Study Report**

Mr. Meador said that the District Study had been a two-year process. He noted that a draft copy of the study report had been provided to members in November. The purpose of the study was to examine and convey the extent to which funds invested in agriculture BMPs are being spent effectively and are having the desired results with addressing water quality problems.

The final report will be released in the near future.

### **District Performance Assessment**

Mr. Meador provided two handouts for Board review and consideration:

- **Soil and Water District FY 2004-2005 Performance “Deliverables” for Acceptance of DCR Funds to Carry Out This Agreement and for Operating Expenses to the Extent that Funding Permits.** This document provides guidance criteria SWCDs must fulfill with regard to the provision of funds from DCR. Districts agree to this list of deliverables to be eligible for District funding.
- **DCR Assessment of SWCD Compliance with DCR/SWCD FY04-05 Grant Agreement Deliverables.** This document summarizes the assessments of District fulfillment of the deliverables.

MOTION: Ms. Packard commended staff for their preparation of this information and moved that the Virginia Soil and Water Conservation Board direct staff to distribute the DCR Assessment of SWCD Compliance with a cover letter of explanation signed by Mr. Maroon.

SECOND: Ms. Hansen

DISCUSSION: None

VOTE: Motion carried unanimously

### **Discussion in Advance of Possible Changes in Cost Share Agreement and District Operations Agreements for March Meeting**

Mr. Frye noted that under the Board’s financial policy for SWCD funding the Board is to review funding criteria for the provision of additional funds beyond District operating expenses. He noted that an additional \$500,000 for district operations was currently under consideration in the General Assembly.

He noted that the Board policy requires that these guidelines be reviewed annually prior to May 1. He said the Board will need to take into consideration funds that will be available in the next

cycle. The Board should expect to entertain discussion on these matters during their March meeting.

### **Report from the Virginia Association of Soil and Water Conservation Districts**

Mr. Byrne gave a report from the Virginia Association of Soil and Water Conservation Districts.

He noted that the essential funding provided to each district allows most districts to open the door. He also noted that there was a significant difference between essential funding needs of a multi-jurisdictional district. He said that with inflation, districts are not making progress.

Mr. Byrne noted that the Association is advocating \$3.5 million in increased District funding during this legislative session.

### **Partner Agency Reports**

#### *Natural Resources Conservation Service*

Mr. Dorsett gave the report for the Natural Resources Conservation Service. A copy of this report is attached as Attachment #2.

#### *Virginia Department of Forestry*

Ms. White gave the report for the Department of Forestry. A copy of this report is attached as Attachment #3.

#### *Department of Conservation and Recreation*

Mr. Frye gave the report for the Department of Conservation and Recreation. A copy is attached as Attachment #4.

### **Other Business**

There was no further business.

### **Public Comment**

There was no public comment.

**Future Meetings**

The next meeting of the Virginia Soil and Water Conservation Board will be Thursday, March 16, 2006. The location will be determined at a later date.

**Adjourn**

Being no further business, the meeting was adjourned.

Respectfully submitted,

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Linda S. Campbell  
Chair

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Joseph H. Maroon  
Recording Secretary

Attachment #1

**Department of Conservation and Recreation  
Legislative Summary  
2006 General Assembly Session**

**DAM SAFETY**

**HB 596 Flood Prevention and Protection Assistance Fund; Fund includes dam safety.**

(Delegates Sherwood and Scott, E.T.)

- Reconstitutes the current Flood Prevention and Protection Assistance Fund into the new Dam Safety, Flood Prevention and Protection Assistance Fund. The new fund will be used to make loans and grants to local governments and loans to private entities to finance the cost of implementing projects to prevent, reduce, or mitigate damages caused by flooding, to upgrade dams or impounding structures, and to fund flood prevention studies.
- One new source of revenue for the Fund would be tax revenue generated as a result of flood insurance premiums associated with the National Flood Insurance Program's flood insurance sales (this replaces existing General Funds that would be transferred to the Dam Safety, Flood Prevention and Protection Assistance Fund; about \$900,000).
- The Virginia Resources Authority would administer and manage the fund, determining the interest rate and terms and conditions of any loan from the Fund. The Department of Conservation and Recreation would make the decision on how the moneys in the Fund would be disbursed. The language establishing the Fund is modeled after language creating the Virginia Resources Authority, the Virginia Water Facilities Revolving Fund, and the Virginia Water Supply Revolving Fund.
- No new fees or taxes are involved
- The State Soil and Water Conservation Board supports.

*Committee: **Reported from** House Agriculture, Chesapeake and Natural Resources. Currently in House Appropriations.*

**SB 624 Dam and flood assistance fund.** (Senator Bell)

Same as House Bill 596 (above)

*Committee: Senate Agriculture, Conservation and Natural Resources*

**HB 597 Dam safety; penalties. AGENCY BILL** (Delegate Sherwood)

- Provides the Virginia Soil and Water Conservation Board and the Department of Conservation with the enforcement tools needed to ensure the safety of Virginia's dams, and includes due process procedures to protect dam owners.
- The bill exempts Department records on the operation of certain dams from disclosure under the Freedom of Information Act if homeland security is involved.
- Makes it illegal once a dam is designated as unsafe for an owner to refuse entry to state employees for the purpose of inspecting the dam or taking corrective action.
- DCR is given the authority to monitor and inspect any alteration or construction of the dam.

- Imposes Class 3 misdemeanor penalties as well as civil penalties for violations of the Dam Safety Act. The moneys collected from the imposition of civil penalties will be deposited in the Flood Prevention and Protection Assistance Fund.

*Committee: House Agriculture, Chesapeake and Natural Resources*

**SB 596 Relief of the Rainbow Forest Recreation Association.** (Senator Bell)

Requests \$186,000 for the Rainbow Forest Recreation Association to make Department of Dam Safety-required corrections to a dam owned by the Association.

*Committee: Senate Finance*

**EROSION CONTROL, STORMWATER, BAY ACT**

**SB 274 Stormwater management; certain localities required to adopt program related thereto.** (Senator Whipple)

Requires localities located in Tidewater and those that are classified as an MS4 under the federal Clean Water Act to adopt a local stormwater management program in accordance with a schedule established by the Virginia Soil and Water Conservation Board. The locality is to adopt its stormwater program between 12 and 18 months after the effective date of the Board's regulation that establishes local program criteria and delegation procedures. Under current law these localities are to adopt a program by July 1, 2006. Any locality that isn't in Tidewater or classified as an MS4 can choose to administer its own program (seek delegation) within six months following the effective date of the regulation. The bill also increases the maximum fine for violation of the provisions of the stormwater law from a civil penalty of \$25,000 to \$32,500.

*Committee: Reported from Senate Agriculture, Conservation and Natural Resources*

**HB 14 Silviculture practices; allows local government to regulate for land.** (Delegate Cole)

Allows local government to fully regulate silviculture activity for land when the owner, or his agent, submits an application for a rezoning, conditional use permit, special use permit, or preliminary subdivision plan approval to convert from an agricultural or rural to a residential, commercial or industrial use. Currently local governments are limited in the regulation of silviculture practices until after the change in zoning or use occurs.

*Committee: House Agriculture, Chesapeake and Natural Resources*

**HB 684 Erosion & Sediment Control & Stormwater Management Acts; Adequate Channels.** (Delegate Rust)

Provides definitions of terms in the Erosion and Sediment Control and Stormwater Management Acts that clarify what are acceptable flow rates from storm runoff at sites where land development projects are occurring. DCR worked with the Homebuilders of Virginia, the Chesapeake Bay Foundation and others on this bill.

*Committee: Reported from House Agriculture, Chesapeake and Natural Resources*

**HJ 134 Perennial flow determination; Dept of Conservation & Recreation to study development, etc. thereof.** (Delegate Shannon)

Requests the Department of Conservation and Recreation to study the development and implementation of perennial flow determination required by the Chesapeake Bay Preservation Act regulations.

*Committee: House Rules*

**NUTRIENT REDUCTIONS, BEST MANAGEMENT PRACTICES**

**HB 963 Income tax; agricultural best management practices tax credit.** (Delegates Bulova and Wittman)

Adds taxpayers who have horses that create needs for agricultural best management practices to those who are engaged in agricultural production for market who may qualify for the agricultural best management practices tax credit, for taxable years beginning on or after January 1, 2007.

*Committee: House Finance*

**HJ 107 Urban Best Management Practices Cost-Share and Tax Credit Program; Dept. of Con. & Rec to study.** (Delegates Bulova, Eisenberg and Wittman)

Requests the Department of Conservation and Recreation to study over the next two years whether an Urban Best Management Practices Cost-Share and Tax Credit Program, modeled after the Agricultural Best Management Practices Cost-Share and Tax Credit Program, would be beneficial and an economically efficient method for meeting the nutrient and sediment reduction goals of the Chesapeake Bay Agreement.

*Committee: House Rules*

**SB 234 Fertilizer, specialty; label required for proper use and precautionary statements.** (Senator Ticer and Delegate Sickles)

Requires that specialty fertilizers include a label with directions for proper fertilizer use and precautionary statements to educate users. Specialty fertilizer means a fertilizer distributed for nonfarm use, including home gardens, lawns, shrubbery, flowers, golf courses, and nurseries.

*Committee: Senate Agriculture, Conservation and Natural Resources*

**BIOSOLIDS**

**HB 688 Land application of sewage sludge.** (Delegates Abbitt, Byron, and Hogan: Senator Quayle)

Prohibits the land application of sewage sludge beginning January 1, 2007, unless the sewage sludge is applied in the same locality in which it is generated. The departments that have oversight of the spreading of sewage sludge, the Health Department and the Department of Environmental Quality, are required to certify that the sewage sludge is being applied in a manner that protects human health and the environment, and the Department of Conservation and Recreation is to certify that the nutrient management plan for applying the sewage sludge protects water quality.

*Committee: House Agriculture, Chesapeake and Natural Resources*

**HB 690 Sewage sludge** (Delegates Abbitt, Byron and Cline: Senator Quayle)

Prohibits sewage sludge from being stored at site where it is being land applied for more than three days prior to application.

*Committee: House Agriculture, Chesapeake and Natural Resources*

**HJ 101 Biosolids; Dept. of Conservation and Recreation, et al to study impact thereof on water quality.** (Delegate Byron, Abbitt, Barlow, Cline and Hogan)

Requests the Departments of Conservation and Recreation and Environmental Quality to study the impact of the land application of biosolids on the quality of Virginia's waters.

*Committee: House Rules*

**CHESAPEAKE BAY CLEAN-UP AND FUNDING**

**HB 1150 Chesapeake Bay Clean-up Authority and the Chesapeake Bay Clean-up Fund; created.** (Delegate Lingamfelter)

Establishes the Virginia Chesapeake Bay Clean-up Authority to develop, through the Department of Environmental Quality, the Chesapeake Bay Clean-up Strategic Plan (Plan) and to oversee the execution of the Plan by the Department, including the approval of any major alterations or modifications. The bill also creates the Chesapeake Bay Clean-up Fund to be administered by the Virginia Resources Authority and used to fund the Plan. The bill has a sunset of 2017.

*Committee: House Agriculture, Chesapeake and Natural Resources*

**SB 413 Recordation tax; collection to be transferred to Water Quality Improvement Fund.**

(Senator Hanger)

Provides that \$100 million of recordation taxes collected each year shall be transferred to the Virginia Water Quality Improvement Fund. The Comptroller shall credit the \$100 million to the Fund after allocations have been made for the \$40 million deposit to the U.S. Route 58 Corridor Development Fund and the \$40 million distribution to counties and cities, as currently required under law.

*Committee: Senate Finance*

**SB 626 Taxes and fees for the Virginia Water Quality Improvement Fund.** (Senator Quayle)

Establishes a \$1 per day lodging fee on the sale of hotel, motel, and similar rooms and provides that such revenues plus \$40 million annually in recordation tax revenues shall be deposited into the Virginia Water Quality Improvement Fund for funding of water quality.

*Committee: Senate Agriculture, Conservation and Natural Resources*

**LAND CONSERVATION**

**HB 449 Income tax; land preservation tax credits.** (Delegate Ware)

- Removes the \$100,000 annual credit limit that a taxpayer may take for qualified donations.
- Imposes a per transaction cap of \$2.5 million or 50% of the FMV, whichever is less.
- (“Soft cap” provision) Credit may exceed \$2.5 million, up to 50% of FMV if (i) taxpayer has submitted two qualified appraisals from two different qualified appraisers, and (ii) the Secretary of Natural Resources, determines that the qualified donation provides exceptional benefit to the Commonwealth by meeting standards adopted by the Virginia Land Conservation Foundation.
- For easement donations, requires the filing of a statement that describes how such easement meets the requirements of IRC § 170(h).
- Adds, as qualified donations, easements on historic buildings or a complex of historic buildings or a portion of such buildings if the building is listed on the Virginia Landmarks Register, provided there are restrictions on the exterior surfaces of the building or complex of buildings.
- A fee of 1% of the value of the donated interest, or \$5,000, whichever is less, is imposed on any taxpayer who transfers unused tax credits.
- Prohibits groups that hold one or more conservation easements from transferring credits.

**HB 450 Income tax; land preservation tax credits.** (Delegate Ware)

Save as HB 449 except it does not contain any cap

**HB 533 Income tax; land preservation tax credit.** (Delegate Parrish and Senator Colgan)

- Requires that value of donations, for purpose of calculating tax credit, (i) be determined using an amount that does not exceed the assessed value of the property and (ii) not exceed the assessed value.
- If the most recent general reassessment of property in the locality occurred more than two years before the conveyance, the assessed value shall be adjusted by dividing the assessed value by the median ratio for the locality from the most recent Assessment/Sales Ratio Study published by the Department of Taxation.

*Committee: House Finance*

**SB 93 Land preservation tax credit.** (Senator Watkins)

- Would apply to donations made on or after July 1, 2006.
- \$600,000 cap per transaction.
- Credits may be transferred only once.
- Nonprofits may not transfer credits.
- Allows credits to be used by an estate, but not transferred by an estate.
- FMV of donation must not exceed highest and best use for which property is adaptable and needed or likely to be needed in the reasonably near future.
- No credits for easements on property that is a part of a residential subdivision or any other residential development (whether or not easement required for zoning approvals).
- No more than one credit per parcel of land within 15 years.

- Easements must meet additional criteria:
  - Be within Chesapeake Bay watershed; or
  - Be in agricultural production for market and have BMPs, as certified by local SWCD. Must also have written agreement with DCR. DCR must inspect property annually; or
  - Be real estate devoted to open space use (as defined in Virginia Code, with certain exceptions). Must also have written agreement with DCR. DCR must inspect property annually; or
  - Have approved Forestry Stewardship Plan as certified by State Forester.
- Eliminates historic buildings and structures as qualifying donations, removes a valuable preservation tool, weakens the easement program, and reverses a well-considered decision of the preceding session.

*Committee: Senate Finance*

**SB 403 Land preservation tax credit.** (Senator Hanger)

- Aggregate cap: either \$600,000 or 50% of fair market value, whichever is less
  - Cap applies to all donations in a taxable year, not per transaction.
- Credits allowed only if the conveyance of interest in land has been certified in writing by a licensed reviewer and registered with the Tax Dept. before being claimed
- If tax credits are allowed for donation of a portion of a parcel of land, no credits may be allowed for donation of any other part of that land for 15 years, unless
  - Owners who have received credits are “not affiliated with” persons or entities seeking credit for a different portion of the same parcel
  - If the person seeking credits for a different portion is an individual who hasn’t previously made a donation for any part of the parcel and is not an immediate family member of the original landowner
- Standards for registration of credits include:
  - Donation must provide significant public benefit, property must have important conservation values, and donation must be made to “an appropriate donee with the commitment to preserving in perpetuity the conservation values of the property”
    - If the donation is an easement, its terms must provide “an appropriate level of protection for the conservation values” of the property
  - Appraisals must employ proper methodology and be appropriately supported
- Tax Department is to establish the procedures and qualifications required, and it may:
  - establish fees for licensure to cover administrative costs
  - revoke or suspend reviewers’ licenses who repeatedly certify donations for which credits are subsequently disallowed (with an appeal process)
  - Allow credit claimants repeatedly rejected by licensed reviewers to register directly with Tax Dept. through a fee-based appeal process
- Transferred credits are limited to \$600,000 or 50% of fair market value, whichever is less, minus the amount claimed as credits by the land donor.

*Committee: Senate Finance*

**SB 238 Land Conservation Fund; adds allocation for ag and forestry.** (Senator Ticer and Delegate Hull)

Specifies that 75% of the Virginia Land Conservation Foundation's unrestricted funds are to be allocated equally to the following five uses: (i) natural area protection, (ii) open spaces and parks, (iii) farmlands preservation, (iv) forest preservation, and (v) historic preservation. Currently, 75% of the unrestricted funds are allocated for four uses, with farmlands and forest preservation combined as one use.

*Committee: Senate Agriculture, Conservation and Natural Resources*

**SB 243 Vehicle registration fees; additional fee to support the Virginia Land Conservation Fund.** (Senator Ticer)

Provides that, on and after January 1, 2008, an additional fee of \$1 per year will be imposed on motor vehicle registrations, with the proceeds to be used to support the Virginia Land Conservation Fund.

*Committee: Senate Transportation*

**Department of Conservation and Recreation  
Summary of Introduced Proposed Budget Actions  
2006 General Assembly Session**

**Based on Governor Warner's proposed Introduced Budget, DCR's operating budget for the current year and upcoming biennium would receive an additional \$45.7 million and 21 positions. The increases occur in two main areas: (1) \$39.6 million to be deposited into the Water Quality Improvement Fund during FY 2006 but which will enable the Department to make grants aimed at improving the Chesapeake Bay and Virginia's tributaries in future years; and (2) \$ 3.2 million for State Park Operations to continue to address the long-standing shortages in staffing and operational budget that is growing with the advent of new parks and new facilities.**

**In addition, the Governor's proposed budget would increase DCR's capital budget by \$20.4 million in order to address completion of capital projects initiated as a result of the 2002 State Park General Obligation Bond. This supplemental funding was needed to address cost escalations in bond construction projects and to enable DCR to build a full compliment of cabins at certain parks.**

**Operating Budget**

**State Park Operations and Staffing Needs** - \$ 3,200,000 (\$1,600,000 GF each year) and 21 new positions to support the expanded operations of parks with bond construction projects that will be completed within the upcoming biennium.

**Water Quality Improvement Fund** - \$39,608,800 GF to be deposited into the fund during FY 2006 to provide matching grants for controlling nonpoint source pollution resulting from agricultural activities and development. This funding is from Virginia's mandatory deposit of \$56.6 million from the budget surplus, 70 % of which will be used to reduce nonpoint source pollution because the Governor made a separate deposit into the Fund. The expectation is that these funds will be spent in FY 2007 and beyond. Of the total amount deposited, \$5,712,250 shall be held in the reserve account for the Virginia Water Quality Improvement Fund for use in later years.

**Nonpoint Service Delivery for Soil and Water Conservation Districts-** \$500,000 annually for Districts to provide assistance in implementing the increasing agricultural nonpoint source control activities required to meet state water quality goals.

**Stormwater Management Program** - \$300,000 GF to cover the anticipated revenue shortfall in FY 2007. This will cover the shortfall for one year while DCR reviews the permit fees associated with the program.

**Captain John Smith Water Trail** - \$140,000 in FY 2007 to provide for signage and expenses associated with the completion of the James River and York River segments of the Trail and \$25,000 for Virginia's contribution towards the National Park Association Feasibility Study for designating the entire Bay as a Water Trail.

**Southside Rails to Trails Initiative** - \$950,000 in FY 2007 for acquisition of the next segment (approximately 140 miles) of the Tobacco Heritage Trail.

**Virginia Land Conservation Fund** – The \$2.5 million annual deposit to the Virginia Land Conservation Fund remains in DCR's base budget for each year of the upcoming biennium. A language amendment effective January 2008 has been included to direct the \$6 million currently being deposited into the Virginia 400<sup>th</sup> Anniversary Fund to be utilized by DMV for computer upgrades. Any collections in excess above this \$6 million would continue to be deposited into the Virginia Land Conservation Fund. (Last year, that amounted to around \$ 350,000.)

**Dam Repairs for dams located in State Parks** – Continuation of the \$650,000 per year for priority projects identified previously by DCR that constitute a safety threat if the dam fails. The state parks' dam infrastructure is aging and has been stressed by recent storms such as Gaston.

**STARS** – There will be language in the Public Safety Secretariat authorizing the sale of bonds to provide for funding the state's new emergency communications network. It is unclear at this time how DCR's needs will be addressed.

**Central Accounts Adjustments** – \$237,865 FY 2007; \$257,528 FY 2008 to cover across-the-board increases in rent, workman's comp, and property insurance.

**Language Amendments** – Various changes to our reporting requirements are identified in the budget act.

### **Capital Budget**

**State Park Construction Support** - \$20,370,000 GF provides new supplemental funding to complete General Obligation Bond construction projects as follows:

Shenandoah River Cabins & Campground - \$7,054,000 in FY 2007

Natural Tunnel Cabins, Campground, and Bathhouse - \$6,133,000 (\$3,316,000 in FY 2007; \$2,817,000 in FY 2008)

Occoneechee Cabins - \$4,550,000 (\$921,000 in FY 2007; \$3,629,000 in FY 2008)

James River Cabins - \$2,633,000 (\$435,000 in FY 2007; \$2,198,000 in FY 2008)

### **Major Budget Needs**

Essential Service Delivery support for districts to implement BMPs: \$ 3 M (07); \$ 5 M (08)

Essential Service Delivery support for DCR for Bay and TMDL work: \$ 1 M; 15 FTEs

Nonpoint Implementation Funding – none set after FY 07

State Park operations at existing parks & phase I development of 6 new parks – \$ 10 M; 80 FTE

Land Conservation - \$ 10 M more per year

Attachment #2

**NRCS Report  
Virginia Soil & Water Conservation Board Meeting  
January 20, 2006  
Richmond, VA**

**WATER QUALITY**

**Watershed Operations**

Construction is well underway on the first phase of flood control work for the City of Buena Vista. NRCS is installing two debris basins on the Chalk Mine Run and Washer Hollow subwatersheds. The debris basins are designed to catch cobble and reduce the volume of material migrating through the system during flood events. The rock chute outlets for the basins are currently being installed. It is anticipated that the project will be completed by the end of January 2006. The total estimated costs is \$450,000 for this portion of the project. The federal share is 100% for the construction.

The sponsors of the Bush River Watershed in Prince Edward County have requested NRCS to close-out this project. Five single purpose and two multipurpose structures have been completed. One site that was not completed will be deleted from the planned works of improvement in the final close-out supplement. The local sponsors are planning a close-out ceremony to celebrate the accomplishments in this watershed.

**Watershed Planning**

NRCS funding was received for watershed planning assistance in the North Fork of the Powell River Watershed in Lee County. This watershed has several impaired streams due to runoff from acid mines and steep, critically eroding areas.

Attachment #3

**Virginia Soil and Water Conservation Board  
January 20, 2006  
Department of Forestry Report**

- The Virginia Stream Alliance, per Executive Order #90, has met for the second time. Over 40 government and non-government staff attended the January 10 meeting. The Alliance has divided its workload into 4 issues/categories: project coordination, technical, permitting, and funding. The most pressing tasks are developing a coordinated web site for project information, creating different permitting requirements for voluntary versus mitigated restoration, and increasing the technical capability of Virginia staff to complete stream restoration projects. The next meeting is scheduled for March 16.
- The Board of Forestry has completed Senate joint Resolution 367 regarding incentives for forest land conservation. Five recommendations were made to the General Assembly. They are as follows: 1. Consider non-perpetual conservation agreements as a way to increase conserved lands, 2. Increase funding to \$50 million per year in the Virginia Land Conservation Foundation and separate the “farm and forest” categories, 3. Continue the strong role of the Virginia Conservation Tax Credit, 4. Examine the Right to Practice Forestry Act to strengthen private landowner’s ability to manage their land, and 5. Examine Use-Value Taxation in order to be more consistent from locality to locality. The Board of Forestry will make a short presentation to the General Assembly this session on these recommendations.
- The Department has finalized its portion of the Water Quality Improvement Fund grant process. We will be focusing on TMDL impacted streams with cost-sharing for BMP’s for stream crossings as well as other riparian practices such as rain gardens and non-CREP forest buffers. We anticipate the program to be active by February.
- The Department’s Silvicultural Water Quality Program will be assisting in the upcoming Logger’s Expo in May at the State Fairgrounds. We will be constructing a give-away timber bridge (charity raffle) during the Expo. In other matters regarding law enforcement, to date since 1992, there have been over 3000 enforcement actions of different types with \$1.1 million dollars of penalty assessed. Nearly \$300,000 has been collected. Furthermore, there have been 141 Emergency Orders over a 13-year period.
- The Department has developed a “Rain Garden” Technical Guide and brochure. This BMP has become very popular for storm water mitigation and serves as a vegetative solution versus impoundment. Please contact us with any publication requests.

Attachment #4

**Department of Conservation and Recreation**  
Report to the Virginia Soil & Water Conservation Board  
January 20, 2006

**1. DCR/SWCD Operational Funding:**

All 47 SWCDs have endorsed grant agreements with DCR for Operational funding this fiscal year and all 3<sup>rd</sup> quarter disbursements will be processed for payment within the next few weeks.

This fiscal year (FY06), operational funding for all districts totals \$4,052,240. The total amount is the same as FY05 operational funding, however, FY06 funding is still roughly 6% less than the peak funding level experienced by districts in FY01 (\$4,301,000).

**2. SWCD Audit Services:**

The accounting firm of Robinson, Farmer, Cox Associates (RFCA) is nearing completion of the SWCD audits began this summer for the audit period that ended June 30, 2005. Twenty-four (24) SWCDs were audited. Audit reports and overall findings will be shared in coming weeks.

**3. SWCD Bonding Coverage:**

A new 2-year contract is in place that raises the deductible from \$5,000 to \$10,000 per claim, with an annual premium (paid by DCR) of nearly \$20,000 (twice previous rate). Information pertaining to these new arrangements was issued to all SWCDs through correspondence from Jack Frye sent August 29, 2005. An updated "Desk Top Guide for District Fiscal Operations" is being prepared and will be in district hands next year.

**4. Employee Development**

The conservation partners continue to work through the "JED" –Joint Employee Development 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 need to effectively collaborate among conservation partners is expected to be especially important in coming months as monies the General Assembly may appropriate should enable employment of additional SWCD technical staff for implementation of agricultural BMPs. Training plans for newly employed staff will be critical to rapidly advancing the "KSAs" (knowledge, skills and abilities) they will need to effectively perform their work activities.

**5. SWCD Dams:**

The SWCD dam owner work group continues to meet and work on specific dam issues among districts. The last meeting was held November 2, 2005 the next meeting is scheduled January 31, 2006 in Charlottesville at the Virginia Cooperative Extension office.

**6. Agricultural BMP Cost-Share Program:**

DCR recently revised the cost-share program eligibility criteria for agricultural lands protected by existing open space/conservation easements. The new guidance makes clear that property owners with

recorded open space/conservation easements are eligible to participate in the Agricultural BMP Cost-Share Program.

Work continues with refinement of a suite of BMP options that advance 5 agricultural conservation priorities. Those priorities are (in no particular order): livestock exclusion from state waters; vegetative riparian buffers; implementation of nutrient management plans; plantings of cover crops; continuous no-till. BMP options will likely include new opportunities for financial incentives that achieve annual and multi-year commitments from participating farmers. Program changes are scheduled to take effect at the start of the 2007 program year (beginning July 1, 2006).

#### **7. Conservation Reserve Enhancement Program (CREP):**

USDA CREP program guidance has been modified to allow the enrollment of sinkholes and karst areas in the CP-22 (riparian forest buffer) practice. This guidance enables further expansion of CREP protection and encourages buffering of potential ground water contamination sites that can now enhance protection of drinking water sources.

DCR is considering increasing the state's cap on CREP cost-share payments (above the existing cap of \$200/acre) as part of a comprehensive effort to increase the rate of CREP enrollment. The Southern Rivers CREP is experiencing brisk participation towards the additional 5,000 acres of expanded program enrollment, while the Chesapeake Bay CREP enrollment has slowed.

#### **8. Stormwater Management:**

EPA and DCR staff members have completed MS4 program evaluations for the cities of Norfolk, Hampton, and Portsmouth and the counties of Arlington, Hanover and Henrico. The final report regarding evaluation findings has been sent to Hampton, Norfolk, Hanover and Henrico. DCR staff has issued coverage under the General Permit for Stormwater Discharges from Construction Activities for 1,815 projects during the period of January 29, 2005 through January 18, 2006.

#### **9. Nutrient Management Regulation Revisions:**

The revised nutrient management training and certification regulations were finalized and became effective on January 11, 2006. The revisions include phosphorus based nutrient management planning requirements and revisions to application time of nutrient sources among other changes.

#### **10. Chesapeake Bay Tributary Strategies**

DCR staff continue to speak with SWCDs about Tributary Strategies, and also are meeting with local governments, Roundtables, and other interest groups to expand awareness of and encourage implementation of the best management practices outlined in each basin document. Promotion of Tributary Strategies at this stage means making sure all of the key land user groups and decision makers are exposed to the document and its contents; both public and private sector. There is the basin, the county and personal land-owner perspective - - what I can do on my land. In each regard, the Strategy calls for significant NPS reductions. DCR staff is communicating ways projects and funding can be used to implement different components of the Strategies.

#### **11. WOIF- Cooperative Nonpoint Source Programs & Water Quality Initiatives**

The "Request for Proposals" for Water Quality Improvement Fund grants was issued October 14, 2005. A total of 102 proposals for funding were received the deadline of December 15, 2005, requesting over \$10 million in grant funds. DCR has earmarked approximately \$1.7 million in WOIF funding for water quality initiatives and \$3 million for cooperative NPS projects with local governments. The proposals are under review and funding determinations should be made by March.

**12. Erosion and Sediment Control Program Review**

Staff is conducting numerous reviews of local erosion and sediment control programs for the FY 2005/2006 Program year. Field staff is also completing follow-up reviews to determine local program implementation of Corrective Action Agreements.

**13. Additional item of interest: Charlottesville seeks to join the Thomas Jefferson SWCD**

By unanimous action of the Charlottesville City Council during their January 17<sup>th</sup>, 2006 meeting, the city will pursue the process of becoming a part of the TJSWCD. The VSWCB should expect upcoming Board meetings to include actions that are necessary to satisfy steps and requirements provided by state statutes.