

**Virginia Soil and Water Conservation Board
Wednesday, September 24, 2008
East Reading Room, Patrick Henry Building
Richmond, Virginia**

WEDNESDAY, SEPTEMBER 24, 2008

Virginia Soil and Water Conservation Board Members Present

Linda S. Campbell, Chair	Joseph H. Maroon, Director
Granville M. Maitland, Vice Chair	Darlene Dalbec
Susan Taylor Hansen	Richard E. McNear
Michael J. Russell	
Wade Biddix for Jack A. Bricker, NRCS	

Virginia Soil and Water Conservation Board Members Not Present

Michael Altizer	Jean R. Packard
Raymond L. Simms	

DCR Staff Present

Robert Bennett	Ryan J. Brown
Eric Capps	Scott Crafton
Nissa Dean	David C. Dowling
Jim Echols	Michael Fletcher
J. Michael Foreman	Doug Fritz
Jack E. Frye	Dean Gall
Lee Hill	Ved Malhotra
John McCutcheon	Christine S. Watlington
Elizabeth Andrews, Office of the Attorney General	

Others Present

Brian Barnes, Lancaster County
Ron Bonnema, Montgomery County
Michelle Brickner, Fairfax County
Barbara Brumbaugh, City of Chesapeake
Kim Callis, Town of South Hill
Gary Carp, Tazewell County
Claudia Cotton, TBA
Tyler Craddock, Virginia Chamber of Commerce
Sherry Earley, City of Suffolk
Michael Flagg, Hanover County
Trenton Funkhouser, Town of West Point
Mike Gerel, Chesapeake Bay Foundation

Don Gill, Lancaster County
Gretchen Gonzales, Isle of Wight County
Normand Goulet, NRVC
Barrett Hardiman, Home Builders Association of Virginia
Andy Herr, TPRC
Steve Herzog, Hanover County
Julia B. Hillegass, HRPDC
Dave Hirschman, Center for Watershed Protection
Ann Jennings, Chesapeake Bay Foundation
William J. Johnston, City of Virginia Beach
Stephen Kindy, VDOT
Roberta Lambert, Highland County
Larry Land, VACO
Monte Lewis, ED Lewis Associates
Kristen Mazer, Isle of Wight County
Ted Miller, KHA
Roy Mills, VDOT
Rick Parrish, Southern Environmental Law Center
Jeff Perry, Henrico County
Chris Pomeroy, Virginia Municipal Stormwater Association
Marirose Pratt, Southern Environmental Law Center
Scott Reed, Earthworks Solutions
Andy Rowley, Arlington County
Ridge Schuyler, The Nature Conservancy
Seth Shreve, Greeley & Hansen
Patrick Small, Isle of Wight County
Jim Spencer, Tazewell County
Ingrid Stenbjorn, Town of Ashland
Bill Street, James River Association
John Tippet, Friends of the Rappahannock
W.L. Tucker, Warren County
Shannon Varner, Troutman Saunders
Michelle Virts, Timmons Group
Amy Walker, New Kent County
Keith White, Henrico County
Doug Wolfe, Augusta County
Tom Wright, Isle of Wight County

Call to Order

Chairman Campbell called the meeting to order. A quorum was declared present.

Approval of Minutes of July 17, 2008

Mr. Maroon noted that an additional amendment had been made to the draft minutes mailed to members. A copy of that amendment was provided in member packets.

MOTION: Mr. Maitland moved that the minutes of July 17, 2008 be approved as amended by staff.

SECOND: Ms. Hansen

DISCUSSION: None

VOTE: Motion carried with Mr. McNear abstaining.

Director's Report

Mr. Maroon gave the Director's report.

Mr. Maroon said that the Commonwealth was facing a difficult budget situation. He said there could be potential budget reductions for the Agency. Each state agency was to submit plans for 5, 10 and 15 percent reductions.

Mr. Maroon said that it was uncertain which plans would be accepted by the Governor, but that the state was looking for \$2-3 billion in reductions over the biennium. He said he would report back to the Board in November.

Mr. Maroon reviewed the agenda highlights.

Stormwater Regulatory Actions

Mr. Dowling gave the following presentation regarding the Stormwater Management Regulations.

Stormwater Water Quality and Quantity and Local Program Criteria Action

Stormwater Fees Action

(by David Dowling, Policy, Planning and Budget Director) (September 24, 2008)

Introductory remarks

Over the course of today and tomorrow, the Department will be bringing to the Board three proposed regulations related to stormwater for the Board's consideration. These include regulatory actions related to:

- 1) Parts I, II, III – Definitions, Water Quality and Quantity Technical Criteria, and Local Program Criteria
- 2) Part XIII – Fees; and
- 3) Parts I and XIV – Definitions and Construction General Permit

Framework of Stormwater Regulations

So where do these actions fit into the stormwater management regulations?

The regulations are comprised of 15 parts.

VIRGINIA STORMWATER MANAGEMENT PROGRAM (VSMP) PERMIT REGULATIONS [4 VAC 50-60-10 et seq.]

Part I: Definitions, Purpose, and Applicability

Part II: Stormwater Management Program Technical Criteria (Water Quality and Quantity)

Part III: Local Programs

Part IV: Technical Criteria and Permit Application Requirements for State Projects

Part V: Reporting

Part VI: VSMP General Program Requirements Related to MS4s and Land-Disturbing Activities

Part VII: VSMP Permit Applications

Part VIII: VSMP Permit Conditions

Part IX: Public Involvement

Part X: Transfer, Modification, Revocation and Reissuance, and Termination of VSMP Permits

Part XI: Enforcement of VSMP Permits

Part XII: Miscellaneous

Part XIII: Fees

Part XIV: General Virginia Stormwater Management Program (VSMP) Permit for Discharges of Stormwater from Construction Activities

Part XV: General Virginia Stormwater Management Program (VSMP) Permit for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems – Effective July 9, 2008

FORMS

Part I, the definitions, are updated as necessary to address issues directly related to each regulatory action.

As you may recall, we have also just recently completed revisions to the MS4 General Permit (Part XV) that became effective on July 9, 2008.

Before I get into the details of today's remarks, I do want to take a moment and thank the staff with us here today and some back at the office that have labored over and supported the development of these regulations. Their efforts and work are greatly appreciated. I also want to extend the Department's thanks to the TAC members and those individuals that served on our related advisory committees. Thank you!

Summary of Recommendation

Today it is my pleasure to share with you two regulatory actions (Parts I, II, III – Definitions, Water Quality and Quantity Technical Criteria, and Local Program Criteria) and (Part XIII – Fees) for the Board’s consideration and public comment.

Unlike last September when we brought these actions before you, this September we are prepared to request the Board to approve these proposed regulations and authorize the Department to file these actions for public comment. While you will hear today from some of the public that the regulations contain several areas where further analysis and refinements might need to be considered and while some may suggest further delaying the proposal of parts of these regulations, we strongly recommend that it is time to advance these proposed regulations for public comment so that a wider audience may review, analyze, and comment on these regulations. We have worked hard and collectively accomplished a lot over the last year (such as developed BMP standards or checklists, enhanced the water quality facets of the regulations, developed the Virginia Runoff Reduction Method Worksheet, conducted charrettes, etc.). I assure you, that should it be found to be necessary, we still have ample opportunities following public comment to further amend these regulations before they become final, so again, it is our recommendation that it is time to advance the proposed language before you today to the next step in the process.

Importance of these regulations:

As you were briefed on several months ago, at the 1st meeting of the reassembled stormwater technical advisory committee (TAC), the Secretary of Natural Resources, L. Preston Bryant, Jr., joined the TAC and shared with them the importance of this regulatory action. The letter from the Secretary to the TAC has been included in your package, but let me focus on several of the key points embodied in that correspondence, and I quote:

- “The work of this Committee will have statewide implications. The completion of these regulations is a high priority for this Administration, and I assure you that my office will be working closely with the Department of Conservation and Recreation and the Virginia Soil and Water Conservation Board to advance this regulatory action in an efficient manner. This regulatory action will be an important element of the Governor’s “Year of the Environment” initiative in 2009. In fact, assuming a very good work product, I certainly envision considering these regulatory improvements to be among our “signature” environmental initiatives to celebrate next year.”
- The Secretary continued saying, “Let me emphasize a couple of goals.
 - First, I believe it is critical that the final regulations address improvements to water quality and quantity criteria associated with construction activities.
 - Second, the regulations must establish criteria by which a locality may be approved by the Board as a “qualifying local program” and be authorized to issue coverage under the construction general permit. Under such a scenario, jurisdictions that meet the criteria will then be able to provide “one-stop shopping” for project applicants, thereby

allowing for significant streamlining of local erosion and sediment control and stormwater permitting processes.”

- In closing the Secretary stated that “[i]t is my hope that these stormwater regulation improvements will serve as the gold standard by which other states in the Chesapeake Bay watershed are measured. I can think of no better thing to have said about the work you are undertaking.”

Conversations with the EPA

- The EPA has been closely following this regulatory action since it began in 2005. The EPA continues to characterize these regulations as an exciting and innovative product that has great promise.
- It should be noted that any decoupling of the water quality and quantity criteria from the local qualifying program criteria would likely result in a regulatory product that the EPA would not likely authorize.

Attorney General’s Office

- I should also note that a statement of the Board’s authority for this regulation was received from the Office of the Attorney General on September 22, 2008 substantiating the Board’s authority to approve these proposed regulations based upon applicable law.
- I will also bring to your attention that based on Ms. Andrew’s review, we have included a brief corrections list to be made to the regulations before you today. All of these changes are grammatical or clarifying in nature and have been incorporated into the official version of the proposed regulations.

Regulatory Process

Regulatory actions are comprised of three primary steps: the Notice of Intended Regulatory Action, the Proposed Regulations, and the Final Regulations.

The NOIRA stage is complete for the two actions before you today and the Department is advancing proposed regulations to the Board for consideration.

Potential Timetable for the Remainder of this Regulatory Action

- Take proposed regulations to the Board at the September 24, 2008 meeting.
- Target mid October for completion of an Economic Analysis.
- Target early November to file the regulations on the TownHall.
- Review by the Administration – conservatively November 2008 thru April 2009 (January if expedited).
 - Official OAG review – 3 days
 - 45 days DPB fiscal analysis review – Mid Dec. 2008
 - 14 days SNR – Jan. 2009
 - No deadline Governor – April 2009 (might be expedited)
 - Submit to Registrar – Early April 2009

- Registrar publication – Late April 2009
- 60-day public comment period – May - June 2009 (earlier if Admin review completed); public hearings; concurrent EPA review.
- Make Regulation refinements; EPA review – by September 1, 2009.
- Take final regulation to the Board at the September 2009 meeting (when we have resolved concerns to the best of our ability).
- Final Regulation Review by DPB, SNR, Governor – by November 15, 2009.
- File with Registrar and publish for 30 days - Dec. 31, 2009.
- EPA final approval by Dec. 31, 2009.

Background - Actions related to Parts I, II, III, and XIII

- Board originally passed a motion authorizing the development of NOIRA(s) on July 21, 2005
- The NOIRAs were filed on: November 15, 2005
- On December 26, 2005 the two original Notices of Intended Regulatory Action or NOIRAs related to Stormwater Management were published in the Virginia Register of Regulations by DCR on behalf of the Board. They were:
 - The Virginia Stormwater Management Program VSMP Permit Regulations NOIRA related to the development of local stormwater program criteria and permit delegation procedures; and
 - The Virginia Stormwater Management Program VSMP Permit Regulations NOIRA related to the changes in the statewide stormwater fee schedule.
- The 60-day public comment period and two public hearings were held between December 26, 2005 and February 24, 2006.
- During March and April of 2006 the Department selected the TAC and secured a facilitator.
- The TAC was assembled during March and April of 2006 which was composed of 23 members including local governments (9); environmental groups (3); state agencies (5 members; 4 agencies); federal agencies (1); consultants - Home Builders (3); soil and water conservation district (1); planning district commission (1).
- Between May 4, 2006 and August 21, 2007, the Department held 12 TAC, 4 TAC subcommittee, and 1 technical discussion group meetings.
 - The 1st meeting of the TAC: May 4, 2006 at the Science Museum of Virginia.
 - The 2nd meeting of the TAC: May 18, 2006 at Department of Forestry.

- The 3rd meeting of the TAC: June 8, 2006 at Department of Forestry.
- The 4th meeting of the TAC: June 20, 2006 at the Science Museum of Virginia.
 - Part III subcommittee meeting: August 8, 2006 at DEQ regional office.
 - Part II subcommittee meeting: August 16, 2006.
- The 5th meeting of the TAC: August 21, 2006 at the Science Museum. (Part III)
 - Part XIII subcommittee meeting: August 29, 2006 at DEQ regional office.
 - Part II subcommittee meeting (2nd meeting): September 21, 2006 at DOF in New Kent.
- The 6th meeting of the TAC: October 3, 2006 at DOF in New Kent. (Tributary Strategies Presentation, Part II, Part III)
 - Part II technical discussion meeting: October 12 at DCR.
- The 7th meeting of the TAC: October 16, 2006.
- The 8th meeting of TAC: May 22, 2007.
- The 9th meeting of the TAC: June 14, 2007.
- The 10th meeting of the TAC: June 26, 2007.
- The 11th meeting of the TAC: June 29, 2007.
- The 12th meeting of the TAC: August 21, 2007.
- We held over 50 internal discussions and team drafting meetings.

At the September 20, 2007 Board meeting, the Board directed the withdrawal of the NOIRA stage for Parts I, II, and III in order to eliminate any question regarding the intent of the original NOIRA related to the Part II water quality and quantity technical criteria and authorized the Department to file a new NOIRA. As part of this motion, the Board directed the Department and the new TAC it would form, to build on the work of the previous TAC. The Board also directed the Department to:

- Assemble a workgroup to develop water quantity language for the TAC's consideration.
- Continue work on BMP Clearinghouse.
- Continue work on Handbook Revisions.
- Hold a series of regulation discussion and plan review meetings to address water quality calculations and spreadsheet approach.
- Work on fiscal analysis of proposed regulation.

We have made significant progress on each of these elements as I will describe in my later remarks.

- 60-day public comment period associated with the new NOIRA for Parts I, II, and III opened on the TownHall on February 18, 2008.

- New NOIRA published in Register March 17, 2008 (previous NOIRA stage withdrawn).
- 60-day public comment period closed April 16, 2008.
- 29-member TAC was appointed that included most of the original TAC but incorporated a number of additional stormwater engineers to bring additional technical expertise to the TAC.
- Between June 10, 2008 and September 9, 2008, the Department held an additional 5 TAC and 4 water quantity workgroup meetings. The water quantity group was a separate advisory committee that was established and made up of technical experts.
 - The 1st Water Quantity workgroup meeting: April 22, 2008.
 - The 2nd Water Quantity workgroup meeting: May 20, 2008.
 - The 3rd Water Quantity workgroup meeting: May 27, 2008.
 - The 1st meeting of the TAC: June 10, 2008.
 - The 4th Water Quantity workgroup meeting: July 9, 2008.
 - The 2nd meeting of the TAC: July 16, 2008.
 - The 3rd meeting of the TAC: August 14, 2008.
 - The 4th meeting of the TAC: August 26, 2008.
 - The 5th meeting of the TAC: September 9, 2008
- The Department contracted with the Center for Watershed Protection to provide recommendations to the Department and the Board regarding the water quality and quantity criteria portions of the regulations. This project has been led by David Hirschman. The Center, utilizing the best stormwater data sets and scientific methodologies available in the nation, put forth technical recommendations to the Department and developed the Virginia Runoff Reduction Method and worksheet. These recommendations and processes have been incorporated into the current proposed regulations. [You will be hearing from David at the conclusion of my remarks.]
- The Department also contracted out with Dr. Kurt Stephenson, an economist at Virginia Tech in June of 2008 to assist in determining the cost of the regulations as well as the general off-setting costs associated with further degradation of Virginia's waters in the absence of these regulatory revisions. A final report is due in October of 2008.

- Since the September 07 Board meeting, the Department has also held two rounds of Charrettes to test the Virginia Runoff Reduction Method and the achievability of the regulations and to familiarize the public with the method:
 - First round of charrettes were held (in association with ASCE):
 - #1 Dorey Park, Richmond (Jan. 31st)
 - #2 Lakes and Watersheds Conference (March 11th)
 - #3 Environment VA (April 1st)
 - #4 Hampton Roads (April 29th)
 - #5 Northern VA (May 12th)

The product was refined during the summer based on comments received.

- Second round of charettes were held (more will be held in coming months):
 - #1 Pocahontas State Park, Chesterfield (September 3rd)
 - #2 Wetland Studies and Solutions, Gainesville (September 16th)

Between the two series of charrettes, we would estimate that we had about 300 different people attend, with 55-60% of those from consulting firms or construction companies, and about 25-30% from local governments.

- The Department has been distributing the methodology to interested entities that may be willing to conduct testing. Additionally, the James River Association has contracted with Williamsburg Environmental Group to methodically test the regulations and methodology.
- To ensure that standard designs are available for the required best management practices, the Department established a Stormwater BMP Clearinghouse Advisory Committee that has met on 7 occasions. The Department has contracted with the Virginia Water Resources Research Center at VT to develop the website and assist DCR in the administration of the advisory committee. The Department has worked with both CWP and Dr. Tom Schueler of the Chesapeake Stormwater Network to develop the BMP specifications and checklists:
 - The 1st meeting of the Advisory Committee: May 30, 2007.
 - The 2nd meeting of the Advisory Committee: June 21, 2007.
 - The 3rd meeting of the Advisory Committee: September 11, 2007.
 - The 4th meeting of the Advisory Committee: December 12, 2007.
 - The 5th meeting of the Advisory Committee: March 13, 2008.
 - The 6th meeting of the Advisory Committee: June 12, 2008.
 - The 7th meeting of the Advisory Committee: September 11, 2008.
- To assist in the review of Stormwater Handbook chapters, an advisory committee was formed. The committee has had one organizational meeting in the fall of 2007 with additional meetings expected this fall as handbook chapters are completed and circulated for comment.

In summary, the Department has established a TAC, a Water Quantity Workgroup, a BMP Clearinghouse Advisory Committee, and a Handbook Advisory Committee, and has held 44 public meetings associated with the regulations, [17 TAC meetings, 4 subcommittee meetings, 13 technical advisory group meetings, 7 Charrettes (that included approximately 300 different people), and 3 public meetings], held over 75 internal working sessions to draft and revise the regulations, and established three supporting contracts (CWP-scientific and technical, VT-BMP Clearinghouse, and VT-economic). We have also spoken at a number of organization's meetings and state and national conferences on these regulatory actions. We truly believe that this may have been one of the most vetted regulatory actions ever.

It should be noted that comments received in response to the March 2008 Parts I, II, and III NOIRA and the December 2005 Part XIII NOIRA are enclosed in your packages. I believe the key elements of these comments will be addressed in my remarks. Additionally, we have enclosed comments received in the last two days from the Virginia Municipal Stormwater Association, several localities, a PDC, and a Soil and Water Conservation District. I am sure that you will be hearing more from these entities during today's public comment period.

Regulation Summary

Overview:

So why are these regulations needed?

Controlling stormwater runoff and its impacts is a serious issue facing the Commonwealth and its local governments. Citizens are complaining about flooding caused by increased amounts of stormwater runoff and the runoff is also reported as a contributor to excessive nutrient enrichment in numerous rivers, lakes, and ponds throughout the state, as well as a continued threat to estuarine waters and the Chesapeake Bay.

Numerous studies have documented the cumulative effects of urbanization on stream and watershed ecology. Research has established that as impervious cover in a watershed increases, stream stability is reduced, habitat is lost, water quality becomes degraded, and biological diversity decreases largely due to stormwater runoff. We recognize that impervious areas decrease the natural stormwater purification functions of watersheds and increase the potential for water quality impacts in receiving waters.

Uncontrolled stormwater runoff has many cumulative impacts on humans and the environment including:

- Flooding - Damage to public and private property
- Eroded Streambanks - Sediment clogs waterways, fills lakes, reservoirs, kills fish and aquatic animals
- Widened Stream Channels - Loss of valuable property

- Aesthetics - Dirty water, trash and debris, foul odors
- Fish and Aquatic Life - Impaired and destroyed
- Impaired Recreational Uses - Swimming, fishing, boating
- Threatens Public Health - Contamination of drinking water, fish/shellfish
- Threatens Public Safety - Drownings occur in flood waters
- Economic Impacts – Impairments to fisheries, shellfish, tourism, recreation related businesses

Additionally, development can dramatically alter the hydrologic regime of a site or watershed as a result of increases in impervious surfaces. The impacts of development on hydrology may include:

- Loss of vegetation, resulting in decreased evapotranspiration
- Soil compaction
- Reduced groundwater recharge
- Reduced stream base flow
- Increased runoff volume
- Increased peak discharges
- Decreased runoff travel time
- Increased frequency and duration of high stream flow
- Increased flow velocity during storms
- Increased frequency of bank-full and over-bank floods

The regulations before you today, work to minimize the cumulative impacts of stormwater on humans and the environment and moderate the associated hydrologic impacts. We recognize that if not properly managed, stormwater can have significant economic impacts and the stream restoration costs to fix the problems after the fact are very costly.

We must keep in mind that a 2007 EPA Office of the Inspector General report entitled “Development Growth Outpacing Progress in Watershed Efforts to Restore the Chesapeake Bay; Report No.2007-P-00031; September 10, 2007, noted that “new development is increasing nutrient and sediment loads at rates faster than loads are being reduced from developed lands. Little progress has been reported in reaching nutrient and sediment load reduction goals from developed lands. The Chesapeake Bay Program Office estimates that impervious surfaces in the Bay watershed grew significantly – by 41 percent – in the 1990s. Meanwhile, the population increased by only 8 percent. Because progress in reducing loads is being offset by increasing loads from new development, greater reductions will be needed to meet the Bay goals. The CBPO estimated that loads from developed and developing lands increased while loads from agriculture and wastewater facilities decreased.” The Assessment noted that stormwater runoff comprised 21.5% of the nitrogen load and 21% of the phosphorus load delivered from Virginia to the Chesapeake Bay. This represented a marked increase since 1985 when stormwater runoff comprised only 12 and 16 percent, respectively.

The Commonwealth needs to employ all possible strategies in its tool box to address water quality improvements on a statewide basis in both agricultural and urban settings, including making marked improvements in our stormwater regulations. We have already made major changes to the nutrient management regulations a few years back and we are ratcheting up Erosion and Sediment local program reviews. Improvements to these regulations are also another key component of addressing the Commonwealth's needed water quality improvements.

Economic Analysis

As I mentioned previously, the Department contracted out with Dr. Kurt Stephenson, an economist at Virginia Tech in their Department of Ag and Applied Economics in June of 2008 to assist in determining the cost of the regulations as well as the general off-setting costs associated with further degradation of Virginia's waters. Dr. Bobby Beamer has been assisting with this work. A final report is due to the Department in October should we have a proposed regulation. This information is required as part of the submittal of the proposed regulations for Administrative and public review. Additionally, upon submittal of this package, the Department of Planning and Budget conducts an independent fiscal analysis of the regulations.

However, in preparation for this meeting, a preliminary outline/draft of the report has been shared with the Department. An overview of the draft report to date is as follows:

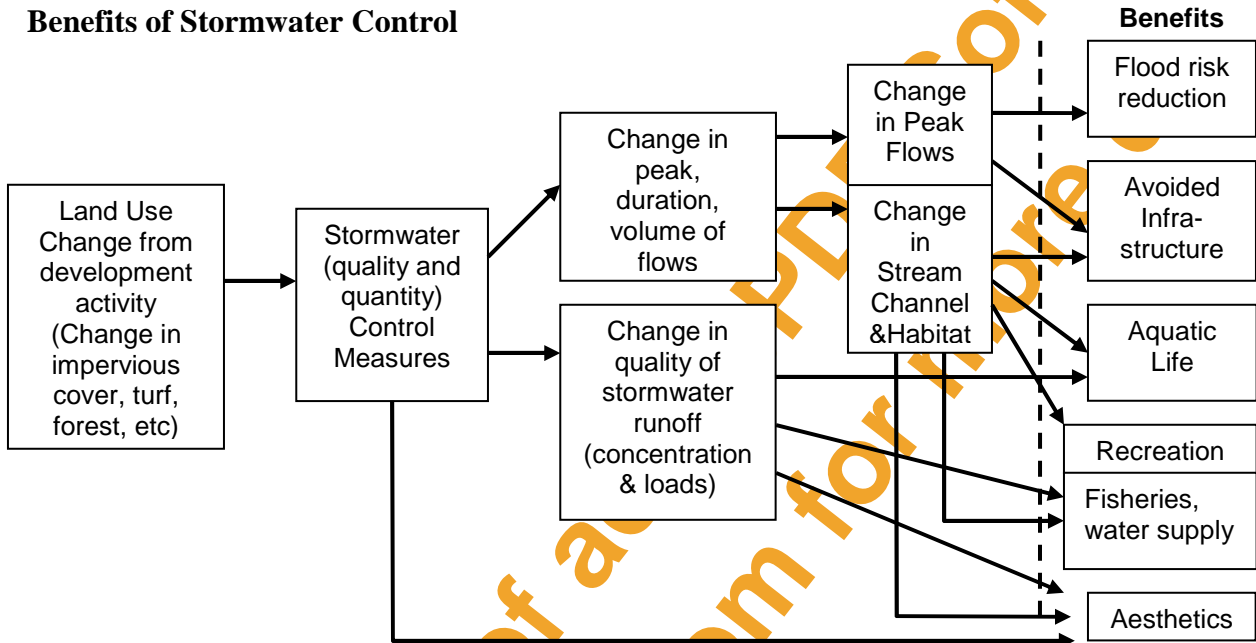
- 1) Provides a narrative on the existing water quality regulations such as Virginia's Erosion, and Sediment Control, Stormwater Management, and Chesapeake Bay Local Assistance Program regulations and their inter-relationships as they relate to stormwater management.
- 2) Provides a summary of the proposed regulations.
- 3) Begins to outline some of the anticipated economic impacts (costs and benefits) of the proposed regulations. Notes that:
 - The proposed regulations will increase the cost to most land disturbing activities across the entire state (ranging from increased construction costs to greater costs associated with long term maintenance of control practices. [This does not come as a surprise as we knew the costs of doing business may increase to achieve the necessary environmental gains.]
 - Outlines who will be affected by the regulations, for example: A portion of the costs will be passed down to buyers of newly constructed properties. Costs will be incurred by public and private entities associated with the administration of the stormwater management program. Environmental consulting engineers may benefit and businesses providing construction and earthmoving will also be impacted.
 - Notes that total projected cost for the state cannot be reliably projected at this time as extrapolating empirical cost analysis to field conditions is challenging given that stormwater treatment exhibits considerable site-

specific variation resulting from different soil, topography, climatic conditions, local economic conditions, and regulatory requirements. The analysis does however review factors that will likely increase or decrease compliance costs (for example):

- The additional control options and P removal possibilities provided in the regulations increase choice and reduce the structural controls required to treat stormwater and may tend to reduce the cost of phosphorus removal.
 - Limitations on the practices allowed by local jurisdictions and the potential increase in the number of practices that require inspection may tend to increase P reduction costs.
 - Increased treatment of volume under the quantity portion of the regulations may result in increased sizes of control practices and may result in cost increases.
 - Notes that the proposed regulation offers opportunities to reduce P by altering the design of any development. Impervious cover may be reduced through planning options such as cluster development patterns, preserving forest cover, reducing street widths, and reducing curb and gutter to name a few. Such features may reportedly reduce capital costs of subdivisions from 10-33%.
- 4) Quotes that the Chesapeake Bay Commission in 2004 summarized the challenges of managing urban loads: while urban sources are the fastest growing source of nutrient load to the Bay, “the job to reduce stormwater impacts from developed land will be expensive, difficult to measure and effective only over the long term”. It goes on to cite the Virginia tributary strategies document that urban runoff contributes 18% of Virginia’s phosphorus load to the Bay, but crude cost analysis estimates that urban runoff controls will make up 75% of the cost to meet Virginia’s reduction commitment.
- 5) The report notes that charrette test applications illustrate that for new developments (<50% impervious), the proposed water quality/quantity requirements can be achieved. The participants in the workshop were able to take advantage of forest cover preservation and reductions in impervious surface to help achieve compliance. Tentative estimates for two of the residential projects indicated that additional stormwater costs might be between \$2,000 to \$3,000 per lot.
- 6) Notes that the offsite provisions and the pro rata system are an important and critical feature of the regulation. These provisions will allow greater opportunity to get more water quality protection for every dollar spent. Allowing land disturbers and local program administrators some flexibility to determine how and where water quality can be addressed can reduce overall costs.
- 7) In the benefits section of the study, it notes that stormwater control practices alter flow and runoff quality stemming from land use change. These changes could

then impact a number of man-made and water-related services that are of value to people. These services include reductions in flood risk, avoided infrastructure costs, aquatic life support, recreation, and aesthetics (Braden and Johnston 2004).

Benefits of Stormwater Control



- 8) The proposed regulations place new emphasis on runoff reduction and infiltration practices that can also reasonably be expected to provide ancillary reductions of other pollutants [such as nitrogen or sediment].
- 9) Notes that the achievement of the Chesapeake Bay goals has been an important water quality goal for the state for over 20 years. The Chesapeake Bay makes numerous and fundamental contributions to the economy and the citizens of the Commonwealth. The benefits (measured primarily as the increased recreational benefits) from state and federal policy efforts through 1996 was estimated to be between \$360 million to \$1.8 billion (Morgan and Owen 2001). These benefits were confined only to recreational benefits and to those currently living within the Bay watershed.

Preliminary Findings of the James River Association/ Williamsburg Environmental Group Study

Although it may be difficult to develop statewide cost estimates associated with these regulations due to the great variability between sites, we can provide example estimates on a site by site basis as well as test the general attainability of the regulations. Aside from the testing during the charrettes that were held, that have generally supported the attainability of these regulations, the JRA/ WEG study provides a more detailed analysis of the regulations. It is our understanding that the study is reviewing a range of sites

from low to high imperviousness, residential to commercial, as well as testing a redevelopment site. It is also our understanding that the testing done to date continues to support the assertion that the regulations are technically achievable. I believe that the Board may hear more about this study during the public comments.

The key provisions of this regulation include

- 1) Establishes that in order to protect the quality of state waters and to control nonpoint source pollution, a local program shall apply the minimum technical criteria and statewide standards established in **Part II** for stormwater management associated with land disturbing activities [**lines 835 – 1316**].

NOTE: In general, since 2005 when the Board took over the federal stormwater permit program, the **current** water quality technical criteria for construction activity statewide are as follows:

- Sites between 0 and 15% imperviousness for new development, all stormwater runoff goes virtually untreated.
- New development above the 16% imperviousness threshold requires a post development pollutant load of .45 lbs/acre/year Phosphorus. This is a P-based system.
- A 10% reduction in the pre-development load is required on redevelopment sites.

New statewide water quality technical criteria that are being proposed for construction activity are as follows [**lines 975 – 1017**]:

- For new development, a 0.28 lbs/acre/year phosphorus standard is established.
- On prior developed lands, total phosphorus loads shall be reduced to an amount at least 20% below the pre-development phosphorus load.
- If a wasteload allocation for a pollutant has been established in a TMDL and is assigned to stormwater discharges from a construction activity, control measures must be implemented to meet the WLA.
- A qualifying local program may establish more stringent standards.
- Compliance with the water quality criteria shall be determined utilizing the Virginia Runoff Reduction Method.
- BMPs listed in Table 1 of Part II or those available on the Virginia Stormwater BMP Clearinghouse shall be utilized to reduce the phosphorus load.
- A locality may establish use limitations on specific BMPs (such as wet ponds or certain infiltration practices).

We believe that most projects can achieve the required reductions on site. However, if the water quality technical criteria can not be met on-site, off-site controls in part or in whole will be allowed by a qualifying local program in accordance with a Department-approved comprehensive watershed stormwater

management plan. Offsite reductions shall be equal to or greater than those required on the land disturbing site. [Lines 1024 – 1030 and 1293 – 1311]

If no comprehensive watershed stormwater management plan exists, the criteria may still be allowed to be met off-site if [Lines 1031 – 1046]:

- The local program allows for off-site controls;
- The applicant demonstrates to the satisfaction of the local program that offsite reductions equal to or greater than those that would otherwise be required for the site are achieved;
- The development's runoff will not result in flooding or channel erosion impacts downstream of the site or any off-site treatment area;
- Off-site controls are located within the same Hydrologic Unit Code or the adjacent downstream Hydrologic Unit Code to the land disturbing site;
- Verification has been received as to the legal right to use the offsite property; and
- A maintenance agreement for the stormwater facilities is developed.

If allowed by the qualifying local program, reductions required for a site may be achieved by the payment of a pro-rata fee sufficient to fund improvements necessary to adequately achieve those reductions. [Lines 1312 – 1316]

A local program may also waive the water quality requirements through the granting of an exception in accordance with Part III provided that [Lines 1637 – 1653 and 1832 – 1833]:

- The exception is the minimum necessary to afford relief.
- Reasonable and appropriate conditions are imposed to preserve the intent of the Act.
- Granting will not confer on the permittee any special privileges denied to others under similar circumstances.
- The exception requests are not based upon conditions or circumstances that are self-imposed or self created.
- Economic hardship alone is not sufficient reason to grant an exception.

- 2) Establishes in **Part II** water quantity criteria to address channel protection and flood protection. This language clarifies and expands on Minimum Standard 19 in the E&S regulations [Lines 1050 – 1210].

Channel protection shall be achieved through one of the following [Lines 1054 – 1096]:

- Stormwater released into a man-made conveyance system from the 2-year 24-hour storm shall be done so without causing erosion of the system.
- Stormwater released into a restored stormwater conveyance system, in combination with other existing stormwater runoff, shall not exceed the design of the restored system nor result in instability of the system.

- Stormwater released to a stable natural stormwater conveyance shall not cause the system to become unstable from the one-year 24-hour storm discharge and it shall provide a peak flow rate from the one-year 24-hour storm that is less than or equal to the pre-development peak flow rate as ascertained by the energy balance equation. [Keep a stable stream stable.]
- Stormwater released to an unstable natural stormwater conveyance shall provide a peak flow rate from the one-year 24-hour storm that is less than or equal to the forested peak flow rate as ascertained by the energy balance equation. [You improve an unstable streams stability.]

Flood protection shall be achieved through one of the following [Lines 1097 – 1124]:

- The post-development peak flow rate from the 10-year 24-hour storm is confined within a man-made conveyance system.
- The post-development peak flow rate from the 10-year 24-hour storm is confined within a restored stormwater conveyance system.
- The post-development peak flow rate from the 10-year 24-hour storm is confined within a natural stormwater conveyance that currently does not flood.
- The post-development peak flow rate from the 10-year 24-hour storm shall not exceed the pre-development peak flow rate from the 10-year 24-hour storm based on forested conditions in a natural stormwater conveyance where localized flooding exists.
- A local program may adopt alternative flood design criteria that achieve equivalent results.

If either of the following conditions are met, the channel protection and flood protection criteria do not apply [Lines 1125 – 1135]:

- The site's contributing drainage area is less than or equal to one percent of the total watershed area draining to the point of discharge.
- The development of the site results in an increase in the peak flow rate from the one-year 24-hour storm that is less than one percent of the existing peak flow rate from the one-year 24-hour storm generated by the total watershed area draining to the point of discharge.

- 3) Establishes the minimum criteria and ordinance requirements (where applicable) which include but are not limited to administration, plan review, issuance of coverage under the General Virginia Stormwater Management Program (VSMP) Permit for Discharges of Stormwater from Construction Activities, inspection, enforcement, reporting, and record keeping, for a Board-authorized qualifying local program (**Part IIIA**) or for a Board-authorized department-administered local stormwater management program (**Part III B**) [**Lines 1323 – 1878**].

A local program shall provide for the following [**Lines 1349 – 1372**]:

- Identification of the authority(ies) issuing permit coverage, reviewing plans, approving plans, conducting inspections, and carrying-out enforcement.
 - Any technical criteria differing from those set out in the regulations.
 - Plan submission and approval procedures.
 - Project inspection and monitoring processes.
 - Procedures for long-term inspection and maintenance of stormwater management facilities.
 - Enforcement
- An ordinance that incorporates the components outlined above is required.
 - A local program shall report specified information to the Department.
 - A local program may require performance bonds or other financial surety.

A local program shall require stormwater management plans that include the following elements [**Lines 1373 – 1425**]:

- Location of points of discharge, receiving waters, pre and post-development conditions.
- Contact information.
- Project narrative.
- Location and design of stormwater management facilities.
- Hydrologic characteristics and structural properties of the soils utilized during facility installation.
- Hydrologic and hydraulic computations of the pre and post-development runoff conditions for the required design storms.
- Calculations verifying compliance with the water quality and quantity requirements.
- A site map that includes the specified elements.
- Plans shall be appropriately signed and sealed by a professional.

The regulation establishes timelines for establishing plan and application completeness, for plan review and approval, and for plan modifications. It also establishes applicant notification requirements. [**Lines 1426 – 1469**]

Establishes that coverage under the construction general permit shall be authorized in accordance with the following [**Lines 1495 – 1524**]:

- The applicant must have an approved stormwater management plan.

- The applicant must have submitted proposed right-of-entry agreements or easements granted from the owner to the local program for the purposes of inspection and maintenance of stormwater management facilities as well as maintenance agreements, including inspection schedules, for such facilities.
- An approved general permit registration statement.
- The required fee form and total fee.

Inspections shall be conducted as follows [Lines 1525 – 1563 and 1654 - 1674]:

- The local program or its designee shall inspect the land disturbing activity during construction.
- At the termination of the project and prior to bond or surety release of the performance bond or surety, construction record drawings for the permanent stormwater facilities shall be submitted to the local program.
- The owner of the stormwater management facilities shall conduct inspections in accordance with the inspection schedule in the recorded maintenance agreement and shall submit the inspection report to the local program.
- The local program shall develop a Board approved inspection schedule.

Information shall be reported by the local program to the Department on a fiscal year basis by October 1st annually as follows [Lines 1675 – 1698]:

- Information regarding permanent stormwater facilities completed during the fiscal year.
- Number of permitted projects inspected by acreage categories.
- Number and type of enforcement actions taken.
- Number of exceptions granted or denied.

- 4) Establishes a Schedule of Civil Penalties as guidance for a court as required by law. [Lines 1587 – 1596]
- 5) Establishes in **Part III D** the procedures the Board will utilize in authorizing a locality to administer a qualifying local program. The application package shall include the following [Lines 1922 – 1979]:
 - The local program ordinance(s);
 - A funding and staffing plan based on the projected permitting fees;
 - The policies and procedures, including but not limited to, agreements with Soil and Water Conservation Districts, adjacent localities, or other entities, for the administration, plan review, permit issuance, inspection and enforcement components of the program.
 - The department shall operate a program in any locality in which a qualifying local program has not been adopted in accordance with a Board-approved schedule.
- 6) Establishes in **Part III C** the criteria the Department will utilize in reviewing a locality's administration of a qualifying local program. The review shall consist of the following [Lines 1879 – 1921]:

- An interview between department staff and the qualifying local program administrator or his designee;
 - A review of the local ordinance(s) and other applicable documents;
 - A review of a subset of the plans approved by the qualifying local program and consistency of application including exceptions granted;
 - An accounting of the receipt and of the expenditure of fees received;
 - An inspection of regulated activities; and
 - A review of enforcement actions and an accounting of amounts recovered through enforcement actions.
- 7) Makes changes to definitions in **Part I** as follows [**Lines 4 – 813**]:
- Deletes unnecessary definitions;
 - Establishes abbreviations for commonly used terms;
 - Updates definitions such as “channel”, “development”, “drainage area”, “flood fringe”, “floodplain”, “floodway”, “impervious cover”, “local stormwater management program”, “permit-issuing authority”, “pre-development”, “site”, and “watershed”; and
 - Adds needed definitions such as “comprehensive stormwater management plan”, “karst features”, “man-made stormwater conveyance system”, “natural channel design concepts”, natural stormwater conveyance system”, natural stream”, “point of discharge”, pollutant discharge”, “prior developed lands”, “qualifying local program”, “restored stormwater conveyance system”, “runoff characteristics”, “runoff volume”, “site hydrology”, “stable”, “stormwater conveyance system”, “stormwater management standards”, “unstable”, “Virginia Stormwater Management Handbook”, and “Stormwater management standards”.
- 8) Establishes in **Part XIII** a statewide fee schedule for stormwater management and state agency projects and notes that this part establishes the fee assessment and the collection and distribution systems for those fees. [**Lines 1 – 286 in Part XIII document**]
- Permit fees were established at a level to allow a local program to cover stormwater program costs associated with plan review, permit review and issuance, inspections, enforcement, program administration and oversight, and travel. Fees also include costs associated with department oversight functions and database management.
 - 50% of the fees are due upon application and the remaining 50% at issuance of coverage.
 - The fees are split 72% to the local program and 28% to the Department.
 - Localities may establish lower fees for their program if they can demonstrate their ability to fully and successfully implement a qualifying program at a lower rate or from a different funding source.
 - The fees shall be periodically assessed and revised as necessary through regulatory actions.
 - Permit fees are established for:

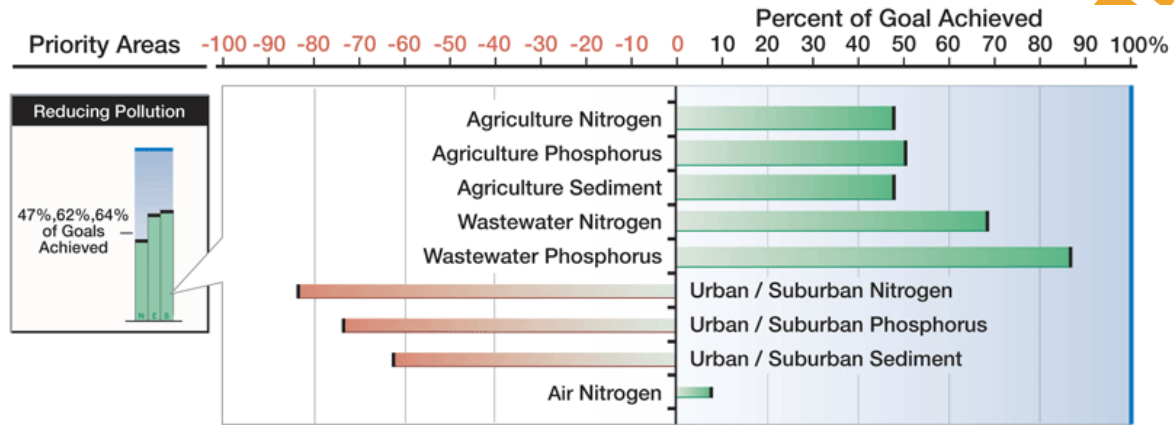
- Municipal Separate Storm Sewer Systems new coverage (Individual and General Permit)
- Municipal Separate Storm Sewer Systems major modifications (Individual)
- Construction activity coverage (Individual and General Permit) (based on project acreage)
- Construction activity modifications or transfers (Individual and General Permit) [For those permits that require significant additional administrative expenses such as additional plan reviews, etc.]
- MS4 and Construction activity annual permit maintenance fees (Individual and General Permit) [For those projects that have not been completed and terminated within a year, allows for recovery in the out years of expenses associated with inspection, enforcement, etc.]
- Allows for an annual increase in fees based on the CPI-U. [Not to exceed 4% per annum without formal action by the Board.]

Key Questions that the Board will hear today

With the understanding that we are asking you today to advance these proposed regulations for Administrative review and public comment, we are aware of several areas of discussion that you may hear more on today from the public and that you received comments on. While important to be aware of, please remember that we will have opportunities to make further amendments to this action following the public comment period and before the Board considers a final set of regulations. With that in mind, the following concepts are being brought to your attention. Some may suggest that:

1) The calculations and science behind the establishment of the 0.28 new development and 20% redevelopment water quality standards merits further discussion.

- Over the last twenty years, as development has increased in Virginia, pollution loads in the Chesapeake Bay watershed from stormwater runoff have increased, while pollution loads from other major sources, such as wastewater discharges and agriculture, have declined. While the Commonwealth has spent considerable time, programmatic focus, and expense addressing nutrients coming from wastewater discharges and agriculture, this regulatory action is one of the first key steps in addressing the increasing impacts from stormwater.

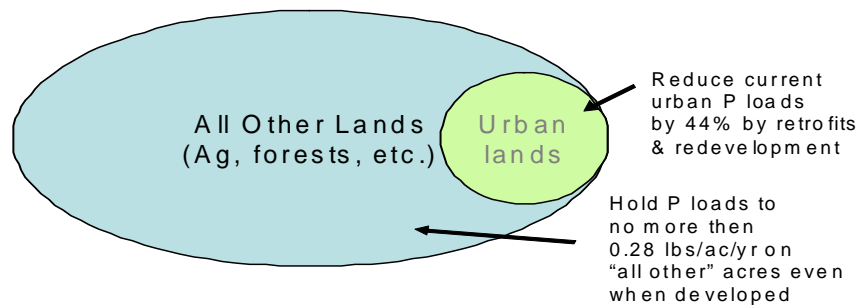


- In order to fulfill our water quality commitments and to address increasing water quality challenges across the Commonwealth, the regulations include numeric phosphorus criteria both for new development on undeveloped land and for redevelopment of existing developed lands.
- The proposed water quality criteria (0.28 lbs/acre/year new development standard and the 20% redevelopment standard) were established based on meeting Virginia's nutrient reduction requirements under the Chesapeake Bay Agreement. Water quality standards were established for different segments of the Chesapeake Bay and tributaries. The standards established criteria for dissolved oxygen and water clarity. Modeling conducted by the Chesapeake Bay Program then analyzed the relationship between total nitrogen and phosphorus loads delivered to the Bay and the probability and frequency of attainment with water quality standards. The final annual load target agreed upon was 175 million pounds of nitrogen and 12.8 million pounds of phosphorus. Virginia's portion of this overall load target was set at 51.4 million pounds of nitrogen and 6 million pounds of phosphorus (delivered load to the Chesapeake Bay from all tributaries).
- To meet these targets, Virginia developed and adopted plans, called Tributary Strategies, which identify implementation actions necessary to remove water quality impairments in the Chesapeake Bay, including its tidal tributaries, caused by nitrogen, phosphorus and sediment pollution. Additionally, Virginia developed water quality standards (dissolved oxygen, chlorophyll-a, and clarity) for the Chesapeake Bay and its tributaries that incorporated the Chesapeake Bay commitments into the Commonwealth's regulatory framework. The plans were devised to achieve nutrient load targets. The plans allocated nutrient reduction load targets to specific types of discharge sources such as agriculture, forest, mixed open, point sources, and urban.
- From the Bay model load targets established for these discharge sources, computations were made utilizing the target loads for non-urban lands to arrive at an average non-urban load that needs to be met and maintained to

meet the tributary goals and more importantly to maintain the health of the Commonwealth's rivers and the Bay. Should such lands be changed in use through development, the 0.28 lbs/acre/year remains a target for the developed lands so that the Commonwealth's waters are not degraded.

- From the redevelopment perspective, the estimated 2002 urban load was compared to the tributary strategy urban load target. Although the calculations indicated a need for a 44% urban load reduction, not wanting to create a standard that would deter redevelopment, we reduced the redevelopment standard to 20% (it is currently 10%).

Reductions Necessary to achieve Virginia Bay Clean-up Phosphorus Reduction Goals



- We suggest that the methodologies utilized represent the best data and modeling available upon which to establish water quality criteria.

2) Why should we establish a statewide water quality standard (based upon Bay calculations).

- Stormwater quantity and quality is a recognized problem state-wide. Impaired waters are not just prevalent in the Chesapeake Bay but have been identified throughout the state. TMDLs have been established on stream segments throughout the state, including non-Bay watersheds, to address these impairments. Additionally, studies have reportedly shown that nutrient loadings to Virginia's rivers draining to the Ohio and Mississippi basins may contribute to those basin's hypoxia episodes. [NOTE: Virginia's land area is approximately 54% within the Chesapeake Bay watershed and 46% in the Southern Rivers (SR) waters; 60% of SR drains to the Atlantic Ocean through North Carolina and 40% to the Ohio River basin.]
- While the 0.28 lbs/acre/year phosphorus standard was established to meet specified Bay goals, it was established as the target level necessary to minimize nutrient impacts on Virginia's aquatic systems and to maintain the health of the aquatic communities.

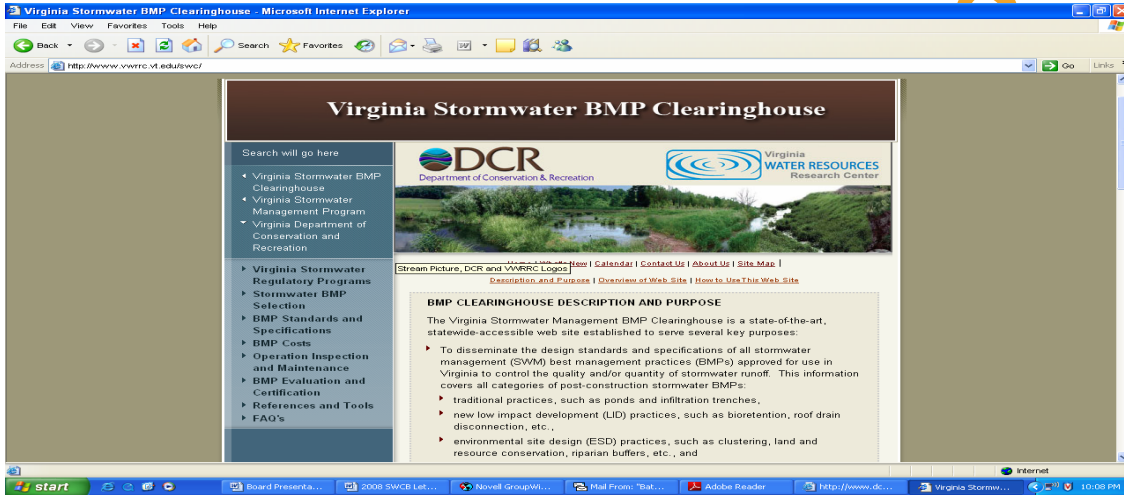
- The 0.28 lbs/acre/yr phosphorous load addresses the reductions needed by new development to maintain pre-development phosphorous loads associated with non-urban land. The end result is “no-net increase” in phosphorous from new development.
- While urban development may not be as prevalent in the non-Bay portions of the state, and while many of the impairments in these waters may be coming from agricultural sources today, this load limit assures that should development occur in these areas it will not further impact the streams.
- Additionally, stormwater additions to western streams may have even greater impacts due to the greater sensitivity of cold and cool water ecosystems (such as trout streams) to nutrient enrichment, sedimentation, turbidity, and dissolved oxygen reductions.
- It should be noted that while the target nutrient is phosphorus, the control measures employed will also remove nitrogen, sediment, and other potential pollutants associated with stormwater runoff.
- The state-wide adoption of the 0.28 lbs/acre/yr phosphorous load is an equitable approach across Virginia jurisdictions so that no locality has a competitive development advantage over another when it relates to stormwater requirements.
- Establishment of a statewide standard also simplifies and standardizes compliance calculations between jurisdictions, thereby facilitating implementation for both permit applicants and local program administrators.

3) More time is needed to assess the achievability of the water quality and quantity standards.

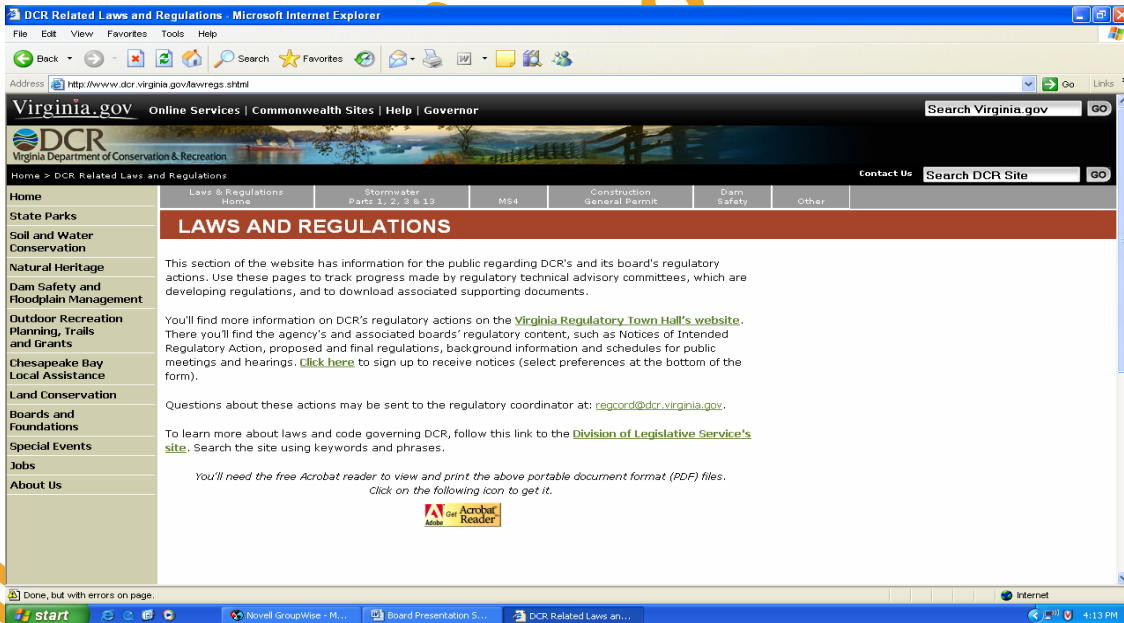
- The regulations being recommended to the Board today are only at the proposed stage and opportunities for further refinement of them exist before bringing a final set back to the Board for consideration. Soliciting comments on the regulations from an even broader array of constituents will be more meaningful once we have a set of Board approved proposed regulations.
- Between this meeting and the closure of a 60-day public comment period, the public will have at least 5-8 months to assess the regulations and to provide their analyses and comments.

As a point of interest related to assessing the achievability of these regulations, DCR has established and revised several websites to make the materials deemed necessary for compliance with the standards readily accessible by the public.

- The specifications for the Best Management Practices necessary to comply with the regulations are currently available on the Draft Virginia Stormwater BMP Clearinghouse at www.vwrrc.vt.edu/swc. The password protection for the draft site has been removed.



- DCR has reformatted its policy and regulatory area of its website (<http://www.dcr.virginia.gov/lawregs.shtml>) to better manage and direct information related to these regulatory actions.



- Virginia Runoff Reduction Method Worksheet is available on DCR's website at <http://www.dcr.virginia.gov/lawregs.shtml>.

Look under: Stormwater Parts 1, 2, 3 & 13 button

In: Runoff Reduction Method

Select: Virginia Runoff Reduction Method Worksheet

<http://www.dcr.virginia.gov/lr2f.shtml>

DRAFT Virginia Runoff Reduction Method Worksheet -- Beta Version -- 09/01/08					
Site Data					
Site Name:					
data input cells					
calculation cells					
constant values					
1. Post-Development Project & Land Cover Information					
Constants					
14 Annual Rainfall (inches)	43				
15 Target Rainfall Event (inches)	1.00				
16 Phosphorus EMC (mg/L)	0.26		Nitrogen EMC (mg/L)	1.96	
17 Target Phosphorus Load (lb/acre/yr)	0.26		Target Nitrogen Load (lb/acre/yr)	2.69	
18 P1	0.90				
Land Cover (acres)					
	A soils	B Soils	C Soils	D Soils	Totals
22 Forest/Open Space (acres) -- undisturbed, protected forest/open space or reforested land	0.00	0.00	0.00	0.00	0.00
23 Managed Turf (acres) -- disturbed, graded for yards or other turf to be mowed/managed	0.00	0.00	0.00	0.00	0.00
24 Impervious Cover (acres)	0.00	0.00	0.00	0.00	0.00
25				Total	0.00
26					0.00
Rv Coefficients					
	A soils	B Soils	C Soils	D Soils	
29 Forest/Open Space	0.02	0.03	0.04	0.05	
30 Managed Turf	0.15	0.20	0.22	0.25	
31 Impervious Cover	0.95	0.95	0.95	0.95	

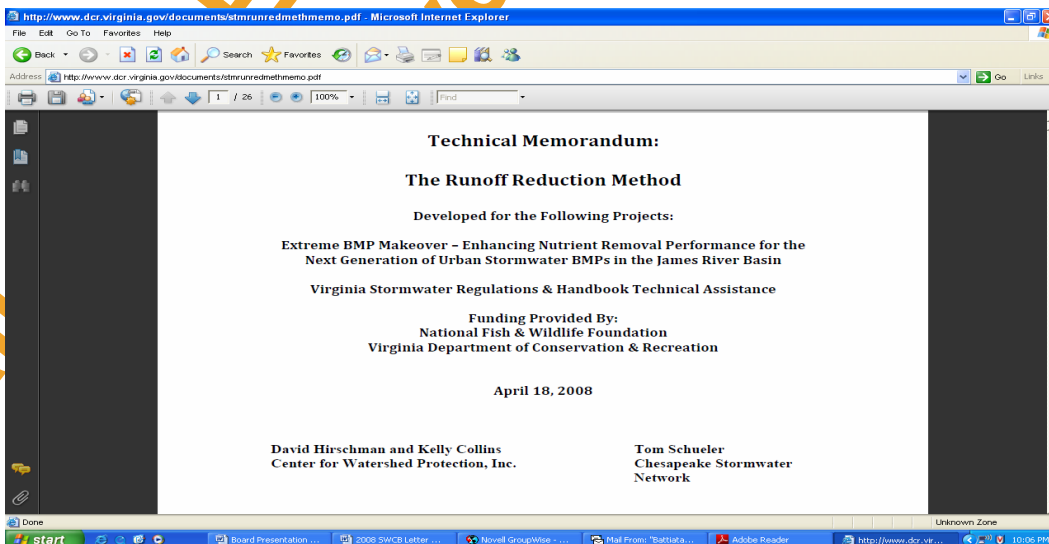
- The Technical Memorandum: The Runoff Reduction Method is available on DCR's website at <http://www.dcr.virginia.gov/lawregs.shtml>.

Look under: Stormwater Parts 1, 2, 3 & 13 button

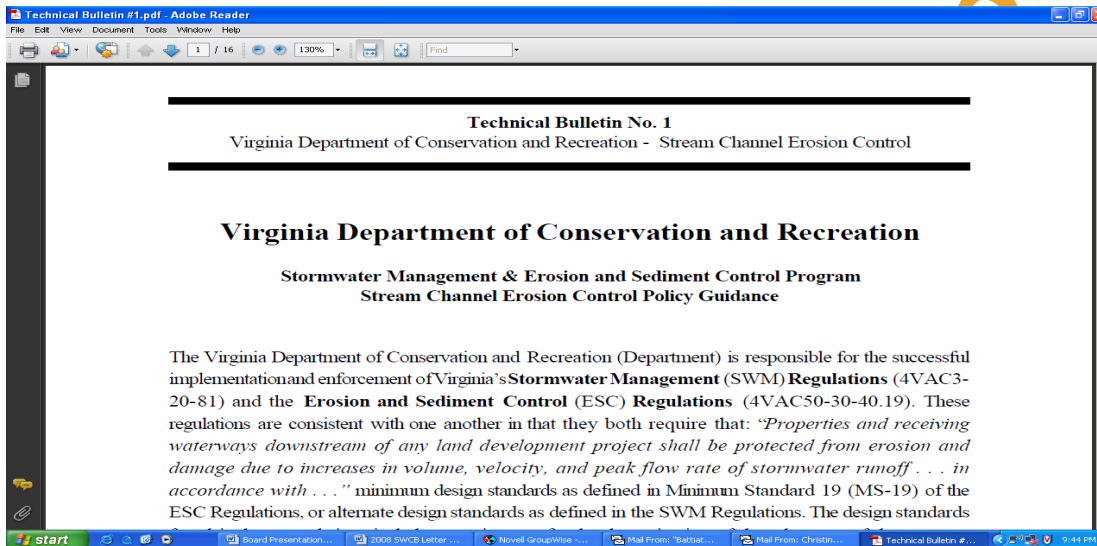
In: Runoff Reduction Method

Select: Technical Memo

<http://www.dcr.virginia.gov/lr2f.shtml>



- Technical Bulletin No. 1 on Stream Channel Erosion Control, that is also referenced in the regulations, is available on DCR's website at http://www.dcr.virginia.gov/soil_water/stormwat.shtml.



4) The fees do not include the costs for future BMP inspections and maintenance (after project termination)

- When establishing the fees, the Department did consider whether or not to add a long-term BMP inspection and maintenance component to the fee regulations. While recognizing the importance of BMP inspections and maintenance, the Department is not recommending adding this additional cost to the permit fees being paid by the development community.
- Under the provisions of law, a locality may establish utility service fees to address maintenance and inspection of BMPs in accordance with § 15.2-2114. Regulation of stormwater.
 - A. Any locality, by ordinance, may adopt a stormwater control program consistent with Article 1.1 (§ 10.1-603.1 et seq.) of Chapter 6 of Title 10.1, or any other state or federal regulation, by establishing a utility or enacting a system of service charges. Income derived from these charges shall be dedicated special revenue and may be used only to pay or recover costs for the following:
 - 4. Facility maintenance, including the maintenance of dams, whether publicly or privately owned, that serve to control the stormwater; however, prior to adoption of any ordinance pursuant to this section related to the maintenance of privately owned dams, a locality shall comply with the notice provisions of § 15.2-1427 and hold a public hearing;
 - 5. Monitoring of stormwater control devices;

5) The fees that have been established are too high (or too low).

- Today's existing fees are those minimal fees that came over from DEQ in 2005 that were essentially only processing fees. These fees have been amended in this regulatory action as they are insufficient for the operation of a local program and for necessary program oversight.
- Per the Code, the fees need to be set at level sufficient to cover expenses associated with all portions of the administration of the Commonwealth's stormwater management permit program. Those that are being recommended are conservative.
- A number of localities wanted to make sure the state set a fee that would allow them to adequately administer a local program. As such, we were very careful to establish permit fees that appropriately covered the costs of the key elements of administering a stormwater program; plan review, permit review and issuance, inspections, enforcement, program administration and oversight, and travel. The permit fee also includes costs associated with department oversight functions and database management.
- The construction fees are based on the area being disturbed. Administrative expenses routinely increase with the size of the project. When the higher fees are put on a per lot basis, they do not result in a large increase per lot. Such increases will most likely be passed on to the consumer as part of doing business.
- The annual maintenance fees have been established to allow local programs to recoup inspection and enforcement expenses for a project that has not been completed and terminated within the first year. Additionally, modification fees are added to allow a local program to recover expenses associated with significant plan modifications that require review.
- The CPI-U annual increase was added as several localities suggested a mechanism was needed to ensure that fees keep pace with the costs of doing business.

6) The 28% of the fees for DCR's program oversight was set based on incorrect permit numbers.

- DCR's estimated revenue to cover its program oversight responsibilities is based on a future estimate of 3,000 permit coverages being issued per year. This was based on our current data: FY2006 = 2678 permits; FY2007 = 2707 permits; and FY08 = 2513 permits.

- It has been suggested that DCR's numbers under-estimate the true number of projects on-going in the jurisdictions and that information being provided by localities to the Department regarding erosion and sediment control projects might be utilized to arrive at a more refined number. The endpoint of this discussion is that if DCR has under-estimated the true number of revenue producing activities, that it will be collecting more money than necessary to manage its estimated oversight needs. If this is true, then DCR could reduce the fees and its percentage of the total amount collected.
- As DCR's sole source of funding to administer the Commonwealth's stormwater management program comes exclusively from fee revenue, we want to make absolutely sure that we establish the fees appropriately and thus currently have based it on known permits.
- However, based on the preliminary analysis in the economic study between general permit coverages issued by DCR and reported land disturbing projects of size in Chesapeake Bay Act localities, there is evidence that DCR may only be seeing about 41% of the projects requiring permits. However, the under-estimating appears to be primarily from the smaller (probably < 1 acre) projects that have much lower fees and that therefore generate much less revenue.
- Understanding the importance of this issue, the Department will further research this element during the public comment period and recommend to the Board further fee regulation revisions in the final version should it be determined to be appropriate.

Again, in closing, I strongly hope/ recommend that the Board will support the Department's recommendations and approve the Part I, II, and III and the Part XIII proposed regulations and authorize their filing for review by the Administration and for public comment.

Prior to public comment, I would now like to provide David Hirshman from the Center for Watershed Protection an opportunity to brief you on the results and products of our contract with them. DCR hired the Center for Watershed Protection to research the scientific rationale for the establishment of the regulatory criteria and to help us build the necessary tools to comply with the standards set out in the regulation. This includes the spreadsheet as well as the BMP standards and specs. Additionally, CWP has been a major partner in the charrettes. As these tools are an important component of the regulations, we wanted to provide an opportunity for the Board to be briefed on this element of the regulations.

Following David's overview, I will turn it back to you Madame Chairman for public comment and for discussion and consideration of the motions for Parts I, II, and III and a separate one for Part XIII that are included on the last two pages of this document.

Chairman Campbell thanked Mr. Dowling for his presentation.

Mr. Maroon said that the action taken by the Board would be to authorize a set of draft regulations to begin the process of public comment and review. He said that final action would not be taken by the Board until late 2009.

Mr. Maroon said that these draft regulations had been thoroughly vetted and that this was one of the most intensive environmental regulatory actions in the Commonwealth.

Mr. Hirschman gave the following presentation.

**Proposed Virginia Stormwater Management Regulations: Water Quality
Criteria & Compliance**
David J. Hirschman
Program Director for Stormwater
Center for Watershed Protection

CWP Role

Scientific Foundation & Regulatory Tools

- Update Stormwater Quality & BMP Research
- Develop Stormwater Quality Approach
 - Methods & Computations
 - Structural & Site Design BMPs
 - Assistance with BMP Specifications
- Assist with ASCE/DCR Charettes

A New Stormwater Approach: Major Themes

1. Site Load Standard – 0.28 pounds/acre/year for Total Phosphorus
2. More options for stormwater practices and overall site design
3. Treating impervious cover + managed turf to better control nutrients
4. Stormwater BMP planning & compliance spreadsheet
5. DCR/ASCE design charettes

1. Site Load Standard

What we do now

- Total phosphorus (TP) as keystone
- Most sites meet average land cover condition (0.45 lbs/acre/year)
- Doesn't apply to much of state

What is proposed

- TP basis for compliance; Total Nitrogen also calculated
- Load limit tied to Tributary Strategy goals = 0.28 lbs/acre/year (TP)
- State-wide application

2. Stormwater BMP Choices

What we do now

- BMP options from Regulations & Blue Book

What is proposed

- Site design & conventional BMPs in Handbook & Clearinghouse, supported by spreadsheet
- BMP performance = Runoff reduction + Pollutant removal
- Use of "treatment train"

Runoff Reduction (RR)

Runoff Reduction is defined as the total volume reduced through canopy interception, soil infiltration, evaporation, rainfall harvesting, engineered infiltration, extended filtration or evapotranspiration at small sites.

BMPs: Level 1 & 2 BMP Designs

Level 1: good, standard design

Level 2: enhanced design to boost nutrient removal

3. Treating Impervious Cover & Managed Turf Areas

What we do now

- Nutrient loads based on impervious cover

What is proposed

- Nutrient loads & treatment volume based on impervious cover + managed turf
- Incentives to preserve forest cover

4. Spreadsheet Compliance Tool

What we do now

- Variable between localities - most use Blue Book method

What is proposed

- Somewhat uniform use of spreadsheet tool

5. ASCE/DCR Design Charettes

- Five “round 1” workshops
- Addressed comments/suggestions
- Two “round 2” workshops
- Over 300 participants
 - Design consultants
 - Local gov't
 - State & Federal government
 - Environmental
 - Academic
 - Vendors

Take Home Points

- Method supported by better science; incorporates runoff reduction
- Broader menu of available BMPs
- Incentives for site design that protects water quality – preserve/restore forest & reduce disturbed soils
- Targeted to water quality goals

At the conclusion of Mr. Hirschman’s remarks, Mr. Dowling said that the Board had the Department recommendations regarding the two regulatory actions. He said that the staff request was for the Board to approve the regulations moving forward.

Ms. Campbell called for a short break before commencing with public comment.

Following the break, Ms. Campbell called for public comment.

Public Comment

Chairman Campbell opened the floor for public comment.

Andy Rowley

Planner, Arlington County Department of Environmental Services

Thank you for the opportunity to comment on these proposed regulations. We appreciate all the hard work put in by DCR staff and all of the TAC members on our behalf. I would like to comment on two aspects of the technical criteria that have raised questions in Arlington.

The first comment is that the design criteria for the BMPs in the proposed clearing house have not been available for review. As a consequence, we have not been able to evaluate the effectiveness, the potential cost, and the feasibility of achieving the stormwater goals as they apply to urban in-fill development and re-development.

The second comment is that it is unclear how these regulations will apply to re-development. Arlington County is a small county of approximately 26 square miles with an existing 40% impervious area. Development in Arlington is chiefly in-fill and re-development and is typically for single parcels of less than half an acre and often less than an eighth of an acre.

While the proposed regulations allow local programs to do pollutant removal off-site, they do seem to heavily favor dealing with stormwater quantity increases through a heavy emphasis on infiltration into the ground. This creates the following challenges:

1. Arlington has a high percentage of soils that do not easily allow for infiltration – we have lots of clay. We already have problems with springs appearing in paved roadways or on adjacent parcels; an increased reliance on infiltration to deal with stormwater will exacerbate those problems.
2. The use of underdrains would seem a simple solution, and I expect that some sites will have underdrains outfalling to storm sewers; however, not all sites have access to storm drains. The 100-mile difference between the number of miles of sanitary sewer (approximately 465 miles) and the number of storm sewer (approximately 366 miles) begins to illustrate the scale of this problem.

Since Arlington is already developed, management of stormwater that goes beyond simple drainage of individual parcels cannot be easily coordinated with off-site stormwater systems, as is often the case for large developments. With approximately 35,000 parcels in Arlington, the number of facilities that would require inspection and potential enforcement actions could quickly become unwieldy.

Since we have been unable to evaluate the effectiveness, feasibility or the costs of the BMPs in the proposed clearing house, and since it is unclear how the regulations will apply to in-fill and re-development, we respectfully request that the Virginia Soil and Water Conservation Board defer advertising part II of these regulations until their impact can be fully understood and evaluated. Thank you.

Michael Flagg, Hanover County

Good morning members of the Board. I very much appreciate the opportunity to be before you and as with others, I would certainly like to acknowledge all of the hard work of all those involved. Endless hours of volunteer time as well as numerous professionals have been invested in this program. At this point I'm passing around a letter that we completed yesterday about the analysis of the Chesapeake Bay for Hanover County (a copy of that letter is available from DCR).

Many of the numbers that were put forward were put forward as specific percentages and science, but I'm here to submit to you that there is great variability in these numbers. I'd also point you to a scientific technical advisory committee, a fact study issued by the Chesapeake Bay program. There's a lot that we know, but also a lot that we don't know. As implementers at the local level, I would submit to you that you have a tremendous amount of technical expertise in the Commonwealth that is not comfortable with the technical criteria and what the ramifications will be.

Because of the lack of published information, we would submit to you that it is reasonable to move forward with many components of the regulations, however, the technical standards should not be moved forward at this time. I also point you back to your high school days and your days in college. All of us are required to study history and sociology as a part of a technical program. This is so that we don't lose site of the larger program when we move forward.

If you cannot establish trust in your community, you cannot move forward with implementing regulations in the absence of a policing authority. Until that trust is established you can't move forward without being in a position to police. And I submit to you if we move forward on an unsteady footing, this will be inevitably bad for conservation.

I've spend the majority of my career working in conservation in this state and the last think I want to see is DCR move forward to implement programs, that quite frankly they have yet to do in local governments and see them fail because of the uncertainty in the application of the technical requirements.

Lastly, I would remind you that in our role as local government officials we see the effects of unintended consequences. Currently in Hanover County, we're experiencing, because of the tightness and restriction in a suburban area, we're seeing increased pressure on our rural land because of the lower cost to go out and develop those large lots

than to compact and contiguously develop in an urban area. These rules have great potential to create urban sprawl and to have exactly the affect we don't want.

Ingrid Stenbjorn, Town of Ashland

First of all I'd like to reiterate that we do appreciate all the work that went into the development of these regulations. I also would like to say that the Town of Ashland concurs with the other concerns that other local governments have regarding the regulations. We're concerned with the Board allowing these to move forward.

Our particular concerns are the outstanding technical issues and the economic considerations that still need to be resolved. We would like to have that developed more before we would move forward with the development of the regs.

John Tippett, Friends of the Rappahannock

Good morning, my name is John Tippett and I'm the Executive Director of the Friends of the Rappahannock, a river conservation group based in Fredericksburg. I appreciate the opportunity to share our comments with you this morning. I've been serving as an active member of the Technical Advisory Committee for these regulations, both for the first and second NOIRAs, and this includes serving on the water quantity subcommittee.

I want to express our organization's strong support for advancing this language to the public comment phase. The process that has gone into developing these standards is unprecedented in its depth and its vigor. There is a scientific basis in Virginia's tributary strategies and this is significantly firmer than the scientific basis for prior standards.

I want to focus specifically on the water quantity standards. This is an absolute critical component for the regulations because of the rapidly growing urban runoff and the degradation of our streams and downstream resources. Current regulations have focused on controlling runoff rate, while they overlooked the critical role of excess runoff volume.

Under current regulations, water that was absorbed into the ground before a site was developed was still delivered directly to the stream. The increased quantity of runoff over time exerts greater energy on our stream banks resulting in increased erosion. The proposed regulations address this issue through the use of a concept called energy balance. Simply put, it seeks to keep the energy exerted on the stream bank for both pre and post development conditions the same. The science is straightforward. Trial runs of this approach on a variety of sites, conducted by Williamsburg Environmental Group show that the approach is achievable both technically and economically.

It will cost more. We know that because we've seen similar measures in place for several years in municipalities like Stafford County that have gone above and beyond the current state regulations. But we also see that these costs are not exorbitant as witnessed by the

fact that development in Stafford County continues to move forward and the cost of stormwater is a cost of doing business.

I would also note that by implementing these regulations statewide, it levels the playing field, so that development in Virginia localities is subject to the same costs. I would also note that these costs are ultimately borne by the consumers and if they do not pay up front for the prevention of these costs, they still pay these costs, in a different form. That includes the cost of seafood, the loss of jobs and recreational opportunities.

I do want to directly address the concerns expressed about the inadequate technical assessment in the development process. We are breaking new ground here because the level of impairment in our streams requires it. And as we advance the state of the art there are always going to be some questions. I would just say that we have exercised the due diligence. Thank you.

Barrett Hardiman, Home Builders Association of Virginia

Good morning Madame Chairman, members of the Board. I appreciate the opportunity to speak before you today. I'm here on behalf of the Home Builders Association of Virginia.

You've heard mentioned several times today that this is the first bite of the apple and that in the pursuant process we would have the opportunity to amend the regulations. What that tells me is that even after several years of the process of going through this and vetting it, we're not there yet. We still have product that many of the tools we need to assess it and to evaluate it were not available until recently and some of them are still not available. Until we have those tools, until we're able to really go through and figure out what this regulation can do, I would urge you not to put forward Part II, the technical standards of the regulations.

Furthermore, to change from the current regulations to an effluent standard, which is what 0.28 is, is a major policy change in Virginia. It's a major policy change in any part of the Country, in fact EPA was contemplating it and decided to put that decision off until the next regulatory process that they go through.

I don't believe that the 0.28 standard is appropriate, even in the Chesapeake Bay Watershed, as you've heard that's only 50% of the state. These guidelines will take into account every part of the state, every watershed and individual unique aspects of those waters. If you look at historic development patterns and the amount of land being converted from forested to development or agriculture development, you'll find that the 0.28 actually goes far beyond what's needed to meet the tributary strategies.

Furthermore, the water quantity standards are quite possibly the most egregious part of these regulations. These will be the most difficult to comply with particularly in a redevelopment situation where you may be returning a developed site to a forested runoff condition. If you've got an unstable stream that you're discharging to in an urban area its

going to be very difficult to require additional land and excessive cost to be able to return that to a forested runoff situation.

Finally there's been some discussion about the costs. There are going to be increased costs. We're talking about an industry now that is struggling with trying to push those costs to the end user. In our business, the second most expensive part of a new house that we're building, after the purchase of the land, is stormwater management. That's already the second most expensive part and we're looking at increasing those costs and increasing those costs to the end user. A lot of projects are not going to be economically feasible. When you get into specifically redevelopment and infill development which is what we're trying to encourage, you're looking at increasing costs exponentially and particularly on smaller parcel projects. Large parcel projects will be a little bit easier, but on the smaller parcels there will be severe ramifications.

Again I would encourage you to hold back on Part II. Let us do some more research and evaluation of the possible effects.

Tyler Craddock, Virginia Chamber of Commerce

Madame Chairman, members of the committee, I represent the Virginia Chamber of Commerce. In order to compete in a global marketplace the private sector needs to be able to develop commercial and industrial sites with nearby affordable housing choices in a timely, cost effective manner that does not impose burdensome unnecessary regulations on the business community. After all, those commercial industrial sites are jobs and those homes are where those workers go at night.

We question imposing this regulation on the business community in the current economic climate. We do acknowledge to you that, if this is to be done, we need to do it right. If we do this wrong it will cripple the economic development efforts of localities across the Commonwealth.

There are both technical questions that have been mentioned and the implication of bad policy if you move forward with certain parts of this. We would urge you, like other speakers have, to hold back on Part II. We are concerned about the 0.28. Yes, this is derived from the Chesapeake Bay Tributary Strategies, but there are lengthy questions about even its appropriateness there much less on a statewide level. While that type of standard would be a job killer in any community, it would be especially bad for places like Southside and Southwest Virginia. A community like Henry County has already been hit very hard by job loss.

We're just as concerned about the 20% reduction of redevelopment. Current legislative policy in Virginia is to foster and promote redevelopment and infill development. Given that, and given current industry costs, to us it seems illogical that you would want to be raising the standard for redevelopment at all, let alone doubling it.

Finally we share concern about the proposed quantity regulations and how certain sites will be able to comply with those especially smaller infill redevelopment sites.

Again we would urge you to first of all not to consider any regulation on business in the current economic climate. But if you do go forward, please take the time to get it right. This regulation, at least Part II of it, in our opinion is not ready for prime time and we would urge you to send it back to staff with a directive to bring forth a proposal that answers those technical questions that have been raised and that doesn't propose onerous new regulations on economic interests in the Commonwealth.

Michelle Brickner, Fairfax County

Hello Madam Chairman, Members of the Board. I want to thank you for the opportunity to speak before you today. I want to preface my remarks by talking about Fairfax County's commitment to environmental excellence. Our Board has created goals and provided funding so we share obviously the goals of improving water quality throughout the state.

However, I must reiterate, with some of my compatriots from the TAC, the concerns about the status of the technical criteria, the lateness of which we were able to receive some of the components of it as well as the lack of testing. I went to a charette just last week but there just hasn't been ample opportunity to digest, consider, or test the infill implications and the development implications of the proposed amendments.

Also I wanted to mention some issues about sustainability. I'm an engineer, I believe almost anything can be engineered. But with the charette that I went to and the email you received from Joe Wilder in Frederick, you can see some of the implications regarding the number of facilities that are going to be required to meet this and that has a huge impact on localities with regard to long term ordinance enforcement and inspection. That is, as David acknowledged, an unfunded burden that is being placed on us. And as Mike Flagg mentioned, I don't know if the community is really prepared for that sort of onslaught of expense and resources that it is going to take to accomplish all of that.

Finally, I want to make a couple of comments about the fees. We are part of the faction that doesn't find it sufficient to run our program. Right now we charge well over a thousand dollars per facility for review, several hundred dollars for inspection. With these new fees that are supposed to cover that we won't be recouping what we're getting today for those sorts of activities.

Also, I wanted to mention the fact that the 20% being applied everywhere I would put forth to you that the amount of effort that the state is going to have to put into overseeing the various programs that are run by the localities will not increase in direct proportion of the number of permits. Somewhere in there it's going to plateau and I do advocate putting a cap on the dollar amount that should be submitted to the state.

Finally, I just want to encourage you to support VAMSA's recommendations. There has been a lot of local jurisdiction participation in this TAC, and there is a lot of local jurisdiction concern. I hope that you will take that under advisement and I hope you will support VAMSA's recommendation. Thank you.

Jeff Perry, Henrico County

Good morning. I'm a TAC member and cosignatory of the letter that VAMSA sent to the Board stating our position. I would like to thank you for the opportunity to be before the Board today. I'd like to thank DCR staff as well as the Center for Watershed Protection.

As a representative of a local government I continue to have several serious concerns focused on the regulations. I believe what you have heard today is that these regulations as proposed are not ready to move forward.

The technical criteria presented in the regulations has not been adequately tested and how this criteria impact redevelopment sites has not been tested at all. And how the 20% redevelopment standard was established was truly mind boggling.

We still have not seen the BMP handbook. Unfortunately the TAC has not seen nor reviewed the economic analysis to determine how many millions or hundreds of millions of dollars these proposed regulatory changes will cost. Even without the economic analysis, we know the impacts on local government will be significant.

We do know that with these proposed regulations, the amount of BMPs will grow significantly. Currently we have over 1,000 BMPs in Henrico County. However, under this proposed regulation that number could easily have been 5,000. The inspection and maintenance costs of these facilities will be extremely large not to mention the impact on our citizens and our homeowners' associations.

I remain very concerned that we are moving forward with a regulation that has not been tested and is missing many important parts. I am equally concerned that the regulation is not based on solid footing and that the TAC members have repeatedly asked for scientific basis for much of the technical criteria with much less than a satisfactory response.

Before closing I would like to bring the Board's attention to one final area of concern and that is the proposed stormwater fees. Henrico County remains extremely concerned and dismayed that DCR is proposing to keep 28% of the money collected for VSMP permits.

With me today, I have a printout of actual projects for the year 2007 as well as the number of builder's permits for that year. We are projecting that in 2007 we would have collected \$974,000 in fees, of which \$272,000 would go to DCR for oversight purposes. We do not think that Henrico County needs \$272,000 worth of oversight. We continue to feel that this money is better spent in the field where the real work is being accomplished. It is my understanding that DCR is proposing 54 new positions for this program with a third of these positions being targeted for the oversight of localities with current

programs, essentially the Tidewater area. Currently DCR's Chesapeake Bay Local Assistance program provides oversight to those same Tidewater areas with five individuals. My understanding is that DCR will not be overseeing individual projects but the money that is collected will provide general oversight of local programs. We are requesting that a cap be placed on the amount of money that DCR can receive for oversight from local governments.

Thank you.

Ted Miller

Good afternoon Madame Chairman and members of the Board. Again thanks to everybody who has put a lot of time and effort into the process so far. Certainly I would support the intent of the regulations. I stand before you as a design engineer and a concerned citizen. I would like to focus on the water quality portion.

As an engineer I'm tasked with solving a problem. I ask a couple of questions. What's the source? How am I going to attack the problem as efficiently as I can? When I look at the water quality issues that we have in the State of Virginia, and specifically the Bay and the sources of pollution; agriculture is 50%, point source discharge is 22%, and urban areas are 14%.

These regulations apply to new development, which is a fraction of the 14%. We're talking about less than one percent probably in terms of source of pollutant and the pollutants in the Bay.

Personally as a consultant it helps me, my fees are going to go up. I'm going to benefit, but I don't think that's fair.

I would ask that you defer the approval of the technical regulations and also I'd like to see more flexibility for localities. Governor Kaine this afternoon is going to be at an Algae to Biodiesel pilot project to advance alternative fuel production and research. There are some groups in Florida that harvest algae. They say they can remove a pound of phosphorus for \$25 per pound. In our design charettes, we had a commercial site, three quarters of an acre that produced one pound per year of phosphorus. We're trying to mitigate that to maybe a half a pound. So we're spending tens of thousands of dollars to mitigate half a pound, meanwhile we've got the technology to remove those pollutants for \$25 a pound. Somewhere there is a major disconnect here and it seems like moving forward with these regulations would be a mistake.

Roy Mills, VDOT

Good morning Madame Chairman, members of the Board. I have been a member of both stormwater TACs, a member of the construction permit TAC, and a member of the BMP Clearing House and the stormwater handbook committee. I have been to just about all meetings that have occurred.

Being a member of those committees, I've begun to see how the pieces will fit together. I want to commend DCR staff for the efforts of an almost impossible task to sit there with two sides of the table with the environmental community on one side and the development community regulators on the other. To their credit they kept their composure and produced the document you have before you.

Was it the consensus of the committee? Probably not. Was everyone happy? Definitely not. Can we live with it? Probably only time will tell.

As you heard there are questions about the numbers, the 0.28 lbs for new development and the numbers for redevelopment. Are they the right numbers? Are they achievable using current technologies? Again, only time will tell. We had the charettes. We looked at them on some specific site areas and were able to get the numbers to work. But again, what happens when you have a lot more sites and facilities like you would under the regulations.

We did have some problems with the linear projects and getting the numbers to work on those. I believe we'll end up doing offsite mitigation for those type of projects and that is allowed by the regulations.

We could design the best facilities and build the best facilities but the key to all of this is the maintenance issue. It is the weak link in the chain.

I think there are two keys to the test in getting these regulations to move forward. First we need to be able to support the numbers with logical documentation. This was a big issue of the TAC that I'm sure will surface again and again as we go through the review process. Secondly the regulations need to have flexibility built into the program. Whatever the final product, we need to be able to revisit that at sometime after a trial period of implementation. We need to be able to go back and tweak the numbers or the process without having to go through another three or four year process that we've done currently.

Over the last few years, VDOT has enjoyed a good working relationship with DCR staff and we certainly hope to continue that, whatever ends up being the final product.

Mike Gerel, Chesapeake Bay Foundation

Good morning. Thank you for the opportunity to speak to you today. I also served on the advisory committee to help draft the proposal. On behalf of the nearly 70,000 members in Virginia, I'm here to offer CBF's strong support for moving the proposal forward for public comment. CBF commends DCR's unparalleled effort applied to the development of this proposal over the last three years. I'm confident that the rigorous public vetting that has already concluded surpasses any environmental action in the Commonwealth of Virginia.

Virginia's economy and citizens are suffering from our collective failure to reduce water pollution in the entire Bay and over the 10,000 miles of stream tributaries that are impaired. There are diminished oyster and blue crab populations.

As we near Governor Kaine's Year of Energy and the Environment, CBF believes that the Commonwealth can and must do more to address stormwater pollution.

Mr. Gerel said there were three broad reasons to support the regulations.

- 1) The proposed technical criteria offer notable improvements. He said the 0.28 number had been in the proposed regulations since early 2007. The regulations apply better science to sites.
- 2) The proposed enhancements will ease implementation. The regulations apply the latest stormwater research.
- 3) While there may be cost increases, they are appropriate, reasonable, and justified. The costs of compliance pale in comparison to the cost of inaction.

Bill Street, James River Association

Mr. Street presented the following testimony.

Chairwoman Campbell and members of the Soil and Water Conservation Board, thank you for the opportunity to speak to you on the very important issues before you today. My name is Bill Street and I am the Executive Director of the James River Association, a conservation organization dedicated to restoring and protecting the James River for over thirty years. On behalf of our members and supporters, I strongly support the regulations proposed by the Department of Conservation and Recreation and respectfully request you to approve these regulations in order to move them to the next step in the administrative process.

I have been involved in the development of these regulations since the initial Notice of Intended Regulatory Action issued on November 1, 2005. I served on the first and second Technical Advisory Committees and participated in nearly every one of the more than 30 TAC meetings as well as numerous subcommittee meetings, technical workgroups, and design charrettes. I would like to commend DCR staff on the unprecedented level of effort that has been put forth in developing these regulations and the numerous supporting methodologies and materials.

Growing Threat of Urban Stormwater Pollution

Urban stormwater pollution is a growing threat to the health of the James River and the rest of Virginia's waters. This is demonstrated by the title of the 2007 Evaluation Report by the U.S. Environmental Protection Agency Office of Inspector General: *Development Growth Outpacing Progress in Watershed Efforts to Restore Chesapeake Bay*. This is

made even more clear in the U.S. Environmental Protection Agency Chesapeake Bay Program 2007 *Chesapeake Bay Health and Restoration Assessment*, which showed that while progress has been made on each of the other 20 factors tracked in the Chesapeake Bay restoration effort, urban stormwater pollution has increased significantly. In Virginia, pollution from wastewater discharges and agricultural have declined over the past twenty years, but urban stormwater pollution is going in the wrong direction and now accounts for over 20 percent of Virginia's nitrogen and phosphorus pollution to the Chesapeake Bay.

We must address the upward trend of urban stormwater pollution in order to fulfill Virginia's commitments to water quality and safeguard its waterways for future generations. Starting with the Commonwealth's Constitution and extending to its stormwater and water quality laws to its participation in the regional Chesapeake Bay Agreements, Virginia has committed to clean, healthy waterways. These regulations will determine in large part the future health of its critical water resources. The proposed regulations are necessary in order to achieve healthy, clean waterways while at the same time accommodating future growth.

The impact of not fully addressing this challenge is considerable. The James River, America's Founding River, has played an integral role in the development of Virginia and today that critical role continues as a primary source of drinking water for millions for Virginians, and an asset for commercial and industrial facilities, and to those that utilize the river as a vital asset to our quality of life that is so important to our future prosperity. Urban stormwater, if left unaddressed, will undermine the value of this shared resource and diminish the public's well being.

The plight of Virginia's watermen demonstrates the very real economic and social impacts of degraded water quality. Today's headlines announce that the Chesapeake Bay blue crab has been declared a disaster by the federal government. This is due to an ecological failure caused by pollution and degraded water quality.

Proposed Regulations are a Crucial Step in Addressing Urban Stormwater Pollution

The regulations before you today represent the culmination of much analysis, research, thought and discussion. The result is a strong set of regulations that make significant advances in addressing the impacts of stormwater pollution.

- The water quality criteria for new development (0.28 pounds of total phosphorus per acre) will help Virginia meet and maintain water quality standards set by the Commonwealth. By ensuring that new development achieves a no net increase above the average undeveloped land under Virginia's tributary strategies, the Commonwealth will be able to have a healthy Chesapeake Bay and accommodate future growth.
- The pollution reductions required in re-development projects will make significant reductions from existing development without discouraging re-development.

- The water quantity criteria provide protection to local receiving streams and creeks to prevent damage to downstream environments and property from flooding and erosion.
- The regulations incorporate the considerable advances made in stormwater science and management over the past ten to twenty years. In particular, they give a more accurate accounting of the pollution loads and runoff associated with different land covers such as lawns and disturbed soil areas that are not addressed at all in the current regulations.
- The regulations provide a sound approach to utilize low impact development practices while not requiring or imposing them in situations where they are not appropriate.

While the proposed regulations are an important improvement over the current regulations and JRA supports their approval, they do represent a compromise between competing interests. A number of issues that affect water quality have been removed or weakened:

- Nitrogen, which is one of the most critical pollutants affecting the Chesapeake Bay, has been removed as a regulated pollutant.
- The water quality criteria for re-development are less than half of what is needed to meet Virginia's Tributary Strategy reductions.

Analysis Re-affirms that Regulations are Workable and Attainable

In an effort to contribute to the understanding of the implementation of the proposed regulations, JRA contracted with Williamsburg Environmental Group to apply the new regulations and associated methodology to a number of real world examples development projects. WEG had extensive experience in water resources engineering and design and construction of stormwater management plans. JRA has contracted with WEG to examine six types of development projects:

- Highly Impervious – new Development site (70% IC)
- Highly Impervious – Redevelopment site (70% IC)
- Big Box Site – 60%+ IC (25 ac)
- High Density Residential (45% CI) – towns/condos
- Medium Density Residential (25% IC) – ½ ac lots
- Low Density Residential (12-15% IC) – 1 ac lots

WEG selected sites for which they had the existing site information necessary to apply the new regulations and methodology. For both current and proposed regulatory criteria, WEG had determined the water quality and quantity requirements, designed generalized locations, sizing and footprints of necessary stormwater facilities in consideration of actual site conditions and constraints, and calculated budget level costs. At this point, WEG has completed analysis of four of the development types including several scenarios for the redevelopment site. Once WEG completes the analysis for the

remaining two sites and submits a final report, JRA will share the complete report with DCR and other interested parties.

The analysis and results produced thus far by WEG have provided several insights and conclusions:

- The results re-affirm that the proposed rules are technically sound and attainable across a variety of different types of development. For each site completed to date, the proposed regulations and criteria have been achieved.
- In most cases, additional stormwater facilities were required in order to achieve the new water quality standard, but one site was able to comply solely by re-designing the existing stormwater facility.
- The results identified some situations where the new regulations did not require major changes and others where they did. The pollution removal requirements for high impervious cover sites, such as office parks and big box store developments did not change significantly and they were offset by improved pollution removal efficiencies of the stormwater BMPs. Conversely, developments with large areas of lawns and turf, such as medium density residential developments, did have significantly greater pollution removal requirements. In the case examined by WEG, 65% of the additional pollution removal required by the new regulations was due to the accounting for pollution loads from turf which were not considered at all under the current regulations. Only 35% of the additional reductions was attributable to the change in water quality criteria.
- Clean water is no accident. It will require greater effort and investment to reduce stormwater pollution. Therefore, the cost of complying with the stronger water quality criteria was greater than under current regulations. However, the cases examined by WEG also demonstrate that:
 - The costs were within the range of what many developers are currently spending for stormwater.
 - Compliance costs are similar to what some localities are already requiring.
 - Adjustments to supporting tools and use of off-site options can reduce costs while still achieving water quality goals.
 - The results demonstrate that each development site is unique and multiple factors beyond the stormwater criteria influence the implementation and cost of stormwater requirements.

Conclusion

Since these regulations were presented to the Soil and Water Conservation Board a year ago, much work has been completed to respond to the concerns that were expressed at that time: A new NOIRA, refined methodology and tools, new BMP designs, BMP clearinghouse, water quantity criteria, and many meetings to discuss issues. It is time to move these regulations to the next step in the administrative process so that additional work and input can be provided to ultimately finalize these critical regulations. Thank you for your time and consideration. JRA stands ready to work with you and other parties in any way we can.

Barbara Brumbaugh, City of Chesapeake

Good afternoon Madame Chairman and members of the Board, I appreciate the opportunity to address you on this issue.

I served on the most recent stormwater TAC and participated as an observer in the first round of TACs. I would like to commend the efforts of the DCR staff and the Center for Watershed Protection on the difficult task that they had before them. I think they've done a really good job getting to this point and have come up with an innovative approach to stormwater management.

At this time, however, we're recommending that you delay advancing Part II of the regulations until a few certain actions have taken place.

First, there needs to be comprehensive testing with comparative analysis of the new criteria vs. the existing criteria, utilizing actual development sites including both new development and redevelopment sites. This would provide the information we need to evaluate whether the proposed technical criteria are technically achievable and economically feasible.

Second, there needs to be a thorough economic analysis of the proposed technical criteria, including the 0.28 lbs. of phosphorus and the 20% reduction for redevelopment. This needs to be available for public review.

Third, we need to see completion of the other components of the regulations, mainly the stormwater management handbook and the BMP clearinghouse website which would include the details of the design criteria. Without these actions, we can not fully evaluate all the impacts of the technical criteria.

So, while nothing's perfect, we would recommend that you advance Parts I, III and XIII of the regulations, but that you delay advancing Part II.

Thank you.

William Johnston, City of Virginia Beach

Good morning. When I arrived here, I had pretty much the same set of comments that you've heard today. I am also concerned about section II.

This is a stormwater quality regulation. It does not achieve stormwater quality because it's not feasible. It cannot be applied.

I've been on the TAC since the beginning. I don't think I've missed a single meeting of both TACs. If someone were to ask me "will this work?" I can't answer that. I don't know because we have not seen enough of the real world examples.

I realize that to improve water quality there is going to be a cost. But the question is how much? We have to know what we're getting into before we go rushing headlong into these regulations.

This needs to be sustainable. Requiring a bunch of things on the ground which will not work in the coastal plain cannot be sustained. Therefore it may look good on paper, but water quality wise we haven't improved anything.

I do want to improve water quality. I've got children and grandchildren and I do want them to be able to enjoy the same things I have.

There's a lot of momentum here. My concern with going forward with section II is that momentum will carry it all the way through and we may end up in a situation where we are going to back track and we have done more harm than good.

I believe DCR fully intends to investigate all of my concerns. But we started the handbook and the BMP clearinghouse over a year ago and we're not done. These regulations will probably be ready to go in little over a year. I'm worried that maybe this is a bigger job than we've been expecting. That is my biggest concern.

We just need to make sure we're doing the right thing, not just doing things right. We need to make sure that what we do will work.

Larry Land, Virginia Association of Counties

Thank you very much for hearing from us today. I not an engineer or one of those who works on stormwater issues on a day to day basis, but I do understand the major impacts that this is going to have on local governments. I appreciate the importance of the decisions you are going to be making over these regulations. I have attended every meeting of the TAC that I possibly could because of the impact this will have on local governments. Those whom you have heard from today from the local governments who are members of the TAC, care no less about the environmental protection and water quality than many of those whom you have heard saying that all the regulations including Part II should be advance. These are people that have gone into this profession because of their interest in environmental quality.

We discussed these regulations when we held a meeting of VACO's committee on the environment and agriculture. I want to join with those who are asking that Part II of the regulations be deferred for consideration.

Chris Pomeroy, Virginia Municipal Stormwater Association

I am speaking on behalf of the Virginia Municipal Stormwater Association. I want to say that I and VAMSA are on the side of clean water as well.

With respect to the technical aspects of the regulation much has been said about this being through a big process. The question to ask is what does that reveal. I think it reveals that there are significant material technical issues outstanding.

We've heard reference to the James River Association/Williamsburg Environmental Group study, to be forthcoming; Chapters of the handbook still in production; and the website went live yesterday. So we're struggling to get our arms around the information and that really confirms that this program is just not ready.

I think the question is not whether you are for or against the technical criteria, but what are the affects of the technical criteria? It's because of that, that VAMSA suggests proceeding with other aspects of the regulation but taking the time to work those other portions out.

We're the implementers at the local level. The issues that I'm speaking of center around the technical criteria and what the implications are. In most cases those aren't our costs, those are development costs and associated with the private sector. I would just point out to help understand that we're not asking for delay on pieces that benefit us.

That's the nature of our concern and the source of our recommendation, that you take the time to pursue the technical issues and get all of the information together.

Monty Lewis, Lewis and Associates

Lewis and Associates is a Civil Engineering firm here in Richmond. I don't have a prepared statement. I've only learned about this action two months ago because the word is not getting out to the engineers. I have real problems with the technical standards. I can't tell you if these are going to work.

I have designed BMPs ever since the Bay Act first came about. I can tell you that it is very difficult to get 0.45 to work in most subdivisions. When it first came about it was fairly easy to put the basin in the bottom. Then DEQ said to get the basin out of the bottom, put it on the side. We just had a subdivision in the past two weeks and barely got it to work.

On the commercial end of the Bay Act, we can get that to work. But if you go below 0.45, I don't see how it will work. I had someone ask me how much it will cost, but I don't have the technical data.

I can tell you that the Bay Act cost for one acre site, which was the cheapest, cost \$110,000 per pound of phosphorus.

We need more time to look at these details. This is a huge concern for developers.

Rick Parrish, Southern Environmental Law Center

The Southern Environmental Law Center would like to express appreciation for the job DCR staff has done. I attended a handful of the meetings and have the utmost respect for the members that committed a huge amount of time for this process. Earlier this week I attended a meeting of the Chesapeake Bay Program in Washington DC. Six states, the District of Columbia, EPA, and other government agencies all working together to restore the Bay. Mr. Baxter was there representing DCR.

The news is not comforting. It's probably too early to say we are losing the battle, but we are certainly not winning the battle to restore the Bay.

It's clear that what is required by this proposal and much, much more will be necessary if we want to live up to our commitment to do Virginia's part to restore water quality in the Chesapeake Bay.

But it's not just the Bay that we need to be concerned about. Other parts of the state flow toward North Carolina's estuaries which are experiencing similar problems. Other parts are flowing into the Tennessee River, all which ultimately flows to the Gulf. Of course there will be burden, and added expense. The decision has been made politically, socially, and otherwise that expense needs to be incurred in order to restore the values of clean water.

I think it's time to put this proposal out for public review. Get more information on the table. It will be some time before you are asked to make a final decision on this. There will be a lot more information on the table, but let's move forward with it. Thank you.

Ridge Schuyler, Piedmont Program for The Nature Conservancy in Virginia.

I work in the Piedmont region in Virginia. The Piedmont region covers 40% of the land in the Commonwealth. Within that 40% of land, my focus is on protecting the freshwater rivers and streams that course through the Piedmont.

We know that globally fresh water systems are the most threatened and fragile habitats across the earth. We know that here in the Piedmont the greatest threat to the future health of those freshwater rivers and streams is excessive sedimentation. There is a growing body of evidence that the source of that excessive sedimentation is stream bank erosion. The Piedmont used to be blanketed in forests and the streams used to course through that blanket of forest. When that forest was removed and the landscape hardened, the energy and volume that's coming off the landscape is going into the streams and the streams were not designed for that level of volume. The result is stream bank erosion.

Because of our interest in stream bank erosion and water quality, I was asked to participate in the water quantity workgroup. I was impressed by the level of expertise and dedication by DCR staff and my colleagues. As a result of going through that process, I think we came up with a workable and effective solution to addressing the problem posed by the volume of energy and water entering our streams.

I think it is time to advance these regulations to move them to the next stage. Until you fix the target you can't design guidelines to address the target. If you move these regulations forward, you can fix the target. The guidelines can then be drafted to meet that target.

The alternative to fixing our streams is to let them continue to degrade and we can't afford to do that.

End of Public Comment

Ms. Campbell said that was the last of the public comment. She offered staff the opportunity to respond or provided additional comment.

Mr. Dowling said that the issues came down to a common theme and that the Board now needed to decide whether it wished to proceed with Part II. He said that staff acknowledged that consensus around the regulations was not unanimous, but stated that the regulations were built on the best science available and recommended the Board move forward with approving the proposed regulations.

Mr. Dowling said that staff wanted to have the regulations proposed and available for public comment. He said that staff had given the best recommendation at this time and had tried to provide a balance between the economic issues and the environmental concerns.

Ms. Campbell asked if Board members would like to comment.

Mr. McNear asked if the comment was correct that these regulations only dealt with 1% of the problem.

Mr. Dowling said that he would defer to others, but that his comments showed stormwater runoff comprised approximately 21% of the phosphorus load delivered from Virginia to the Chesapeake Bay. He said that DCR acknowledged that stormwater was only a part of the problem but that water quality issues needed to be addressed from all sources.

Ms. Hansen said that she had never heard the numbers in that low range. She said that it was a moving target. She said that she believed the level of effort being put in to the regulations was warranted.

Mr. Maitland asked if there would be an actual trial period with the regulations.

Mr. Dowling said that there would be a period of several years before a qualifying local program would have to come to the Board and that there would be time for further education and outreach regarding implementation of the new water quality and quantity standards.

Ms. Hansen said that she was ready to move for adoption. She said it was important to further evaluate concerns. She noted that she shared the concern about redevelopment as well as maintenance. But she said that she had not heard anything that would warrant delaying the process.

Ms. Hansen moved the following:

Motion to approve, authorize and direct the filing of proposed regulations related to the Board's Virginia Stormwater Management Program (VSMP) Permit Regulations (Parts I, II, and III)

The Board approves these proposed regulations and authorizes the Director of the Department of Conservation and Recreation and the Departmental Regulatory Coordinator to submit the proposed amendments to Parts I, II, and III of the Board's Virginia Stormwater Management Program (VSMP) Permit Regulations and any other incorporated or associated forms or documents to the U.S. Environmental Protection Agency, the Virginia TownHall, and upon approval by the Administration to the Registrar of Virginia.

As part of the process, the Board further authorizes at least one public hearing to be held by the Department following publication of the proposed regulations in the Virginia Register of Regulations and that the Department make provisions to receive public comment concerning the proposed regulations. The hearing may be held together with the hearing on Part XIII. Upon the closing of the public comment period, the Department is authorized to make revisions to the proposed regulations in response to the comments received and to hold additional stakeholder group meetings as it deems necessary.

This authorization is related to those changes that are subject to the Administrative Process Act and to the Virginia Register Act. The Department shall follow and conduct actions in accordance with the Administrative Process Act, the Virginia Register Act, the Board's Regulatory Public Participation Procedures, the Governor's Executive Order 36 (2006) on the "Development and Review of Regulations Proposed by State Agencies".

This authorization extends to, but is not limited to, the posting of the approved action to the Virginia Regulatory TownHall and the filing of the proposed regulations and incorporated forms and documents with the Virginia Registrar's Office and the U.S. Environmental Protection Agency, the holding of at least one public hearing, as well as the coordination necessary to gain approvals from the Department of Planning and Budget, the Secretary of Natural Resources, the Governor, the Office of 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.

Ms. Dalbec seconded:

DISCUSSION:

Mr. Maitland said that he could only support the regulations with an assurance that there would be time to work out the concerns.

Ms. Hansen said that the regulations could not be fully evaluated until they were released for public review. She said that she was comfortable with the time frame.

Ms. Campbell said that this moved the regulations forward and allowed for additional discussion. She said the regulations would come back to the Board for final approval.

Mr. Maroon said that from the DCR standpoint it was reassuring that people were expressing the concern of getting this right. He said that the process would not be ending with this vote, but that the effort to improve the regulations would continue.

VOTE: The motion carried unanimously.

Ms. Campbell asked for further comment or a recommendation regarding Part XIII.

Mr. Maitland asked for a clarification regarding the fee schedules.

Mr. Dowling said that the fees would not be effective until a local qualifying program was approved.

Mr. Maitland expressed a concern regarding the annual increase in fees based on the CPI.

Mr. Dowling said that language was modeled after an existing section of the Code. He said that this was one section for which DCR wanted to have public input.

Ms. Hansen made the following motion:

Motion to approve, authorize and direct the filing of proposed regulations related to the Board's Virginia Stormwater Management Program (VSMP) Permit Regulations (Part XIII)

The Board approves these proposed regulations and authorizes the Director of the Department of Conservation and Recreation and the Departmental Regulatory Coordinator to submit the proposed amendments to Part XIII of the Board's Virginia Stormwater Management Program (VSMP) Permit Regulations and any other incorporated or associated forms or documents to the U.S. Environmental

Protection Agency, the Virginia TownHall, and upon approval by the Administration to the Registrar of Virginia.

As part of the process, the Board further authorizes at least one public hearing to be held by the Department following publication of the proposed regulations in the Virginia Register of Regulations and that the Department make provisions to receive public comment concerning the proposed regulations. The hearing may be held together with the hearing on Parts I, II, and III. Upon the closing of the public comment period, the Department is authorized to make revisions to the proposed regulations in response to the comments received and to hold additional stakeholder group meetings as it deems necessary.

This authorization is related to those changes that are subject to the Administrative Process Act and to the Virginia Register Act. The Department shall follow and conduct actions in accordance with the Administrative Process Act, the Virginia Register Act, the Board's Regulatory Public Participation Procedures, the Governor's Executive Order 36 (2006) on the "Development and Review of Regulations Proposed by State Agencies".

This authorization extends to, but is not limited to, the posting of the approved action to the Virginia Regulatory TownHall and the filing of the proposed regulations and incorporated forms and documents with the Virginia Registrar's Office and the U.S. Environmental Protection Agency, the holding of at least one public hearing, as well as the coordination necessary to gain approvals from the Department of Planning and Budget, the Secretary of Natural Resources, the Governor, the Office of 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.

Ms. Dalbec seconded the motion.

DISCUSSION: None

VOTE: Motion carried unanimously

Ms. Campbell thanked staff and the members of the public for their participation.

At this time the Board recessed for lunch.

Following lunch, Ms. Campbell called on Mr. Hill.

Erosion and Sediment Control Program

Linear Projects Annual Standards and Specifications: 2008 Annual Standards and Specifications for Trans-Allegheny Interstate Line Company

MOTION: Mr. Maitland moved that the Virginia Soil and Water Conservation Board receive the staff update concerning the review of the 2008 annual standards and specifications for Trans-Allegheny Interstate Line Company. The Board concurs with staff recommendations for conditional approval of the 2008 specifications for the Trans-Allegheny Interstate Line Company in accordance with the Erosion and Sediment Control law. The Board requests the Director to have staff notify said company of the status of the review and the conditional approval of the annual standards and specifications.

The four items for conditional approval are:

1. A revised list of all proposed projects planned for construction in 2008 must be submitted by October 24, 2008. 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 24, 2008 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.

SECOND: Mr. McNear

DISCUSSION: None

VOTE: Motion carried unanimously.

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Lancaster County's Proposed Alternative Inspection Program

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

SECOND: Ms. Dalbec

DISCUSSION: None

VOTE: Motion carried unanimously

Brunswick County and Smyth County Proposed Alternative Inspection Programs

MOTION: Mr. Maitland moved that the Virginia Soil and Water Conservation Board receive the staff update and recommendations regarding the proposed Alternative Inspection Programs for Brunswick and Smyth Counties. The Board concurs with staff recommendations and accepts the proposed Alternative Inspection Programs for review and future action and the next Board meeting.

SECOND: Ms. Dalbec

DISCUSSION: None

VOTE: Motion carried unanimously

Local Programs recommended to be found consistent following completion of Corrective Action Agreement (CAA)

MOTION: Mr. Maitland moved that the Virginia Soil and Water Conservation Board commend the City of Fredericksburg, Charlotte, Lunenburg, Nottoway, Nelson, Surry Counties and the Towns of Berryville and Rocky Mount for successfully improving their respective Erosion and Sediment Control Program to become 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: Ms. Dalbec

DISCUSSION: None

VOTE: Motion carried unanimously

Local Programs recommended to be found inconsistent based on Initial Review and request for Board approval of Corrective Action Agreement (CAA)

Henrico County's Erosion and Sediment Control Program and Corrective Action Agreement (CAA)

Mr. Hill gave the background report for Henrico County.

DCR staff completed the initial program review for Henrico County's Erosion and Sediment Control Program and the scores for the individual components were as follows: Administration – 84; Plan Review – 40; Inspection – 50; and Enforcement – 75. As all program components did not receive a score of 70 or greater, the staff recommendation was that the Virginia Soil and Water Conservation Board find the County's Erosion and Sediment Control Program inconsistent with the Virginia Erosion and Sediment Control Law and Regulations and approve the draft CAA for the County.

Ms. Campbell asked for an explanation of agreement in lieu of a plan.

Mr. Hill said that in the case of a subdivision with single family lots there could be an agreement but not a specified plan.

Benjamin Thorp, Assistant County Attorney spoke on behalf of Henrico County.

Mr. Thorp said that the County had reviewed the CAA and that the County intends to comply and wants to work with staff. However, he said that the County had made some adjustments and completed an alternative corrective action agreement. He said the County would like to propose the alternative which addresses the problems DCR found with the program. He said the proposed alternative outlines the steps the county intends to take.

Ms. Campbell asked if the agreement was just adding specifics.

Mr. Thorp said that the County believed there was some ambiguity with some of the issues. He said that in a couple of instances the County disagreed that they were actually in violation of the law.

Ms. Hansen expressed concern that this was a counter offer being made on the morning of the hearing. She said that the Board did not have the time or ability to determine whether this version was adequate or not. She said that she would be reluctant to accept an alternative plan.

Mr. McNear asked if the action could be tabled.

Ms. Campbell said that would procedurally leave the Board in limbo.

Mr. Hill said that the Board could act to find the County inconsistent, then in the same motion direct staff to work with the County to develop an acceptable CAA. He said the Board could delegate authority to Mr. Maroon.

Ms. Hansen said that she was not comfortable with the revised compliance date.

Mr. Brown said that a locality is typically found inconsistent based on particular reasons.

Mr. Thorp said that the County was concerned with the score sheet the staff uses. He said that a lot of what was required was guidance and not required by law or statute. He said the form was designed in a way that a locality could do everything and still be labeled inconsistent.

Mr. Hill said that DCR has reviewed 131 programs and that 107 have gone through the same review. He noted that the Board established the review process and noted that the previous system required 100% compliance in all four areas.

Mr. Hill said that staff had committed to review the scoring sheet after the completion of the current review cycle.

Mr. McNear asked how long the County had known they would be found inconsistent.

Mr. Hill said that the review was performed in March and that the County had been notified in June.

Mr. Frye noted that even if the Board approved the alternative plan, the County would still be found inconsistent.

Mr. McNear said that staff needed time to review the proposal.

Mr. Perry said that one of the issues the County has relates to guideline issues. He said that the County believes the guidelines are not laws and regulations. He said the County's position was that they did not wish to be found inconsistent based on guidelines that are not regulatory.

Mr. Thorp said the County was attempting to address the difference between requirements based on statutory, regulatory, and guidance authorities.

Ms. Hansen asked if the County intended to comply with the guidelines.

Mr. Thorp said the County would comply with some of them, but that they did not feel some of the guidelines were appropriate.

Mr. Hill said the proposed alternative from the County did not address inspections. He said the County has the option to develop an alternative inspection program.

MOTION: Ms. Hansen moved that the Virginia Soil and Water Conservation Board accept staff recommendations and find Henrico County's Erosion and Sediment Control Program inconsistent and approve the County's CAA. The Board directs DCR staff to monitor the implementation of the CAA by the County to ensure compliance.

SECOND: Mr. Maitland

DISCUSSION: Mr. McNear said that if the County wished to pursue this they should provide better documentation.

Mr. Thorp said the County would like to do that.

Ms. Hansen said if there is a legal issue, that needs to be determined. However, she noted that the Board needs to be consistent in the application of the guidelines.

Mr. Maroon noted that while the County was saying their problems were tied to guidance that Mr. Hill pointed out that the inspection section is insufficient. He said that while there was a good will intent on the part of the County it would not be appropriate for the Board to approve that section.

Ms. Hansen said that the Board needed to take action and that problems could be addressed at the next meeting.

Ms Campbell said that the motion was to find the County inconsistent, and to accept the CAA. She said that did not preclude additional conversations regarding the meeting of guidance and the law.

Mr. Thorp asked if the date could be extended.

Mr. Hill said that the final CAA had to be implemented by March 2009. He said that the County could sign the agreement and still negotiate a revised CAA.

VOTE: The vote was as follows:

Aye: Campbell, Dalbec, Hansen, McNear

No: Maitland, Russell

Abstain: Maroon

The motion carried.

Mr. Hill said that the Board approves the five-year review cycle. He said that on several occasions, staff have indicated that the process would be reviewed at the end of the current cycle to see where improvements might be made. .

Ms. Hansen noted that the Board heard a legal argument that the locality does not believe the guidelines are legal. However she noted that the guidelines should be applied uniformly.

Isle of Wight: Isle of Wight County's Erosion and Sediment Control Program and Corrective Action Agreement (CAA)

Mr. Hill gave the background report for Isle of Wight County. He noted that Gretchen Gonzales, Tom Wright, Patrick Small and Kristen Mazer were present from the County.

DCR staff completed the initial program review for Isle of Wight County's Erosion and Sediment Control Program and the scores for the individual components were as follows: Administration – 96; Plan Review – 60; Inspection – 60; and Enforcement – 90. As all program components did not receive a score of 70 or greater, staff recommends that the Virginia Soil and Water Conservation Board find the County's Erosion and Sediment Control Program inconsistent with the Virginia Erosion and Sediment Control Law and Regulations and approve the draft CAA for the County.

Ms. Gonzales said that she had been in her position since August 2008. She said that while the plan reviewer hired in 2007 was very methodical and had implemented new procedures and protocols that the review had covered a four-year period over which there were staffing issues. She said that the County has been developing written protocols for each of the four program areas. She said that the program review was not reflective of the current status of the program and asked that the Board reconsider.

Mr. Small distributed a letter to Regional Manager Noah Hill from the Chairman of the County Board of Supervisors. A copy of this letter is available from DCR. Mr. Small noted that Isle of Wight is a leader in land conservation and that the County was one of the earliest to adopt the Chesapeake Bay Regulations.

Mr. Small said there had been staff turnover in the County however that was not the sole reason the County was not compliant. He said that the County questioned the four-year process. He said that was not an adequate picture of where the County currently is.

Mr. Small said that the County took the program very seriously. He said that the Board of Supervisors has willingly agreed to the CAA. He asked that the Board direct the staff to review the program again.

Mr. Hill said that staff could do that. He said that the only remaining items the staff would be reviewing related to the CAA.

Mr. Maitland asked when the review was done. Mr. Hill said the review was performed in July. Mr. Maitland asked why the County would be penalized.

Mr. Hill said that plans are randomly selected for review and that they represent a picture in time. He noted that it may not reflect the work of the current staff. He said that when the program evaluation process is reviewed it may be that the decision would be to review only plans completed within the past year.

Ms. Hansen said that the inspection was designed to reflect an operating history. She said that it was important to note when the inspections occurred.

MOTION: Ms. Hansen moved that the Virginia Soil and Water Conservation Board accept staff recommendations and find Isle of Wight County's Erosion and Sediment Control Program inconsistent and approve the County CAA. The Board directs DCR staff to monitor the implementation of the CAA by the County to ensure compliance. Further the Board directs staff to conduct a review of the CAA in as timely a manner as possible.

SECOND: Ms. Dalbec

DISCUSSION: Mr. McNear said that it seemed that there was a problem with the review process.

Ms. Campbell noted that the process was much more efficient than it had been previously.

VOTE: Motion carried unanimously

Montgomery County: Montgomery County's Erosion and Sediment Control Program and Corrective Action Agreement

Mr. Hill gave the background report for Montgomery County.

DCR staff completed the initial program review for Montgomery County's Erosion and Sediment Control Program and the scores for the individual components were as follows: Administration – 100; Plan Review – 90; Inspection – 45; and Enforcement – 55. As all program components did not receive a score of 70 or greater, staff recommended that the Virginia Soil and Water Conservation Board find the County's Erosion and Sediment Control Program inconsistent with the Virginia Erosion and Sediment Control Law and Regulation and approve the draft CAA for the County.

Mr. Bonham, Montgomery County Engineer said that the review of the program showed some deficiencies of which the County was not aware. He said that the County has take steps to address these deficiencies and that the hope was to bring them in to compliance as quickly as possible.

MOTION: Ms. Dalbec moved that the Virginia Soil and Water Conservation Board accept staff recommendations and find Montgomery County's Erosion and Sediment Control Program inconsistent and approve the County's CAA. The Board directs DCR staff to monitor the implementation of the CAA by the County to ensure compliance.

SECOND: Mr. Maitland

DISCUSSION: None

VOTE: Motion carried unanimously

Tazewell County: Tazewell County's Erosion and Sediment Control Program and Corrective action agreement.

Mr. Hill gave the background report for Tazewell County. He recognized Jim Spencer, County Administrator.

DCR staff completed the initial program review for Tazewell County's Erosion and Sediment Control Program and the scores for the individual components were as follows: Administration – 96; Plan Review – 55; Inspection – 20; and Enforcement – 15. As all program components did not receive a score of 70 or greater, staff recommended that the Virginia Soil and Water Conservation Board find the County's Erosion and Sediment Control Program inconsistent with the Virginia Erosion and Sediment Control Law and Regulations and approve the draft CAA for the County.

Mr. Spencer said that County was aware that there would be problems. He said that there had been staff transitions but that a new county engineer had been hired since the inspection was completed. He said that the County has also streamlined the permitting process. He said that the County would also be submitting a proposed alternative inspection program.

MOTION: Mr. Russell moved that the Virginia Soil and Water Conservation Board accept staff recommendations and find Tazewell County's Erosion and Sediment Control Program inconsistent and approve the County's CAA. The Board directs DCR staff to monitor the implementation of the CAA by the County to ensure compliance.

SECOND: Mr. Maitland

DISCUSSION: None

VOTE: Motion carried unanimously

West Point: Town of West Point's Erosion and Sediment Control Program and Corrective Action Agreement

Mr. Hill gave the background report for the Town of West Point.

DCR staff completed the initial program review for the Town of West Point's Erosion and Sediment Control Program and the scores for the individual components were as follows: Administration – 8; Plan Review – 5; Inspection – 0; and Enforcement – 0; As all program components did not receive a score of 70 or greater, staff recommended that the Virginia Soil and Water Conservation Board find the Town's Erosion and Sediment Control Program inconsistent with the Virginia Erosion and Sediment Control Law and Regulations and approve the draft CAA for the Town.

Trenton Funkhouser from the Town of West Point had been present at the meeting, but needed to leave before this agenda item. He left the following written comments:

I regret I will be unable to stay for the portion of the agenda devoted to local program reviews. I hoped to attend in lieu of the Town's Community Development Director. That staff member is attending an Erosion and Sediment Control class today – unfortunate scheduling and timing. Further, I understand lengthy agendas and have participated in CBLAB program reviews. While I was prepared to devote all morning to this meeting, I am unable to devote the day to this matter. Apparently the Town did not receive advance notice regarding the agenda or my staff did not forward information to me.

Regarding the Town's program review, staff will be working to resolve all cited issues and concerns and looks forward to the follow up work by DCR staff to check the Town's progress. The document I provided (a copy is available from DCR) represents the Town's response to the program review. The document is not intended to represent the Town's response to the program review score nor the Town's intended course of action. While certain aspects of the initial score will be revised based on the resolution of discrepancies, I recognize the Town also has more substantive issues to address.

Again, I regret I am unable to attend today's meeting portion devoted to local program reviews. A representative of the Town will make every effort to attend future meetings.

MOTION: Mr. Russell moved that the Virginia Soil and Water Conservation Board accept staff recommendations and find the Town of West Point's Erosion and Sediment Control Program inconsistent and approve the Town's CAA. The Board directs DCR staff to

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monitor the implementation of the CAA by the Town to ensure compliance.

SECOND: Ms. Hansen

DISCUSSION: None

VOTE: Motion carried unanimously

Local Programs previously found inconsistent and request for Board to extend Corrective Action Agreement (CAA)

Augusta County: CAA Follow-up – Augusta County's CAA Compliance

Mr. Hill gave the report for Augusta County.

The Virginia Soil and Water Conservation Board approved Augusta County's Corrective Action Agreement to July 30, 2008. At the direction provided by the Board, DCR staff reviewed Augusta County's progress on implementing the CAA. Based on the results of the review, staff has determined that the County has not achieved compliance with the CAA. Mr. Hill said the staff recommendation was that the County be given until March 19, 2009 to comply with the outstanding CAA.

Doug Wolfe, County Engineer, said that Augusta County had a unique position at the headwaters of the James and Potomac rivers. He said that the County comprehensive plan was written by the Center for Watershed Protection. He said that while the County did wish to comply he echoed some of the same concerns as Henrico County with regard to the law and the regulations. He said that his Board of Supervisors had asked what had changed since 2003 when the program was found consistent.

Mr. Wolfe said that Augusta County had improved the program since 2003, but now the program has several areas scoring under 50 points. He said that he thought the program was consistent.

Mr. Maroon said that this did not appear to be the same issue as with Henrico County.

Mr. Wolfe said that he was disagreeing with staff judgment that the County was not in compliance.

Mr. Maroon said that the program had been in place for 35 years. He said that the Board and DCR are taking a more serious approach to the program and that perhaps the results in Augusta County were a reflection of that.

Mr. Hill noted that Augusta County had already signed the CAA and that the Board had taken a previous action.

Chairman Campbell said at this time the Board would be granting the County an extension and giving an adequate time frame.

Mr. Wolfe said that Augusta County could and would comply. He said, however, that the County felt that they already had complied.

Mr. Hill said that he would offer a proposal to Mr. Maroon and Mr. Frye regarding how to do a CAA review with Augusta County.

MOTION: Mr. Russell moved that the Virginia Soil and Water Conservation Board accept the staff recommendations and grant Augusta County an extension until March 19, 2009 to fully comply with the outstanding CAA. The Board further requests the Director of DCR and his staff to evaluate the County's compliance with the outstanding CAA and provide a report at the May 2009 Board meeting.

SECOND: Ms. Dalbec

DISCUSSION: None

VOTE: Motion carried unanimously

Essex County: CAA Follow-up – Essex County's CAA Compliance

Mr. Hill gave the report for Essex County.

The Virginia Soil and Water board approved Essex County's Corrective Action Agreement to July 17, 2008. At the direction provided by the Board, DCR staff reviewed Essex County's progress on implementing the CAA. Based on the results of the review, the staff has determined that the County has not achieved compliance with the CAA. DCR staff recommends that the County be given until March 19, 2009 to comply with the outstanding CAA.

MOTION: Mr. Russell moved that the Virginia Soil and Water Conservation Board accept the staff recommendation and grant Essex County an extension until March 19, 2009 to fully comply with the outstanding CAA. The Board further requests the Director of DCR and his staff to evaluate the County's compliance with the outstanding CAA and provide a report at the May 2009 Board meeting.

SECOND: Ms. Dalbec

DISCUSSION: None

VOTE: Motion carried unanimously

Highland County: CAA Follow-up – Highland County's CAA Compliance

Mr. Hill gave the background report for Highland County.

The Virginia Soil and Water Conservation Board approved Highland County's Corrective Action Agreement (CAA) to July 30, 2008. At the direction provided by the Board, DCR staff reviewed Highland County's progress on implementing the CAA. Based on the results of the review, staff has determined that the County has not yet achieved compliance with the CAA. The DCR staff recommendation was that the County be given until March 19, 2009 to comply with the outstanding CAA.

MOTION: Mr. Maitland moved that the Virginia Soil and Water Conservation Board accept the staff recommendation and grant Highland County an extension until March 19, 2009 to fully comply with the outstanding CAA. The Board further requests the Director of DCR and his staff to evaluate the County's compliance with the outstanding CAA and provide a report at the May 2009 Board meeting.

SECOND: Ms. Dalbec

DISCUSSION: Roberta Lambert, County Administrator for Highland County said that the County's goal was to comply.

Jim Echols, DCR Regional Manager said that Highland County had made progress toward bring the program into compliance. He said the County's biggest problem was not having enough resources to perform necessary inspections. He said that an Alternative Inspection Plan would be of great benefit to the county.

VOTE: Motion carried unanimously.

Mr. Maroon asked Mr. Echols to also address the staff working relationship with Augusta County.

Mr. Echols said that Augusta County was making progress and had completed five of ten items. He said that in the last CAA assessment staff found that Erosion and Sediment Controls were being bypassed. Mr. Echols said that when DCR assumed the responsibility for the Virginia Stormwater Management Program, localities were asked to become familiar with the program and how they needed to comply. Augusta County was not responsive.

Mr. Echols said that the problems in Augusta County were fixable.

Mr. Russell asked who would do the review.

Mr. Hill said that the review would be completed by someone not from the regional DCR office.

Lancaster County: CAA Follow-up – Lancaster County's CAA Compliance

Mr. Hill gave the report for Lancaster County. He recognized Don Gill and Brian Barnes from the County.

The Virginia Soil and Water Conservation Board approved Lancaster County's CAA to July 30, 2008. At the direction provided by the Board, DCR staff reviewed Lancaster County's progress on implementing the CAA. Based on the results of the review, the staff has determined that the County has not achieved compliance with the CAA. DCR staff recommends that the County be given until March 19, 2009 to comply with the outstanding CAA.

Mr. Gill said that Lancaster County had made steps towards compliance. He said that the Board had approved an alternative inspection program and that he believed the County could become compliant. He noted that the County has updated the ordinance.

Mr. Gill said that he was intrigued by the Henrico County presentation. He noted that the County had previously discussed turning the program back to the Northern Neck Soil and Water Conservation District. He said that if the County was again deemed to be out of compliance that the Board of Supervisors would likely surrender the program to the Soil and Water Conservation District.

MOTION: Mr. Maitland moved that the Virginia Soil and Water Conservation Board accept the staff recommendations and grant Lancaster County an extension until March 19, 2009 to fully comply with the outstanding CAA. The Board further requests the Director of DCR and his staff to evaluate the County's compliance with the outstanding CAA and provide a report at the May 2009 Board meeting.

SECOND: Mr. McNear

DISCUSSION: None

VOTE: Motion carried unanimously

Middlesex County: CAA Follow-up – Middlesex County's CAA Compliance

Mr. Hill gave the background report for Middlesex County.

The Virginia Soil and Water Conservation Board approved Middlesex County's CAA to July 30, 2008. At the direction provided by the Board, DCR staff reviewed Middlesex County's progress on implementing the CAA. Based on the results of the review, the staff has determined that the County has not achieved compliance with the CAA. DCR staff recommended that the County be given until March 19, 2009 to comply with the outstanding CAA.

MOTION: Mr. Maitland moved that the Virginia Soil and Water Conservation Board accept the staff recommendation and grant Middlesex County an extension until March 19, 2009 to fully comply with the outstanding CAA. The Board further requests the Director of DCR and his staff to evaluate the County's compliance with the outstanding CAA and provide a report at the May 2009 Board meeting.

SECOND: Mr. McNear

DISCUSSION: None

VOTE: Motion carried unanimously

Westmoreland County: CAA Follow-up – Westmoreland County's CAA Compliance

Mr. Hill gave the report for Westmoreland County.

The Virginia Soil and Water Conservation Board approved Westmoreland County's CAA to July 30, 2008. At the direction provided by the Board, DCR staff reviewed Westmoreland County's progress on implementing the CAA. Based on the results of the review, the staff has determined that the County has not achieved compliance with the CAA. DCR staff recommended that the County be given until March 19, 2009 to comply with the outstanding CAA.

MOTION: Mr. Maitland moved that the Virginia Soil and Water Conservation Board accept the staff recommendation and grant Westmoreland County an extension until March 19, 2009 to fully comply with the outstanding CAA. The Board further requests the Director of DCR and his staff to evaluate the County's compliance with the outstanding CAA and provide a report at the May 2009 Board meeting.

SECOND: Mr. McNear

DISCUSSION: None

VOTE: Motion carried unanimously

Town of South Hill: CAA Follow-up – Town of South Hill's CAA Compliance

Mr. Hill gave the report for the Town of South Hill.

The Virginia Soil and Water Conservation Board approved the Town of South Hill's CAA to July 17, 2008. At the direction provided by the Board, DCR staff reviewed the Town of South Hill's progress on implementing the CAA. Based on the results of the review, staff determined that the Town has not fully achieved compliance with the CAA. DCR staff recommended that the Town be given until March 19, 2009 to comply with the outstanding CAA.

Kim Callas from the Town of South Hill noted that the Town needs more organizational oversight with regard to inspections. She thanked DCR staff for working with the Town to become complaint.

MOTION: Mr. Maitland moved that the Virginia Soil and Water Conservation Board accept the staff recommendation and grant Town of South Hill an extension until March 19, 2009 to fully comply with the outstanding CAA. The Board further requests the Director of DCR and his staff to evaluate the County's compliance with the outstanding CAA and provide a report at the May 2009 Board meeting.

SECOND: Ms. Dalbec

DISCUSSION: None

VOTE: Motion carried unanimously

Local Programs that did not sign their CAA within 30 days

Mr. Hill said that this item was for an update to the Board. He said that he was pleased to announce that Washington County signed a Corrective Action Agreement on September 12, 2008 and that Greenville County signed a Corrective Action Agreement on September 23, 2008.

District Director Resignations and Appointments

Mr. Meador presented the District Director Resignations and Appointments.

Mr. Meador said that there were two lists. The first was the regular list of resignations and appointments. The second was a list of extension agent appointments.

Mr. Meador presented the following recommendations:

James River

Resignation of T. Michael Likens, Chesterfield County, effective 8/9/08, appointed Extension Agent director position (term of office expires 1/1/09).

Recommendation of J. Scott Reiter, Prince George County, to fill unexpired appointed Extension Agent term of T. Michael Likens (term of office to begin on or before 10/25/08 – 1/1/09).

Lord Fairfax

Resignation of Robert (Bobby) Clark, Shenandoah County, effective 9/2/08, appointed Extension Agent director position (term of office expires 1/1/09).

Recommendation of Jake Grove, Clarke County, to fill unexpired appointed Extension Agent term of Robert Clark (term of office to begin on or before 10/25/08 – 1/1/09).

Mountain Castles

Resignation of Harold P. Entsminger, Jr., Botetourt County, effective 9/18/08, elected director position (term of office expires 1/1/12).

Recommendation of F. Preston Wickline, III, Botetourt County, to fill unexpired elected term of Harold P. Entsminger, Jr. (term of office to begin on or before 10/25/08 – 1/1/12).

Natural Bridge

Resignation of Dr. E. Burwell Wingfield, City of Lexington, effective 5/21/08, appointed director position (term of office expires 1/1/11).

Recommendation of Ward H. Robens, City of Buena Vista, to fill unexpired appointed term of Dr. E. Burwell Wingfield (term of office to begin on or before 10/25/08 – 1/1/11).

Peter Francisco

Recommendation of David Smith, Cumberland County, to fill unexpired appointed Extension Agent term of Mark Davis (term of office to begin on or before 10/25/08 – 1/1/09). (*appointed during the July 17, 2008 SWCBoard meeting, but failed to take oath of office*)

Piedmont

Resignation of Robyn Whittington, Amelia County, effective 8/9/08, appointed Extension Agent director position (term of office expires 1/1/09).

Recommendation of Brent Clayton, Prince Edward County, to fill unexpired appointed Extension Agent term of Robyn Whittington (term of office to begin on or before 10/25/08 – 1/1/09).

Thomas Jefferson

Resignation of Andrew Gantt, II, Nelson County, effective 7/30/08, elected director position (term of office expires 1/1/12).

Extension Agent Appointments Recommended for Four-Year Term Beginning on January 1, 2009

<u>SWCD</u>	<u>Incumbent</u>	<u>Recommended</u>
Appomattox River	Michael J. Parish Dinwiddie	
Big Sandy	W. Bradley Mullins* Dickenson	W. Bradley Mullins* Dickenson
Big Walker	James Atwell Bland	James Atwell Bland
Blue Ridge	Jonathan Vest Roanoke	Jonathan Vest Roanoke
Chowan Basin	Wesley C. Alexander Southampton	
Clinch Valley	D. Scott Jessee Russell	D. Scott Jessee Russell
Colonial	Paul H. Davis New Kent	Paul H. Davis New Kent
Culpeper	I. Brad Jarvis, Jr. Madison	L. Brad Jarvis, Jr. Madison
Daniel Boone	Harold L. Jerrell Lee	Harold L. Jerrell Lee
Eastern Shore	William E. Shockley, Jr. Northampton	
Evergreen	Walter J. Robinson Smyth	Walter J. Robinson Smyth

Halifax	Traci R. Talley Halifax	
Hanover-Caroline	McGann Saphir Caroline	McGann Saphir Caroline
Headwaters	Brian Jones Augusta	
Henricopolis	Karen F. Carter Henrico	
Holston River	Phillip K. Blevins Washington	Phillip K. Blevins Washington
James River	T. Scott Reiter Prince George	T. Scott Reiter Prince George
John Marshall	Timothy A. Mize Fauquier	Timothy A. Mize Fauquier
Lake Country	C. Taylor Clarke, Jr. Mecklenburg	C. Taylor Clarke, Jr. Mecklenburg
Lonesome Pine	W. Bradley Mullins* Dickenson	W. Bradley Mullins* Dickenson
Lord Fairfax	Jake Grove Clarke	Jack Grove Clarke
Loudoun	Corey Childs Loudoun	Corey Childs Loudoun
Monacan	Eric Bowen Powhatan	Eric Bowen Powhatan
Mountain	Rodney P. Leech Highland	Rodney P. Leech Highland
Mountain Castles	George A. Allen, III Botetourt	
Natural Bridge	Jonathan Repair Rockbridge	Jonathan Repair Rockbridge

New River	Kevin Spurlin Grayson	Kevin Spurlin Grayson
Northern Neck	Matt Lewis Lancaster	Matt Lewis Lancaster
Northern Virginia	Adria Bordes Fairfax	Adria Bordes Fairfax
Patrick	Melanie Barrow Patrick	Melanie Barrow Patrick
Peaks of Otter	Scott M. Baker Bedford	Scott M. Baker Bedford
Peanut	Glen Slade Surry	
Peter Francisco	David Smith Cumberland	David Smith Cumberland
Piedmont	Robyn Whittington Amelia	Brent Clayton Prince Edward
Pittsylvania	Jamie Stowe Pittsylvania	Jamie Stowe Pittsylvania
Prince William	Paige E. Thacker Prince William	Paige E. Thacker Prince William
Robert E. Lee	William W. Seay Amherst	Bruce Jones Appomattox
Scott County	Scott Jerrell Scott	Scott Jerrell Scott
Shenandoah County	Amber Vallotton Rockingham	Amber Vallotton Rockingham
Skyline	Barry Robinson Montgomery	Jason Pratt Pulaski
Southside	Robert L. Jones Charlotte	Robert L. Jones Charlotte
Tazewell	John Blankenship	John Blankenship

	Tazewell	Tazewell
Thomas Jefferson	Carrie Swanson Albemarle	
Three Rivers	Keith Balderson Essex	Keith Balderson Essex
Tidewater	David M. Moore Middlesex	David M. Moore Middlesex
Tri-County/City	John E. Howe Spotsylvania	John E. Howe Spotsylvania
Virginia Dare	Watson Lawrence, Jr. Chesapeake City	Watson Lawrence, Jr. Chesapeake City

* serves Big Sandy and Lonesome Pine

MOTION: Mr. McNear moved that the Virginia Soil and Water Conservation Board approve the recommended District Director Resignations and Appointments and the Extension Agent appointments as presented by staff.

SECOND: Ms. Dalbec

DISCUSSION: None

VOTE: Motion carried unanimously

Recess for the Day

Ms. Campbell recessed the Board meeting for the day and noted that the meeting would resume at 9:00 a.m. on Thursday, September 25, 2008.

THURSDAY, SEPTEMBER 24, 2008

September 24 Attendees

Virginia Soil and Water Conservation Board Members Present

Linda S. Campbell, Chair
Granville M. Maitland, Vice Chair
Susan Taylor Hansen
Wade Biddix for Jack A. Bricker, NRCS

Joseph H. Maroon, Director
Darlene Dalbec
Michael J. Russell

Virginia Soil and Water Conservation Board Members Not Present

Michael Altizer
Jean R. Packard

Richard E. McNear
Raymond L. Simms

DCR Staff Present

Russell W. Baxter
William G. Browning
David C. Dowling
J. Michael Foreman
Jack E. Frye
Mark B. Meador
Robert VanLier
Elizabeth Andrews, Office of the Attorney General

Ryan J. Brown
Eric Capps
Michael Fletcher
Doug Fritz
Lee Hill
Jim Robinson
Christine S. Watlington

Others Present

Trey Adams, Counsel for Lake of the Woods Association
Tyler Craddock, Virginia Chamber of Commerce
Margaret Darby, Lake of the Woods Association
Jeff Flynn, Lake of the Woods Association
Chuck Frederickson, James River Keeper
Mike Gerel, Chesapeake Bay Foundation
Barrett Hardiman, Home Builders Association of Virginia
Preston Hartman, Shenandoah River Keeper
Suzie Takacs, Lake of the Woods Association
Bill Wilson, Lake of the Woods Association

Chairman Campbell reconvened the meeting. She noted that at the time, a quorum was not present. She amended the agenda and turned to Mr. Robinson for a presentation.

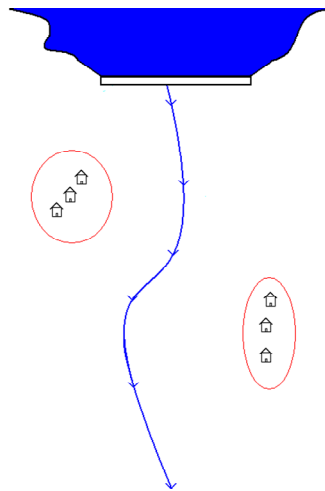
Mr. Robinson gave the following presentation. A copy of Mr. Robinson's presentation with accompanying graphics is available from DCR.

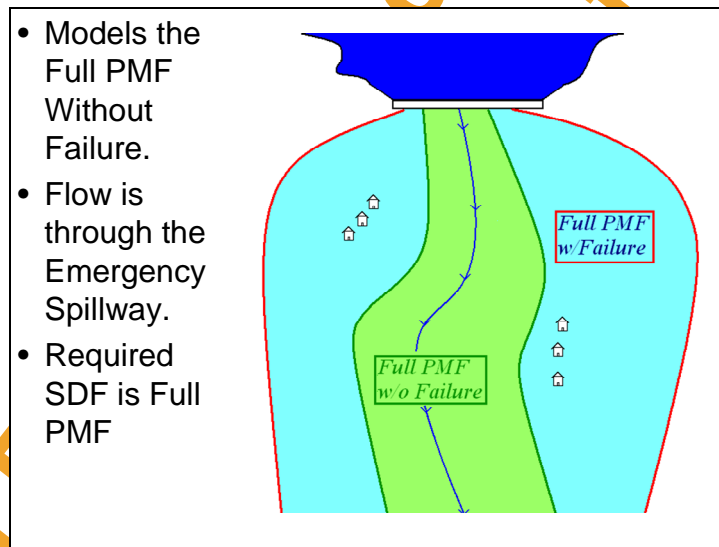
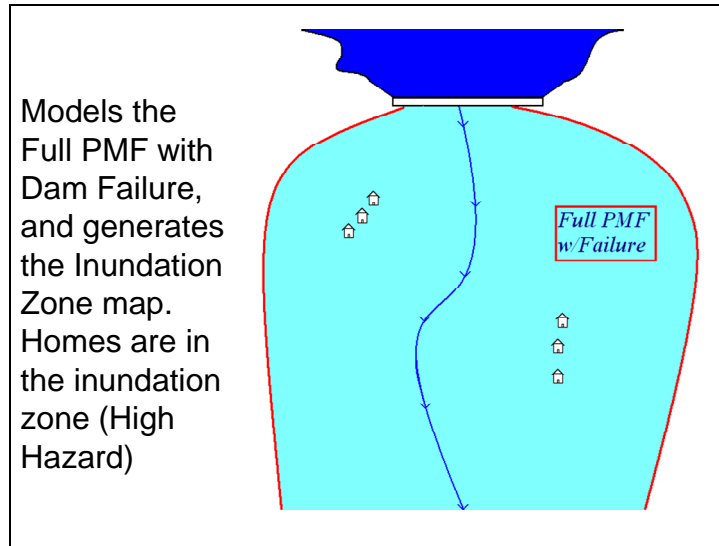
Determining Required Spillway Design Flood – Incremental Damage Analysis

Determining Required Spillway Design Flood -Incremental Damage Analysis

September 25, 2008

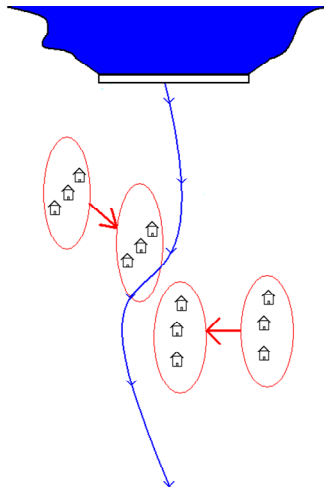
An impoundment with structure(s) downstream of the dam: owner hires a professional engineer to analyze the potential impact that the impoundment may have on the structure(s).



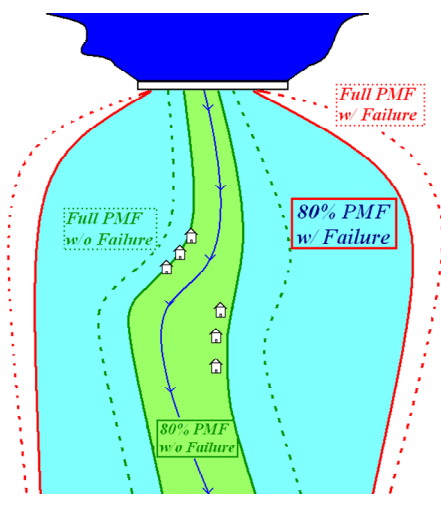


Incremental Damage Analysis?

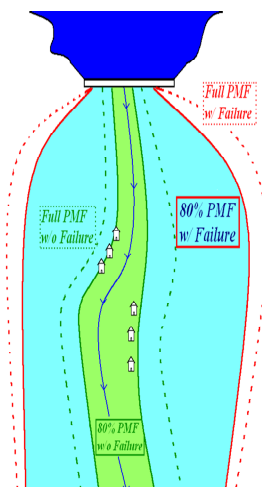
- Imagine that the homes are in a different place – closer to the streambed, at a lower elevation.



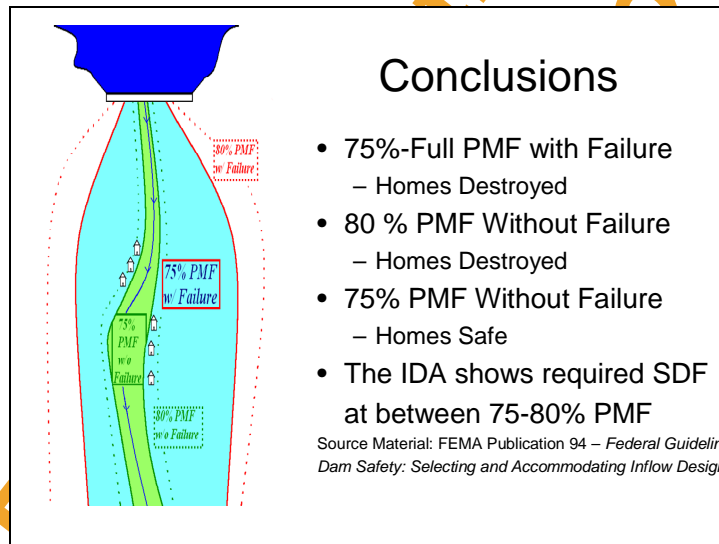
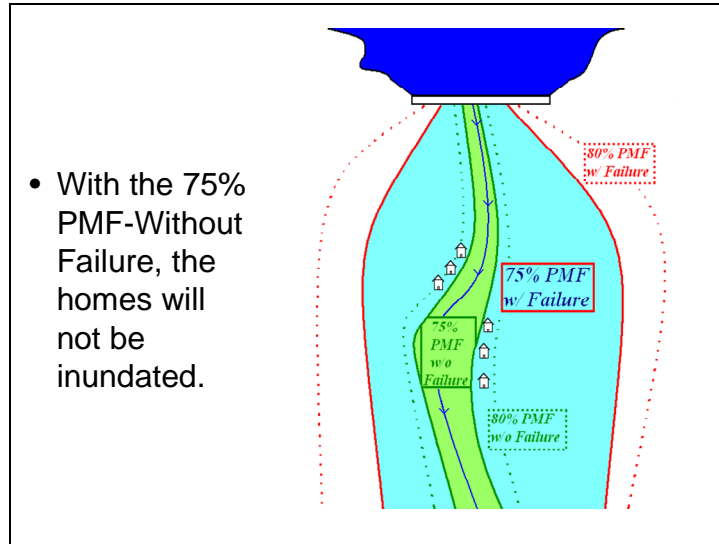
- The engineer chooses to analyze the 80% PMF.
- The inundation zones for this storm are smaller than for the full PMF.



80% PMF - Analysis



- Homes in “Without Failure” zone.
- Failure or Without Failure - the homes are destroyed.
- Next engineer looks at smaller 75% PMF storm



Official Language

- From FEMA 94 – Dams must be designed to...
 - “...the flood flow above which the incremental increase in downstream water surface elevation due to failure of a dam...is no longer considered to present an unacceptable additional downstream threat.”
 - New Virginia Regulations contain similar language.

Rule of Seven

- What if a structure is just inside the edge of the inundation zone, or away from the main flow path?
- The water may be too shallow, or flowing too slowly to damage the structure.
- Apply the Rule of Seven
 - Multiply water velocity (ft/sec) on the structure by depth of water on the structure (ft) – These units only!
 - If the product is 7 ft²/sec or greater - consider the structure to be destroyed.

Ms. Hansen arrived and a quorum was declared present.

Stormwater Construction General Permit

Mr. Brown gave the following presentation:

General Permit for Discharges of Stormwater from Construction Activities

This regulatory action amends the General Permit for Discharges of Stormwater from Construction Activities (General Permit). The current General Permit is valid for five years, and is set to expire on June 30, 2009. This proposal is a revision of that current permit that is anticipated to be effective from July 1, 2009 through June 30, 2014. This

will be the first such revision of this permit since the Board received responsibility for the VSMP program.

Purpose of the General Permit

What is the General Permit?

- The General Permit is a permit issued by the Board in the form of a regulation. It is a Clean Water Act (NPDES) permit.
- A permit can be thought of as a license. The General Permit is a “license” to discharge stormwater. The terms of the General Permit are what the regulated community (i.e., land developers) follow when developing their sites.
- As with all VSMP permits, it is developed based on the requirements of the underlying VSMP regulations (i.e., the provisions of the other “parts” of the regulations). Although it is a regulation, the role of the General Permit is to implement the existing VSMP regulations, not to develop new “rules”.
- While “individual” permits are drafted to apply to a single permittee, “general” permits are written to apply to a category of permittees who have similar circumstances.
- This general permit governs construction activities that are:
 - Greater than one acre in size (statewide)
 - 2,500 square feet or greater in size (in areas designated as subject to the Bay Act)
 - Any areas that are part of a common plan of development or sale that, in total, are one acre or greater in size.
- All regulated construction activities must have permit coverage.

Framework of Stormwater Regulations

Where does this action fit into the ongoing regulatory actions associated with stormwater management?

VIRGINIA STORMWATER MANAGEMENT PROGRAM (VSMP) PERMIT
REGULATIONS [4 VAC 50-60-10 et seq.]

Part I: Definitions, Purpose, and Applicability

Part II: Stormwater Management Program Technical Criteria

Part III: Local Programs

Part IV: Technical Criteria and Permit Application Requirements for State Projects

Part V: Reporting

Part VI: VSMP General Program Requirements Related to MS4s and Land-Disturbing Activities

Part VII: VSMP Permit Applications

Part VIII: VSMP Permit Conditions

Part IX: Public Involvement

Part X: Transfer, Modification, Revocation and Reissuance, and Termination of VSMP Permits

Part XI: Enforcement of VSMP Permits

Part XII: Miscellaneous

Part XIII: Fees

Part XIV: General Virginia Stormwater Management Program (VSMP) Permit for Discharges of Stormwater from Construction Activities

Part XV: General Virginia Stormwater Management Program (VSMP) Permit for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems – Effective July 9, 2008

FORMS

The Regulatory Process to Date

- Board Motion: March 20, 2008
- This is an “exempt” Administrative Process Act action pursuant to § 2.2-4006(A)(9):
 - Requires the publication of a NOIRA, organization of a TAC, ability for the public to submit oral and written comment, and at least one public meeting.
- Filed NOIRA: March 24, 2008
- The 30-day public comment period opened on April 14, 2008 and closed on May 14, 2008.
- We received 4 comments and 9 requests to be placed on the TAC.
- The TAC was composed of 19 members including consultants (7); local governments (2); environmental groups (3); state agencies (3); federal agencies (2); colleges and universities (1); and planning district commission (1).
- The TAC was facilitated by Dr. Frank Dukes from the Institute for Environmental Negotiation.
- Committee Meetings
 - The 1st meeting of the TAC: July 22, 2008
 - The 2nd meeting of the TAC: August 19, 2008

- The 3rd meeting of the TAC: September 9, 2008
- A statement of the Board's authority for this regulation was received from the Office of the Attorney General on September 23, 2008.

Summary of Proposed Revisions

All VSMP permits, including this draft General Permit, are composed of terms developed pursuant to the greater body of stormwater regulations. As Part II of those regulations, which is directly implemented by the General Permit, is currently undergoing substantial revisions, it was not intended to make large changes to this version of the permit. Rather, the General Permit will be further revised following the completion of the Parts I/II/III/XIII regulatory process in the future. Additional future changes may be made in response to an ongoing EPA effort to revise terms and limitations that it utilizes in general permits that it issues in other states.

Still, important updates are proposed to be made to the General Permit in order to enhance program administration and promote clarity for the regulated community. The key proposed revisions to the permit include:

- 1) Updating and adding needed definitions such as “control measure”, “linear development project”, “qualified personnel”, “stormwater pollution prevention plan”, “Virginia Stormwater Management BMP Clearinghouse website”, and “minimize” (lines 17-781); PART I [section 10] and PART XIV [section 1100].
- 2) Specifying that this general permit shall become effective on July 1, 2009 and expire on June 30, 2014 (lines 801-02); PART XIV [section 1120].
- 3) Adding a statement that discharges to waters that have been identified as impaired on the 305(b)/303(d) Water Quality Assessment Integrated Report are not eligible for coverage under the permit unless they are addressed consistent with the terms of the permit, and that all control measures be protective of impaired waters (lines 847-50, 1151-54, and 1707-10); PART XIV [sections 1130 and 1170].
- 4) Adding a requirement that stormwater discharges from construction activities not cause or contribute to an excursion (i.e., a violation) above any applicable water quality standard, and that all control measures be employed in a manner that is protective of water quality standards (lines 1220-1247 and 1540-47); PART XIV [section 1170].
- 5) Updates to the registration statement (i.e., application) for coverage under the general permit, including:
 - a. A requirement that a complete registration statement be submitted prior to “the issuance of coverage under the general permit that authorizes the commencement of land disturbing activities...”, and that the “operator of a construction activity is authorized to discharge...only upon issuance of

- coverage under the general permit...” Currently, land disturbance is permitted to begin upon submittal (usually, mailing) of the registration statement; this new language changes that practice to require that coverage under the permit actually be issued by the Department prior to the time that land disturbing activities begin (lines 913-18 and 933-42); PART XIV [section 1150].
- b. A requirement that current permit coverage holders reapply for coverage under this new general permit by July 1, 2009. As the current general permit will expire on June 30, 2009, there are only two options in order to ensure continued coverage for active projects—either the existing general permit must be administratively continued, or all permit coverage holders must receive coverage under this permit. As either process requires reapplication by current coverage holders, and as it is believed that changes to this draft proposed permit will not detrimentally affect active projects, it is proposed that all projects receive coverage under this draft proposed permit (lines 928-29); PART XIV [section 1150].
 - c. A specification that only one construction activity operator may receive coverage under a single registration statement (lines 954-55); PART XIV [section 1150].
 - d. A requirement that each registration statement note direct discharges to any receiving water identified as impaired on the 2006 305(b)/303(d) Water Quality Assessment Integrated Report or for which a TMDL WLA has been established for stormwater discharges from a construction activity (lines 964-67); PART XIV [section 1150].
- 6) Updates to the notice of termination, which ends permit coverage and becomes effective at midnight on the date that it is submitted (previously, it had been effective seven days after submission) (lines 1012-66); PART XIV [section 1160].
 - 7) Updates to the requirements for and contents of a Stormwater Pollution Prevention Plan (SWPPP) for the construction site, including:
 - a. A requirement for the SWPPP to be made available to the public. Access to the SWPPP could be arranged at a time and location convenient to the operator (permittee), but no less than twice per month and during normal business hours (lines 1333-38); PART XIV [section 1170].
 - b. A direct requirement that all operators implement an Erosion and Sediment Control plan for the site in accordance with the Erosion and Sediment Control Law and Regulations. Previously, the SWPPP had been required to address Erosion and Sediment Control through specific language in the permit; however, as a practical matter, operators simply followed their approved E&S plans. This change aligns the permit language with that practice (lines 1416-90); PART XIV [section 1170].
 - c. Clarification that water quality and quantity requirements must be met by the operator. Under the current permit, there has been confusion at times as to whether or not water quality measures are required on every site

- statewide. The draft proposed language makes it clear that water quality is required on all sites (lines 1513-15); PART XIV [section 1170].
- d. The addition of an option for inspections of the site to be conducted every seven days by the operator. The operator can still choose the current inspection schedule of every 14 days and within 48 hours following a runoff producing event if desired (lines 1607-09); PART XIV [section 1170].
 - e. A requirement that the operator report if there has been any correspondence with federal officials regarding endangered species on the site, and a description of any measures necessary to protect such species (lines 1682-90); PART XIV [section 1170].
 - f. Requirements that TMDL wasteload allocations made to construction activities be addressed through the implementation of control measures and strategies contained in the SWPPP (lines 1691-1706); PART XIV [section 1170]
- 8) General updates to the basic Conditions Applicable to All VSMP Permits section that appears in every VSMP permit (lines 1712-2110); PART XIV [section 1170].
 - 9) The inclusion of new sections 4VAC50-60-1180, 1182, 1184, 1186, 1188, and 1190. These sections are direct copies of the currently-effective Part II (water quality and quantity) of the stormwater regulations. When the version of Part II that is currently undergoing development becomes effective, it will repeal the existing Part II. This would mean that all permittees at that time would then immediately become responsible for meeting the new Part II requirements, even though their plans were developed to meet the existing (currently effective) Part II requirements, and even though construction of the project under those plans may be well underway. In order to avoid that inequity, the permit specifically references the water quality and quantity requirements of these copied sections, which will prevent the changes to Part II from affecting persons holding coverage under this general permit. A new general permit will then be developed to incorporate the changes to Part II on a going forward basis for new projects (lines 2111-2278); PART XIV [sections 1180, 1182, 1184, 1186, 1188, and 1190].
 - 10) Updates to forms associated with the General Permit, including the registration statement (DCR 199-146), notice of termination (DCR 199-147), transfer form (form number pending), and permit fee form (DCR 199-145).

Next Steps

- Should the Board propose this regulation today, we plan file the proposed regulation on October 8 with the Registrar's Office; it should then be published on October 27 in the Virginia Register of Regulations.
- A 60-day public comment period will begin on October 27 and end on December 26.

(EPA will also review during this time period)

(We also have newspaper publishing requirements during this time period)

- At least one public hearing will be held (expect to hold at least two).
- We would then hopefully bring the final regulation to the Board at the March meeting. We would expect to have the amended General Permit regulation in place sometime near the beginning of June 2009 with an effective date of July 1, 2009.

Ms. Campbell thanked Mr. Brown and noted that the Board would return to the issue for public comment and action, but directed member attention to an agenda item carried over from the previous day.

Board Action on Nomination from VASWCD for Area II Appointment

Chairman Campbell recessed the Board meeting and convened a joint meeting of the Board and the Virginia Association of Soil and Water Conservation Districts. She welcomed Don Wells who was representing the Association.

Mr. Wells said that he would like to address two items on behalf of the Association. He said that the Association Board met on September 12 and approved the legislative agenda for the coming 2009 session. He said that of particular concern was that the budget for the biennium does not contain any funding for the Ag BMP program.

Mr. Wells said that the other item was the nomination of an Area II representative to the Board to replace Mr. McNear. Mr. Wells said that the Association approved the following nominations:

Jim Byrne, Culpeper SWCD
Gary Hornbaker, Loudoun SWCD

Ms. Campbell said that she would accept that as a motion.

Mr. Maitland seconded.

Ms. Campbell said to clarify that the Board did take action on this issue at the September meeting, but was advised that the Board needed first to have approval by the Association's Board prior to action during a joint session. This action addressed the shortcoming in the September action.

Mr. Maroon noted that Mr. McNear had not resigned but had asked not to be reappointed.

Mr. Wells confirmed that the Board did take the necessary action to support the nominees.

VOTE: The motion carried unanimously

Ms. Campbell said that the nominations would move forward to the Governor.

Mr. Maroon said that the Department may be forwarding legislation that would eliminate the need for a joint session, and that would make sure that Clean Water Act requirements for Board membership are embedded in the Code of Virginia. He said he would keep the Board informed of any developments.

Chairman Campbell adjourned the joint session and reconvened the Board meeting. She called for public comment on the proposed Construction General Permit regulatory action.

Public comment on General Permit

Chuck Frederickson, James Riverkeeper

Thank you Madame Chair. It's my job to be in or on the water most days of the week, so I'm intimately familiar with the effects that sediment pollution has on the river. I've gotten to see first hand how it has clogged up our oyster beds in Newport News and it's killed areas in the river where we had underwater grasses. We know it's a big problem.

As an Association, we've addressed sediment as one of our major issues. We take this very seriously. I appreciated the invitation from DCR to work on this TAC and to be able to voice our concerns as we worked through this permit. We appreciate the efforts being made in stormwater and think we are on the right track. We would like to see this permit go forward for public comment. We think it's going in the right direction but could be better. I've been an advocate for an objective performance base to measure whether our control measures are actually working. In the TAC, we discussed something like a turbidity standard. We should be able to come up with an objective measure.

We would like to continue to work with DCR and would like to see this move permit forward.

Barrett Hardiman, Home Builders Association of Virginia

Thank you. I'd like to start by saying how much we appreciate which technical standards they are actually enforcing in this permit. That was a matter of great confusion for our members.

Under a representative form of government citizens rely on public policy boards like this one and the legislature to establish rules and regulations under which they conduct their lives. It is the assumption of each citizen that to adhere to these regulations keeps them in compliance with the law.

In the letter that the Shenandoah Riverkeepers sent to you, they cite the Clean Water Act. The public right now is involved in the revision and the promulgation of a stormwater permit. When we walk out of the door ever single one of us has the opportunity to participate in that enforcement. Any citizen can report perceived violations and trigger an enforcement action.

Making the SWPPP available would not change the enforcement authority, nor would it grant access to a site. When we have a construction site, construction sites are dangerous places to be. We have to maintain insurance and there are many situations in which someone could be hurt on a construction site. It is very hard for us to allow someone on a construction site. There aren't any provisions for citizen enforcement actions. Permit holders as well as every citizen are entitled to due process of law.

SWPPPS are living proprietary documents that contain confidential information from multiple business entities. These change on a daily basis. They also have proprietary design structures.

Making the SWPPP available to the public would require either the time of an engineer or site foreman. You have to have someone with an understanding of the SWPPP.

Again the Riverkeepers' letter says that any document obtained by the permitting authority is public information. SWPPPS again are not obtained by the permitting authority.

To finish up, we understand that the endangered species language in the permit is an important section, but we don't necessarily feel that should be addressed in a stormwater permit.

Preston Hartman, Shenandoah Riverkeeper

Thank you. I am here on behalf of the Shenandoah River keeper. I wanted to address two things. One is the availability of SWPPS and the other is the impaired waters.

Public availability of SWPPS is absolutely critical. Without that, there is no way to know if a site is in compliance. The Clean Water Act requires this information be available and that includes providing for public participation.

There is another concern that is lost. Virginia citizens deserve to have this information, to know what is going on in their waters.

As for impaired waters, the permit says discharges must be minimized, but that is not enough. You're still discharging into waters that are already impaired.

Instead of saying the BMPs must minimize, it should say they must prevent discharge into waters that are already damaged.

I wanted to mention that the purpose of the permit is to protect water quality, not to facilitate development in Virginia.

Mike Gerel, Chesapeake Bay Foundation

Thank you for the opportunity to speak to you again. I served on the advisory committee that helped draft this proposed permit. We appreciate staff's effort to develop this permit.

As others have said, the review of a SWPPP is the only way to know if a site is compliance. It is absolutely crucial.

Mr. Gerel said that CBF would provide additional written comments to request one new provision and a revision to two requirements. He said that a numeric performance standard with periodic monitoring would be the most effective.

Mr. Gerel said that the permit must be constructed in such a way to ensure the most up to date construction requirements are included.

Mr. Gerel said that he was concerned that the 5-year permit would have to be reopened. He said that it could inadvertently delay the effective date of the Board's other proposed stormwater regulations. He suggested consideration be given to a 3-year permit term.

Tyler Craddock, Virginia Chamber of Commerce

Mr. Craddock expressed concern with one particular section of the General Permit. That section pertains to the availability of the opportunity for the public to review the SWPPP. He said that, as previously mentioned, that would require the availability of an engineer to explain the SWPPP to the person requesting to view it. He said that the Chamber believed that businesses should only have to provide compliance information as provided under existing law.

Mr. Craddock said the review of the SWPPP should be in an appropriate public process. He said that a private entity, such as a developer and a non public entity such as a citizen group or individual citizen meeting in a public library is not a public process.

Mr. Craddock said that this provision sent the wrong message to the Virginia Business community that the developer would not only be regulated but would also be subject to enforcement participation by any other entity. He said that with outside entities there would be no controlling legal authority.

Mr. Maroon asked Mr. Craddock if the Chamber was objecting to the two times a month for public inspection of the SWPPP.

Mr. Craddock said that it was not a citizen function to determine compliance with the SWPPP, but a function of DCR.

Mr. Brown clarified that nothing in the language granted the public access to the site. He said that the developer could choose to do that, but that the permit did not require that access.

This was the end of the public comments.

Ms. Campbell said that if the Board took action on the permit, that it would be filed on October 8, 2008 with the goal to have a final regulation before the Board at the March 2009 meeting.

Mr. Dowling said that the timeline was critical, noting that the current permit does expire in June 2009 and that there would be no authority to approve new projects after that date without a new permit in place.

Mr. Maitland asked if the new permit was not made effective if the old guidelines would continue.

Mr. Brown said only for existing projects.

Mr. Maroon said that staff considered the possibility of extending the current permit administratively and had asked EPA about such a possibility, but it was determined not to be possible under the law.

Mr. Maitland moved the following motion:

Motion to approve, authorize and direct the filing of proposed regulations related to Part XIV of the Board's Virginia Stormwater Management Program (VSMP) Permit Regulations and other related sections:

The Board approves these proposed regulations and incorporated forms and authorizes the Director of the Department of Conservation and Recreation and the Departmental Regulatory Coordinator to submit the proposed amendments to Part XIV of the Board's Virginia Stormwater Management Program Permit Regulations [entitled "**General Permit for Discharges of Stormwater from Construction Activities**"] and other approved sections, including but not limited to, Part I definitions, and associated forms incorporated by reference, and any other required documents to the Virginia Regulatory TownHall, the Virginia Registrar's Office, and the U.S. Environmental Protection Agency.

In accordance with the Administrative Process Act exemption requirements specified in § 2.2-4006 A9, the Board further authorizes at least one public hearing to be held by the Department following publication of the proposed regulations in the Virginia Register of Regulations and that the Department make provisions to receive public comment concerning the proposed regulations. Upon closing of the public comment period, the Department is authorized to make

revisions to the proposed regulations in response to comments received and to hold additional stakeholder meetings as it deems necessary.

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 A9, the Virginia Register Act, and other technical rulemaking protocols that may be applicable. The Department shall also implement all necessary public notification and review procedures specified by Federal Regulation regarding General Permit reissuance.

This authorization extends to, but is not limited to, the posting of the approved action to the Virginia Regulatory TownHall and the filing of the proposed regulations and incorporated forms with the Virginia Registrar's Office and the U.S. Environmental Protection Agency, the holding of at least one public hearing, as well as the coordination necessary to gain approvals from the Office of 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.

Ms. Dalbec seconded the motion.

DISCUSSION: None

VOTE: Motion carried unanimously.

Dam Safety Certificates and Permits

Board guidance document on ownership

Mr. Brown presented the draft board guidance document on dam ownership. He said this was the first of what will be many guidance documents associated with Dam Safety. A copy of the document is available from DCR.

Mr. Brown said that one of the most problematic aspects of dealing with dams was the aspect of ownership. He said that the document provides a basic sense of who a dam owner is.

Mr. Brown said this document was a synthesis of the information that the Division of Dam Safety considers when determining dam ownership. He said that at the heart was the definition from the Dam Safety Act which says the owner of a dam means "the owner of the land on which a dam is situated or of an easement permitting the construction of a dam and any person or entity agreeing to maintain a dam".

He said the three basic prongs were 1) fee simple owner, which who owns the underlying property. He said there are situations where there are multiple owners. But for the most part the owner of the underlying property can be determined; 2) easement holder, basically the individual doesn't own the land but has an easement to build a dam on that property. This will require a recorded deed; and 3) individual agreeing to be responsible. This is the most difficult to determine. This can be homeowner's associations or other entities.

Mr. Brown said the document also provided guidance as to what an entity is considered to be. He said the Dam Safety program has the ability to consider all documentation available.

Ms. Campbell said that reading the document there was the sense that the individuals were all co-owners.

Mr. Brown said that the guidance could mean the group or any of the individuals. He said there were many situations where there were multiple entities involved.

MOTION: Ms. Hansen moved that the document be approved as submitted by staff.

SECOND: Ms. Dalbec

DISCUSSION: None

VOTE: Motion carried unanimously

At this time the Board recessed for a Break.

Following the break, Mr. Browning continued with the Dam Safety Certificates and Permits.

Mr. Browning gave an update regarding Enforcement Actions and noted that no action was needed by the Board at this time.

Conditional Operational Maintenance Certificate Recommendations

06905 Cove Lake Dam #1	FREDERICK	Class I	9/30/09
06911 Cove Dam #2	FREDERICK	Class I	9/30/09
10502 Keokee Dam	LEE	Class II	3/31/09
10709 Daley Dam	LOUDOUN	Class II	9/30/09
12514 Black Creek Impoundment	NELSON	Class III	3/31/09
14739 Bush River Dam #5	PRINCE EDWARD	Class III	3/31/09
14740 Bush River Dam #6	PRINCE EDWARD	Class III	3/31/09
15307 Omisol Dam	PRINCE WILLIAM	Class III	9/30/09

19104 Hidden Valley Lake Dam	WASHINGTON	Class II	3/31/09
19511 Bear Creek Dam	WISE	Class I	9/30/10

MOTION: Mr. Maitland moved that the Virginia Soil and Water Conservation Board approve the Conditional Operation and Maintenance Certificate Recommendations as presented by DCR staff and that staff be directed to communicate the Board actions to the affected dam owners.

SECOND: Ms. Hansen

DISCUSSION: None

VOTE: Motion carried unanimously

Regular Operation and Maintenance Certificate Recommendations

00308 Henley's Dam	ALBEMARLE	Class III	9/30/14
00349 Loftlands Dam	ALBEMARLE	Class III	9/30/14
00387 Broadmoor Lake Dam	ALBEMARLE	Class II	9/30/14
00503 Clifton Forge Dam	ALLEGHANY	Class I	9/30/14
00504 Westvaco #2 Flyash Lagoon Dam	ALLEGHANY	Class II	9/30/14
01508 South River Dam #23	AUGUSTA	Class I	9/30/14
01933 Greg Lester Dam	BEDFORD	Class III	9/30/14
02304 Blue Ridge Estates Dam	BOTETOURT	Class I	9/30/14
03350 Ladysmith Lake Dam	CAROLINE	Class III	9/30/14
04150 Ironbridge Dam	CHESTERFIELD	Class II	9/30/14
04720 Cole Dam #1	CULPEPER	Class III	9/30/14
05104 White Oak Creek Dam	DICKENSON	Class II	9/30/14
05106 Laurel Lake Dam	DICKENSON	Class III	9/30/14
06101 Warrenton Dam	FAUQUIER	Class II	9/30/14
07537 Holland Hills Dam	GOOCHLAND	Class III	9/30/14
08554 Lower Lakes Dam	HANOVER	Class III	9/30/14
09519 Rennicks Pond Dam	JAMES CITY	Class II	9/30/14
10733 Lawrence Dam	LOUDOUN	Class III	9/30/14
10736 Hope Parkway Dam	LOUDOUN	Class II	9/30/14
10923 Gordonsville Dam	LOUISA	Class II	9/30/14
10934 South Anna Dam #22	LOUISA	Class II	9/30/14
13703 Lake Orange Dam	ORANGE	Class III	9/30/14
13713 Decoursey Dam	ORANGE	Class III	9/30/14
14118 Ararat River Dam #64	PATRICK	Class III	9/30/14
14119 Ararat River Dam #69	PATRICK	Class III	9/30/14

13901 Dry Run Dam #102	PAGE	Class I	9/30/14
15303 Lake Montclair Dam	PRINCE WILLIAM	Class I	9/30/14
15331 Potomac Club Regional Pond Dam	PRINCE WILLIAM	Class II	9/30/14
15504 Hogan Dam	PULASKI	Class I	9/30/14
16506 Lower North River Dam #81C	ROCKINGHAM	Class I	9/30/14
17902 Potomac Creek #1 17902	STAFFORD	Class II	9/30/14
17913 Potomac Creek #2 17913	STAFFORD	Class II	9/30/14
17920 Walden Ten No. 1 Dam	STAFFORD	Class III	9/30/14
19701 Rural Retreat Dam	WYTHE	Class I	9/30/14

Mr. Maroon noted that he would need to abstain from action regarding Laurel Lake Dam at Breaks Interstate Park.

MOTION: Ms. Dalbec moved that the Virginia Soil and Water Conservation Board approve the Regular Operation & Maintenance Certificate Recommendations as presented by DCR staff with the exception of Inventory Number 05106 Laurel Lake Dam and that staff be directed to communicate the Board actions to the affected dam owners.

SECOND: Mr. Maitland

DISCUSSION: None

VOTE: Motion carried unanimously

MOTION: Ms. Dalbec moved that the Virginia Soil and Water Conservation Board approve the recommendation for Inventory Number 05106 Laurel Lake Dam and that staff be directed to communicate the Board action to the affected dam owner.

SECOND: Mr. Russell

DISCUSSION: None

VOTE: Motion carried with Mr. Maroon abstaining

Permit Recommendations

00369 Hunt Country Dam	ALBEMARLE	Class II Alteration	5/31/09
003C8 Martha Jefferson Retention Basin Dam	ALBEMARLE	Class II Construction	9/30/10
01510 South River Dam #3	AUGUSTA	Class II Alteration	7/31/09

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

SECOND: Ms. Dalbec

DISCUSSION: None

VOTE: Motion carried unanimously

Extensions

00305 Albemarle Dam	ALBEMARLE	Class III Conditional	1/31/09
00341 Clover Dam	ALBEMARLE	Class II Conditional	1/31/09
00385 Mountain Valley Dam 1	ALBEMARLE	Class III Conditional	1/31/09
01504 South River Dam #10A	AUGUSTA	Class I Conditional	9/30/10
01505 Upper North River Dam #10	AUGUSTA	Class III Conditional	9/30/10
01514 South River Dam #19	AUGUSTA	Class II Conditional	9/30/10
01930 Elk Garden Lake Dam	BEDFORD	Class III Regular	1/31/09
02303 Rainbow Forest Dam	BOTETOURT	Class I Conditional	9/30/09
05907 Pohick Creek Dam #8	FAIRFAX	Class I Conditional	9/30/09
05923 Pohick Creek Dam #2	FAIRFAX	Class I Conditional	9/30/09
05928 Pohick Creek Dam #3	FAIRFAX	Class I Conditional	9/30/09
06109 Kinlock Farm Dam	FAUQUIER	Class I Conditional	1/31/09
06143 Lower Warrenton Lakes Dam	FAUQUIER	Class II Conditional	7/31/09
06701 Upper Blackwater River Dam #6	FRANKLIN	Class II Regular	11/30/08
07706 Hidden Valley Estates Dam	GRAYSON	Class II Conditional	9/30/09
08539 Mattawan Dam	HANOVER	Class II Conditional	1/31/09
08703 Gillie Creek Dam	HENRICO	Class II Conditional	1/31/09
08714 Lake Overton Dam	HENRICO	Class II Conditional	3/31/09
10126 Central Crossing Dam	KING WILLIAM	Class III Conditional	5/31/09
10707 Horsepen Dam	LOUDOUN	Class III Regular	1/31/09
10708 Dulles Airport Dam	LOUDOUN	Class III Regular	1/31/09
12501 Nelson Dam	NELSON	Class II Conditional	1/31/09
13701 Lake of the Woods Dam	ORANGE	Class I Conditional	1/31/09
13706 Northrup Dam	ORANGE	Class III Regular	1/31/09
13714 Spring Vale Dam	ORANGE	Class III Conditional	1/31/09
14104 Squall Creek Dam	PATRICK	Class III Conditional	9/30/09
14506 Lower Byers Dam	POWHATAN	Class III Conditional	1/31/09
14533 Westlake Dam	POWHATAN	Class III Conditional	1/31/09
15302 T. Nelson Elliott Dam	PRINCE WILLIAM	Class I Conditional	3/31/09
16104 Clifford D. Craig Memorial Dam	ROANOKE	Class I Regular	1/31/09

18501 Upper Clinch River Dam #8	TAZEWELL	Class I Regular	9/30/09
18709 Apple Mountain Lake Dam	WARREN	Class II Conditional	3/31/09
18711 Apple Mountain Upper Lake Dam	WARREN	Class II Conditional	3/31/09
70001 Lee Hall Reservoir Dam	NEWPORT NEWS	Class II Conditional	9/30/09
70006 Lee Hall Upper Dam	NEWPORT NEWS	Class II Conditional	9/30/09
81003 Stumpy Lake Dam	VIRGINIA BEACH	Class I Conditional	9/30/10

MOTION: Mr. Russell moved that the Virginia Soil and Water Conservation Board approve the extension recommendations as presented by DCR staff and that staff be directed to communicate the Board actions to the affected dam owners.

SECOND: Ms. Dalbec

DISCUSSION: None

VOTE: Motion carried unanimously

Partner Agency Reports

Natural Resources Conservation Service

Mr. Biddix gave the report for the Natural Resources Conservation Service. A copy is included as Attachment # 1.

Department of Conservation and Recreation

Mr. Frye gave the report for the Department of Conservation and Recreation. A copy is included as Attachment # 2.

Executive Session

MOTION: Ms. Hansen moved the following:

Madame Chair, I move that the Board convene a closed meeting pursuant to §2.2-3711(A) (7) of the Code of Virginia for the purpose of consultation with legal counsel regarding specific legal matters requiring the provision of legal advice, namely the pending litigation by the Board in the Circuit Court of Fauquier County, styled *Commonwealth of Virginia ex rel. Virginia Soil and Water Conservation Board v. Carter, et al.* and *Commonwealth of Virginia ex rel. Virginia Soil and Water Conservation Board v. Ingman.*

This closed meeting will be attended only by members of the Board. However, pursuant to § 2.2-3712(F) of the Code, the Board requests counsel, the Director of the Department of Conservation and Recreation (DCR), Mr. Baxter, Mr. Dowling, Mr. Brown, Mr. Browning, Mr. Van Lier, and Mr. Robinson to attend because it believes that their presence will reasonably aid the Board in its consideration of the topic that is the subject of this closed meeting.

SECOND: Mr. Maitland

VOTE: Motion carried unanimously

(The Board went into a closed meeting)

(The Board reconvened an open meeting)

Ms. Hansen moved the following motion:

WHEREAS, the Board has convened a closed meeting on September 25, 2008 pursuant to an affirmative recorded vote and in accordance with the provisions of the Virginia Freedom of Information Act; and

WHEREAS, § 2.2-3712(D) of the Code requires a certification by the Board that such closed meeting was conducted in conformity with Virginia law;

NOW, THEREFORE, the Virginia Soil and Water Conservation Board hereby certifies that, to the best of each member's knowledge, only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the closed meeting to which this certification applies, and only such public business matters as were identified in the motion convening the closed meeting were heard, discussed or considered by the Board.

ROLL CALL VOTE: Aye: Campbell, Dalbec, Hansen, Maitland, Maroon, Russell

No: None

Not present at meeting: Altizer, McNear, Packard, Simms

Motion carried

Public Comment

There was no additional public comment.

Next Meeting

The next meeting of the Virginia Soil and Water Conservation Board will be Friday, November 21, 2008. The location is to be determined.

Adjourn

There was no additional business and the meeting was adjourned.

Respectfully submitted,

Linda S. Campbell
Chair

Joseph H. Maroon
Director

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Attachment # 1

NRCS REPORT
VA Soil & Water Conservation Board Meeting
September 24-25, 2008
Patrick Henry Building
Richmond, VA

FARM BILL PROGRAMS

Fiscal Year 2008 – We are ending this fiscal year very strong in terms of contracts signed with landowners. Funding in both the EQIP and WHIP is the highest on record for Virginia apportionments. Total funding is as follows:

EQIP	\$ 13,544,874
WHIP	\$ 1,535,543
CSP	\$ 1,500,000.

Over 99% of all apportioned funds were successfully contracted. What little carryover remained was not sufficient to fund the next application on the waiting list. Waiting lists of applications still exist for the major programs and will be honored in the 2009 program year. Due to changes in the Farm Bill and ranking criteria, producers will have to reapply rather than automatically have their applications carried forwarded.

Fiscal Year 2009 – Plans are underway to roll out a very similar basic program in EQIP and WHIP starting in 2009. The rule making process currently underway which is based on changes in the new Farm Bill, will mostly likely add only several small changes to our program. However the basic list of practices offered in Virginia as well as our efforts to address identified resource concerns will basically stay the same. We will be offering both programs on a continuous sign-up basis with periodic approval of practices.

The Conservation Stewardship Program (CSP) - (formally the Conservation Security Program) will be offered statewide under changes made in the Farm Bill. Rule making is also currently underway and will be released later in the year.

The Chesapeake Bay Initiative - is still receiving attention. Administration budget proposal calls for the elimination of this program as well as several others in the Farm Bill. Staff has been coordinating with DCR and several other partners to develop a pilot program of key practices to offer incentive payments within the Chesapeake Bay watershed. These are designed to compliment

existing efforts underway aimed at specific nutrient and sediment load reducing practices. Contingency plans are also being developed on how this pilot will be implemented at various funding levels.

ECOLOGICAL SCIENCES HIGHLIGHTS

- NRCS is in the process of filling the State Biologist and Conservation Agronomist positions. These selections should be completed in September 2008.
- Prescribed Burning training was conducted to 27 SWCD and NRCS employees.
- NRCS staff is working to update several conservation standards.
- NRCS plans to purchase a rainfall simulator that will be available for educational purposes.
- The practice payment schedule (average cost list) has been updated for 2009. This payment schedule will be used to administer State and Federal cost-share programs. This has been shared with DCR and SWCD offices.

DAM REHABILITATION

South River Site 26 (Inch Branch) in Augusta County – Construction was completed in July 2008. Final costs are not available yet.

South River Site 25 (Toms Branch) in Augusta County – An outside consultant has been hired to complete the final design. The Headwaters SWCD is working to secure the necessary land rights. The final design will be completed in September or October. Solicitation for a construction contract will be initiated in September with construction to begin in the spring of 2009.

Pohick Creek Site 4 (Royal Lake) in Fairfax County – Fairfax County is administering a construction contract for the rehabilitation of Royal Lake. Construction will take from 6-8 months. Due to heavy rains from Hurricane Hanna, the emergency spillway flowed on Saturday, September 6, 2008. There was minimal damage to the spillway.

Pohick Creek Site 3 (Woodglen Lake) in Fairfax County – The NRCS Chief has authorized the plan for rehabilitation of Woodglen Lake. Fairfax County has hired a consultant to complete the design and NRCS is assisting. Funding for the construction of this project has been requested in our FY-09 budget request.

Pohick Creek Site 2 (Lake Barton) in Fairfax County – Funding for the completion of the plan has been requested in our FY-09 budget request.

Stony Creek Site 9 (Lake Laura) in Shenandoah County – The Shenandoah County Board of Supervisors has agreed to become a project sponsor of the Stony Creek Watershed and the dam rehabilitation efforts of Lake Laura. NRCS has requested funding in our FY-09 budget to develop a plan to rehabilitate this dam.

South River Site 10A (Mills Creek) in Augusta County – Augusta County has requested NRCS planning assistance to rehabilitate this dam. The County has already completed most of the engineering studies and analysis but needs help with the environmental, sociological, and economic portions of the plan. They want to organize the information into a document that will meet the Dam Rehabilitation Program requirements so they can qualify for NRCS cost-share on the project. NRCS has requested funding in our FY-09 budget to assist Augusta County to develop a plan to rehabilitate this dam.

Moratorium Lifted on Assessments for High Hazard Dams – The moratorium that was in place for the past two years by the Chief of NRCS has been lifted for dams classified as “high” hazard. Therefore, NRCS has requested funding to conduct assessments of the following three dams in Virginia.

- South River Watershed Site 7 - Lake Wilda in Augusta County
- Upper North River Watershed Site 10 - Todd Lake in Augusta County
- Johns Creek Site 3 in Craig County

The moratorium still exists for dams classified as “low” or “significant” hazard. This affects the South River Watershed Site 19 - Waynesboro Nursery Lake in Augusta County. NRCS cannot request funding to complete that assessment until the moratorium is lifted.

WATERSHED OPERATIONS

Buena Vista Flood Control Project – The replacement of two undersized bridges in Buena Vista has been completed. The final payments have not been processed but the total construction cost is approximately \$900,000. NRCS paid 100% of the construction costs.

NRCS and the City of Buena Vista have signed a cooperative agreement for \$42,000 to acquire and demolish one home that is located in the floodplain on

the Chalk Mine Run tributary in Buena Vista. The City is completing the legal work necessary to complete this project.

WATERSHED PLANNING AND SURVEYS

There is no change on the status of the authorization for the completed watershed plan for the North Fork Powell River Watershed in Lee County. The final plan was submitted in February, 2008 to Chief Arlen Lancaster for authorization, but he decided to defer approval of all new watershed plan authorization requests at this time. The final plan is a land treatment project that will address water quality issues associated with abandoned mines and acid mine drainage. The project sponsors are the Daniel Boone SWCD, Lee County, and the Virginia Department of Mines, Minerals, and Energy. If approved and funded, the project will provide 65% cost-share for the installation of needed measures in this watershed. The estimated construction cost is \$963,000.

NHQ guidance has restricted states from submitting funding requests for developing new watershed plans. Only funding for ongoing studies will be considered in FY-09. This affects Virginia for the following two requests for planning assistance: 1) Town of Glasgow in Rockbridge County and 2) the Gross Creek Watershed located in the Town of Farmville in Prince Edward County.

RAPID WATERSHED ASSESSMENT

Lower Shenandoah River – NRCS was approved to complete a Rapid Watershed Assessment on the Lower Shenandoah River in FY-09. This is a multi-state project between West Virginia and Virginia. This assessment, along with the South Fork and North Fork assessments, will complete the entire Shenandoah River Watershed in Virginia and West Virginia.

RESOURCE CONSERVATION AND DEVELOPMENT

VA Assoc of RC&D Councils hosted the SE Association meeting (9 states) in Wytheville the week of September 10-13. VA highlighted some of our RC&D projects in the New River Highlands RC&D Area during the scheduled tours. Over 250 participants attended.

OFFICE CONSOLIDATION

The Stephens City and Woodstock Service Centers have combined into one Service Center now located in Strasburg, VA. Mike Liskey, the District

Conservationist in that office, will continue to serve the Counties of Winchester, Frederick, Clarke, Warren and Shenandoah, and the Lord Fairfax SWCD.

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Attachment # 2

Department of Conservation and Recreation
Report to the Virginia Soil and Water Conservation Board
September 24-25, 2008

1. DCR/SWCD Operational Funding:

All 47 SWCDs were issued a grant agreement with DCR in May, 2008 for Operational funding this fiscal year ('09). Each is returning a fully endorsed agreement to their CDC. All districts were issued an initial quarterly disbursement of funds during late July or August. Second quarter disbursements will be issued during November. Third quarter disbursements may be expected to be issued during February, 2009. Final disbursements will be issued in late April and early May (2009).

This fiscal year (FY09), operational funding for all districts totals \$3,943,790. The total amount reflects a decrease below FY08 operational funding and represents a decrease below the peak funding level experienced by districts in FY01 (\$4,301,000).

2. Conservation Partner 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 state level JED team meets no less than quarterly through face to face meetings or through conference calls. The group held a face to face discussion on July 23, 2008 at the DOF headquarters in Charlottesville.

The state level JED team continues to focus on delivery of 3 "core courses". The short course "Conservation Selling Skills" is planned for delivery again this fall (2008) for the 7th consecutive year. The course will be delivered by professional trainer Chuck Hitzemann on October 29th and 30th at the DOF State Office in Charlottesville. Course delivery is dependent on sufficient enrollment. NRCS is supporting delivery of the EP&I (Effective Presentation and Instruction) short course with an initial focus of training course instructors that will deliver the course through the 4 regional JED teams. The third "core course" –Conservation Orientation for New Employees is delivered regionally when sufficient need exists to justify the sessions. Broader training needs are being addressed regionally through the 4 regional JED teams.

3. SWCD Dams:

The SWCD dam owner work group comprised of representatives from the 12 SWCDs that own dams, DCR, NRCS and others, continue to meet approximately every 3 months (a quarterly annual schedule). Of the roughly 4 meetings per year, one session is focused on Emergency Action Plans, another addresses routine annual maintenance of district dams and the remaining two meetings address priority topics identified by the group. The group last met on July 31st with the primary focus on procurement processes districts must satisfy to comply with the Virginia Public Procurement Act as they perform many of the smaller repairs and maintenance tasks that are necessary to fulfill dam certification requirements. The group will meet again on October 16th at the DOF State Office in Charlottesville. Dam Safety regulations and continuation of the procurement processes discussion will be the primary focus for the upcoming meeting.

4. Agricultural BMP Cost-Share Program:

A Steering Team (comprised of representatives from DCR, SWCDs and NRCS) for the “modernization” of the Ag BMP Tracking Program has received a report from the SWCD user’s group outlining their desired capabilities for the modernized tracking program. The Virginia Information Technologies Agency (VITA) has approved the project charter and project proposal (both prepared by DCR). With this approval DCR has posted a scope of work and supporting documents to seek proposals from VITA pre-qualified suppliers that have interest in performing the programming and development of a new computerized program that will collect Ag BMP Cost Share Program data from SWCDs. The deadline for receiving proposals from the pre-qualified suppliers was September 10th, 2008. Three proposals were submitted. DCR is striving to award a contract for development of a new program by early October, 2008. Full implementation of a more efficient and effective tracking program is scheduled to be in place July 1st, 2009.

All data entered by the districts during program year 2008 (ending June 30 2008) has been harvested from the existing tracking programs. Several small changes necessary to collect data during PY 2009, have been completed and the tracking programs are available for reporting BMP implementation by the SWCDs.

The Cost Share program Technical Advisory Committee (TAC) held its last meeting on August 21st. Attendance by TAC members (or designated alternates) was very good. The group resolved areas of focus for potential changes to the Cost Share program that would take effect July 1, 2009. The TAC’s “program of work” includes consideration of changes to cover crop practices, BMPs related to biofuels, modifications to nutrient management and livestock exclusion practices and other areas of focus. The TAC will hold its next meeting on October 9th, 2008. A survey of farmers and other program delivery staff is being conducted to solicit input on a reasonable fee per acre for nutrient management plan implementation.

5. Conservation Reserve Enhancement Program (CREP):

A subcommittee of the Virginia Agricultural BMP Cost Share Program Technical Advisory Committee along with the CREP TAC held a teleconference on August 7th to explore ways the Cost Share program may provide additional financial incentives to encourage CREP enrollment in the Chesapeake Bay. It is hoped that by increasing the available cost share funds new participants will enroll in the Chesapeake Bay CREP. Of the 25,000 acre goal authorized for the Chesapeake Bay basin in Virginia, there are approximately 10,300 acres remaining to enroll.

6. Marketing Agricultural Conservation Messages:

DCR is winding down a contract with Open Door Communications (ODC, formerly McFadden-Clay Marketing Group) that began over two years ago with special funding from Virginia Income Tax Check off contributions for Chesapeake Bay restoration. Market research about Virginia farmers was conducted to understand how to best reach farmers with conservation messages and how they perceive staff of conservation partner agencies as technical resources for conservation. The research and outreach materials were tested in the Shenandoah Valley during 2007.

ODC is completing a fact sheet for each of the 5 priority practices (cover crops, continuous no till, livestock stream exclusion, riparian buffers and nutrient management). The fact sheets are intended to be used by SWCD staff (and others) as they encourage farmer adoption of the priority practices. ODC will also make available a more expansive white paper of information on each priority practice. A final outcome of the DCR/ODC contract will be a “warehouse” of many of the marketing materials that were piloted in the Valley. It is the intent to provide each SWCD with a CD of the warehouse products for use as appropriate and needed.

7. Nutrient Management Related Issues

The State Water Control Board has issued a Notice of Intended Regulatory Action to consider changes to the Biosolids Regulations. This will be the first opportunity to modify the biosolids regulations that were transferred from the Board of Health to the Water Control Board last January 1. Comments were due by July 31.

DCR is working to develop a new category for nutrient management planner certification for developed lands, to supplement the current certification program that is aimed at agricultural lands. The idea for a new category is supported by the Virginia Turfgrass Council and the Virginia Agribusiness Council.

8. Total Maximum Daily Load (TMDL)

An idea exchange and coordination meeting was held with SWCDs that are implementing 319 TMDL grant projects in the Southern Rivers watersheds on July 24 at Claytor Lake State Park. Districts with current projects include Holston River, Skyline, Peaks of Otter, and Blue Ridge.

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