

**Virginia Soil and Water Conservation Board  
Tuesday, May 24, 2011  
Senate Room A, General Assembly Building  
Richmond, Virginia**

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

Susan Taylor Hansen, Chair	David A. Johnson, DCR Director
Frank Blake, Jr.	C. Frank Brickhouse, Jr.
Darlene Dalbec	Gary Hornbaker
Jerry L. Ingle	Daphne W. Jamison
Stephen Lohr	
John A. Bricker, NRCS, Ex Officio	

**Virginia Soil and Water Conservation Board Members Not Present**

Raymond L. Simms, Vice Chair

**DCR Staff Present**

Jeb Wilkinson, Chief Deputy Director	
Robert Bennett	Jan Briede
James Davis-Martin	Nissa Dean
David C. Dowling	Lloyd Edwards
Michael R. Fletcher	Doug Fritz
Ken Harper	Lee Hill
Ved Malhotra	Stephanie Martin
John McCutcheon	Mark Meador
David Sacks	Joan Salvati
Christine Watlington	
Elizabeth Andrews, Office of the Attorney General	

**Others Present**

Bethany Bezak, Wetland Studies and Solutions  
Linda Bristow, Rainbow Forest Recreation Association  
Ryan Brown, Office of the Attorney General  
Barbara Brumbaugh, City of Chesapeake  
Donna Chamberlain, Rainbow Forest Recreation Association  
Joe DuRant, City of Newport News  
Mike Gerel, Chesapeake Bay Foundation  
Joe Lerch, Virginia Municipal League  
John C. Martin, Albemarle County  
Ed Overton, Virginia Association of Soil and Water Conservation Districts  
Jeff Perry, Henrico County  
Mike Rolband, Wetland Studies and Solutions, Inc.

Peggy Sanner, Chesapeake Bay Foundation  
W. H. Shirley, Northumberland County  
Jenny Tribo, Hampton Roads Planning District Commission  
Kendall Tyree, Virginia Association of Soil and Water Conservation Districts  
Shannon Varner, Troutman Sanders  
Cabell Vest, Aqualaw PLC  
Jennifer Whitaker, Rivanna Water & Sewer Authority  
Keith White, Henrico County

### **Call to Order and Introductions**

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

### **Approval of Minutes from March 10, 2011**

MOTION: Mr. Hornbaker moved that the minutes of the March 10, 2011 meeting of the Virginia Soil and Water Conservation Board be approved as submitted by staff.

SECOND: Mr. Blake

DISCUSSION: None

VOTE: Motion carried unanimously

### **Director's Report**

Mr. Johnson gave the Director's report. He noted that at the previous meeting Mr. Wilkinson had discussed the agency management study.

As a result of the recommendations of the study, the Division of Soil and Water Conservation and the Division of Chesapeake Bay Local Assistance are being combined into one division, effective June 1, 2011. In addition, several key members of the Soil and Water Conservation Division and one member from the Division of State Parks have announced their retirement.

Mr. Johnson said that the new division will be the Division of Stormwater Management. The primary function was not to create a new organization but to bring a new level of accountability and customer service. He noted that much of what the individual divisions handled was complimentary, but there were institutional barriers to good communication.

The Division of Stormwater Management will be divided into three program areas: urban stormwater regulatory activities, conservation practices, and regional operations.

Mr. Johnson noted that in the interim Mr. Wilkinson is serving as Acting Division Director. The Department has advertised the position with the intent of hiring a permanent director.

Mr. Johnson said that the Chesapeake Bay WIP still commands a great deal of attention. The Department is fully engaged in Phase II of the process.

Ms. Jamison asked how Soil and Water Conservation Districts will fit into the reorganization plans.

Mr. Johnson said that because of the long-standing relationship with the Soil and Water Conservation Districts the intent was for that to never be compromised. He said that in reality it would be enhanced. District programs will be managed under the conservation subdivision.

Mr. Johnson presented three Resolutions of Appreciation for Board consideration.

**MOTION:** Mr. Lohr moved that the Virginia Soil and Water Conservation Board approve the three Resolutions of Appreciation as presented by staff recognizing the service of Jack E. Frye, Carlton Lee Hill and Mark B. Meador.

**SECOND:** Ms. Dalbec

**DISCUSSION:** None

**VOTE:** Motion carried unanimously

The resolutions read as follows:

**Virginia Soil and Water Conservation Board**

**COMMENDING RESOLUTION**

**Presented to**

**JACK E. FRYE**

At a regular meeting of the Virginia Soil and Water Conservation Board held on Friday, May 24, 2011 at the General Assembly Building in Richmond, Virginia the following resolution was unanimously adopted:

WHEREAS, Jack E. Frye began his service with the Department of Conservation and Recreation in 1984, and

WHEREAS, Mr. Frye received his B.S. in Geology from Virginia Polytechnic Institute and his M.S. in Oceanography from Old Dominion University, and

WHEREAS, Mr. Frye has served as the Department of Conservation and Recreation's Director of the Division of Soil and Water Conservation since October 1991, and

WHEREAS, Mr. Frye has been responsible for coordinating Virginia's nonpoint source pollution control programs and working with Virginia's 47 soil & water conservation districts.

BE IT THEREFORE RESOLVED that the Virginia Soil and Water Conservation Board recognizes and applauds Mr. Jack E. Frye for his lifelong commitment to the natural resources of the Commonwealth, and the safety of the Commonwealth's citizens,

BE IT FURTHER RESOLVED, that on this date, May 24, 2011 the Virginia Soil and Water Conservation Board establishes as public record their deep appreciation and admiration for Mr. Frye's many years of service.

### **Virginia Soil and Water Conservation Board**

#### **COMMENDING RESOLUTION**

**Presented to**

**CARLTON LEE HILL**

At a regular meeting of the Virginia Soil and Water Conservation Board held on Friday, May 24, 2011 at the General Assembly Building in Richmond, Virginia the following resolution was unanimously adopted:

WHEREAS, Carlton Lee Hill began his service with the Department of Conservation and Recreation in 1977, and

WHEREAS, Mr. Hill received his B.S. and M.S. in Agricultural Engineering from Virginia Polytechnic Institute, and

WHEREAS, Mr. Hill has served as the Assistant Director of Stormwater Management in the Department of Conservation and Recreation's Division of Soil and Water Conservation, and

WHEREAS, Mr. Hill has been responsible for coordinating Virginia's erosion and sediment control and stormwater programs, and shoreline and streambank restoration and protection programs.

BE IT THEREFORE RESOLVED that the Virginia Soil and Water Conservation Board recognizes and applauds Mr. Carlton Lee Hill for his lifelong commitment

to the natural resources of the Commonwealth, and the safety of the Commonwealth's citizens,

BE IT FURTHER RESOLVED, that on this date, May 24, 2011 the Virginia Soil and Water Conservation Board establishes as public record their deep appreciation and admiration for Mr. Hill's many years of service.

## **Virginia Soil and Water Conservation Board**

### **COMMENDING RESOLUTION**

**Presented to**

**MARK B. MEADOR**

At a regular meeting of the Virginia Soil and Water Conservation Board held on Friday, May 24, 2011 at the General Assembly Building in Richmond, Virginia the following resolution was unanimously adopted:

WHEREAS, Mark B. Meador began his service with the Department of Conservation and Recreation in 1986, and

WHEREAS, Mr. Meador received a B.S in Forestry from Virginia Polytechnic Institute, and

WHEREAS, Mr. Meador has served as the Department of Conservation and Recreation's Soil and Water Conservation District Program Manager, and

WHEREAS, Mr. Meador has been responsible for all SWCD operations, cost-share funding distribution, GIS support for SWCD's and District Dams.

BE IT THEREFORE RESOLVED that the Virginia Soil and Water Conservation Board recognizes and applauds Mr. Mark B. Meador for his lifelong commitment to the natural resources of the Commonwealth, and the safety of the Commonwealth's citizens,

BE IT FURTHER RESOLVED, that on this date, May 24, 2011 the Virginia Soil and Water Conservation Board establishes as public record their deep appreciation and admiration for Mr. Meador's many years of service.

### **Division Director's Reports**

*Division of Soil and Water Conservation*

Mr. Wilkinson presented the report for the Division of Soil and Water Conservation. He noted that the full report had been mailed to members prior to the meeting. A copy of that full report is included as Attachment #1.

Mr. Wilkinson noted that he and Mr. Johnson had been with DCR for a year.

Mr. Wilkinson said that Soil and Water Conservation Division inspectors had been inspecting VDOT facilities. He noted that he accompanied them on some of the inspections and that one of the sites visited in Northern Virginia was shocking in terms of violations. He said that he had met with VDOT and explained that the violations were unacceptable. He said that VDOT had been very cooperative.

Mr. Wilkinson noted that he was in an acting position as the Director of the Division of Stormwater Management. He said that the Division Director's position had been advertised and would close on May 31. The goal is to have the new Division Director in place by the middle of July.

#### *Division of Dam Safety and Floodplain Management*

Mr. Bennett gave the report. He said that the Division had received three bids regarding the dam break early warning system. A decision will be made in early June as to which company will be implementing the system.

Mr. Bennett said that the Division had hired a 5<sup>th</sup> regional engineer, located in the Warrenton office. He said that Mr. Van Lier had moved to the Charlottesville region. The Division is in the process of redefining regional lines.

Mr. Bennett said that Virginia has been in discussions with North Carolina regarding partnering for floodplain management. He said that a web-based system is being developed so that citizens could determine whether or not they are in a flood plain.

#### **Virginia Stormwater Management Regulations**

Chairman Hansen said that the process for the development of the revised Stormwater Management Regulations had been collaborative and exhaustive. She expressed appreciation to the conservation community, local governments, the engineering community and others who had engaged in the process.

Mr. Dowling gave the following overview:

#### **Stormwater Water Quality and Quantity and Local Program Criteria Action (Parts I, II and III)**

**(by David Dowling, Policy and Planning Director)**

## **Introductory remarks**

Madame Chairwomen, members of the Board, today, the Department is bringing to the Board for consideration the revised final regulation amending the Board's Virginia Stormwater Management Program Permit Regulations. This includes amendments to Parts I, II, III which includes the Definitions, Water Quality and Quantity Technical Criteria, and Local Program Criteria sections.

## **Purpose for the Regulatory Action and Selection of Appropriate Standards**

In order to improve water quality, the Commonwealth is implementing actions that reduce pollutants coming from agriculture, sewage treatment plants, air deposition, septic systems, as well as urban and suburban runoff. The stormwater regulations are but one piece of the puzzle in making water quality improvements and controlling stormwater runoff on a statewide basis. This regulatory action will benefit the Commonwealth and its citizens in a variety of ways.

- They bring us one step closer to fully integrating stormwater and erosion and sediment control;
- They allow for one-stop-shopping for the regulated construction industry with services to be provided by our local government partners; and
- They benefit water quality throughout the state and will result in reductions in downstream flooding by enhancing existing controls of stormwater runoff.

I should also note, that as part of the regulatory process, it was also important for the final regulations to be science-based. Accordingly, they contain a statewide water quality design standard that is sufficient to protect water quality in both local and downstream receiving waters. The regulatory advisory panel agreed that a science based approach linking impervious cover and declining stream health was both valid and defensible.

- Research has established that as impervious cover in a watershed increases, stream stability is often reduced, habitat is lost, water quality becomes degraded, and biological diversity decreases largely due to stormwater runoff.
- In order to be protective of local streams and local water quality a water quality design standard that equates to an impervious cover of ten percent was selected. It is believed that this design standard will keep the runoff from construction projects from causing or contributing to the impairment of water quality in both local receiving streams and those downstream.

Accordingly, these final regulations will work to minimize the cumulative impacts of stormwater on humans and the environment and moderate the associated hydrologic impacts.

### **Regulatory Process Update for Parts I, II, and III (Local program and Water Quality and Water Quantity Criteria)**

As a matter of background, from a procedural perspective, this has been a significant journey that began with passage of legislation in 2004 and authorization from the Board in July of 2005 to begin a regulatory action. The process has involved well over 100 public meetings and has resulted in a regulation based on the best science available.

I have provided you previously with a detailed chronology of actions taken over a nearly six-year period and this morning I only want to key in on the last several actions that set out the current posture of this final regulation.

At its December 9, 2009 meeting, the Board adopted final regulations related to Parts I, II, III of the Virginia Stormwater Management Program (VSMP) Permits Regulations. In response to 25 petitions received during the 30-day final adoption period, the Board at their meeting on January 14, 2010 suspended the regulatory process in accordance with § 2.2-4007.06 of the Administrative Process Act and called for a 30-day public comment period that was held from February 15, 2010 to March 17, 2010. Seventeen comments were received.

Also during this period, the General Assembly took actions (Chapters 137 and 370 of the 2010 Virginia Acts of Assembly) that stipulated that the regulation that establishes local program criteria and delegation procedures and the water quality and water quantity criteria, shall become effective within 280 days after the establishment by the EPA of a Chesapeake Bay-wide Total Maximum Daily Load (TMDL) but in any event no later than December 1, 2011. The legislation also called for a regulatory advisory panel (RAP) to be formed to continue work on the regulations.

In response to the legislation, the Board at its March 26, 2010 meeting determined to keep the regulations suspended and with the Department assembled a 35-member RAP. Since July of 2010, the RAP met five times and its subcommittees a total of seventeen times to craft revised draft final regulations. Beginning on March 28, 2011, a 30-day public comment opportunity on these draft final regulations was provided (closed April 27<sup>th</sup>).

Thirty comments were received during this public comment period. Copies of all comments received have been shared with the Board, along with a summary document that presents the individual comments made and the Department's responses to those comments. While the comments addressed a wide-variety of future implementation questions and raised some technical issues that would benefit from further clarification, they were generally supportive of the draft final regulations. In response to the comments, a number of the technical and grammatical issues were addressed and the clarifications are reflected in the draft version of the final regulations before you today. A full accounting of those changes was provided to you in our Board mailing and is available on the Department's website with the other materials associated with this regulatory action. I should note that two of the technical themes advanced in the public



comments were related to grandfathering and TMDLs, both of which have been improved based on the comments received.

It is also recognized as was highlighted in the comments that as the Agency and the Board begin to focus on the implementation of these regulations, the Department will need to develop guidance to further clarify portions of the regulations. The Department is committed to this task.

### **Summary of Recommendations**

The final regulations before you reflect general consensus of the RAP. It will be our strong recommendation for the Board to readopt these amended final regulations.

Since the final regulations were suspended in January of 2010, we have worked hard and collectively accomplished a lot to develop these final regulations as well as to refine the BMP standards on the BMP Clearinghouse website, to develop a revised Stormwater Handbook, and to update the Virginia Runoff Reduction Method.

The Department believes that with these additional amendments to the regulations over the last year, we are advancing to the Board a final set of regulations that there is general consensus around, that are established on a sound scientific basis, that advance water quality protections, and that responsibly regulate land disturbing activities. We certainly believe that the collective efforts of involved stakeholders and the Department have resulted in a solid set of regulations that is supported by the best science available nationally.

### **Attorney General's Office**

I should also note that a statement of the Board's authority for these final regulations has been received from the Office of the Attorney General substantiating the Board's authority to readopt these final regulations based upon applicable law.

### **Revised Final Regulation Discussion**

Next, I would like to briefly provide the Board as part of the record, a high level overview of the revised final regulations summarizing those key elements that have changed in Parts II (water quality and quantity criteria) and III (local program criteria) since the last version of the regulation was brought before you. Additionally, a more detailed outline is provided at the end of this document (Pages 9 through 17 of the Board's handout; See Attachment #2 in these minutes) should the Board require additional details regarding the regulations before you today.

Key changes made from the last final version of the regulation that was suspended by the Virginia Soil and Water Conservation Board to the current version of the regulation, include the following provisions:

**Part II**

- Part II was rearranged and updated to include:
  - Several general sections (Authority, Implementation Date, General Objectives, Applicability of other Laws and regulations, Time limits on applicability of approved design criteria, Grandfathering, and Chesapeake Bay Preservation Act land-disturbing activity sections);
  - A new Part IIA that includes general administrative criteria for regulated land-disturbing criteria was added;
  - Water quality and quantity technical criteria were moved from Part II A to Part II B; and
  - Today's water quality technical standards referenced in both the time limits on applicability of approved design criteria and grandfathering sections were moved from Part II B to Part II C.
  
- Based on comments received, a new section numbered 4VAC50-60-47.1 and titled "Time limits on applicability of approved design criteria" was created and language carved out the grandfathering section that specifies that any project that receives general permit coverage shall be held to the technical criteria under which permit coverage is issued and shall remain subject to those criteria for an additional two permit cycles. This time limit was selected as this equates to the period within which over 90% of construction projects are typically completed.
  
- The grandfathering section was updated to move away from paralleling local vesting standards and contains specified grandfathering provisions associated with projects for which local plan approval has been received; local, state, or federal funding has been obligated; or governmental bonding or public debt financing has been issued prior to July 1, 2012. Based on comments received, it has also been amended to clarify the original intent that the construction needs to be completed by June 30, 2019 for projects grandfathered under the receipt of local plan approval or the obligation of local, state, or federal funding provisions. This has had the effect of further tightening up these provisions.
  
- The Chesapeake Bay Preservation Act section specifies the requirements for small land-disturbing projects within the Chesapeake Bay Act jurisdictions. These small projects, between 2,500 square feet and less than one acre, would now be subject to only state requirements, rather than state and federal requirements. Federal requirements only need to extend down to one acre. These projects would not be required to receive coverage under the VSMP general permit, but would be required to receive local permits and meet the specified criteria in Parts II A and B.
  
- Part II A now contains requirements to inform the operator as to what is expected in order to receive general permit coverage including items such as stormwater plan or SWPPP requirements.

- TMDL language associated with an operator identifying and implementing additional measures for specified pollutants so that discharges are consistent with the assumptions and requirements of a WLA, where applicable and necessary, was moved from the post construction requirements in Part II B to the construction requirements in Part II A.
- In 2010, EPA adopted the federal effluent limitation guidelines. Virginia is required to adopt these regulations this year. To meet the federal timeline, the requirements listed in the federal effluent limitation guidelines have been duplicated in Part II A of this regulation.
- Part II B includes scientifically-based statewide water quality technical criteria for construction activities. This includes for new development, a statewide 0.41 lbs/acre/year phosphorus standard (prior standard was 0.45). In general, on prior developed lands:
  - Where land disturbance is greater than or equal to 1 acre and results in no net increase in impervious cover over the predevelopment condition, total phosphorus loads shall be reduced to an amount at least 20% below the pre-development phosphorus load;
  - Where land disturbance is less than 1 acre and results in no net increase in impervious cover over the predevelopment condition, total phosphorus loads shall be reduced to an amount at least 10% below the pre-development phosphorus load; and
  - For land disturbing activities that result in new increases in impervious cover, the new development standard shall be applied to the increased impervious area. For the remainder of the site, the criteria above will be utilized.
- Table 1 which included BMP phosphorus removal efficiency information has been removed, although the names of the currently approved best management practices have been maintained in a list format. The information previously presented in the table, including BMP efficiencies, is available on the Virginia Stormwater BMP Clearinghouse.
- The water quantity section specifies minimum standards and procedures to address channel protection and flood protection.
  - A provision was added that compliance with the minimum standards of this section shall be deemed to satisfy the requirements of minimum standard 19 of the Virginia Erosion and Sediment Control Regulations.
  - Under channel protection, the number of scenarios previously provided was reduced to manmade stormwater conveyance systems, restored stormwater conveyance systems, and natural stormwater conveyance systems. References to stable and unstable conveyance systems were removed.

- Under channel protection, in the energy balance formula (for natural stormwater conveyance systems), the peak flow rate and volume of runoff for the existing land use at a given storm was changed from an assumed “good pasture” condition to now utilize the peak flow rate and volume of runoff from the actual pre-developed land use condition. To moderate this calculation, there is an improvement factor inputted into the equation (0.8 for sites > 1 acre or 0.9 for sites ≤ 1 acre).
- The offsite compliance options section was revised to meet legislative actions during the 2011 General Assembly Session (Chapter 523 of the Acts of Assembly). The section includes the following key components:
  - Subsection A specifies the options a stormwater program administrative authority may allow an operator to use which include: COMPREHENSIVE PLAN; LOCAL PRO-RATA; NUTRIENT OFFSET; DEVELOPER SITE; or any other offsite options approved by an applicable state agency or state board may be utilized.
  - Subsection B specifies that an operator shall be allowed to utilize offsite compliance options under any of the following conditions:
    - Less than 5 acres of land will be disturbed;
    - The post-construction phosphorus standard is less than 10 pounds per year; or
    - At least 75% of the required phosphorus nutrient reductions are achieved on-site. If the operator demonstrates to the satisfaction of the stormwater program administrative authority that 75% of the required reductions can not be practicably met onsite, then the required phosphorus reductions may achieved through the use of offsite compliance options.
  - Subsection C specifies the situations where offsite options will not be allowed. Offsite options must achieve the necessary nutrient reductions prior to the commencement of the operator's land disturbing activity. Additionally, offsite options shall not be allowed in contravention of local water quality-based limitations.

### **Part III**

- Many of the changes in Part III involve a reorganization of existing materials to add clarity. Additionally a number of the elements of Part III were moved to Part II so that the applicant would better understand what was expected of him.
- Part III A was restructured to include both locality-administered programs and Department-administered programs within the same Part. The requirements are the same for both types of programs, although they will be implemented differently (localities by ordinance). In the previous version, the Department-administered versions were in Part III B, although the requirements were the same and merely referenced the appropriate sections in Part III A. The revisions

provide more clarity for localities adopting local stormwater management programs and for the operators of land disturbing activities.

- As mentioned above, in previous versions of the regulations, Part III B dealt with Department-administered programs. In this version of the regulations, the criteria for both locality-administered programs and the Department-administered program have been included in Part III A. Part III B in this version of the regulations specifies the procedures utilized by the Department in its review of local stormwater management programs which was previously located in Part III C.
- Part III C now contains the Board's authorization procedures for local stormwater management programs that previously was found in Part III D. Part III D has been stricken from the current version of the regulations.
- The primary technical change to this part is in how local programs operate. Under the previous version of the regulations, an approved local stormwater management program was going to issue coverage under the general permit and enforce under the Stormwater Management Act and regulations. Under this final version, approved local programs operate and enforce under the auspices of a local ordinance that includes the elements of the stormwater regulations. They will still make sure that the applicant has received state general permit coverage prior to issuing a local land disturbing permit.

### **Closing Remarks**

With that overview of the revised final regulations, I would close by re-emphasizing that the Department has worked cooperatively with affected constituents to prepare these recommended final regulations and has remained true to the science upon which they have been established. We again recommend that the Board readopt the regulations before you.

I would also like to take a moment and sincerely thank the staff and the RAP and TAC members that devoted their time to the development of this regulation. Thank you for all of your hard work.

With that, I will turn it back to you Madame Chairwoman for questions from the members, for public comment, and for discussion and consideration of the re-adoption motion for Parts I, II, and III (on Page 7 of the Board's handout) and subsequently a corresponding motion associated with withdrawing a no longer needed stormwater related regulatory action (on Page 8 of the Board's handout).

Chairman Hansen asked if there were questions from Board members. There were none.

Chairman Hansen called for public comment.

*Mike Rolband*  
*Wetland Studies and Solutions*

My name is Mike Rolband from Wetland Studies and Solutions and I had the honor to be on the RAP and multiple TACs. First of all, I would again express appreciation to the staff and all the different participants, and all those groups. It was a very, very good experience, a little longer than I would have appreciated but it was a great coming together.

It is not a perfect document. It is not a perfect regulation. But it represents good consensus and a compromise on many, many issues. I am sure that not everyone is happy with it, but I think it represents the best consensus that we could develop.

I had the honor of being the chair of one of the subcommittees on quantity control. We met a lot of really great people and got to know people better. It was a great personal experience.

I think the big thing to remember is that this is based, I believe, on sound science and sound engineering. I think the engineering as much as the science, because the science, a lot of it we do not really know. It is just an evolving field. But we are trying to make a practical solution to a tough technical problem.

I want to point out that it solves a long standing problem with MS19. My entire career there has been a problem and this finally does give a solution. It still needs to be implemented in the E& S control regulations as well. But it's a step.

Finally, I hope the board continues to provide funding to staff to continue to update the BMP clearinghouse and stormwater handbook and revising stormwater runoff method. Not done until we get all of the nuts and bolts together.

Thanks again.

Ms. Hansen said that she hoped that in solving the problem that the Board had not deprived Mr. Rolband of future work. She thanked him for his service.

*Peggy Sanner, Chesapeake Bay Foundation*

Good morning Madame Chairman and members of the Board. Thank you very much for the opportunity to be here today. I would particularly like to thank on behalf of the Chesapeake Bay Foundation, for whom I am the senior attorney, the representatives of the Department of Conservation and Recreation for their long-term, thoughtful, and very productive work leading to the proposal that we have before us today.

The proposal obviously represents a very significant step forward in reducing post-construction stormwater pollution from new development and redevelopment activities. A notable improvement is its requirement to determine compliance with water quality criteria through the new runoff reduction method. A method which encourages practices to reduce runoff volume and requires better runoff treatment, setting a baseline water quality criteria, 0.41 pounds of phosphorus runoff per acre [per year].

CBF, as noted in its written comments, has however serious concerns about the grandfather provision. We recognize the improvement created by DCR in the past week, nonetheless, projects covered by this provision together with the time limits on approved design criteria provision, which have been moved around in this current proposal [are of concern]. Those projects will now have up to 2024 or 13 years, as long as that, within which they do not need to comply with the new criteria. During this long period of time which is really unprecedented in the law as reflected in our written comments, cover projects will be allowed to avoid the new requirements and specifically the new baseline of 0.41 lbs. of phosphorus per acre [per year].

I think this is a big problem. It contradicts the commitments made by Virginia in its Watershed Implementation Plan, and it also contradicts [what] we believe [was] the General Assembly's clear intent when they directed the Board in 2010 to convene an advisory panel to recommend new regulations complying with the Chesapeake Bay TMDL.

How so, as we all know the TMDL is the total amount of pollution that a water body can receive will still retaining water quality standards. A pollution diet if you will. Its various components, the waste load allocation from point sources and the load allocation from non point sources added together must equal the TMDL number. And if pollution from one source goes up the TMDL will be exceeded unless there is a compensating reduction of pollution from another source.

So, in Virginia to meet the Bay TMDL's allocation, Virginia's WIP committed to specific strategies to reduce pollution from all various sectors. For example for the urban stormwater sector, Virginia committed to ensuring that post construction runoff will reflect, and I quote "no net increase over pre-development conditions." That's the WIP at [page] 86. So to allow for new development while maintaining a cap, Virginia's WIP also committed to the use of offsetting reductions. These do not appear in the current proposal. The grandfathering provision contradicts these commitments with respect to covered projects and in so doing contradicts the TMDL diet and the General Assembly's intent. It allows long-term runoff at levels higher than the 0.41 baseline and it fails to require grandfathered projects to offset their higher pollution limits.

We understand, by virtue of a recent conversation with EPA, that EPA is also concerned by the grandfathering provision.

So, as set out in our written comments, we asked the Board to approve these regulations. We consider them to be a substantial improvement. But to address the problem that I have identified, we also ask the Board to require compensating offsets consistent with Virginia's commitment in its Watershed Implementation Plan from any grandfathered projects. By requiring offsetting pollution reductions Virginia's commitment to permitting no net increase will be maintained, the TMDL diet will be implemented in this sector, and the Board's intent will be honored.

Thank you very much.

Ms. Hansen asked Mr. Dowling to comment regarding the practicalities and methodologies were the Board to require compensating.

Mr. Dowling responded:

I appreciate the opportunity to add some additional remarks in that regard. We understand the comments provided by CBF. We did have a meeting with CBF to discuss many of these issues with them a week or so back.

At this point in time, as was alluded to, we are awaiting further regulatory clarification from EPA on this subject. At this time we understand that we are being more restrictive than the EPA as well as more restrictive than the Commonwealth's current administration of the permit. So we think we have tightened timelines up by virtue of the language that is before the Board.

When the federal regulations change, if it is found to be required, Virginia will explore further refinements to our approach at that time, including potential modifications to the general permit related to this topic.

EPA needs to lead by example on this and we believe firmly that we are more restrictive than them in this regard.

In terms of communications with EPA, we did share these regulations with them about a month and a half ago, and we offered to have a conference call with them on it about two weeks ago. We asked them in the very beginning to write up their questions and send them to me for the Department's consideration and we received one verbal question on post construction phosphorus limits. We did provide a white paper in that regard back to them and it was not until late yesterday afternoon that we did receive a call from the EPA saying that they would like to discuss some of this.



Obviously we were well advanced in our work toward this meeting and we will get back to the EPA and will have further conversations. But we believe the Board is on very solid ground with the regulation that we have put before you.

Further, although we find it quite reasonable to utilize two additional permit cycles, based on the completion time table for larger land disturbing actions as the regulations stipulate, we do offer that over 80% of permits are completed within a five-year period. Therefore, we do not have a water quality issue associated with this grandfathering. We certainly recognize what CBF is saying regarding the WIP, but the WIP does not lock us into specific strategies in the stormwater arena for achieving necessary reductions.

We will be looking into what those strategies are, but in the meantime, we believe the regulation is sound that is before you. We urge the Board to adopt the regulations as presented to you.

Ms. Hansen said that the Board should certainly consider that there may be a need to revisit the regulations in the future. She said that there may need for future refinements.

*David Nunnally, Caroline County*

Thank you. I'm David Nunnally, Environmental Planner, Caroline County.

First I would like to thank this Board, DCR, Mr. Johnson, and all the members of the advisory panel and on and on for all the hard work and dedication to get this job done. We're anxious to move forward with this program.

I would like to make four comments for your consideration in the regulations or for future guidance. Let me say that Caroline County is not an MS4 locality. That does factor in.

In no particular priority order, the first is site inspections. As I understand it, currently the stormwater general permit requires the permit holder to conduct site inspections. I would ask that this program allow the locality to fully utilize self inspections where they would be in coordination with the provisions of the Erosion and Sediment control regulations and the alternative inspection program. What that does for us is that it allows for a very efficient use of staff, of our manpower staff. And its 100% user funded.

Caroline County with the impact of the economy on our budget, we have had to eliminate inspector positions. This up and down is just not feasible. We can not maintain that. We are looking for that self inspection and let us have the oversight and make sure that the program works.

Ms. Hansen asked if Mr. Nunnally was proposing that there be no inspection other than the permit holder.

Mr. Nunnally responded:

Well, there is a lot of details there. Currently sites are inspected in triplicate. The site hires their own consultant to do their own inspections and records their result in their SWPPP document. The locality does E& S inspections. DCR stormwater staff comes in and does even a third inspection. This is certainly a bureaucratic nightmare. It is inefficient.

Ms. Hansen asked if it was different to consolidate those functions rather than simply delegating the inspection function to the person who is least likely to find a problem, the permit holder.

Mr. Nunnally responded:

Well, if that is the case, if those inspections are not working, let's make this program efficient and let's eliminate that. I think we can make it work. I think we can at least allow and provide for it rather than eliminate it.

The second item is comprehensive stormwater management plans. It is unclear what is meant by this regulation by a comprehensive stormwater management plan. It appears that a comprehensive stormwater management plan would have to be submitted to either this Board or to DCR for review and approval as well as any amendments and provisions. The challenges of this program and others on the local environmental program are enormous. I think we need every tool that we have, every strategy, and in the most efficient way. I would simply ask that we allow the localities to implement the proper measures and strategies to achieve the performance that is required in this program.

Grandfathering. Similar to our previous commenter. We would ask that this regulation allow the localities at its own volition to adopt a more stringent or a stricter timetable that works for them. We are not asking to make that a statewide requirement. Simply allow us to do that.

I do not have water quality concerns so much as the previous discussions. It is a matter of simplifying. The reason we are here today with this regulation was to consolidate and streamline the various requirements dealing with stormwater runoff going back ten years or so. We may want to move forward a little quicker than that.

The last comment, and I am not quite sure what was meant in the original proposal under water quantity and the flooding section, but it states [in 4VAC50-60-66 C 2 a] that the "detention of stormwater or downstream improvements may be incorporated into the approved land-disturbing activity to meet this criteria".

That language appears to be limiting to the localities. I do not that is what was intended. You do not want to limit us to just detention or to downstream channel improvements, but you should include infiltration, retention, the whole nine yards. Or you just develop a site plan that meets the requirements from the beginning.

Again, I just ask that in making these recommendations that we allow or provide for these items for future consideration so that we do not have to go through this regulatory process if we wanted to do something different.

Ms. Hansen thanked Mr. Nunnally and asked if Mr. Dowling had a response.

Mr. Dowling said:

Yes, Madame Chairman, I do not have a lot to offer in regards to those comments other than certainly we were aware of the issues raised here. We have thought through them, particularly the grandfathering question. We are pretty firm on where we are on the situation at this time.

As to the other issues, as Mr. Nunnally indicated and as in my prior remarks I already noted, that we are going to be working on guidance on all of these issues. We will be able to clarify items such as these through the guidance and if we find there is an issue, we will bring it back to the Board's attention and we'll fix it. I am most certainly open-minded in that regard. And we are going to have all these things in mind as we work forward on the implementation.

Ms. Hansen thanked Mr. Dowling and noted that no one said that the process would be easy. She said that one of the quotes received by one of the comments that came to the Board was from a recent study by the National Academy of Science which said that "Stormwater runoff in the environment remains one of the greatest challenges of modern water pollution control."

*Joe DuRant*

*City of Newport News*

I am Joe DuRant, Deputy City Attorney for the City of Newport News.

I wanted to address the issue of grandfathering. Grandfathering as it is used is an attempt to accommodate the conflict between regulation and constitutional rights. In this case we are dealing with issues that are going to involve property rights and obligations of contracts under the federal and state constitutions. The reason grandfathering is written into land use statutes is for that reason to try to accommodate the necessary regulation and rights as well.

I think what DCR has done in this case is to do exactly that. For that reason I would support that part of the regulations.

Ms. Hansen asked if there were additional comments from the Board. There were none.

MOTION: Ms. Dalbec moved the following:

**Motion to rescind suspension, then readopt, authorize and direct the filing of final regulations related to the Board's Virginia Stormwater Management Program (VSMP) Permit Regulations (Parts I, II, and III)**

The Board rescinds the suspension of these regulations, readopts these final regulations, and authorizes the Director of the Department of Conservation and Recreation and the Departmental Regulatory Coordinator to submit the Board's final 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 Virginia TownHall and upon approval by the Administration to the Registrar of Virginia.

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 14 (2010) on the "Development and Review of Regulations Proposed by State Agencies", as well as the Code requirements of Chapter 137 and Chapter 370 of the 2010 Virginia Acts of Assembly.

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

The Board also notes that the Department should make every effort to ensure that the regulations are effective by the October 5, 2011, Statutory Effective Date Target (280 days) specified in Chapters 137 and 370 of the 2010 Virginia Acts of Assembly.

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

SECOND: Mr. Lohr

DISCUSSION: None

VOTE: Motion carried with Mr. Johnson abstaining

Ms. Hansen expressed continued thanks to the DCR staff.

Mr. Dowling said that there was need of a follow-up motion regarding another stormwater action in the NOIRA phase which was no longer necessary.

MOTION: Mr. Hornbaker moved the following:

**Motion to direct the withdrawal of Notice of Intended Regulatory Actions (NOIRA) related to the establishment within the Virginia Stormwater Management Program (VSMP) Permit Regulations of water quality design criteria for new development activities within the Chesapeake Bay Watershed:**

The Board authorizes the Director of the Department of Conservation and Recreation and the Departmental Regulatory Coordinator to withdraw the NOIRA the Board directed filing of on December 9, 2009 related to the Board’s Virginia Stormwater Management Program (VSMP) Permit Regulations.

This NOIRA had been subsequently published on January 4, 2010 and directed the Department to consider changes and solicit recommendations related to the Board’s Virginia Stormwater Management Program (VSMP) Permit Regulations. The changes were to be limited to the establishment of water quality design criteria for new development activities within the Chesapeake Bay Watershed that are consistent with the pollutant loadings called for in the EPA approved Virginia TMDL Implementation Plan for the Chesapeake Bay Nutrient and Sediment TMDL and compliance methodologies and mechanisms associated with any new design criteria. The Board had directed the Department to establish a Regulatory advisory panel to make recommendations to the Director and the Board on potential regulatory changes, and for the Department to prepare a draft proposed regulation for the Board’s review and consideration.

SECOND: Ms. Jamison

DISCUSSION: None

VOTE: Motion carried with Mr. Johnson abstaining

**Dam Safety**

Mr. Bennett gave the report for Dam Safety.

The following dams were presented for Regular Certificates:

Troiano Dam	04724	CULPEPER	6-Year Regular
-------------	-------	----------	----------------

Lake St. Clair Dam	06903	FREDERICK	6-Year Regular
Beautiful Run Dam #11	11308	MADISON	6-Year Regular
Epes Dam	13502	NOTTOWAY	6-Year Regular
Upper Powhatan Dam	14501	POWHATAN	6-Year Regular
Lower Powhatan Dam	14502	POWHATAN	6-Year Regular
Lake Meade Dam	80013	CITY OF PORTSMOUTH	6-Year Regular

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

**SECOND:** Ms. Dalbec

**DISCUSSION:** None

**VOTE:** Motion carried unanimously

The following dams were presented for Conditional Certificates.

Douthat Lake Dam	01701	BATH	2 Year Conditional
Mountain Run Dam 8A	04701	CULPEPER	1 Year Conditional
Mountain Run Dam 13	04705	CULPEPER	1 Year Conditional
Pearsall Dam	04906	CUMBERLAND	1 Year Conditional
Coleman Lake Dam	05308	DINWIDDIE	2 Year Conditional
Leatherwood Creek Dam #4	08906	HENRY	2 Year Conditional
Hunger Mother Dam	17301	SMYTH	2 Year Conditional
Surry Power Station Dredge Soils Disposal Dam	18107	SURRY	1 Year Conditional
Lake Smith	81005	CITY OF VIRGINIA BEACH	1 Year Conditional

Mr. Bennett said that staff recommended the Director abstain from voting regarding Douthat Lake Dam and Hungry Mother Dam as those dams are owned by DCR.

Ms. Jamison said that she would abstain from voting regarding Leatherwood Creek Dam #4 as the dam is owned by the Blue Ridge Soil and Water Conservation District.

**MOTION:** Mr. Hornbaker 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: Mr. Brickhouse

DISCUSSION: None

VOTE: Motion carried with Mr. Johnson and Ms. Jamison abstaining as noted above.

Mr. Bennett presented the recommendations for Extensions. He noted that several citizens were present to speak with regard to these dams.

The following dams were presented for recommended Extensions:

Lower Ragged Mountain Dam	00304	ALBEMARLE	6 Month Extension
Upper Ragged Mountain Dam	00356	ALBEMARLE	6 Month Extension
Carvin Cove Dam	02301	BOTETOURT	2 Month Extension
Reservoir #2 Dam	07527	GOOCHLAND	1 Year Extension
Lake Cohoon Dam	80001	CITY OF SUFFOLK	2 Year Extension
Lake Kilby Dam	80002	CITY OF SUFFOLK	2 Year Extension
Speight's Run Dam	80010	CITY OF SUFFOLK	2 Year Extension

Mr. Bennett said that Mr. John Martin from Albemarle County was present to speak regarding Lower Ragged Mountain Dam and Upper Ragged Mountain Dam.

*John Martin, Albemarle County*

Thank you Madame Chairman. My name is John Martin, I come from Albemarle County the location of the Ragged Mountain Dams. First of all I would like to say that the staff of the Water and Sewer Authority has continued to do an outstanding job moving this matter forward, notwithstanding the severe political restraints imposed upon it by the City Government and the County Government.

Jennifer Whitaker, Chief Engineer for the Rivanna Water and Sewer Authority is here today.

The project is on schedule, sort of. The schedule given to you previously. It is on schedule in that the plans for a final design for a new Ragged Mountain earthen dam have been submitted to you. The permits, by the schedule were due at the end of this month. It is clear that the permits are not going to be obtained. The permit applications were filed in April, but DEQ has not moved that matter forward as of yet.

The plans for the dam that were submitted to you are for an earthen dam that will accommodate a full rise of 30 ft. But the base will be sufficient so that an additional 12 ft. can be added onto the dam at a later point in time. With the schematic, the difference between a 30 ft. pool rise and a 42 ft. pool rise is really very small.

There was discussion at an Albemarle County Service Authority meeting, this is an aside, that when we get ready to build the dam full height, where are we going to get the dirt from? Somebody suggested well, the dirt should be stockpiled on site because the kind of dirt needed is on site. And the Chairman of the Board of the Albemarle County Service Authority scratched his head and said "Why not stockpile the dirt on top of the dam." There is some degree of silliness.

In any case it is moving forward. There are, however, no shovels in the ground yet. Anything could still happen, until there are shovels in the ground, due to the politics.

It would be my request, as a citizen, that you extend the operating permits for four months. I understand that your next meeting is September 8<sup>th</sup>. By September 8<sup>th</sup> we should know a lot more about how things are going.

Also, I think it is really important and it would be very helpful if you could make a statement regarding your expectations that Charlottesville and Albemarle will meet their expectations.

I am thinking of the television commercial by a law firm and the lawyer on the screen says, "show them that you mean business." I mean really, they have paid attention to your past actions.

There is one additional thing however, that could be done that is not being done and this is a suggestion. Rivanna submitted their permit application to DEQ, permit modification application on April 22<sup>nd</sup>. There are two sets of permit bonds. The first set deals with construction of an earthen dam and the second set deals with facing of the earthen dam, 30 ft. and then 40ft. The permit modifications dealing with constructing an earthen dam I think are clearly very minor modifications and they could be done by DEQ staff probably without involvement of the State Water Control Board.

In fact the environmental effects of building an earthen dam in most respects are less than building a concrete dam. So they could be done, I think, very, very quickly. And once the permit is issued for allowing construction of an earthen dam then we can get shovels into the ground and get started on that base. And the decision on whether it should be a 30 ft. pool or 42 ft. pool will be a result of DEQ's decision and can be made at a later point in time. If the decision is to 30 ft. pool fine, if they say 42 ft. we just need a few additional final plans to build the full height. The important thing is we can get started on the base. The quickest way to get shovels in the ground is to get that permit issued.

So, my suggestion is that maybe DCR staff could talk with DEQ and just see if DEQ would be willing or whether it would be possible to just bifurcate and consider them separately.

I do not know whether it's feasible or whether DEQ would be willing to do it, but it might be something worth exploring.



I thank you very much for your attention to this matter.

Just one further comment. I understand that later on in this agenda you are going to consider a delegation of authority to DCR staff which could impact on the Ragged Mountain Dam situation. I guess I have some concerns about that. I would, personally as a citizen of Albemarle County, be comfortable with the fact that this Board is involved in the decision making which affects my community. I do not know all of the details about how this delegation would work.

Chairman Hansen said that the Board and public would be further briefed on that request for delegation of authority.

Mr. Bennett noted that Jennifer Whitaker from the Rivanna Water and Sewer Authority was present. Ms. Whitaker had no comments.

**MOTION:** Ms. Jamison 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:** Mr. Lohr

**DISCUSSION:** None

**VOTE:** Motion carried unanimously

Mr. Bennett distributed the Compliance Action report. He noted that there were citizens present who wished to speak regarding these actions. A copy of the report is available from DCR.

Mr. Bennett said that the Board had requested a history of the dams. He said that at each meeting staff was adding to the history to give an update to staff recommendations. The dams on the list with compliance issues or enforcement actions were:

Lower Ragged Mountain Dam	00304
Upper Ragged Mountain Dam	00356
Upper Wallace Dam	01516
Rainbow Forest Recreation Dam	02303
Mellott Dam	06119
Saponi Dam	07907
Jolly Pond Dam	09509
Farmville Dam	14717
Little Lake Arrowhead Dam	17907
Lake Arrowhead Dam	17908

Mr. Bennett said that there were citizens present to speak regarding Rainbow Forest Recreational Dam. Mr. Bennett referred to page 8 of his report for the current status of the dam. He noted that the dam was a high hazard dam built for recreational use in 1960.

Mr. Bennett noted that on January 25, 2010, the Board approved the following motion:

Ms. Hansen moved that the Soil and Water Conservation Board approve an eight month extension for Rainbow Forest Dam, Inventory #02303 with the provisions that the lake be immediately and completely drained and that the Association develop a plan of action to present to staff and the Board prior to the end of the eight months.

The motion was seconded by Ms. Packard and unanimously approved.

Mr. Bennett said that the lake had not been drained or lowered.

Mr. Bennett said that on April 19, the Dam Safety Regional Engineer met with the Association Board and discussed the needed items. No significant progress has been made. He said that the Association Board indicated that they would attend the Board meeting.

Mr. Bennett said that on May 23<sup>rd</sup> the Dam Safety Regional Engineer again visited the dam and confirmed that it had not been lowered. The Engineer obtained a copy of the draft dam break inundation study. He said this was long overdue.

Mr. Bennett did say that some progress was being made but that the report was incomplete. However, he said that at least the project is started.

Mr. Bennett noted the conditional certificate history. He said that staff was recommending that DCR take the next action which is to send the dam owners a certified register letter indicating that if the dam was not lowered by July 1 that DCR would take the next action in order to get the dam lowered at the owner's expense.

Mr. Bennett said that DCR believed this is a public safety issue. It has been going on since 2004. In 2005 the Board issued an order to have the lake lowered. That order was rescinded. In 2010 the order was made again by the Board with very little action being taken.

Mr. Bennett turned to the citizens representing the Rainbow Forest Association.

*Donna Chamberlain*  
*Rainbow Forest Recreational Association*

Good morning, Madame Chairman, members of the Board. Thank you for allowing me to speak. My name is Donna Chamberlain and forgive me, this is my first meeting of this type and I am a little nervous.

I am humbly here to represent the Rainbow Forest Recreation Association. Ladies and gentlemen, if I had on a hat I would be holding it in one hand and a very large slice of humble pie in the other. Because I have walked into a rather chaotic situation in our neighborhood and I have held the position of President since April.

In trying to catch up and get up to speed on all of the things that have happened since the dam was built in 1960 and certainly in the last 20 years of regulations and the fact that we are not in compliance, it has come to my attention that unfortunately our neighborhood lacked the leadership and enthusiasm and unfortunately the passion to make this stick.

They have gone above and beyond when it came to the little issues, but they have to see the big picture. So I am here today to hopefully help you help me to help my neighborhood see the big picture.

They understand now that they are out of compliance. They understand now that things must be done. I was awfully glad to hear that Mr. Roberts has reported to Mr. Bennett that some progress has been made. We have been urgently trying to address all of our various issues that we need to bring us up to compliance.

I cannot tell you why it is taking, for instance, three years to get a study done. I basically ran for President of our local association on the banner of "let's fire the engineer." Practically though, that is not the thing that I have chosen to do. We have gotten a draft which Mr. Roberts came and picked up yesterday and has made copies of. Being not an expert in this field, I of course do not understand all of the hydrology and all of the references. I can read a map pretty well. I see the people downstream could possibly be affected. I have become more and more concerned with all of these facts. And as the weight of this situation has borne down on my shoulders I have certainly tried to share that information with our community. We are activating. We are coming together.

We have put together a brand new Board of Directors for our lake. Everyone is trying to do their part whether it is walking the dam for those daily inspections, finding an insurance agent that understands something called downstream insurance, working on the emergency action plan. Mr. Roberts had informed me that there was no emergency action plan and unfortunately things have not passed from administration to administration in our neighborhood in any type of cohesive manner. So the people that needed the information, we had to go and find it, and sometimes we had to go and find it in someone's rec. room file cabinet. But we believe that we have got a plan now for addressing all of our issues. We have been able to specifically address some that you may have questions on. I will certainly try to answer any questions if I can. And if today I do not know the answers I will find out as quickly as possible.

We are asking that no action be taken at this time. We do have a certificate of operation through September. I understand that there were conditions placed on that that have not been met. That's all part of why we are not in compliance.

We want to comply. We want to be good neighbors to each other and to our friends downstream. We need to do these things and we are taking action in our community.

So I am here with my hat in my hand and asking you to give us to the end of the current certificate, which I noticed is just a week past your next meeting and give me and the other members of my community the opportunity to come back to you in September with a genuine progress report.

Are there any specific questions?

Mr. Ingle said that he had no question, but said that that was the best deliverance of mercy that he had seen.

Ms. Chamberlain introduced Linda Bristow, the Association Vice President.

Ms. Hansen said that the job of the Board is to protect the people who might be harmed by the hazard presented by the dam. She asked Mr. Bennett to speak to additional delay.

Ms. Jamison asked if the Association had the funds to lower the water level or to drain the lake.

Ms. Chamberlain said that she was not sure. She said that while the dam was a high hazard dam, the Association did not believe they were high risk.

Ms. Hansen asked if the membership in the Association that owned the dam was voluntary. She asked if members would resign if presented with an extraordinary cost. She also asked if there was a contractual obligation on the homeowners.

Ms. Hansen said that she was sure the Association understood that the role of the Board was to protect the public.

Ms. Chamberlain asked Linda Bristow, Association Vice President to address those comments.

Ms. Bristow said that the Association did not have a budget for all of the expenditures. She said that since Botetourt County had designated the land as recreational that the Association could not be run as a business.

Ms. Hansen said that the Association had an expensive amenity that presents a potential risk for which the Board has a regulatory responsibility. She said that she did not see the

supporting structure necessary to retain such an expensive amenity. She expressed concern that the Association had no projected costs.

Mr. Hornbaker asked for clarification regarding the certificate. He noted that Mr. Bennett had said that the last extension given was through March 31, 2011.

Mr. Bennett said that the Rainbow Forest Association had been verbally told that there was a clerical error and that the certificate did expire on March 31.

Ms. Chamberlain said that the Association feels they are close. She said they do want to comply.

Ms. Jamison asked if residents who live downstream and who would be affected by a sunny day failure were members of the Association or if they had opportunity to join.

Mr. Hornbaker suggested a substitute course of action. Given the clerical error, he suggested that the date be changed from July 1, 2011 to October 1, 2011. He suggested that if the conditions are not met by the end of September then the state would proceed with lowering the dam.

Ms. Hansen said that the date would be for the lowering of the lake.

There was no second for Mr. Hornbaker's motion.

Ms. Jamison said that the January 2010 motion stated that the lake was to be drained. She said she was concerned about residents downstream.

Mr. Ingle said that while he understood the position of the Association, the Board has a responsibility to listen to the recommendations of the professionals at DCR.

Ms. Chamberlain said that the dam was built in 1960. She noted that the regulations may have changed, but the dam has held.

Ms. Hansen said that the Board had a responsibility to be consistent with all dam owners. She said that if the dam is drained there is no reason that it could not be brought into compliance and refilled.

Ms. Chamberlain said that if the lake was drained, the habitat and environment would never come back. She said that with recent rains the dam and the release of the water have prevented downstream flooding. She said that the PMF would bring the waters to four feet over the road.

Ms. Hansen noted that if the Board took no action, staff would be authorized to send the letter of notice regarding draining the dam.

Ms. Andrews confirmed that the Director has the authority to issue the order to lower the dam as provided in § 10.1-609.A of the Code of Virginia.

### **Dam Safety Grants**

Mr. Bennett presented information regarding Grant Funds Available to Dam Owners and Local Governments. He distributed a letter that was sent to dam owners and floodplain managers. A copy of this letter is available from DCR.

### **The Virginia Dam Safety Flood Prevention and Assistance Fund**

Mr. Bennett said that the Virginia Dam Safety Flood Prevention and Assistance Fund was established by the General Assembly a number of years ago. He said that there is the opportunity to offer dam owners and localities 50-50 matching grants.

Mr. Bennett said that there were about 75 applicants. He noted that available funding for the grants was \$855,000. He distributed a matrix of grant applicants and the recommended award.

MOTION: Ms. Jamison moved the following:

In accordance with its responsibilities pursuant to § 10.1-603.18 of the Code of Virginia the Virginia Soil and Water Conservation Board approves the applications as presented by staff for funding from the Dam Safety, Flood Prevention and Protection Assistance Fund in the amounts specified in the attached spreadsheet. In addition to other terms and conditions and specified in the 2001 DSFPPAF Grant Manual and as will be determined by the Virginia Resources Authority, this approval is conditional upon the following:

1. All grants are made on a reimbursement basis and will be governed by a grant agreement developed in consultation with the Virginia Resources Authority. All applicants will be given a period of 90 days to enter into a grant agreement following the agreement being sent. The Board may further extend this date in its discretion and following consultation with VRA.
2. All grant agreements will require that projects be completed within 12 months of the date of execution of the agreement. The Board may further extend this date in its discretion and following consultation with VRA.

In the event that any of the above applicants fail to execute a grant agreement with VRA within 90 days of such an agreement being sent to the applicant, grant funds not utilized by that applicant may be distributed

among other approved applicants who did not receive the total amounts of their requests, as determined by DCR staff.

DCR Staff is authorized to communicate this approval to the Virginia Resources Authority so that VRA's review of applicants may proceed. Staff is also authorized to take any action necessary to proceed with the closing and administration of grants subsequent to VRA's approval of the application.

SECOND: Mr. Blake

DISCUSSION: None

VOTE: Motion carried unanimously

### **Dam Safety Motion for Delegation of Authority**

Mr. Dowling presented a draft motion for the Board to delegate authority currently vested with the Board to the Department. He said that a legislative change had removed the prohibition of the Board delegating authority to the Director or his designee. He said that staff was asking the Board to delegate this power and duty to issue certificates to the Director of DCR, effective July 1, 2011.

Mr. Dowling said that this action would not preclude the Board from hearing from the public. He said this also does not remove the authority of the Board to take enforcement actions.

Mr. Dowling said that in many cases program authority had already been delegated to the Director. He said that this was a nuance of the Code that kept the issuance of the actual certificates with the Board.

Mr. Bennett said that the Board would continue to get reports of action taken.

Ms. Andrews said that the delegation would not remove the authority of the Board to enforce provisions and that the Board would still have the authority for court action.

Ms. Dalbec asked if the Board would continue to see extensions.

Mr. Dowling said that the Board would be vesting that authority with the Department.

Ms. Dalbec asked what would happen in the event staff made a designation and that the Board felt that designation to be incorrect or unsafe.

Mr. Dowling said that the Board would have the authority to rescind the decision of the staff.

MOTION: Mr. Hornbaker moved the following:

**Motion for the Board to authorize the Director of the Department of Conservation or his designee to issue certificates in accordance with § 10.1-605.1 of the Code of Virginia, effective July 1, 2011.**

In accordance with Chapter 323 of the 2011 Virginia Acts of Assembly (SB1456), §10.1-605.1 of the Dam Safety Act (Delegation of powers and duties) has been amended, effective July 1, 2011, to authorize that “[t]he Board may delegate to the Director or his designee any of the powers and duties vested in the Board by this article, except the adoption and promulgation of regulations”. This legislative action specifically removed the current prohibition to the Board delegating authority for “the issuance of certificates” to the Director or his designee.

Pursuant to this authority, the Virginia Soil and Water Conservation Board delegates the power and duty to issue Regular, Conditional, and Extensions of Operation and Maintenance Certificates for impounding structures to the Director of the Department of Conservation and Recreation or his designee, effective July 1, 2011.

SECOND: Mr. Blake

DISCUSSION: None

VOTE: Motion carried unanimously

**Approval to commence Dam Safety Track Regulatory Action**

Mr. Dowling presented an overview of the request for the Board to take action on three fast track regulatory actions to amend the Board’s Impounding Structure Regulations.

**Impounding Structure Regulation Action Approvals**

**Virginia Soil and Water Conservation Board  
Senate Room A, General Assembly Building, Richmond  
(May 24, 2011)**

**Introductory remarks**

Before you today for consideration is a motion to authorize the Department to initiate three fast-track regulatory actions to amend the Board’s Impounding Structure Regulations.

The three fast-track actions are as follows:



- 1) Develop regulations that consider the impact of downstream limited-use or private roadways with low traffic volume and low public safety risk on the determination of the hazard potential classification of an impounding structure;
- 2) Develop regulations that provide a method to conduct a simplified dam break inundation zone analysis; and
- 3) Develop regulations that set out the necessary requirements to obtain a general permit for a low hazard impounding structure.

Each of these is being taken in response to legislative actions that are outlined in the attached motion.

### **Fast-track Regulatory Process**

- The Fast-track Process is **appropriate when an action is expected to be noncontroversial**. A rulemaking is deemed noncontroversial if no objections are received from (1) certain members of the General Assembly or (2) ten or more members of the public.
- After approval of the draft final language by the Board and subsequent review by the Administration (DPB, SNR, and Governor), a notice of a proposed fast-track rulemaking will be published in the *Virginia Register of Regulations* and will appear on the Virginia Regulatory Town Hall. This will be followed by a public comment period of at least 30 days.
- If, during the public comment period, an objection to the fast-track regulation is received from:
  - Any member of the applicable standing committee of Senate,
  - Any member of the applicable standing committee of the House of Delegates,
  - Any member of the Joint Commission on Administrative Rules (JCAR), or
  - 10 or more members of the public,then publication of the fast-track regulation will serve as the Notice of Intended Regulatory Action (NOIRA) and standard rulemaking process is followed to promulgate the regulation.
- If there are no objections as described above, the regulation will become effective 15 days after the close of the public comment period, unless the regulation is withdrawn or a later effective date is specified by the Board.

In accordance with the attached motion, we respectfully request the Board to authorize the Department to initiate these actions. With that overview, I am happy to answer any questions, or turn it back to you Madame Chairwomen for Board action.

MOTION: Mr. Lohr moved the following:

REVISED: 6/27/2011 9:55:20 AM

**Motion to authorize and direct the development of three separate fast-track regulatory amendment actions to the Board's Virginia Impounding Structure Regulations (§ 4VAC50-20):**

The Board authorizes the Director of the Department of Conservation and Recreation and the Departmental Regulatory Coordinator to develop three separate draft final fast-track regulatory actions for the Board's consideration. As part of the regulation development process, the Board directs that a Regulatory Advisory Panel(s) be assembled to make recommendations to the Director and the Board on the contents of the draft final regulations.

The three fast-track actions are as follows:

- 1) Develop regulations that consider the impact of downstream limited-use or private roadways with low traffic volume and low public safety risk on the determination of the hazard potential classification of an impounding structure;
- 2) Develop regulations that provide a method to conduct a simplified dam break inundation zone analysis; and
- 3) Develop regulations that set out the necessary requirements to obtain a general permit for a low hazard impounding structure.

The Board recognizes that these actions are predicated on the following legislation and information and directs the Department to consider the following in the development of the regulations:

For Action 1:

- Chapter 270 of the 2010 Virginia Acts of Assembly (HB438 - Delegate David J. Toscano) amended § 10.1-605 C. of the Code of Virginia to direct that “[t]he Board shall consider the impact of limited-use or private roadways with low traffic volume and low public safety risk that are downstream from or across an impounding structure in the determination of the hazard potential classification of an impounding structure”.
- Chapter 41 of the 2010 Virginia Acts of Assembly (SB244 – Senator John C. Watkins) resulted in the Codification of § 10.1-605.2 of the Code of Virginia that stipulates “[t]hat the Virginia Soil and Water Conservation Board shall, in accordance with the Administrative Process Act (§ 2.2-4000 et seq.), adopt regulations that consider the impact of downstream limited-use or private roadways with low traffic volume and low public safety risk on the determination of the hazard potential classification of an impounding structure under the Dam Safety Act (§ 10.1-604 et seq.)”.
- During 2010, in partial response to these legislative directives, the Director of the Department approved on November 30, 2010 a “Guidance Document on Roadways On or Below Impounding Structures”. Such guidance shall be strongly considered in the construct of the regulations.

For Action 2:

- Chapter 637 of the 2011 Virginia Acts of Assembly (SB1060 – Senator Ryan T. McDougle) created a § 10.1-604.1 titled “Determination of hazard potential class” with a subsection C. that specifies that “[t]he Board may adopt regulations in accordance with § 10.1-605 to establish a simplified methodology for dam break inundation zone analysis”.

For Action 3:

- Chapter 637 of the 2011 Virginia Acts of Assembly (SB1060 – Senator Ryan T. McDougle) created a § 10.1-605.3 titled “General permit for certain impounding structures” with a subsection A that specifies that “[t]he Board shall develop a general permit for the regulation of low hazard potential impounding structures in accordance with § 10.1-605”.

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

Further the Board recognizes that following the completion of these actions, that the entire body of the Virginia Impounding Structure Regulations (§ 4VAC50-20) may benefit from a reorganization of sections in order to increase the readability of the document. The Board will entertain a future motion at the appropriate time to authorize this action.

The Board requests that the Director or the Regulatory Coordinator report to the Board on these actions at subsequent Board meetings and will consider the adoption of these regulations at a future meeting(s) following their development.

SECOND: Ms. Dalbec

DISCUSSION: None

VOTE: Motion carried unanimously

**Authorization on NOIRA to amend the Board’s Small Municipal Separate Storm Sewer System (MS4) General Permit regulation.**

Mr. Dowling gave the following presentation:

**Action Overview**

Today we are seeking the Board’s authorization to initiate a regulatory action to amend the Board’s Small Municipal Separate Storm Sewer System (MS4) General Permit regulation. The General Permit is a regulation of the Virginia Soil

and Water Conservation Board found in Part XV of the Virginia Stormwater Management Program (VSMP) Permit Regulations.

This General Permit when completed will only be the 3rd permit that the regulated community has been under since the inception of the federal program and the second developed by the Virginia Soil and Water Conservation Board and DCR since we took over administration of the consolidated NPDES stormwater program in January of 2005.

This action is authorized under the federal Clean Water Act (33 USC § 1251 et seq.) and the Virginia Stormwater Management Act (§10.1-603.1 et seq.). It is necessary at least every five years to update and reissue the General Permit and we will need to have a new permit in place by the July 8, 2013 expiration date of the Board's current permit.

MS4 dischargers covered by the General Permit range in size from individual state and local agencies and institutions (e.g., schools, hospitals, community colleges, VDOT), to small towns (such as Bridgewater, Herndon, and Ashland) to counties (including Albemarle, York, and Stafford) to large cities (including Richmond, Alexandria, Charlottesville, Lynchburg, Suffolk, and Harrisonburg).

The MS4 Program amended through this regulatory action will reduce the discharge of pollutants from the MS4 to the Maximum Extent Practicable using an iterative best management practices (BMP) approach over multiple permit cycles, to protect water quality, to ensure compliance by the operator with water quality standards, and to satisfy the appropriate water quality requirements of the Clean Water Act and the Virginia Stormwater Management Act.

These amendments will also advance water quality improvements where a wasteload allocation from a TMDL has been assigned to a MS4, provide greater clarity to MS4 operators as how to administer and improve/ advance their MS4 programs, and specify sampling protocols where applicable and necessary reporting requirements.

### **Regulatory Amendment Process and Next Steps**

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

However, amendments to this General Permit are exempt from the full APA (§2.2-4006 subsection A8 of the Code of Virginia). As such, a slightly abbreviated APA process is required. We still go through the NOIRA, Proposed, and Final regulatory steps, public input processes remain; however, the administrative review process is reduced.

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

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

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

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

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

### **Board Action**

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

MOTION: Mr. Lohr moved the following:

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

The Board authorizes the Director of the Department of Conservation and Recreation and the Departmental Regulatory Coordinator to prepare and submit a NOIRA to consider changes and solicit recommendations related to the Part XV of the Board's Virginia Stormwater Management Program Permit Regulations [entitled **General Virginia Stormwater Management Program (VSMP) Permit for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems**] and other necessary related sections, including but not limited to, Part I definitions, 4 VAC 50-60-400 related to Small municipal separate sewer systems, and the VSMP General Permit Registration Statement form which is incorporated by reference. The changes may include, but not be limited to, incorporating water quality requirements for impaired waters and TMDLs including the Chesapeake Bay, consistency requirements with other regulations such as for erosion and sediment control, chemical application and handling requirements, minimum prescriptive measures regarding public notification and reporting, compliance with water quality and quantity standards set out in Part II of these regulations, compliance with Part III local program technical criteria of these regulations, and developing specific requirements for both non-traditional (government facilities) and traditional (local governments) MS4s. As part of this exempt process, and in accordance with § 2.2-4006 A8, the Board further authorizes that following the passage of 30 days from the publication of the Notice of Intended Regulatory Action form, a technical committee composed of relevant stakeholders be established to make recommendations to the Director and the Board on potential regulatory changes, that the Department hold other stakeholder group meetings as it deems necessary, and that the Department prepare a draft proposed regulation for the Board's review and consideration.

The Board further authorizes that prior to publication of the NOIRA, if the Department determines that the promulgation of this General Permit Regulation would be better split into two separate actions [one for non-traditional (government facilities) and one for traditional (local governments) MS4s], the Department may file two separate NOIRAs and as such both amend Part XV for one group and establish a new Part in the Virginia Stormwater Management Program (VSMP) Permit Regulations to accommodate the development of a second General Permit for the second group.

In implementing this authorization, the Department shall follow and conduct actions in accordance with the Administrative Process Act exemption requirements specified in § 2.2-4006 A8, the Virginia Register Act, and other

technical rulemaking protocols that may be applicable. 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 drafting and filing of the NOIRA(s), the holding of public meetings if determined to be necessary, the development of the draft proposed regulation and other necessary documents and documentation, as well as the coordination necessary to gain approvals from the Attorney General, the Virginia Registrar of Regulations, and the U.S. Environmental Protection Agency.

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

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

### **Erosion and Sediment Control**

Mr. Hill presented the Erosion and Sediment Control items.

#### *Annual Standards and Specifications for Utility Companies*

MOTION: Mr. Lohr moved the following:

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

The four items for conditional approval are:

1. A revised list of all proposed projects plan for construction from May 24, 2011 to December 31, 2011 must be submitted by June 30, 2011. The following information must be submitted for each project:
  - Project name (or number)
  - Project location (including nearest major intersection)

- On-site project manager name and contact information
  - Project description
  - Acreage of disturbed area for project
  - Project start and finish dates
2. Project information unknown prior to June 30, 2011 must be provided to DCR two (2) weeks in advance of land disturbing activities by e-mail at the following address [linearprojects@dcr.virginia.gov](mailto:linearprojects@dcr.virginia.gov).
  3. Notify DCR of the Responsible Land Disturber (RLD) at least two (2) weeks in the advance of land disturbing activities by e-mail at the following address [linearprojects@dcr.virginia.gov](mailto: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.

The Company recommended for conditional approval with the 4 conditions is:

Gas: Virginia Natural Gas Company

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

*Washington County Alternative Inspection Program*

MOTION: Mr. Ingle moved the following:

The Virginia Soil and Water Conservation Board receives the staff update and recommendation regarding the proposed Alternative Inspection Program for Washington County. The Board concurs with the staff recommendation and accepts the County's proposed Alternative Inspection Program for review and future action at the next Board meeting.

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

REVISED: 6/27/2011 9:55:20 AM



*Lee and Spotsylvania County's Erosion and Sediment Controls*

MOTION: Ms. Jamison moved that the Board approve the following two motions in one action:

The Virginia Soil and Water Conservation Board commends Lee County for successfully improving the County's 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.

The Virginia Soil and Water Conservation Board commends Spotsylvania County for successfully improving the County's 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

Mr. McCutcheon said that this approval brought the program to a consistency level of 97%.

*CAA Follow-up – City of Petersburg's CAA Compliance*

Mr. McCutcheon read the background on Petersburg.

The Suffolk Regional Office conducted an initial program review of the City of Petersburg's local erosion and sediment program in December 2006 and sent the completed review to Petersburg on March 27, 2007. The program review found that the City's program was inconsistent with the state program in the areas of Administration, Inspection and Enforcement and included a Corrective Action Agreement (CAA) with a completion date of December 31, 2007. DCR Staff conducted a CAA review of Petersburg's program on April 28, 2008 and found that none of the corrective actions in the CAA had been completed. The Virginia Soil and Water Conservation Board approved a time extension at its meeting on July 17, 2008 with a new completion date of September 17, 2008. The follow-up CAA review conducted on October 9, 2008 found that the City had completed all of the Administration requirements and one of two Inspection requirements,

leaving one additional Inspection and one Enforcement action to complete. The Board granted another time extension in November 2008 with a completion date of May 21, 2009. A third CAA review conducted on June 25, 2009 found no further corrective actions complete, with deficiencies remaining in the program areas of Inspection (frequency) and Enforcement (maintenance of records). After a fourth and fifth time extension granted by the Board at its July 2009 and September 2010 meetings and subsequent CAA reviews conducted on August 17, 2010 and April 1, 2011 that found no further progress in meeting the CAA, staff concluded that the continuation of providing time extensions was not moving Petersburg's program toward compliance.

The options to the Board for addressing a local erosion and sediment control program that does not meet its obligations under its CAA are addressed in the Virginia Erosion and Sediment Control Law, § 10.1-562, E, which states:

...If the program authority has not implemented the corrective action identified by the Board within thirty days following receipt of the notice, or such additional period as is necessary to complete the implementation of the corrective action, then the Board shall have the authority to (i) issue a special order to any locality that has failed to enter into a corrective action agreement or, where such corrective action agreement exists, has failed to initiate or has not made substantial and consistent progress towards implementing an approved corrective action agreement within the deadline established by the Board to pay a civil penalty not to exceed \$5,000 per day with the maximum amount not to exceed \$20,000 per violation for noncompliance with the state program, to be paid into the state treasury and deposited in the Virginia Stormwater Management Fund established by § 10.1-603.4:1 or (ii) revoke its approval of the program...

However, in addition to the authority under the Erosion and Sediment Control Law, the Board also has authority under the Virginia Stormwater Management Act, § 10.1-603.2:1 ["the Act"], to enforce Municipal Separate Storm Sewer System (MS4) Permits. The Board delegated all of its administrative, programmatic and legal authorities under the Act to DCR on December 8, 2004. DCR is presently in the process of moving forward with enforcement action concerning Petersburg's compliance with its MS4 Permit. Since maintaining a consistent erosion and sediment control program is a component of meeting the conditions of the City's MS4 Permit, staff recommends that the Board suspend the CAA process for the City of Petersburg, pending the outcome of the MS4 permit enforcement process. DCR staff will verify that Petersburg's Erosion and Sediment Control Program completes the actions required to attain consistency with the state program through enforcement action in the MS4 process and staff will report the progress of that action to the Board.

Ms. Crosier explained that DCR has an existing administrative order with the City of Petersburg with their MS4. She said that the plan is to leverage resources and wrap all of the compliance issues into one enforcement action.

MOTION: Ms. Dalbec moved the following:

The Virginia Soil and Water Conservation Board accepts the staff recommendations to suspend the CAA process for the City of Petersburg's Erosion and Sediment Control Program pending the outcome of the MS4 enforcement process. The Board directs staff to monitor the suspended CAA through the MS4 enforcement process and report that progress to the Board.

SECOND: Mr. Lohr

DISCUSSION: None

VOTE: Motion carried unanimously

*CAA Follow-up Northumberland County's CAA Compliance*

Mr. McCutcheon gave the report for Northumberland County.

The Virginia Soil and Water Conservation Board approved Northumberland County's Corrective Action Agreement (CAA) with a completion date of March 17, 2011. At the direction provided by the Board, Department of Conservation and Recreation staff reviewed Northumberland County's progress on implementing the CAA on April 5, 2011. Based on the results of the review, the staff has determined that the County has not completed the approved CAA within the deadline established by the Board.

The initial program review for Northumberland County was completed on February 19, 2008 and the Board approved three time extensions for completion of the CAA at its meetings in November 2008, November 2009 and September 2010. Through the preceding years of corrective actions, Northumberland County remedied deficiencies in the Administration, Plan Review and Enforcement components of its program, with corrective action remaining only in the Inspection component. Due to the number of time extensions previously granted to Northumberland County, staff does not recommend that the Board grant a fourth six-month time extension. Rather, staff recommends that the Board grant an administrative extension of time to allow Department staff to continue to provide technical assistance to Northumberland County and to obtain additional documentation concerning the remaining component of the CAA.

Ms. Jamison asked if the lack of inspections were a staffing issue.

Mr. W.H. Shirley from the County said that it was a matter of staff shortage. He said that the County had someone doing inspections but that person left. He said that he believed the County could correct the deficiency by the next Board meeting.

MOTION: Mr. Brickhouse moved the following:

The Virginia Soil and Water Conservation Board accepts the staff recommendations to grant the Department an administrative extension of time until the next Board meeting on September 8, 2011, to obtain additional documentation concerning the remaining item on its CAA. At that time, staff will report on the completion of the CAA and the Board will consider whether additional action will be necessary.

SECOND: Ms. Jamison

DISCUSSION: None

VOTE: Motion carried unanimously

### **Local Program Review Criteria**

Mr. Hill said that at the March meeting staff had distributed revised local program review guidance. He asked if Board members had questions or concerns.

Mr. Hill said that the five-year cycle had been revised based on comments received and discussions with localities.

Mr. Hill said that staff was seeking a motion to approve the guidance as distributed at the March meeting.

MOTION: Mr. Ingle that the Virginia Soil and Water Conservation Board approve the revised local program review guidance as presented by staff at the March meeting.

SECOND: Ms. Dalbec

DISCUSSION: None

VOTE: Motion carried unanimously

### **Local Soil and Water Conservation District Operations**

*District Director Resignations and Appointments*

Mr. Meador presented the District Director Resignations and Appointments.

*Halifax*

Resignation of Grace Ann Hite, Halifax County, effective 2/1/11, appointed Extension Agent director position (term of office expires 1/1/13).

Recommendation of Jason Fisher, Halifax county, to fill unexpired Extension Agent term of Grace Ann Hite (term of office to begin on or before 6/23/11 – 1/1/13).

*Tri-City County*

Resignation of Kathleen Harrigan, City of Fredericksburg, effective 5/6/11, elected director position (term of office expires 1/1/12).

Resignation of Ann Little, City of Fredericksburg, effective 5/6/11, elected director position (term of office expires 1/1/12).

Resignation of Anne Little, City of Fredericksburg, effective 5/6/11, elected director position (term of office expires 1/1/12).

Resignation of George Schwartz, Stafford County, effective 5/10/11, elected director position (term of office expires 1/1/12).

*Virginia Dare*

Recommendation of Mario Albritton, City of Virginia Beach, to fill vacant appointed position of Herbert L. Powers (term of office to begin on or before 6/23/11 – 1/1/15).

MOTION: Ms. Jamison moved that the District Director Resignations and Appointments be approved as submitted by staff.

SECOND: Ms. Dalbec

DISCUSSION: None

VOTE: Motion carried with Mr. Brickhouse abstaining with regard to actions concerning the Virginia Dare Soil and Water Conservation District.

**Reconsideration of FY12 Performance Deliverables for DCR/Districts Grant Agreements for Operational Funding**

Mr. Meador said that at the March meeting the Board has approved the list of FY12 Performance “Deliverables” for Soil and Water Conservation Districts.

He said that since that time, discussion with Counsel has led to the recommendation that the last two items be removed from the list as they are not appropriate items to be included in a performance list.

Mr. Meador said that representatives from the Virginia Association of Soil and Water Conservation Districts were present and may wish to make comments.

Ms. Hansen called on Mr. Ed Overton from the Virginia Association of Soil and Water Conservation Districts.

Mr. Overton said that at the March meeting, past Association President Wilkie Chaffin had addressed the issue with regard to the clause in question. Mr. Overton read prepared remarks from Dr. Chaffin in support of leaving the two items in question on the list of deliverables.

MOTION: Mr. Brickhouse moved the following:

The Board amends the list of Performance Deliverables approved by the Board on March 10, 2011 for the FY 12 DCR/Districts Grant Agreement for Operational Funding, by deletion of the two final items on the list as follows:

- In the interest of local community public health, safety and water quality, assist DCR by notifying DCR of any dams that the district may have identified that could threaten life or property.
- Assist all 47 districts in Virginia in achieving their natural resource conservation goals by supporting the Virginia Association of Soil and Water Conservation Districts by 1) volunteering to help the Association work toward district goals, and 2) providing financial assistance to the Association in an amount determined by the entire Association membership.

SECOND: Ms. Dalbec

DISCUSSION: None

VOTE: Motion carried unanimously

**DRAFT Evaluation Guidance for DCR/SWCD FY2010-2011 Grant Agreement Deliverables**

Mr. Meador said that the staff had traditionally brought to the Board at the July meeting the Evaluation Guidance for the DCR/SWCD Grant Agreement Deliverables. He said that with the change in the Board meeting schedule it was necessary to address this item.

REVISED: 6/27/2011 9:55:20 AM

He said that the only change to the Evaluation Guidance was related to the removal of the items deleted by the preceding Board action.

**MOTION:** Ms. Dalbec moved that the Board approve the Evaluation Guidance for the DCR/SWCD FY2011-2012 Grant Agreement Deliverables as presented by staff.

**SECOND:** Mr. Lohr

**DISCUSSION:** Ms. Jamison asked in light of the comments received how DCR determined if a District was “passive or reluctant in forming relationships.”

Mr. Meador said that staff used their best professional judgment. Conservation District Coordinators work with five to eight Districts. He agreed that the item was subjective.

Mr. Ingle expressed concern that the evaluations could become too regimental.

Mr. Johnson said that there was no regulatory authority in this regard. He said that the deliverables did factor into how finances were managed.

Mr. Meador said that with few exceptions Districts meet these requirements at almost all levels. He said that to date staff had not felt that limiting funds due to performance was warranted.

**VOTE:** Motion carried unanimously

### **Proposed use of FY12 funds managed by DCR on behalf SWCDs**

Mr. Meador said that within the Board’s financial policy there was guidance that DCR would advise the Board regarding the planned use of funds appropriated to the Department for District operations. It was noted that a portion of these funds are managed by the Department on behalf of the Districts and from this sum, historically a grant had been provided to the Virginia Association of Soil and Water Conservation Districts for specified services. He noted that the deliverables associated with this grant to the Association needed to be strengthened in light of a recent Attorney General opinion.

Ms. Andrews said that an opinion of the Attorney General had indicated that the General Assembly is prohibited from directing funds to charitable organizations. She said that funds however can be provided under a contract for services.

Mr. Meador provided a copy of the Board policy on Financial Assistance for Soil and Water Conservation Districts with recommended language to address this concern.

MOTION: Ms. Jamison moved that the Virginia Soil and Water Conservation Board amend the Board Policy on Financial Assistance for Soil and Water Conservation Districts to include the following phrase in section VI, 2, 5: *performance of tasks by the Virginia Association of Soil and Water Conservation Districts that support provisions of this policy.*

SECOND: Ms. Dalbec

DISCUSSION: None

VOTE: Motion carried unanimously.

Mr. Meador reviewed the planned use of FY12 funds managed by DCR on behalf of all SWCDs. A copy of this plan is available from DCR.

MOTION: Ms. Dalbec moved that the Board approve the Planned use of FY12 funds managed by DCR (as directed by the VSWCB) on behalf of all SWCDs as presented by staff.

SECOND: Mr. Brickhouse

DISCUSSION: None

VOTE: Motion carried unanimously

### **Virginia Agricultural Incentive Program**

Ms. Martin presented two items with regard to the Virginia Agricultural Incentive Program. Documents entitled “Matrix of Changes to 2012 VACS Program” and “Virginia Agricultural BMPs” are available from DCR.

Ms. Martin said that these materials were published so that Districts could know what to expect in upcoming trainings. She said that the other list contained the BMPs that were allowable for tax credit.

MOTION: Mr. Brickhouse moved that the Virginia Soil and Water Conservation Board approve the Matrix of Changes to the 2012 VACS Program and the list of Virginia Agricultural BMPs as presented by staff.

SECOND: Ms. Jamison

REVISED: 6/27/2011 9:55:20 AM



DISCUSSION: None

VOTE: Motion carried unanimously

### **Reconsideration of VASWCD FY12 Contract**

Mr. Meador said that his understanding was that the Association had requested a discussion of the VASWCD FY12 Contract. He said that staff had no recommendation in this regard.

Ms. Tyree with the Virginia Association of Soil and Water Conservation Districts thanked the Board for past support. She said that the Association will work to meet the contractual guidelines previously discussed at this meeting. Ms. Tyree said that the Association would wait until the Board's September 8 meeting to further discuss this topic.

### **Partner Reports**

#### *Natural Resources Conservation Service*

Mr. Bricker presented the report for the Natural Resources Conservation Service. A copy of the report is included as Attachment #3.

#### *Virginia Association of Soil and Water Conservation Districts*

Mr. Overton gave the report for the Virginia Association of Soil and Water Conservation Districts.

Mr. Overton noted that the two day Envirothon had just been completed. The winning team was from Fort Defiance High School in Augusta County. Fort Defiance will represent Virginia at the National Envirothon in the summer.

Mr. Overton said that the Association Board meeting would be July 14-15 in Leesburg. He noted that planning was underway for the Youth Conservation Camp and for the Association Annual Meeting.

### **Public Comment**

There was no additional public comment.

### **New Business**

There was no new business.

**Adjourn**

There was no further business and the meeting was adjourned.

Respectfully submitted,

Susan Taylor Hansen  
Chair

David A. Johnson  
Director

Attachment #1

**Department of Conservation and Recreation  
Report to Virginia Soil and Water Conservation Board  
May 24, 2011**

**1. DCR/SWCD Operational Funding:** All 47 SWCD's were issued a grant agreement with DCR in May, 2010 for operational funding this fiscal year (FY11). Each returned a fully endorsed agreement to their CDC. Each has been issued 75% of the approved operational funding for FY11. Final funding for this fiscal year is being issued to every district this month (May, 2011). At the outset of this fiscal year (FY11), operational funding for all districts totals \$3,186,573. This amount reflects a decrease below the peak funding level experienced by districts in FY01 (\$4,301,000). However, over two thirds of the 47 districts are also receiving this fiscal year, funds that total \$1,712,500 to employ conservation specialists for the implementation of agricultural BMPs. In addition to the preceding amounts, districts receive funding for staff through appropriations language that enables 8% of the amount deposited in the Virginia Natural Resources Commitment Fund or \$1.2 million –whichever is greater, to support technical staff of SWCD's that are performing assistance with implementation of agricultural BMPs.

**2. Conservation Partner Employee Development** The conservation partners continue to work through the Joint Employee Development or "JED" system which relies on 4 regional teams (coordinated through a separate state level JED team) to address training and development of SWCD and other partner agency field staff. The last quarterly meeting of the state JED group was held as a conference call on March 23<sup>rd</sup>. The JED state team meeting is scheduled to hold a face to face discussion on June 23<sup>rd</sup> in Charlottesville in the Virginia Department of Forestry state office in the Fire Protection meeting room. NRCS staff will lead and coordinate work of the JED State Team until the job duties performed by the DCR District Programs Manager position (vacated by Mark Meador) is re-established.

**3. SWCD Dams:** The SWCD dam owner work group comprised of representatives from the 12 SWCD's that own dams, DCR, NRCS and others, continues to meet approximately every 3 months (generally a quarterly schedule). Of the roughly 4 meetings per year, one session is focused on Emergency Action Plans (EAPs), another addresses routine annual maintenance of district dams and the remaining meetings address the priority topics identified by the group. The group last met on April 28, 2011. The attendees numbered approximately 25 individuals representing SWCD's, NRCS, and DCR. The primary focus of the session was devoted to Emergency Action Plans (EAPs) with presentations by NRCS and DCR. The group will meet again on July 21<sup>st</sup>, 2011 in the training room of the Virginia Department of Forestry's state office in Charlottesville. DCR's Design and Construction (DAC) staff will be present to share the latest news and plans for completing the remaining Break Inundation Zone Studies and mapping, and the next steps for structural modifications to five SWCD dams to enable their passage of the required storm and flood events.

**4. VA Agricultural BMP Cost Share (VACS) Program:** DCR continues to work with WorldView, Inc. to refine additional enhancements and reporting capabilities of the Ag BMP Tracking program. DCR and Worldview staff conducted 4 webinars in late February and early March to provide basic training to SWCD program users on the LogiXML reporting capabilities. “Canned” reports and special unique reports are now available using this advanced reporting software. The need for additional webinars and training sessions will be evaluated and additional sessions may be scheduled in the coming weeks.

**CREP:** Signup continues statewide with large numbers of projects completing each month. It appears that the removal of per acre cost share caps stimulated increased enrollment. Slightly less than 1,600 acres are available in the Southern Rivers drainage and just over 9,200 acres of CREP remain available for enrollment in the Chesapeake Bay drainage basin.

**5. Nutrient Management:** The public comment period is closed for the State Water Control Board's proposed revisions to the Biosolids Use Regulations. These regulations govern how biosolids are permitted, applied to the land, set back and buffers required, and the timing of applications. With a few minor tweaks, we anticipate the new regulations be in effect shortly.

EPA conducted field inspections of several small un-permitted animal operations in the Valley last week, to determine how the smaller farms operate and what things these farmers might do to improve upon their current operations. Representatives from EPA have been in contact with Tim Sexton, Nutrient Management Program Manager to discuss options that may be available to small animal feeding operations to assist in improving management systems if necessary. The primary goals would be to eliminate unauthorized discharges, incorporate nutrient management plans and reduce soil test phosphorus over a period of time through better management.

**6. DCR TMDL Activities:** Currently DCR is working on two TMDL implementation plans in the following watersheds across the Commonwealth: Upper York River Basin - Goldmine Creek (Louisa County), Beaver Creek, Mountain Run, Terry’s Run and Pamunkey Creek (Orange County) and Plentiful Creek (Spotsylvania Creek); and Upper Bannister River, Bearskin Creek, Cherrystone Creek, Whitehorn Creek, and Stinking River (Pittsylvania County). DCR and NRCS will be hosting two meetings in June for the 15 Districts responsible for TMDL implementation projects. The Southern Rivers meeting will be June 7 at Claytor Lake State Park in Dublin and the Bay meeting will be June 16 in Lexington at Washington & Lee University.

**7. Stormwater Management Program:** DCR staff has issued coverage to 1,530 projects qualifying for the General Permit for Discharges of Stormwater from Construction Activities for the period of July 1, 2010 through May 13, 2011.

**8. Chesapeake Bay TMDL:** Phase 2 of Virginia’s Watershed Implementation Plan (WIP) to address the Chesapeake Bay TMDL is underway. The Stakeholder Advisor Group (SAG) for the Chesapeake Bay TMDL held its first meeting to be briefed on the Phase 1

WIP and the Phase 2 process on April 26, 2011. This SAG is smaller than the Phase 1 SAG and comprised of representatives of the private sector, local and state government, nonprofit organizations, and other conservation partners. Assistant Secretary for Chesapeake Bay Restoration, Anthony Moore has been giving presentations on Phase I to the 16 Planning District Commissions (PDC's) located within the Chesapeake Bay Watershed since March. These presentations will be complete by the end of May. The purpose of these presentations is to begin the process of engaging the PDC's and local jurisdictions in the development of the Phase 2 WIP, as required by EPA. DCR staff have been following up with the PDC Executive Directors to further educate them on Phase 2 requirements and discuss their involvement in the state's work with localities, Soil & Water Conservation Districts (SWCD), and other conservation partners. PDC's are expressing interest in the concept of utilizing them as a mechanism to facilitate this process within the localities they serve. A series of meetings will continue through the next several months between DCR, PDC, locality, and SWCD staff that will involve the discussion and comparison of local data with the Chesapeake Bay Watershed Model data, allowing the state and localities to develop locality-based strategies that will be compiled into the state's overall Phase 2 WIP. To learn more about plans and expectations of the Bay states, visit the official EPA website for Bay TMDL information at: [www.epa.gov/chesapeakebaytmdl/](http://www.epa.gov/chesapeakebaytmdl/). DCR's website for the Bay TMDL is: <http://www.dcr.virginia.gov/sw/baytmdl.shtml>

Attachment #2

**Stormwater Water Quality and Quantity and Local Program Criteria Action (Parts I, II, and III)**

(Detailed Summary of the regulations provided to the Board in their May 24, 2011 regulatory handout)

(NOTE: Line numbers reflect those in the May 24, 2011 Marked-up Regulation Version)

**Part II [4VAC50-60-40 through 4VAC50-60-99] [Lines 857 – 2195]**

Part II has been restructured to reorganize and clarify/ update Authority, Implementation Date, General Objectives, Applicability of other Laws and regulations, Time limits on applicability of approved design criteria, Grandfathering, and Chesapeake Bay Preservation Act land-disturbing activity sections [Lines 858 – 1061] as well as Part II A (general administrative criteria for regulated land-disturbing criteria) [Lines 1062 – 1276], B (water quality and quantity technical criteria) [Lines 1277 – 1951], and C (today's current standards for grandfathered projects) [Lines 1952 – 2195] that contain the statewide standards for stormwater management.

- 1) Section **4VAC50-60-47.1** titled **Time limits on applicability of approved design criteria [Line 905]** has been created and specifies that any project that receives general permit coverage shall be held to the technical criteria under which permit coverage is issued and shall remain subject to those criteria for an additional two permit cycles. Any projects that are issued coverage under the July 1, 2009 general permit and for which coverage is maintained, will remain subject to the technical criteria in Part II C for an additional two permit cycles. If permit coverage is not maintained, or if portions of the project are not completed after the two additional permit cycles have passed, portions of the project not under construction shall become subject to any new technical criteria adopted since original permit coverage was issued.
- 2) Section **4VAC50-60-48** titled **Grandfathering [Line 916]** has been revised and includes the following provisions:
  - Subsection A specifies that land disturbing activities that have received locality approval of a valid proffered or conditional zoning plan, preliminary or final subdivision plat, preliminary or final site plan or zoning with a plan of development, or any document determined as being equivalent prior to July 1, 2012, will be considered grandfathered under this section until June 30, 2019 and shall be subject to Part II C technical criteria.
  - Additionally, in the event that the approved document is modified during the grandfathering period and the amendments do not result in any increase in the amount of phosphorus leaving the site through stormwater runoff or any increase in the volume or rate of runoff, the project will maintain its grandfathered status.
  - Subsection B specifies that for any locality, state, or federal project for which there has been an obligation of locality, state, or federal funding, in whole or in

- part, prior to July 1, 2012, such projects shall be considered grandfathered under this section until June 30, 2019.
- Subsection C specifies that for land disturbing activities grandfathered under subsections A and B, that construction must be completed by June 30, 2019 or portions of the project not under construction shall become subject to the technical criteria of Part II B.
  - Subsection D specifies that incases where governmental bonding or public debt financing has been issued for a project prior to July 1, 2012, the project shall remain grandfathered and subject to the Part II C criteria.
- 3) Section **4VAC50-60-51** titled **Chesapeake Bay Preservation Act land-disturbing activity [Line 1032]** has been added in this final regulation. This section specifies the requirements for small land-disturbing projects within the Chesapeake Bay Act jurisdictions. These small projects, between 2,500 square feet and less than 1 acre, would be subject to only state requirements, rather than state and federal requirements. These projects would not be required to receive coverage under the VSMP general permit, but would be required to receive local permits and meet the specified criteria in Parts II A and B. These projects are subject to the following requirements:
- Design and implement an approved erosion and sediment control plan;
  - Design and implement an approved stormwater management plan;
  - Provide for long-term maintenance of any stormwater management facilities in accordance with 4VAC50-60-58;
  - Apply the water quality design criteria in accordance with 4VAC50-60-63;
  - Achieve the water quality design criteria in accordance with 4VAC50-60-65;
  - Achieve the channel and flood protection criteria in accordance with 4VAC50-60-66;
  - Utilize offsite compliance options in accordance with 4VAC50-60-69;
  - Apply for exceptions in accordance with 4VAC50-60-57; and
  - Be subject to the design storm hydrologic methods set out in 4VAC50-60-72; linear development controls in 4VAC50-60-76, and the criteria associated with stormwater impoundment structures or facilities in 4VAC50-60-85.

#### **Part II A (4VAC50-60-53 through 4VAC50-60-59) [Lines 1062 – 1276]**

A new **Part II A** has been developed. Part II A contains the general administrative criteria for all regulated land disturbing activities. These requirements inform the operator as to what is expected in order to receive general permit coverage. Many of the requirements listed in 4VAC50-60-54, 4VAC50-60-55, and 4VAC50-60-56 are elements of federal regulations. In 2010, EPA adopted the federal effluent limitation guidelines. Virginia is required to adopt these regulations this year. To meet the federal timeline, the requirements listed in the effluent limitation guidelines have been duplicated in the appropriate section of this regulation.

- 4) Section **4VAC50-60-53** titled **Applicability [Line 1064]** stipulates that these administrative requirements apply to all regulated land disturbing activities.
- 5) Section **4VAC50-60-54** titled **Stormwater pollution prevention plan requirements [Line 1071]** specifies that the stormwater pollution prevention plan must contain the following elements:
- An approved erosion and sediment control plan;
  - An approved stormwater management plan;
  - A pollution prevention plan must be developed that identifies potential sources of pollutants and describes the control measures that will be utilized to minimize those pollutants;
  - If a specific WLA for a pollutant has been established in a TMDL as is assigned to stormwater discharges from a construction activity, additional measures must be identified and implemented by the operator so that discharges are consistent with the assumptions and requirements of the WLA in a State Water Control Board approved TMDL; and
  - The stormwater pollution prevention plan must address, to the extent otherwise required by state law or regulations and any applicable VSMP permit requirements, the following:
    - Control stormwater volume and velocity within the site;
    - Control stormwater discharges;
    - Minimize the amount of soil exposed during construction;
    - Minimize the disturbance of steep slopes;
    - Minimize sediment discharges from the site;
    - Provide and maintain natural buffers around surface waters and direct stormwater to vegetated areas, unless infeasible;
    - Minimize soil compaction and preserve topsoil unless infeasible; and
    - Stabilize any disturbed areas immediately after any earth disturbing activities have permanently or temporarily (as defined) ceased.
- 6) Section **4VAC50-60-55** titled **Stormwater Management Plans [Line 1126]** specifies that a stormwater management plan must be implemented as approved, shall apply to the entire land-disturbing activity, and shall consider all sources of surface runoff and all sources of subsurface and groundwater flows converted to surface runoff. The section also details the components required to be in a plan for it to be deemed a complete. The plans must include the following elements:
- Information on the type and location of stormwater discharges, information on features to which stormwater is being discharged, and predevelopment and post-development drainage areas;
  - Contact and parcel information;
  - Project narrative;
  - Location and design of stormwater management facilities as well as information on operation and maintenance of the facilities after the project is completed;
  - Hydrologic and hydraulic computations, including runoff characteristics;



- Calculations verifying compliance with the water quality and quantity requirements;
  - A site map that includes the specified elements;
  - If off-site options are to be utilized, a letter of availability from the off-site provider;
  - Submission of the appropriate fee and forms;
  - Plans shall be appropriately signed and sealed by a professional;
  - Construction record drawings for the stormwater management facilities;
- The final regulations moved these criteria from 4VAC50-60-108 to this section. There have been minor revisions to the language to clarify the requirements.

7) Section **4VAC50-60-56** titled **Pollution Prevention Plans [Line 1186]** details the components required to be in a pollution prevention plan and requires that such plan be implemented. The plans must include the following elements:

- Minimize and treat the discharge of pollutants from equipment and vehicle washing, wheel wash water, and other wash waters;
- Minimize the exposure of building materials, building products, construction wastes, trash, landscape materials, fertilizers, pesticides, herbicides, detergents, sanitary waste and other materials present on the site to precipitation and to stormwater; and
- Minimize the discharge of pollutants from spills and leaks and implement chemical spill and leak prevention and response procedures.

The plan must also include effective best management practices to prohibit the following discharges:

- Wastewater for washout of concrete, unless managed by an appropriate control;
- Wastewater from washout and cleanout of stucco, paint, form release oils, curing compounds and other construction materials;
- Fuels, oils or other pollutants used in vehicle and equipment operation and maintenance; and
- Soaps or solvents used in vehicle and equipment washing.

The section also precludes discharges from dewatering activities unless managed by appropriate controls.

8) Section **4VAC50-60-57** titled **Requesting and exception [Line 1217]** specifies how an exception for Part II B or Part II C may be submitted and how a determination will be made to grant or deny the request.

9) Section **4VAC50-60-58** titled **Responsibility for long-term maintenance of permanent stormwater management facilities [Line 1224]** requires that a recorded instrument, such as a maintenance agreement, be submitted to the stormwater program administrative authority to ensure the long term maintenance of stormwater facilities. This requirement was specified in the last version of the regulations; the requirement has been added in this Part to clearly demonstrate to the operator the requirement.

- 10) Section **4VAC50-60-59** titled **Applying for VSMP permit coverage [Line 1228]** requires the operator to sign a complete and accurate registration statement and to provide the form to the appropriate stormwater program administrative authority.

**Part II B (4VAC50-60-62 through 4VAC50-60-92) [Lines 1277 – 1951]**

- 11) Section **4VAC50-60-63** titled **Water Quality Design Criteria Requirements [Line 1286]** specifies that in order to protect the quality of state waters and to control stormwater pollutants, the minimum technical criteria and statewide standards set out in this section for stormwater management associated with land disturbing activities shall be utilized, unless such project is grandfathered as discussed above.

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 that is approximately 0.45 lbs/acre/year phosphorus.
- A 10% reduction in the pre-development load is required on redevelopment sites.

In the final regulations, statewide water quality technical criteria for construction activities are as follows:

- For new development, a statewide 0.41 lbs/acre/year phosphorus standard is established. Upon the completion of the 2017 Chesapeake Bay Phase III Watershed Implementation Plan, the department shall review the water quality design criteria standards.
- On prior developed lands the following technical criteria apply:
  - Where land disturbance is greater than or equal to 1 acre and results in no net increase in impervious cover over the predevelopment condition, total phosphorus loads shall be reduced to an amount at least 20% below the pre-development phosphorus load.
  - Where land disturbance is less than 1 acre and results in no net increase in impervious cover over the predevelopment condition, total phosphorus loads shall be reduced to an amount at least 10% below the pre-development phosphorus load.
  - For land disturbing activities that result in new increases in impervious cover, the new development standard shall be applied to the increased impervious area. For the remainder of the site, the criteria above will be utilized. In lieu of this provision, the total P-load of a linear development project on prior developed lands may be reduced by 20%.
  - The total phosphorus load shall not be required to be reduced to below the applicable standard for new development unless a more stringent standard has been established by a local stormwater management program.

- As was the case in the previous final regulations, a local stormwater management program may establish more stringent standards.
- TMDL requirements previously in this section have been moved from these post-construction criteria to the construction criteria in 4VAC50-60-54.

12) Section **4VAC50-60-65** titled **Water Quality Compliance [Line 1366]** specifies the following:

- Compliance with the water quality criteria shall be determined utilizing the Virginia Runoff Reduction Method. (The Method and associated spreadsheets were refined between proposed and final regulations.)
- BMPs listed in this section are approved for use as necessary to effectively reduce the phosphorus load and runoff volume in accordance with the Virginia Runoff Reduction Method. Design specifications for all approved BMPs can be found on the Virginia Stormwater BMP Clearinghouse website. Other approved BMPs available on this website may also be utilized to achieve compliance.
- A locality may establish use limitations on specific BMPs (such as wet ponds or certain infiltration practices) upon written justification to the Department.
- Table 1 has been removed, although the names of the currently approved best management practices have been maintained in a list format. The information presented in the table is available on the Virginia Stormwater BMP Clearinghouse and it was the consensus of the RAP to remove the table.
- Offsite alternatives where allowed (as specified in section 4VAC50-60-69) may be utilized to meet the technical standards.
- The section includes protocols regarding the application of design criteria to each drainage area of the site.

13) Section **4VAC50-60-66** titled **Water Quantity [Line 1438]** specifies minimum standards and procedures to address channel protection and flood protection. A provision was added that compliance with the minimum standards of this section shall be deemed to satisfy the requirements of minimum standard 19 of the Virginia Erosion and Sediment Control Regulations. The language overall has been revised to clarify the requirements of the section.

- Channel protection shall be achieved through one of the following:
  - Stormwater released into a man-made conveyance system from the two-year 24-hour storm shall be done 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 parameters of the restored system that is functioning in accordance with the design objectives.
  - Stormwater released to a natural stormwater conveyance shall be discharged at the maximum peak flow rate from the one-year 24-hour storm as calculated from the energy balance equation or another board approved methodology that is demonstrated to achieve equivalent results. To moderate this calculation, there is an improvement factor inputted into the equation (0.8 for sites > 1 acre or 0.9 for sites ≤ 1 acre). The use of the

energy balance equation is also an option when discharging to either a manmade stormwater conveyance system or a restored conveyance system.

- For channel protection, the limits of analysis are:
  - Based on land area, the site's contributing drainage area is less than or equal to 1.0% of the total watershed area; or
  - Based on peak flow rate, the site's peak flow rate from the one-year 24-hour storm is less than or equal to 1.0% of the existing peak flow rate from the one-year 24-hour storm prior to the implementation of any stormwater quantity control measures.
- Flood protection shall be achieved through one of the following:
  - When the system does not currently experience localized flooding, the post-development peak flow rate from the 10-year 24-hour storm is confined within the stormwater conveyance system.
  - When the system does currently experience localized flooding, the following options are available:
    - The post-development peak flow rate from the 10-year 24-hour storm is confined within the stormwater conveyance; or
    - The post-development peak flow rate from the 10-year 24-hour storm is released at a rate that is less than the predevelopment peak flow rate from the 10-year 24-hour storm. If this approach is utilized to comply with the flood protection criteria, downstream analysis within the limits established below shall be conducted.
- For flood protection, the limits of analysis are:
  - The site's contributing drainage area is less than or equal to one percent of the total watershed area draining to a point of analysis in the downstream stormwater conveyance system;
  - Based on peak flow rate, the site's peak flow rate from the 10-year 24-hour storm event is less than or equal to 1.0% of the existing peak flow rate from the 10-year 24-hour storm event prior to the implementation of any stormwater quantity control measures; or
  - The stormwater conveyance system enters a mapped floodplain or other flood-prone area, adopted by ordinance, of any locality.

14) A section numbered **4VAC50-60-69** titled **Offsite Compliance Options [Line 1662]** has been revised in these final regulations. The section has been revised to meet legislative actions during the 2011 General Assembly Session (Chapter 523). The section is outlined as follows:

- Subsection A specifies the options a stormwater program administrative authority may allow an operator to use which include:
  - **COMPREHENSIVE PLAN:** a local comprehensive watershed stormwater management plan adopted for the local watershed within which a project is located pursuant to 4VAC50-60-92 may be utilized to meet water quality or water quantity requirements.

- LOCAL PRO-RATA: Specifies that a locality may use a pro rata fee in accordance with § 15.2-2243 or similar local funding mechanism to achieve offsite the water quality and quantity reductions required. Participants will pay a locally established fee sufficient to fund improvements necessary to adequately achieve those requirements.
- NUTRIENT OFFSET: Incorporates the offset option passed by the 2009 General Assembly (HB2168) for water quality and is to be applied in accordance with the stipulations set out in the Code of Virginia (§10.1-603.8:1).
- DEVELOPER SITE: The option specifies that water quality controls must be located within the same HUC or within the upstream HUCs in the local watershed that the land disturbing activity directly discharges to.
- Any other offsite options approved by an applicable state agency or state board may be utilized.
- Subsection B specifies that an operator shall be allowed to utilize offsite compliance options under any of the following conditions:
  - Less than 5 acres of land will be disturbed;
  - The post-construction phosphorus standard is less than 10 pounds per year; or
  - At least 75% of the required phosphorus nutrient reductions are achieved on-site. If the operator demonstrates to the satisfaction of the stormwater program administrative authority that 75% of the required reductions can not be practicably met onsite, then the required phosphorus reductions may be achieved through the use of offsite compliance options.
- Subsection C specifies the situations where offsite options will not be allowed. Offsite options must achieve the necessary nutrient reductions prior to the commencement of the operator's land disturbing activity. Additionally, offsite options shall not be allowed in contravention of local water quality-based limitations.

### **Part II C (4VAC50-60-94 through 4VAC50-60-99) [Lines 1952 – 2195]**

Part II C contains the technical criteria that will be applicable to specified administratively continued and "grandfathered" projects. The sections within Part II C have not been revised, except for definitional changes. They have been moved from Part II B to Part II C. A definitions section only applicable to this Part was added.

### **Part III (4VAC50-60-100 through 4VAC50-60-150) [Lines 2196 – 3140]**

15) Section 4VAC50-60-103 titled **Stormwater program administrative authority requirements for Chesapeake Bay Act land-disturbing activities [Line 2222]** specifies the requirements for a stormwater program administrative authority in regulating stormwater runoff from Chesapeake Bay Act land-disturbing activities. Stormwater program administrative authorities are required to issue permits for these activities, require compliance with the requirements of 4VAC50-60-104 including ensuring compliance with Part II, review plans in accordance with 4VAC50-60-108,

ensure long-term maintenance of facilities is provided for in accordance with 4VAC50-60-112, provide for inspections in accordance with 4VAC50-60-114, enforce these provisions in accordance with 4VAC50-60-116, provide for hearings in accordance with 4VAC50-60-118, provide for exceptions in accordance with 4VAC50-60-122, and meet the reporting and recordkeeping requirements in 4VAC50-60-126. This section allows the stormwater program administrative authority to collect a fee of \$290 and an annual maintenance fee of \$50 for all permits issued.

**Part III A (4VAC50-60-104 through 4VAC50-60-126) [Lines 2249 – 2858]**

Part III A has been restructured to include both locality-administered programs and Department-administered programs within the same Part. The requirements are the same for both types of programs, although they will be implemented differently (localities by ordinance). In the previous version, the Department-administered versions were in Part III B, although the requirements were the same and merely referenced the appropriate sections in Part III A. The revisions provide more clarity for localities adopting local stormwater management programs and for the operators of land disturbing activities.

- 16) Section **4VAC50-60-106** has been modified. The section titled **Additional requirements for local stormwater management programs [Line 2268]** requires that local governments adopt ordinances as least as stringent as the VSMP General Permit for Discharges of Stormwater from Construction Activities. Localities shall also adopt ordinances that ensure compliance with 4VAC50-60-460L of the regulations. Provisions in the earlier version of the regulations in section 4VAC50-60-106 have been moved to section 4VAC50-60-148 (Local stormwater management program administrative requirements).
- 17) Section **4VAC50-60-108** titled **Stormwater management plan review [Line 2298]** has been modified. The components of a complete plan have been moved to 4VAC50-60-55. This section now specifies that a program administrative authority shall review and approve or disapprove stormwater management plans and outlines the criteria and timeline by which such a determination is made. The section also outlines how plan modifications may be made and stipulates that a stormwater program administrative authority shall not provide authorization to begin a land disturbing activity until provided evidence of VSMP coverage.
- 18) Section **4VAC50-60-112** titled **Long-term maintenance of permanent stormwater management facilities [Line 2441]** has been modified. The requirement to provide for the long-term maintenance of stormwater management facilities was included in the previous version of the regulations in section 4VAC50-60-124. The provisions of 4VAC50-60-112 have been revised to allow for additional flexibility by the operator and the stormwater program administrative authority.
- 19) Section **4VAC50-60-114** titled **Inspections [Line 2491]** specifies the requirements for inspections by the stormwater program administrative authority. The program is

required to inspect land disturbing activities for compliance with the approved erosion and sediment control plan, to ensure compliance with the approved stormwater management plan, to ensure the development, updating, and implementation of a pollution prevention plan, and to ensure the development and implementation of any additional control measures necessary to address a TMDL. The criteria for a stormwater program administrative authority have been modified slightly for clarity. Several subsections of this section have been moved to 4VAC50-60-112 (Long-term maintenance of permanent stormwater management facilities) with minor modifications.

- 20) Section **4VAC50-60-116** titled **Enforcement [Line 2557]** has been modified slightly for clarity. The table has been removed, although the typical types of offenses have been maintained in list format. It was the consensus of the RAP that these regulations are not the appropriate mechanism to detail to the court what an acceptable penalty might be. Additional language has been added regarding the ability of the Department and the Board to enforce the VSMP permit or revoke coverage.
- 21) Section **4VAC50-60-118** titled **Hearings [Line 2623]** has been slightly modified to include additional Code of Virginia requirements and definitional changes.
- 22) Section **4VAC50-60-122** titled **Exceptions [Line 2655]** specifies that a stormwater program administrative authority may grant exceptions to the water quality and quantity provisions of Part II B and Part II C under certain conditions. Minor revisions to the language were made to the language, including definitional changes.
- 23) Section **4VAC50-60-124 [Line 2684]** has been stricken. The language in this section has been moved to sections 4VAC50-60-58 and 4VAC50-60-112.
- 24) Section **4VAC50-60-126 [Line 2715]** titled **Reports and recordkeeping** has been modified for definitional changes. Several minor revisions have been made to increase clarity.

### **Part III B (4VAC50-60-142 through 4VAC50-60-144) [Lines 2859 – 2925]**

In previous versions of the regulations, Part III B dealt with Department-administered programs. In this version of the regulations, the criteria for both locality-administered programs and the Department-administered program have been included in Part III A. Part III B in this version of the regulations specifies the procedures utilized by the Department in its review of local stormwater management programs which was previously located in Part III C.

- 25) Section **4VAC50-60-142** titled **Authority and applicability [Line 2862]** simply states that the Department shall review of local stormwater management programs pursuant to § 10.1-603.12 of the Code of Virginia and explains the procedures that will be used to conduct those reviews.

26) Section **4VAC50-60-144** titled **Local stormwater management program review** [Line 2880] has been moved from 4VAC50-60-157 in previous regulations. There have been several modifications to the language. There are additional opportunities for locality's to review and respond to the Department's findings.

**Part III C (4VAC50-60-146 through 4VAC50-60-150) [Lines 2926 – 3140]**

27) Section **4VAC50-60-148** titled **Local stormwater management program administrative requirements** [Line 2936] has been added. The language previously existed in section 4VAC50-60-106. The language has been modified for clarity and to ensure that all the necessary administrative requirements are adopted through local ordinances.

28) Section **4VAC50-60-150** titled **Authorization procedures for local stormwater management programs** [Line 2957] has been moved from 4VAC50-60-159 in previous regulations.

**Part IID [Lines 3087 - 3140]** has been removed from this final regulation and its components moved to Part III C.

**Part I [4VAC50-60-10 through 4VAC50-60-30] [Lines 1 – 855]**

29) Makes additional changes to definitions in **Part I** as follows:

- Deletes unnecessary definitions (some are then moved to Part II C);
- Updates definitions such as “channel”, “development”, “flood fringe”, “floodplain”, “floodway”, “impervious cover”, “land disturbance”, “large construction activity”, “local stormwater management program”, “natural channel design concepts”, “permit-issuing authority”, “qualified personnel”, “qualifying local stormwater management program”, “runoff characteristics”, “runoff volume”, “site”, “small construction activity”, “stormwater conveyance system”, “stormwater management facility”, “stormwater pollution prevention plan”, and “surface waters”.
- Adds needed definitions such as “Chesapeake Bay Preservation Act land-disturbing activity”, “flood-prone area”, “layout”, “localized flooding”, “main channel”, and “stormwater program administrative authority”.
- Includes definitions previously added such as “Chesapeake Bay Watershed”, “comprehensive stormwater management plan”, “karst features”, “natural channel design concepts”, “natural stream”, “peak flow rate”, “point of discharge”, “prior developed lands”, “qualifying local program”, “runoff volume”, “site hydrology”, and “Virginia Stormwater Management Handbook”; or amended such as “drainage area”, “flooding”, “linear development project”, “pollutant discharge”, “post-development”, “predevelopment”, “site”, “Virginia Stormwater Management Program”, and “watershed”.
- Includes abbreviations previously added for commonly used terms;



**DOCUMENTS INCORPORATED BY REFERENCE [Lines 3141 – 3165]**

30) In the final regulations, the Documents Incorporated by Reference section has been updated to delete the inclusion of the:

- Erosion and Sediment Control Technical Bulletin #1;
- Virginia Runoff Reduction Method Spreadsheet; and
- Virginia Runoff Reduction Method Spreadsheet – Redevelopment.

It was recognized by the RAP that the Virginia Runoff Reduction Method Spreadsheets will need to be updated as additional BMPs are approved for use by the department. The technical bulletin has been superseded by the requirements in the water quantity section (4VAC50-60-66) and is no longer needed.

The Technical Memorandum has been replaced with the Virginia Runoff Reduction Method: Instructions and Documentation, March 28, 2011.

Attachment #3

**NRCS REPORT**  
**VA Soil and Water Conservation Districts Board Meeting**  
**VA General Assembly Building**  
**May 24, 2011**

---

**BUDGET** (update will be provided at meeting)

**FARM BILL PROGRAMS**

**Financial Assistance Programs:**

**CBWI and EQIP** - We have obligated 92% and 90% of the CBWI and EQIP funds respectively. We will be moving some funds around in the next few days from fund pools that do not have backlogs into areas where we can pre-approve additional applications.

**Organic Initiative** – A second sign-up is ongoing through May 20<sup>th</sup>. Obligated funds are to be completed by June 17<sup>th</sup> and any unused funds returned to our national headquarters.

**WHIP** – We have obligated 69% of the WHIP funds in 27 contracts for 1,823 acres.

**EWP** – NRCS is working with Washington County through emergency watershed program dollars to remove debris from stream channels, resulting from recent heavy winds and tornadoes.

**FRPP** - We have 2 applications for approximately \$600K. We have completed our hazardous materials search. Site visits will be done over the next two weeks. We will be ready to obligate the funds when NHQ releases this year's obligating document template. We are working to obligate the remaining \$600k in FRPP funds; there are quite a few great properties, but a shortage of matching funds. The next round of State-matching funds will not be available until September 14, 2011, which may be too late to match against this year's FRPP.

**GRP** - Pre-approvals have been made for 2 GRP applications in Halifax and Augusta Counties. Funds for due diligence has been received and we will be ordering title search and environmental database search soon. Additional funds have been requested for 3 more applications.

**WRP** – Field visits have been completed and 11 sites have been determined eligible and ranked. Additional field work may be needed on one site in Accomac. Approval decisions will be made by the end of next week. Additional funds will be requested as needed for unfunded applications.

**EWP** – Using emergency watershed program dollars, NRCS is working with Washington County to remove debris in steam channels and damage from heavy winds and tornadoes.

**NATIONAL EASEMENT STAGING TOOL (NEST)** - NRCS Staff performed a Quality Assurance Review (QA) on our National Easement Staging Tool (NEST). NEST is a national database containing a record of every conservation easement NRCS has acquired, signed an agreement to acquire, or assisted in the acquisition of by providing federal funds. The QA consisted of cross-checking the data in the physical archive with the electronic NEST database for 129 easement files in Virginia. The State Conservationist certified that the content of the easement files was complete and accurate at the end of the QA. The NEST QA is part of NRCS's continued efforts to be a responsible land steward. In the near future NEST will be used to record the monitoring and land management activities on all NRCS stewardship lands.

REVISED: 6/27/2011 9:55:20 AM

## **STEWARDSHIP PROGRAMS**

**Conservation Innovation Grants (CIG)** - We have approved 6 state CIG proposals for a total of \$248,704 in 2011 and will be developing the Cooperative Agreements over the next few weeks.

**Conservation Security and Conservation Stewardship Programs (CSP)** - Payments have been made for 2010 CSP contracts. Field verifications are ongoing for 2011 applications. The deadline for 2011 contract obligations is May 31, 2011.

**Cooperative Conservation Partnership Initiative (CCPI)** - This is a national submittal. Virginia submitted 5 projects for consideration. The approvals should be announced and released soon.

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

**North Fork Powell River Watershed** – Four sites have been completed and one site is under construction using ARRA funds to remediate abandoned mine land sites in this Watershed. The project was sponsored by the Lee County Board of Supervisors, the Daniel Boone SWCD, and the Virginia Department of Mines, Minerals and Energy. On May 17, there was a dedication ceremony and tour of the recently constructed Ely Creek Acid Mine Remediation project in Lee County. This event was attended by state, local, and federal officials, elected officials, and the public.

**Buena Vista Flood Control Project** – An A&E firm has completed the design for the channel modification project for the Chalk Mine Run project in Buena Vista. We will be delivering the final design folder and plans and specifications to the City this month.

### **Strategic Watershed Action Teams (SWAT) Proposals**

Virginia has received funding for two SWAT proposals for (1) the Chesapeake Bay and (2) the Long Leaf Pine Initiative. We are currently developing the agreements with the cooperating agencies and organizations.

**DAM REHABILITATION** - Dam Rehabilitation was reduced to \$18 million nationwide and will be zeroed out in the 2012 President's budget.

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

**Pohick Creek Site 2 (Lake Barton) in Fairfax County** – This site is under construction and will be completed in late spring or summer this year.

**Pohick Creek Site 8 (Huntsman Lake) in Fairfax County** – A draft plan will be completed by June 1 and distributed for interagency and public review with completion of the final plan by the end of FY-11.

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

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

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

### **SMITH CREEK WATERSHED UPDATE**

Smith Creek, Virginia's Chesapeake Bay Showcase Watershed. \$500,000 of CBWI funds have been set aside as a special fund pool for Smith Creek producers in FY-11 with \$150,000 for cropland and \$350,000 for pastureland assistance. Staff is working to allocate these funds through contracts. This assistance includes conducting outreach (one-on-one meetings with farmers); farm resource inventories; developing newsletters; and help with field days, such as the March 19<sup>th</sup> Smith Creek Landowners Breakfast, which was attended by 40 people.

### **RC&D PROGRAM NOT FUNDED BY CONGRESS IN FY-11**

When the federal budget was finally passed on April 15, 2011 no funds were appropriated for the RC&D Program. Without funding NRCS is unable to continue staffing and maintaining the project offices. Therefore, NRCS is in the process of closing the offices. Immediately the RC&D Coordinators and Secretaries that are NRCS employees were re-assigned temporary duties. In Virginia all of them are temporarily assisting with the Farm Bill. Nationally NRCS is assembling an offer for early retirement and an optional buy-out package for those that wish to apply. As a follow up to these offers NRCS will release a staff re-assignment plan for those that choose to stay.

The RC&D program remains in Public Law and RC&D Councils can continue to function. Many of the 375 Councils nationwide will chose to do so. The Virginia Association of RC&D Councils held their annual spring meeting in April and revised the program to dedicate the theme on how councils can remain sustainable without federal funding assistance. Each of the seven councils in Virginia are currently making an assessment and determining if they will continue. RC&D councils will remain a partner of NRCS and as non-profit 501c3 organizations, they will continue to obtain grants and implement local projects.

### **HUGH HAMMOND BENNETT DEDICATION CEREMONY**

A historical marker dedication and VA Soil Survey Ceremony will take place on July 15, 2011 in honor of Hugh Hammond Bennett "the father of soil conservation", and to formally recognize Virginia as the birthplace of soil science and the soil conservation movement in our country. In 1905 Mr. Bennett conducted a special soil survey in Louisa County, which resulted in an understanding of the link between soil erosion and degradation of soil quality. The dedication ceremony which will be attended by the Chief of NRCS, is sponsored by the Louisa Historical Society, Thomas Jefferson SWCD and NRCS.

### **NUFFIELD SCHOLARS' WORLDWIDE TOUR COMES TO VIRGINIA**

After World War II Lord Nuffield, industrialist and philanthropist initiated a travelling scholarship program for farmers throughout the British Empire. The purpose is to recognize their contributions to feeding the nation throughout the war, and as a way to advance the best agricultural practices. Since then, 1,000 scholars from eight participating countries have travelled the world to study agriculture in different countries.

From June 18-June 24, NRCS in Virginia and the Center for Rural Culture will be hosting this delegation. During the week they will learn about oyster growing, harvesting, and processing; tour a Pittsylvania dairy farm, anaerobic digester, Chatham Ag Development Complex, and several farms in Goochland County. They will also visit historic Jamestown and Williamsburg. They will end their visit by engaging in a dialogue with VA policy makers, and a tour of the state capital.