

**Virginia Department of Conservation and Recreation and Virginia Soil and Water  
Conservation Board  
Public Hearing on Proposed Resource Management Plans Regulations  
(4 VAC 50-70-10 et seq.)**

**August 13, 2012 in Wytheville (Bland Hall, Wytheville Community College, 7 p.m.)**

**Meeting Officer:** Michelle Vucci  
Policy and Planning Assistant Director  
Department of Conservation and Recreation

Introduction:

Ms. Vucci called the meeting to order and made the following remarks:

**Ms. Vucci:** Good evening, I would like to call this public hearing on the Virginia Soil and Water Conservation Board's proposed Resource Management Plans Regulations to order. I am Michelle Vucci, Policy and Planning Assistant Director for the Department of Conservation and Recreation. I will be serving as the meeting officer this evening. I welcome you to this hearing.

I would like to thank Wytheville Community College for allowing us to use this facility.

With me this evening I have Robert Bennett, Acting Stormwater Management Division Director, who will serve as our technical presenter; and Michael Fletcher our Board and Constituent Services Liaison who will take minutes of this hearing's proceedings. This meeting will be recorded.

I hope that all of you have registered on our attendance list. If not, please do so. Those wishing to speak should note that on the attendance list. Please also make sure that your contact information, including your name and address, is legible and complete as we will be utilizing it to keep you informed on the status of this regulatory action.

**Purpose of the public hearing:**

The purpose of this hearing is to receive input from interested citizens on the Board's proposed regulatory action during the 60-day public comment period, which opened on July 16<sup>th</sup> and closes on September 14<sup>th</sup>. In accordance with Chapter 781 of the 2011 Virginia Acts of Assembly (HB1830) the Virginia Soil and Water Conservation Board authorized the establishment of new regulations that clarify and specify the criteria that must be included in a resource management plan and the processes by which a Certificate of RMP Implementation is issued and maintained. The intent of this regulatory action is to encourage farm owners and operators to voluntarily implement a high level of BMPs on their farmlands in order to be protective of water quality and for them to then benefit from the following legal provision stating that "notwithstanding any other provision of law, agricultural landowners or operators who fully implement and maintain the applicable components of their resource management plan, in accordance with the criteria for such plans set out in § 10.1-104.[8] and any regulations adopted thereunder, shall be deemed to be in full compliance with (i) any load allocation contained in a total maximum daily load (TMDL) established under § 303(d) of the federal Clean Water Act addressing benthic, bacteria, nutrient, or sediment impairments; (ii) any requirements of the

Virginia Chesapeake Bay TMDL Watershed Implementation Plan; and (iii) applicable state water quality requirements for nutrients and sediment”.

The Department used the participatory approach to develop the proposed regulations. Following the publication of the Notice of Intended Regulatory Action regarding these regulations and the public comment period on the NOIRAs, the Department formed a Regulatory Advisory Panel to assist in the development of the proposed regulations. The nineteen member RAP was composed of stakeholder organizations within the agricultural and environmental community, representatives from the Soil and Water Conservation Districts and the Association, as well as those with technical expertise in agricultural planning. The RAP and the Department were provided technical support from Natural Resources Conservation Service, Farm Service Agency, Virginia Tech, Virginia Department of Agriculture and Consumer Services, Virginia Department of Forestry, and the Virginia Department of Environmental Quality. Between June 29, 2011, and February 14, 2012; the RAP held five meetings, and the RAP’s three subcommittees met a total of six times. Additionally, two of the subcommittees held a joint meeting. Following the completion of the RAP’s work, the Virginia Soil and Water Conservation Board proposed these regulations at their meeting held on March 29, 2012. Copies of the proposed regulations as published are located on the table near the attendance list.

We do want to note that all public comments received at these hearings and during the comment period will be carefully considered by the Department and the Board in developing final regulations. The Board’s recent regulatory actions demonstrate a history of being responsive.

This concludes my introductory remarks. I would like to introduce Robert Bennett, DCR’s Acting Stormwater Management Division Director who will provide information regarding what the proposed regulation does.

**Mr. Bennett:** Thank you Ms. Vucci.

Although many of you here this evening may be familiar with this regulatory action and the proposed regulations, for those who are not, we thought it would be useful to take about 15 minutes to provide a background on this action and what the key portions of the proposed regulations are. This presentation will present information in summary fashion; obviously, you should consult the hard copy of the regulations for specifics.

As a matter of background, the regulation has been developed to implement a process by which farmers may improve the water quality of Virginia’s rivers and the Chesapeake Bay through the voluntary implementation of a high level of BMPs on their property and thereby be certified for a 9-year period as being compliant with (i) any load allocation contained in a total maximum daily load (TMDL) established under § 303(d) of the federal Clean Water Act addressing benthic, bacteria, nutrient, or sediment impairments; (ii) any requirements of the Virginia Chesapeake Bay TMDL Watershed Implementation Plan; and (iii) applicable state water quality requirements for nutrients and sediment. Such action will protect the health, safety, and welfare of citizens through the water quality improvements that will result through implementation of the proposed regulations.

Within the Chesapeake Bay watershed, this regulatory action will address the Environmental Protection Agency's (EPA) established requirements within the state Watershed Implementation Plans (WIP) as part of a larger Chesapeake Bay Total Maximum Daily Load (TMDL) accountability framework. Virginia's Phase I WIP was approved by EPA on December 29, 2010. Additionally, as part of the accountability framework, the Commonwealth submitted preliminary milestones for 2012-2013 to EPA on November 4, 2011 and final programmatic milestones on January 6, 2012. These represent the first set of two-year milestone commitments associated with the Bay TMDL. Virginia submitted a draft Phase II WIP document on December 15, 2011 and a final Phase II WIP on March 30, 2012. This document supplements the strategies offered in Virginia's Phase I WIP. The resource management plan regulations are a component of the WIP and the milestones. The RMP regulations set forth specific criteria for the implementation of a suite of agricultural BMPs and will serve to promote greater and more consistent use of voluntary agricultural practices across the state. The RMP regulations, though voluntary, provide an incentive to farmers who utilize agricultural BMPs in that they will receive a "safe harbor" from future mandatory requirements related to the Chesapeake Bay TMDL. They may also be used as a baseline for participation in the expanded nutrient credit exchange program. By incentivizing such practices, the RMP program can serve as a mechanism for localities to implement their agricultural strategies and BMPs.

This regulatory approach was also determined to be the best path forward in order to meet the necessary nutrient and sediment reductions and to protect the health, safety, or welfare of citizens. In 2010, the Department of Conservation and Recreation developed several draft bills for the consideration of the Administration and the public that would have made livestock exclusion and nutrient management planning mandatory. These draft proposals were floated to stakeholders for comment. In response to these comments and discussions with stakeholders and the Administration and in lieu of these mandatory actions, a more progressive piece of legislation establishing a voluntary resource management plan approach was introduced and enacted by the General Assembly and Governor.

Accordingly, the resulting legislation [Chapter 781 of the 2011 Virginia Acts of Assembly (HB1830)] authorized the Virginia Soil and Water Conservation Board to establish new regulations that clarify and specify the criteria that must be included in a resource management plan and the processes by which a Certificate of RMP Implementation is issued and maintained.

As specified in the resulting law, it is the goal of these regulations to:

1. Be technically achievable and take into consideration the economic impact to the agricultural landowner or operator;
2. Include (i) determinations of persons qualified to develop resource management plans and to perform on-farm best management practice assessments; (ii) plan approval or review procedures if determined necessary; (iii) allowable implementation timelines and schedules; (iv) determinations of the effective life of the resource management plans taking into consideration a change in or a transfer of the ownership or operation of the agricultural land, a material change in the agricultural operations, issuance of a new or modified total maximum daily load (TMDL) implementation plan for the Chesapeake Bay or other local total maximum daily load water

quality requirements, and a determination pursuant to Chapter 4 (§ 3.2-400 et seq.) of Title 3.2 that an agricultural activity on the land is creating or will create pollution; (v) factors that necessitate renewal or new plan development; and (vi) a means to determine full implementation and compliance with the plans including reporting and verification;

3. Provide for a process by which an on-farm assessment of all reportable best management practices currently in place, whether as part of a cost-share program or through voluntary implementation, shall be conducted to determine their adequacy in achieving needed on-farm nutrient, sediment, and bacteria reductions;

4. Include agricultural best management practices sufficient to implement the Virginia Chesapeake Bay TMDL Watershed Implementation Plan and other local total maximum daily load water quality requirements of the Commonwealth; and

5. Specify that the required components of each resource management plan shall be based upon an individual on-farm assessment. Such components shall comply with on-farm water quality objectives as set forth in subdivision B 4 [directly above], including best management practices identified in this subdivision and any other best management practices approved by the Board or identified in the Chesapeake Bay Watershed Model or the Virginia Chesapeake Bay TMDL Watershed Implementation Plan.

On a statewide basis, the voluntary implementation of these regulations will provide substantial incentives to farmers to implement high priority water quality conservation practices and specifically within the Chesapeake Bay watershed, implementation will help the Commonwealth meet its commitments outlined in the Phase II Watershed Implementation Plan and provide for “agricultural certainty”.

This entire regulatory action involves the promulgation of a new Chapter of regulations (Chapter 70) by the Virginia Soil and Water Conservation Board titled Resource Management Plans (4VAC50-70-10 et seq.).

The key substantive elements of this proposed regulatory action include:

- Establishment of minimum standards of a resource management plan (4VAC50-70-40);
- Processes for the development, updating, and approval of a resource management plans by Resource Management Plan Reviewers (4VAC50-70-50) and (4VAC50-70-60);
- Processes to ensure the implementation of a resource management plan and for issuance of a Certificate of Resource Management Plan Implementation (4VAC50-70-70) and (4VAC50-70-80);
- Processes associated with conducting inspections by the RMP Reviewer and ensuring RMP compliance after Certificate issuance by the Department of Conservation and Recreation including issuance of deficiency notices and development and implementation of corrective action agreements (4VAC50-70-90) and (4VAC50-70-100);
- Procedures for the review of duties performed by local soil and water conservation districts ; (4VAC50-70-130) and
- Establishment of qualifications and certification processes for Resource Management Plan Developers and the issuance or revocation of a Resource Management Plan

Developer Certificate by the Department of Conservation and Recreation (4VAC50-70-140).

Additional details on these key sections include the following:

- Section 4VAC50-70-~~40~~ sets out the **minimum standards of a resources management plan**. Depending on land use and whether the BMP requirements are applicable to the management unit and needed based on an on-farm assessment, the following requirements will apply:
  - For all cropland or specialty crops:
    - § A nutrient management plan;
    - § A forest or grass buffer between cropland and perennial streams with a minimum width of 35 feet;
    - § A soil conservation plan that achieves a maximum soil loss rate to “T”;
    - and
    - § Cover crops, when needed to address nutrient management and soil loss requirements.
  - For all hayland:
    - § A nutrient management plan;
    - § A forest or grass buffer between cropland and perennial streams with a minimum width of 35 feet; and
    - § A soil conservation plan that achieves a maximum soil loss rate to “T”.
  - For all pasture:
    - § A nutrient management plan;
    - § A pasture management plan or soil conservation plan that achieves a maximum soil loss rate of “T”;
    - and
    - § A system that limits or prevents livestock access to perennial streams.
- Section 4VAC50-70-50 specifies the **components of a resource management plan** and includes:
  - The information to be collected by the RMP developer when developing the RMP,
  - Specifies the components to be included in a resource management plan such as the BMPs that are necessary to achieve the minimum standards set out in 4VAC50-70-40 and a schedule for the implementation of those BMPs, and
  - Includes RMP developer and owner or operator certifications as well as approvals to conduct inspections of properties within the management unit as needed to ensure the adequacy of the RMP in accordance with 4VAC50-70-70.
- Section 4VAC50-70-60 outlines processes associated with making **revisions to a resource management plan**.
  - Upon notification of the RMP review authority of a change in owner or operator of the management unit with a signed RMP where it involves the complete transfer of one or more RMPs and any Certificate of RMP Implementation:

- § The review authority shall contact the new owner or operator within 60 days of the new owner or operator assuming control of the management unit regarding implementation of the RMP and any necessary revisions.
- § The new owner or operator, following consultation with the review authority may elect to:
  - Implement and maintain the provisions of the existing RMP;
  - Request a RMP developer revise the RMP; or
  - Choose not to continue implementing a RMP.
- Upon notification of the RMP developer by the owner or operator with a signed RMP that changes in the management unit or implementation of the RMP may create needs for revision, the RMP developer shall review the RMP (within 30 days) to determine if material changes to the management unit require a revision of the RMP.
- The section provides a listing of the material changes to the management unit that may require a revision of the RMP.
- A RMP developer will determine if revision of the RMP is required.
  - § When the RMP developer determines that revision of the existing RMP is not necessary, the RMP developer shall provide such determination to the requesting owner or operator in writing.
  - § When the RMP developer determines that revision of the existing RMP is necessary, the owner or operator may elect to:
    - Request the RMP developer revise the RMP as necessary to fulfill RMP requirements; or
    - Choose not to continue implementing a RMP whereupon the RMP for the management unit shall no longer be valid.
- The section specifies that when a new or modified watershed implementation plan is issued for the Chesapeake Bay or a new or modified local approved TMDL is issued which assigns a load to agricultural uses, a RMP covering land with waters that drain to such TMDL shall be deemed sufficient when the RMP has been revised to address the new or modified TMDL and the owner or operator agrees to implement the revised RMP, except when the owner or operator already holds a Certificate of RMP Implementation.
  - § When an owner or operator holds a Certificate of RMP Implementation that has not expired, the owner or operator may continue operation of the RMP without such revisions for the lifespan of the Certificate of RMP Implementation so long as the owner or operator is deemed to be fully implementing the RMP.
- Revision of a RMP by a RMP developer requires:
  - § If a Certificate of RMP Implementation has not been issued, the revised RMP shall be provided to the review authority and shall be subject to all specified review requirements.
  - § If a Certificate of RMP Implementation has been issued by the department and its duration has not expired, such existing Certificate of RMP Implementation shall remain valid for the balance of time remaining since

it was originally issued by the department or a new Certificate of RMP Implementation may be issued where appropriate.

- Section 4VAC50-70-70 outlines the processes associated with **review of a resources management plan**. The process shall include the following:
  - Upon completion of a new or revised RMP, the owner or operator, or the RMP developer on behalf of the owner or operator, shall submit the RMP to the review authority.
  - Each soil and water conservation district shall establish a Technical Review Committee that will ensure the RMP fully meets the minimum standards of a RMP and the components of a RMP. The section also specifies the timelines for conducting the review and how the review will be handled if multiple districts are involved.
  - RMPs received by the department where no local soil and water conservation district exists must fully meet minimum standards of a RMP and the components of a RMP and shall be reviewed by the department. The section also specifies the timelines for conduction the review.
  - When a RMP is determined by the review authority to be insufficient to meet minimum standards set forth in 4VAC50-70-40 and the components specified in 4VAC50-70-50 such review authority shall work with the owner or operator and the RMP developer to revise the RMP.
  - Where a RMP is deemed sufficient the notification issued to the owner or operator and the RMP developer by the review authority shall include approval of the plan and its implementation.
  - When an owner or operator is aggrieved by an action of the review authority, the owner or operator shall have a right to appeal.
  
- Section 4VAC50-70-80 establishes the process for the **issuance of a Certificate of Resource Management Plan Implementation**. The process shall include the following:
  - Prior to issuance of a Certificate of RMP Implementation for a management unit, confirmation shall be made by the RMP developer that no revision of the RMP is required and as such is adequate, and verification of the full implementation of the RMP shall be completed.
  - The owner or operator shall request the verification of RMP implementation by the review authority in a format provided by the department. Such verification submittal shall include a complete copy of the RMP including any referenced plans and authorizations for the review authority and the department as specified to conduct onsite inspections.
  - When the local soil and water conservation district has determined the RMP to be adequate and fully implemented, the lead soil and water conservation district board shall affirm such adequacy and implementation, and submit the required documentation to the department for action. Upon receiving such documentation supporting that the plan is adequate and has been fully implemented, the department shall issue a Certificate of RMP Implementation.

- Where the department is the review authority, the department shall determine adequacy and full implementation of the RMP. If the RMP is determined to be adequate and fully implemented, the department shall affirm such implementation by issuing a Certificate of RMP Implementation.
  - If the resource management plan is not adequate or has not been fully implemented, the review authority shall provide the owner or operator with written documentation that specifies the deficiencies of the RMP. The owner or operator may correct the named deficiencies and request verification of RMP adequacy or implementation at such time as the shortcomings have been addressed.
  - A Certificate of RMP Implementation shall be valid for a period of nine years.
  - Upon the expiration of the Certificate of RMP Implementation, a new RMP may be prepared by a plan developer for the management unit upon request by the owner or operator. The RMP must conform with all existing TMDL implementation plans applicable to the management unit to include the Chesapeake Bay and any local approved TMDL, which assign a load to agricultural uses and impact any portion of the management unit. The plan developer shall ensure the new RMP also complies with the current minimum standards of a RMP.
  - The department shall maintain a public registry on the agency's website of all current Certificates of RMP Implementation in accordance with confidentiality provisions specified in an exemption to the Freedom of Information Act.
- Section 4VAC50-70-90 outlines how periodic **inspections** of a management unit that has been issued a Certificate of RMP Implementation shall be performed. The section specifies that:
    - Inspections may be performed by the review authority or the department.
    - Onsite inspections shall occur no less than once every three years but not more than annually on lands where an active Certificate of RMP Implementation has been issued provided that no deficiencies have been noted that require more frequent inspections or re-inspections.
    - Upon the completion of the inspection, an inspection report shall be completed in a format provided by the department, to document the implementation of the RMP on the management unit and shall identify any identified deficiencies that may need to be addressed through revision of the RMP.
    - Where deficiencies are noted it authorizes the department to proceed pursuant to the section on compliance.
    - All inspections or re-inspections conducted in accordance with this chapter shall occur only after 48 hours of prior notice to the owner or operator unless otherwise authorized by the owner or operator.
- Section 4VAC50-70-100 on **compliance** outlines how deficiencies identified through an inspection shall be provided to the owner or operator and how a corrective action agreement shall be developed, reviewed, and subsequently agreed to unless otherwise revoked through inability to reach an agreement, failure of the owner or operator to fully



implement the agreed upon corrective action agreement, or upon a request from the owner or operator. Timelines for every step of the process are provided in the section.

- Section 4VAC50-70-130 speaks to the **review of duties performed by soil and water conservation districts**. The section specifies that:
  - The department shall periodically conduct a comprehensive review of the RMP duties performed by each soil and water conservation district to evaluate whether requirements set forth by this chapter have been satisfactorily fulfilled.
  - The department shall develop a schedule for conducting periodic reviews and evaluations.
  - Each district shall receive a comprehensive review at least once every five years; however, the department may impose more frequent, partial, or comprehensive reviews with cause.
  - The section also speaks to how programmatic deficiencies will be addressed.
- Section 4VAC50-70-140 sets out the **RMP developer qualifications and certification** process. The section also outlines certification revocation procedures.

More information on these regulatory actions can be found on DCR's website or the Virginia Regulatory Townhall at the addresses appearing on our handout on the back table. Public comment information is also included in the handout provided.

**Ms. Vucci:** Thank you Mr. Bennett.

There were no members of the public signed up to speak. Ms. Vucci offered the audience the chance to speak if the information presented had prompted comments.

There were no public comments. However several questions were raised by audience members. Ms. Vucci explained that this was a public information gathering hearing and that the Department was available to note concerns and questions which would be addressed by staff at a later date.

Members of the audience raised the following questions:

1. The question of grass vs. forest buffer. It is my understanding that a forest is more effective at holding the soil in place. What would be the advantage of having a grass buffer? You can't use that grass, for hay or pasture. It's going to grow up and eventually become some type of forest land anyway. What would be the regulations on how that 35 ft. buffer is going to be managed if it is going to be a grass buffer?
2. Would the area with the grass buffer be mowed or bush hogged? Would there be a reason to do that and how would a grass buffer as opposed to a permanent forest buffer be managed?
3. Regarding the Nutrient Trading Regulations, is it correct that there are no draft regulations at this point?

4. Is it anticipated that a good part of the money for farmers who choose to participate in the Resource Management Plan program would come from developers or localities in order to meet their MS4 discharge and, in lieu of operating their MS4 or sewage treatment plant, these developers and localities would pay farmers, is that correct?

Mr. Bennett noted that the Nutrient Trading was a separate set of regulations.

5. As a farmer, if I have agreed to this, after the nine years is up am I no longer required to have a resource management plan?

Mr. Bennett noted that the RMP was not a requirement, but that at the end of nine years, the farmer could get a new nine year RMP. He noted that there were provisions for opting out.

6. If I choose not to participate, will I be subjected to any modifications to the local TMDL or to the Bay TMDL?

7. Will a definition of perennial stream be included in the regulations?

8. Will there be a public record of which management units are participating in the program? What level of public intrusion is there going to be onto my farm? It was noted that the proposed regulations address exemptions of certain personal and proprietary information under the Virginia Freedom of Information Act.

9. On line 123 of the draft what does it mean that other BMPs may be applied to achieve minimum standards beyond those identified?

10. One line 518 regarding the nutrient management plan, who will determine if the professional meets the academic and applied proficiencies? Who determines that? Are these the NRCS standards?

**Closing:**

**Ms. Vucci:** A handout is provided on the table outlining the public comment submittal procedures I am about to cover and the dates and locations of the remaining public meetings.

Anyone wishing to submit comments may do so via the Regulatory Town Hall website (<http://www.townhall.virginia.gov>), or by mail to the Regulatory Coordinator at: Virginia Department of Conservation and Recreation, 203 Governor Street, Suite 302, Richmond, Virginia 23219. Comments may also be emailed to the Regulatory Coordinator at: [record@dcr.virginia.gov](mailto:record@dcr.virginia.gov). Comments may also be faxed to the Regulatory Coordinator at: (804) 786-6141. All written comments must include the name and address of the commenter (e-mail addresses would also be appreciated). In order to be considered, comments must be received by midnight on September 14, 2012.

With that announcement, I would like to thank each of you for attending this meeting and providing us with your views and comments. This meeting is now officially closed. Staff will be available afterwards to take any individual questions you may have.

I hope that everyone has a safe trip home.

**Members of the Public Present**

Mike Altizer, Clinch Valley SWCD  
Christopher Barbour, Skyline SWCD  
Becky Barlow, DCR  
Brian Benham, Virginia Tech  
David Bernard, Sierra Club  
Martha Chapman, Department of Environmental Quality  
Stacy Horton, DCR  
Mike Jonas, Wytheville  
G. Blair Sanders, Skyline SWCD  
Wayne Turley, Tazewell SWCD