

Public Hearing
on
Virginia Stormwater Management Program (VSMP) Regulations
Wednesday, July 1, 2009, 7:00 p.m.
Augusta County Government Center
Verona, Virginia

Meeting Officer: Christine Watlington
Policy and Budget Analyst
Department of Conservation and Recreation

Opening:

Ms. Watlington: Good evening, I would like to call this public hearing on the Virginia Soil and Water Conservation Board's proposed amendments to Parts I, II, III and XIII of the Virginia Stormwater Management Program Permit Regulations to order. I am Christine Watlington, Policy and Budget Analyst 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 Augusta County for allowing us to use this facility.

Introduce DCR Staff assisting with the meeting.

With me this evening I have Doug Fritz, from DCR's Division of Soil and Water; David Dowling, DCR's Policy, Planning and Budget Director, Ryan Brown, our Policy and Planning Assistant Director, who will serve as our technical presenter and Michael Fletcher, DCR Board Liaison who will be recording this meeting.

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 the regulatory actions.

Purpose of the public hearing:

The purpose of this hearing is to receive input from interested citizens on the Board's two proposed regulatory actions during the 60-day public comment period, which closes on August 21st. The first regulatory action proposes amendments to Parts I, II, and III of the Virginia Stormwater Management Program Permit Regulations related to stormwater definitions, water quality and quantity technical criteria, and local program criteria. The second action proposes amendments to Part XIII of those regulations related to stormwater fees.

The Department used the participatory approach to develop the proposals. Following the publication of the Notices of Intended Regulatory Action regarding these regulations and the public comment period on the NOIRAs, the Department formed a Technical Advisory Committee to assist in the development of the proposed regulations. The TAC included representatives from localities, consulting firms, environmental organizations, state agencies, colleges and universities, planning district commissions, soil and water conservation districts, and federal agencies. The TAC met 17 times over the course of a two and a half year period. Following the completion of the TAC's work, the Soil and Water Conservation Board proposed these regulations at its meeting held on September 25, 2008. Copies of the proposed regulations are located on the table near the attendance list.

Although we have already been considering regulatory solutions to issues with the proposed regulations that we are aware of, it is the Board's approved version that we were required to publish and seek comments on. However, during the regulatory overview, we will share with you a few areas that we already recognize will need further consideration. We do want to note that all public comments received 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 Ryan Brown, DCR's Policy and Planning Assistant Director, who will provide information regarding what the proposed regulations do.

Mr. Brown: Thank you Ms. Watlington.

Although we know that many of you here this evening are very familiar with these regulatory actions and the proposed regulations, for those who are not, we thought it would be useful to take about 20 minutes to review how these regulatory processes have been conducted to date and what the key portions of the proposed regulations are. This presentation will present information in summary fashion; obviously, you should consult the hard copies of the regulations for specifics. I believe that a copy of this powerpoint is available on the information table with the other materials associated with this hearing.

To give some history, as recently as five years ago, stormwater management requirements in the Commonwealth varied depending on where a project was located in the state. Four different citizen boards (Soil and Water Conservation Board, Board of Conservation and Recreation, Chesapeake Bay Local Assistance Board, and State Water Control Board) and three different state agencies (DCR, Chesapeake Bay Local Assistance Department, and Department of Environmental Quality) all had various stormwater management requirements. This led to inconsistent requirements and uncertainty for the regulated community. During the 2004 General Assembly, this inconsistency and uncertainty was sought to be addressed by House Bill 1177, which created the Virginia Stormwater Management Program, or VSMP, and effectively consolidated stormwater management responsibilities for municipal separate storm sewer

systems and construction activities into DCR and the Virginia Soil and Water Conservation Board. Also key to House Bill 1177 was the concept that responsibilities for permitting of construction stormwater be eventually passed down to localities, similar to the way that Erosion and Sediment Control has been administered historically.

Following the enactment of House Bill 1177, the existing stormwater regulations utilized by the Department of Environmental Quality were transferred to the Virginia Soil and Water Conservation Board in order to allow for the administration of the federal Clean Water Act stormwater permitting program. These regulations are essentially what is on the books today, and are what are utilized in Virginia's stormwater management program at the current time. In order to fully implement House Bill 1177's requirements and to meet Virginia's water quality goals, however, these regulations need to be amended.

The first area that needs to be addressed in the VSMP regulations concerns local administration of stormwater management programs. Allowing construction stormwater management to be implemented on a local level was a key assumption of House Bill 1177, which requires local programs to be adopted by localities located within the area impacted by the Chesapeake Bay Preservation Act, as well as MS4 localities. Other localities may adopt local programs on a voluntary basis or DCR will administer a program in their locality. These changes require amendments to Part III of the VSMP regulations. Complimentary to these amendments are changes to Part XIII of the regulations, which contain the fees that apply to the VSMP program. By law, these fees need to be established at a level that is sufficient to support a stormwater program.

The quality of Virginia's waters, as well, need to be protected from pollutant discharges from regulated construction activities. Enhancing these stormwater regulations is a key part of Virginia's overall approach to improving water quality statewide and restoring the Chesapeake Bay, which includes pollution reductions from sewage treatment plants and farmland runoff. Regulated construction activities generally include those one acre or greater statewide, as well as those 2500 square feet or larger in areas subject to the Chesapeake Bay Preservation Act. Addressing post-development runoff from these sites is a key component of Virginia's water quality goals for rivers, streams, lakes, and the Chesapeake Bay. In fact, EPA's Chesapeake Bay Program has estimated that 32% of phosphorus loads to the Bay can be attributed to urban and suburban runoff sources, of which stormwater runoff from developing lands is a part. While gains are being made in addressing other sources, including agricultural sources, sewage treatment plants, industrial sources, and atmospheric deposition, the loadings for developed lands continue to increase. Water quality criteria are contained in Part II of the VSMP regulations.

This graphic from the EPA's Chesapeake Bay Program illustrates the share of nitrogen, sediment, and phosphorus pollution coming from urban sources to the Chesapeake Bay.

The quantity of water leaving developed lands similarly continues to be of concern. The current standards contained in the VSMP regulations and in the Virginia Erosion and Sediment Control Regulations still result in significant flooding and channel erosion, and

residents continue to report flooding impacts created by upstream development. It is believed that the current criteria needs revisions to address these concerns, as well as to allow long term consistency of the VSMP regulations and the Erosion and Sediment Control Regulations for the regulated community (although amendments to the Erosion and Sediment Control Regulations will require a separate regulatory action in the future). As with water quality, the water quantity technical criteria are contained in Part II of the VSMP regulations.

Recognizing all of these needs, in late 2005, DCR and the Board embarked on a regulatory process to amend the VSMP regulations. This was commenced through the publication of Notices of Intended Regulatory Action related to Parts I, II, III, and XIII of the VSMP regulations. A technical advisory committee, or TAC, was formed to assist with the preparation of proposed regulations. The TAC was composed of nearly 30 members representing localities, consulting firms, environmental organizations, state agencies, colleges and universities, planning district commissions, soil and water conservation districts, and federal agencies. Overall, the TAC met 17 times between May of 2006 and August of 2008. Subcommittees held an additional 8 meetings. Numerous other meetings were held related to the regulations. In all, over 50 public meetings have been held to date, along with a series of design charrettes which examine real-world site planning. These charrettes have been held statewide and attended by over 400 individuals. Following the completion of the TAC's work and these other meetings, the Board proposed the amended VSMP regulations on September 25, 2008. As is required by Virginia's administrative process, the regulations as they were proposed on this date are what is now before you for public comment, although we are aware of a number of areas that will additionally need consideration before preparing final revisions to the regulations.

With this background, what do the proposed regulations do? Four different parts of the VSMP regulations are amended by this action. These include the definitions contained in Part I, the technical criteria (including water quality and quantity) contained in Part II, the requirements for local stormwater management programs contained in Part III, and the stormwater permit fees contained in Part XIII.

Turning first to Part II, water quality and quantity, these are the technical criteria that will be employed by a locality when it operates a local stormwater management program and, for those localities that do not adopt their own program, the criteria that will be utilized by DCR in administering a local stormwater management program within a locality.

As it pertains to water quality, the amended Part II maintains the current approach of focusing on phosphorus as an indicator pollutant. By employing practices that remove phosphorus from discharges from a site, it has been demonstrated that other pollutants (such as nitrogen and sediment) will likewise be reduced. Through examination of Virginia's Tributary Strategy goals for the Chesapeake Bay, however, it has been determined that the current 0.45 pounds of phosphorus per acre per year standard for new development projects is continuing to allow degradation. The proposed amendments to

Part II amend this standard to 0.28 pounds per acre per year, which is the level indicated by Virginia's Tributary Strategies but more lenient than a forested situation that is 0.11 pounds per acre per year. This is a design standard, meaning that the site will be designed in a manner that is deemed to achieve this standard. It is not a load limit that would require monitoring from the site. The water quality requirements also provide a more lenient standard for redevelopment, which would be required to achieve a load 20% below that present prior to the redevelopment of the site. This is more stringent than today's 10% requirement, but, with the goal of not creating an obstacle to redevelopment projects, has been established at a level much lower than the 44% that is indicated by the Tributary Strategy goals.

Compliance with water quality requirements would be achieved through utilization of the new Runoff Reduction Method and an expanded set of best management practices contained in the regulations. Implementing BMPs consistent with a plan developed based on the Runoff Reduction Method would achieve compliance with the standard; additionally, the proposed amendments allow for local adoption of other methods, off-site compliance, and participation in regional stormwater management plans and pro-rata fees. DCR is also currently working on guidance related to the new nutrient offsets program, which would allow for another "trading for compliance" option.

The proposed Part II also contains new provisions related to water quantity. A special water quantity workgroup was developed to work specifically on this issue, and section 66 of the proposed regulations is the result of this group's work. To alleviate stream channel erosion and downstream flooding, section 66 contains requirements related to channel protection and flood protection that vary based upon the condition of stormwater conveyance system that is being discharged into. Sheet flow is also addressed. It is DCR's long term intention to use this criteria, when finalized, to amend MS19 of the Virginia Erosion and Sediment Control Regulations to bring consistency across the Stormwater and Erosion and Sediment Control programs.

Secondly, the proposed regulations do establish the framework for local stormwater management programs (both locality administered "qualifying local programs" and DCR-administered programs for those localities that do not adopt their own programs). Due to the timeframes established by law for the effective date of these regulations and the timing for local program adoption, local programs are not likely to begin being adopted until between October 2011 and April 2012, with all programs being in place by April of 2013.

Part III requires that all local stormwater management programs implement the new Part II technical criteria. Specific requirements for up-front plan review, permit issuance, inspections (during and post-construction), long term BMP maintenance, and other program components are contained in Part III as well.

Finally, the proposed regulations do include amendments to the permit fee schedule contained in Part XIII. As noted earlier, the law requires that fees be established at a

level sufficient to adequately fund the administration and oversight of stormwater management programs. The fees proposed are scaled based upon acreage of the project, and were established based upon the actual work that is projected to be necessitated by the site. Twenty-eight percent of the overall fee is attributed to technical assistance and local program oversight and will go to DCR. In the case of a locality-administered qualifying local program, the remaining 72% is believed to be sufficient to fund the locality's responsibilities.

The previous slides summarize what is contained in the proposed regulations. As noted earlier, however, since the time of the Board's proposal of these regulations in September of last year, DCR has become aware of a number of issues that need to be considered going forward. These include grandfathering of existing projects from the requirement to meet the new technical criteria, the effect of the new technical criteria on commercial, redevelopment and infill sites, as well as sites located in urban development areas; nutrient offsets; and questions as to whether it is appropriate to have a single statewide standard or whether different standards for different regions of the state would be more appropriate. DCR is already considering these concerns. Public comment will undoubtedly produce other issues that need to be considered carefully.

Finally, although these regulatory actions have been ongoing for several years, there are still many important steps remaining. Following the close of the public comment period on August 21, all public comments will be carefully considered as final regulations are developed and forwarded to the Board for approval. By law, they cannot become effective prior to July 1, 2010. Similarly by law, the adoption of local stormwater management programs will follow the effective date of these regulations by 15 to 21 months, placing them at earliest between October 2011 and April 2012.

More information on these regulatory actions can be found on DCR's website or the Virginia Regulatory Townhall at the addresses appearing in this presentation. Public comment information is also included on the final slide of this presentation, as well as in the handout provided.

Ms. Watlington: Thank you Mr. Brown.

Before we begin receiving testimony on the proposed regulations, I would like to stress that this is an information-gathering meeting. Everyone wishing to speak will be heard. However, due to the number of individuals present we ask you to limit your comments to 5 minutes and to address information that others may not have already covered. For your information, the timer located at the front of the room will monitor your time. If necessary, we may ask speakers questions concerning their testimony or to request additional information concerning a subject believed to be important to the process in order to help the clarify and properly capture your comments. Staff will be available after this hearing to take any individual questions you may have.

We will now begin the public comment portion of the hearing. When I call your name, please come to the front and use the podium. Please state your name and who you represent. If you have an extra copy of your comments, please provide it to us so that it may be utilized in developing the minutes of this hearing.

Richard Blackwell

Rick Blackwell, I'm with Blackwell Engineering. I'm an environmental engineer. One of my specialties is phosphorus and nitrogen removal so this is something very near and dear to my heart.

I think where I'd like to go is to talk about the technical aspects that are in this document.

A lot of the assumptions being made primarily with the phosphorus level are very poor science at best. In this world for every pound of a substance that we have, you can either destroy it or change it. Phosphorus is one of those compounds that you can add oxygen or take oxygen away you can manipulate it a little bit, but phosphorus will remain. Always.

The science that is being applied to this is that somehow we're going to get rid of this phosphorus. It's not going to happen. Every pound of phosphorus that comes into this watershed will leave this watershed through the Chesapeake Bay. We know that. That's the basic concept.

We can play with the time factor. But how long does it take before it gets released? Ultimately the phosphorus is going to be released and end up on the ocean deposits, where it will someday form rock and, if the plates collide again, will build mountains. And then those mountains, we'll be able to mine the phosphorus out of them, or, as they dissolve, they will release phosphorus to the water.

Now, phosphorus is a key component to life. It is a part of DNA structure and RNA structure. Every living thing has phosphorus in it.

The plant life, animal life, humans. Phosphorus is in our bones and our teeth. In order for your muscles to react, if you don't have phosphorus in your system, your muscles are not going to react.

So those are just some of the basic concepts and some of the science behind it. How phosphorus moves within this system that we live in is very critical to whether we can remove it or not remove it.

We heard from you guys that we are working towards removing the phosphorus from a number of different locations, such as wastewater. We're spending trillions of dollars removing the phosphorus and nitrogen from wastewater treatment facilities. However,

they're land applying those phosphorus laden sludges on the ground and the phosphorus is ending back up in our water.

To say that his plan is going to remove the phosphorus and help the Chesapeake Bay is a farce. It's not going to happen.

We can plant vegetation and the trees can take it up. But once those trees die and start decaying, they're releasing the phosphorus back out.

The concept that was put in this plan to collect the stormwater off the roof and to put it subsurface in the ground, hopefully so that the ground can take up part of it, also so that the vegetation that's there in the yards and in the wetlands beds can take that up, that's great. But some day you're going to harvest those crops. Someday the soil is going to become saturated with phosphorus and become phosphorus laden and then it's going to be released back out.

All you are doing with this plan is just playing with the time release mechanism. We're storing up phosphorus to a later release date. I think that is poor science.

If you want truly address phosphorus in this plan, you need to take your blinders off and truly address it. And that is, you have to quit bringing phosphorus compounds into this watershed, i.e. fertilizers that are mined and brought into this area.

Reusing of the biosolids that we have in this area, in the Commonwealth of Virginia for fertilizer applications is a wonderful reuse of those systems. But unless you want to truly stop fertilizers or try to truly have an impact on phosphorus in our area, you're going to have to eliminate the source outside of this area of the phosphorus.

Until Virginia gets serious about the reduction in phosphorus, you're playing games with people's money. You're playing games with people's lack of understanding of the true issues here. I think that is almost criminal and we can do much better in Virginia than to allow the people to have this economic stress. I don't think this is good. I'd like you to go back and put proper science in place.

Thank you.

Roger Eitelman

I'm Roger Eitelman. I'm a citizen of West Virginia. My worst fear was just confirmed. I come here with absolutely no expertise. I couldn't argue phosphorus at all. But I live in the shadow of the Shenandoah River in West Virginia. My neighbors and I feel like our Shenandoah River is a victim from Virginia and all that goes on here.

We would like to just support your approval of these amendments to the regulations.

As an aside, I will tell you that while West Virginia is not a prosperous state, there is now growing tremendous citizen frustration and energy to start making things happen in our state. We have many tributaries of the Potomac in our state, as well as the north and south branches of the Potomac that provide the water for Washington, DC. All of that ends up in the Chesapeake Bay. So we are working very hard to push our government and push ourselves to start fixing our problems there.

I came from Charles Town, West Virginia just to encourage you all to approve these regulation changes.

Charles Newton

My name is Charles Newton. I live in Page County. I believe these proposed regulations are quite well researched and developed with lots of public input and that they will provide much needed help to reduce the sediment, phosphorus, and nitrogen that are coming from the stormwater runoff in our developed areas.

In recent years the state has made significant progress in reducing excess nitrogen and phosphorus from the point sources, such as the wastewater plans, and from nonpoint agricultural sources. Unfortunately, during this same time that pollution reductions that were occurring from agricultural and point sources, our waterways from the nonpoint sources under the old plan actually increased the nutrients.

We definitely need to reduce the sudden runoff of the heated stormwater carrying the excess nitrogen, phosphorus sediment and other pollutants that flow into our water ways and have spoiled many a good fishing stream.

I live in the Shenandoah Valley and I've learned that the areas in the Commonwealth with karst geology, like we have in the Valley, require special consideration to protect our ground water from surface pollution sources such as that found in stormwater from the developed areas.

I would encourage the state soil and water conservation board to add provisions to the proposed regulations that would require the use of best management practices designed to protect the groundwater in these karst areas in Virginia.

This could be done by incorporating the work of the of the Chesapeake Stormwater network into the DCR technical manual for stormwater or the BMP Clearinghouse website or whatever is the best way to do that.

Also, because even properly installed BMPs require regular maintenance to remain effective, I also encourage the Board to clarify the provision so that there would be a requirement for regular maintenance and inspections and perhaps even include a source of funding. So that localities would be encouraged to give these operation and maintenance activities the attention they need.

Thank you for proposing these much needed regulations. I look forward to their adoption and implementation.

Jay Willer

Good evening. My name is Jay Willer. I represent the Blue Ridge Home Builders Association which covers the central Virginia counties of Madison, Green, Albemarle, Nelson and Fluvanna and the City of Charlottesville. Our organization includes approximately 250 local businesses.

While we support appropriate efforts to clean up and control stormwater runoff, our concern is that the proposed regulations of the 0.28 pounds of phosphorus per acre will actually have minimal impact on lowering nutrients and runoff while doing that at an extremely high price.

It's not just the high cost to builders and developers, but a high price for each pound of nutrients these regulations would capture.

Good policy should be cost-effective policy. There are better ways to accomplish your goals and I would refer you to the alternative proposal being offered by the Home Builders Association of Virginia as an example

Most of the counties in our region are pushing us to build in urban development areas and to build with high densities to accommodate growth with minimal impact. That applies to both residential construction and infill growth. Infill and redevelopment are workable strategies to attain those goals but the cost and space requirements of these pending regulations will push future development in exactly the opposite direction, with scattered sites and by-right construction to economically accommodate the proposed runoff requirements.

As a result these proposed regulations risk even more land disturbance and growth, and will stress other county services.

The proposed requirements are also self-limiting, affecting only new construction. Efforts to control runoff will show gains only if developers and builders build in configurations that require the proposed compliance. But we can only do that if the measure is cost effective. If these costs are prohibitive we will build elsewhere or not at all and fewer gains will be made.

As I said at the beginning, the building community understands the value and need of lowering pollution and cleaning our waterways and we're willing to do our part. The HBAV proposal allows developers to contribute cash in lieu of spending on cost compliance measures and to direct that cash to programs that are more cost effective in removing pollutants. Particularly through retrofits and modifications to existing sources.

Please adapt these proposals so they leverage the most cost-effective solutions, not artificial, sector-specific controls.

Thank you.

Kate Wofford

Good evening. My name is Kate Wofford and I'm the director of the Shenandoah Valley Network. The Network is a non profit conservation program linking community groups that work on land protection, land use, and transportation issues in six counties in the northern Shenandoah Valley.

I am here tonight to urge you strongly to adopt the proposed regulations. Pollution from stormwater runoff must be addressed in the Shenandoah Valley and in Virginia.

Since 2000 considerable progress has been made by farmers and by local governments to clean up our streams and rivers. Nutrient and sediment runoff from farms is down almost 50% in the Chesapeake Bay watershed. And pollution from wastewater treatment plants is down between 70% and 90%. However, all this progress that has been made has been offset by increases in runoff from developments.

According to the EPA, runoff from urban and suburban areas has increased over 60% during that same time period. The time is now to do something so that future projects moving forward don't have to be addressed through retrofits. They can be addressed when they are built and good site design can be implemented to do it right from the start.

These proposed stormwater regs. that you are now considering would require developers to join the agricultural community and local governments in taking steps to reduce pollution in our streams and rivers.

Clean water is important to communities in the Valley for a lot of reasons.

First, much of the drinking water in the Valley is obtained from surface waters. Runoff from poorly planned development makes it more expensive for localities to provide clean drinking water to citizens. Stormwater pollution can also impact ground water where there is limestone karst geology.

Second, the recharge of rainwater through good stormwater management supports our water supply and also reduces harmful floods which can impact people's property.

Third, and maybe most importantly, we need healthy streams and waters for our quality of life here. Our children swim in the streams. We all fish in the rivers. And we need to protect this resource for now and for our future generations.

Again we urge you to adopt the proposed regulations. Thank you for the opportunity to make comments.

Joe Wilder

My name is Joe C. Wilder and I am the Deputy Director of Public Works in Frederick County, Virginia. I served on the Stormwater Technical Advisory Committee (TAC) in the summer of 2008. I want to thank you for this opportunity to express my thoughts and concerns related to the proposed stormwater regulations, Parts I, II, III and XIII.

Water quality and quantity standards have been discussed and debated for many years. The localities in the Chesapeake Bay watershed have had stormwater quality standards in place for some time. Many localities within this region have developed some type of stormwater program through Phase I, Phase II, MS4 or in accordance with other state or local requirements. However, many other localities have opted not to implement a stormwater program at this time. The state has encouraged localities not to develop a program until the new regulation has been adopted. Frederick County developed and implemented a comprehensive erosion and sediment control program which utilizes MS-19 as the stormwater standard. However, this standard addresses only channel erosion and capacity. Consequently, the proposed mandate as set forth in the proposed regulations will have a major impact on many localities across the state, including Frederick County.

These localities will not only be impacted financially, but an additional burden will be placed on personnel. Many localities do not have the expertise to attempt to develop a program of this magnitude. Therefore, many localities will be forced to engage the services of an engineering consultant, a costly alternative. Even if localities opt to have the state or a soil and water conservation district run the program, funds will be required to develop a comprehensive ordinance, a permitting network, and create a data base to document the number and location of BMPs within the locality. With the current economic downturn in the development community, it is questionable as to how localities will derive the required additional funding.

Although permit fees will be collected once the program has been approved, it is anticipated that the approval process will take approximately 18 months to two (2) years once it has been initiated. Development and implementation of this program will be difficult at best. A locality cannot collect fees until the program has been approved and the program cannot be developed without funding. This is a no win situation. It is obvious that development and implementation of the program is an unfunded mandate.

Additionally, localities will be required to rely heavily on the expertise of the Department of Conservation and Recreation's staff during the development and implementation process. The additional load of assisting localities to develop and implement their programs, how many additional employees will DCR be required to hire and at what cost?

Localities will be affected monetarily by the long-term oversight and inspection of the documented permitted BMPs. The locality will bear the responsibility of ensuring that the BMPs are maintained and remain in compliance even when the permit has expired. Once again, this is another financial burden localities will be expected to absorb with no indication as to where program funding will be derived. As stated previously, the economic downturn in the development community does nothing to assure localities that funding will be available from future permit fees to carry out this state mandated program.

Local governments will not be the only ones that will be impacted financially by this state-mandated regulation; the development community will be affected as well. The letter written in the fall of 2008, to the Chair of the Virginia Soil and Water Conservation Board, Ms. Linda Campbell, outlines who will be affected in the development community as well as how. The letter states that the costs associated with the design, construction and long-term maintenance of the BMPs will adversely impact developers and builders.

It has been stated numerous times that the phosphorus standard of 0.28 pounds per acre per year is extremely restrictive. Many question the tributary strategies model and the validity of the numbers. The impact of this standard coupled with the rainfall volume for treatment of approximately one (1) inch rainfall event will more than triple the required BMPs over the current state standard of the first flush rainfall event of one-half inch. The proposed change will increase the cost of construction which will eventually be passed on to homeowners and businesses, etc.

In its Economic Impact Analysis dated May 12, 2009, the Virginia Department of Planning and Budget states its concern over the costs associated with the proposed regulation. On Page 8 of the report, it further states, "The total incremental costs to the state of implementing additional stormwater control practices to meet the proposed regulatory changes could not be estimated at this time." This statement comes from a report on the Economic Impact Analysis prepared by Virginia Tech Professors Kurt Stephenson and Bobby Beamer, as submitted to the DCR. Based on this information, the cost to the Commonwealth of Virginia or the affected localities throughout the state cannot be accurately determined; therefore, it would not be fiscally responsible to enact a program with this much uncertainty in the costs to be born by the state or localities.

Although the stormwater regulations need to be changed to protect the waterways of the state, the entire regulation as proposed is not the solution. I am hopeful that the state will work with and be ready to answer the many questions of the localities impacted by the proposed regulation. At this time, there appear to be more questions than answers regarding the proposed regulation.

In summary, the financial impact of this regulation will change the way development occurs in Virginia. The proposed regulation is too restrictive and, based on the state's

own analysis – costly. An unfunded mandate proposed at a time when there has been an historic downturn in development is difficult to accept, especially at the local level.

Thank you.

J.M. Snell

Good evening. Thank you for setting up this meeting and taking this time. As a planning commissioner in Harrisonburg, I'm quite familiar with having to sit there and listen to us ramble on about the same things. I will try not to be repetitive, but I do want to reiterate a few of the points that were mentioned already this evening.

My name is J.M. Snell; I'm a builder in the Shenandoah Valley. Everyone in this room wants to save the Bay. Everyone sees the Bay as an asset to our community throughout the state as well as the nation.

The current proposal and changes have a focus on the building community. While urban growth has definitely made contributions to the sediment load and the phosphorus content of the Bay, it still isn't as significant a contributor as agriculture is.

I'm also a member of the Home Builder's Association of Virginia which was mentioned earlier this evening with the alternative idea and concepts of tax credits, transfer of development rights, so that we might use that money for something more effective.

Farmland is still twice the contributor to the Bay that urban development is. Urban development is only slightly higher than point source. Those two items, point source and urban development, almost equal what comes off the farmland. So, I'm certain that you've looked at it, you've been working on this for a while and we'd like for you to continue to evaluate why we are going after the second instead of the first, the highest rate loader in the state, which would be agriculture.

Urban development and point sources have improved the most over the past 20 years. We've got data that back in 1985; point sources were contributing roughly five million pounds. That's less than two now. Urban development has improved from its 2. something to 2.8 which is really outstanding because growth is incredible in the state of Virginia in the past 20 years. In the past 20 years we've virtually paved one or two percent of the state and yet managed to reduce the contributions to the Bay in total volume. So your best management practices that are in use, retention ponds, stormwater selection, and impervious pavement. There are a lot of these things that are being used effectively.

Agriculturally, soil and water conservation service is providing a lot of help but they're under funded. We had a meeting just last month in Harrisonburg for the annual review of goals and objectives. We've got lots of goals and objectives, but we don't have money to accomplish them. Nor do the farmers.

I'm not suggesting for a moment that you tax the farmers or fee base this on the farmers. I love eating, it's very obvious. I'm fond of food. I don't want you to shut down farming in Virginia, but I think that's where we ought to be focused in reducing sediment, especially when you consider sediment loads attributed to farming.

I saw on the slide that the agricultural load for sediment is 54% or something like that. That's significant on the sediment level.

Soil and Water Conservation Service has been doing great work for many years. If we could create a viable stream of revenue to keep them operating and let them continue their programs and even expand them, I think we could make a real difference.

I'm worried that what we are going to do here is only going to have a minimal impact on the total amount of contributions to the Bay. We can only get so much better. We've done a lot. I mean, the development community has come a long way. But if we go expanding, doubling or tripling the size of our retention areas and the other methods that we might use to control runoff, like the gentleman said earlier, builders might not choose to do what House Bill 3202 last year suggested, that everybody who has a density area develop a UDA and stick to that plan. I believe in that as a smart growth principle and certainly endorse the idea of putting people and homes where the services and infrastructure are already there.

Value-based efforts were mentioned earlier, and I would ask that you consider HBAV's alternative. It's very rough. It's very coarse and it will take some more work. But I think it would be time well spent.

Thanks. I appreciate your time.

Dennis Atwood

Good evening. My name is Dennis Atwood of Maurertown, Shenandoah County. I appreciate the opportunity to address this public hearing.

Not in my remarks, but a note I made based on previous speakers, if Mr. Blackwell is correct on phosphorus, I don't know quite where we can go. I know there's a lot of technical analysis that has gone into the development of these regulations. I've seen the list of experts that have been involved and I would doubt that they were wrong.

As a citizen I just know it's an oxidizer and it's used in incendiary devices so I hope none of those will go off here.

It must be evident why I am fond of hats. Actually, I do wear the functional hats of being a member of the Shenandoah County Water Resources Advisory Committee, the board of

the Shenandoah Forum, and the Friends of the North Fork of the Shenandoah River. All organizations I am proud to be a member of.

But tonight I do not speak in a governmental capacity. My comments tonight are as a citizen, and member of the Forum and the Friends. They are not approved by, nor do they necessarily represent the views of, the Water Resources Advisory Committee.

In summary, I support the draft regulations and recommend their timely adoption, because, in addition to being necessary and meritorious on their own, they are a vital component of broader air, water, and soil environmental protections to safeguard precious resources, halt further environmental degradation, and begin to improve environmental quality. Wouldn't that be a nice mark for us to achieve?

There are some common phrases that most people in this room are probably familiar with. They come from various sources.

“Tread lightly on the earth.” “Be responsible environmental stewards.” “Land, air, and water do not ultimately belong to individuals, they are merely on loan to us to benefit from and enjoy and not to harm.” These are all well known sayings. They are abidingly true and should not be considered trite because they are often remembered and stated. I think those kind of contexts are helpful in addition to the technical aspects of this program.

The vast majority of rivers and their tributaries in the Northern Shenandoah Valley, indeed throughout the Commonwealth, are already declared to be impaired.

Almost every major tributary in the North Fork of the Shenandoah watershed is impaired due to bacteria, sediment or acid rain problems. The North Fork itself is impaired in sections upstream from the Edinburg area.

We need effective stormwater management, as incorporated in the draft regulations, to prevent further deterioration of the water quality and quantity in these waterways and as part of the remedial action plans to recover these streams from their impaired status.

Developers should have a favorable view of these regulations, and the implementation of local stormwater management programs for at least two reasons: 1) as matter of business social responsibility, and 2) a competitive marketing advantage.

Some developers already use “environmentally friendly,” or responsible, practices, such as environmentally sensitive development and low impact development. While the number of potential landowners who have this as a factor in their selection may be small, they are growing. Further even the “non-growing” home owner will benefit as they occupy their residences and look after their yards.

There are many benefits to retaining native vegetation in place, to the maximum extent feasible, when land is disturbed by development.

Native vegetation, especially hardwood trees, is superb for soil retention, run-off control, oxygen generation, and wildlife habitat. Just think of the joy songbirds bring, the splendor of autumn leaf coloration, and the sweet smell of honeysuckle.

There are many harmful effects of total land clearing, and we've seen this in Shenandoah County and increasing the presence of non-porous surfaces – roofs, and pavements – including soil erosion, reduction in ground water recharging, and delivery of increased sediment and pollution to our streams.

The fee structure proposed in the regulations is fair and necessary. Those seeking to disturb the land for profit are, appropriately, charged fees for the maintenance of the program.

I do have two concerns at this time.

The cost to local governments at the point of program startup. It will be necessary to incur staffing and contracting costs before an adequate amount of fees are collected. Perhaps a three month budget should be submitted with local plans for DCR approval and approval would be in state funds for three month startup. DCR funds could be allocated to the locality on a startup basis.

So, as a governmental and community organizations volunteer, but most of all as a citizen, I take my three hats off to the General Assembly for making the Code of Virginia changes enabling this program; and especially to the DCR staff and numerous experts and interest groups who have contributed to the laborious task of continuing to refine these draft regulations.

I support their adoption on a timely basis.

Thank you, again, for the opportunity to participate in this public hearing.

Ray Burkholder

My name is Ray Burkholder, Balzer and Associates. Can any clarification be asked at this point?

Mr. Brown: Yes.

Mr. Burkholder: I'd like to hear from you all a little bit about the fee schedule again. I've seen a lot of variations from the localities in the program to date. And I see localities that aren't represented here again tonight.

My concerns have a lot to do with just the enforcement of the fees at the local level or even at DCR. I still see discrepancies across the state.

If you could take, say a 100 acre subdivision property and step us through what kind of fees people are going to be looking at, all the way to the homeowner. How this thing is transferred.

The way I understand it is that currently, what I've been told, even as the homeowner they would be paying these larger fees because they're part of the regular development.

So I don't think you'll have a problem funding the program if that's the way you're going. So I think that will help provide clarity. I know some examples that have been presented have been thrown to the side. I'd like to see more of the public education through actual examples of some of these things so that folks can see the reality of how this is going to affect every homeowner.

Mr. Dowling: I'll take the first stab at that. As Christine has said, we are here to hear from all of you today, so we're not going to spend a lot of time at this point because a lot more folks have information to share with you.

Where I would point you to is in the regulations that are on the back table the fee structure is there certainly for permit fees.

In terms of the costs from a development perspective, that's certainly site-specific and project-specific. So it's difficult for us to show more of what those costs were.

If you go to the regulatory Town Hall, there is an economic analysis that we had Virginia Tech do. An engineering company did run a number of site plans. That information is in there and it does indicate the upfront costs or it can be amortized over a number of years depending on how you want to look at those values. They are out there for public discussion and consumption. So I'm not going to try to speak back all that information at this point in time. But the numbers for case examples are out there for the public to take a look at.

Mr. Brown: I'd just add that this is a statewide standard, meaning that the fees are intended to be uniform across jurisdictions no matter who is administering the program. I think in your comments you are alluding to individual lots within a 100 acre development. The question is whether lots that are part of a common plan of development would each face the fee imposed on that large development, and the answer to that is "no" under the proposal. They would be charged based on their individual acreage and not the overall acreage of the development.

Mr. Dowling: This is a departure from today's regulations.

Leslie Watson

My name is Leslie Watson. I'm director of Friends of the North Fork of the Shenandoah River.

Adopt the proposed stormwater regulations because the proposed stormwater regulations will improve water quality and quantity in all Virginia streams and rivers. This is the primary message from the Friends of the North Fork of the Shenandoah River. Our organization, which includes over 400 members, is dedicated to enhancing and protecting the purity, beauty and natural flow of the North Fork of the Shenandoah River.

There is no time to wait. Action must be taken now. Of the 31.3% of the Commonwealth's total of rivers and streams that are monitored by the Virginia DEQ, 66% of those waterways are already impaired. Stormwater runoff from poorly designed new development will only worsen pollution and increase the impact on already unhealthy streams and rivers.

Also, if Virginia fails to address stormwater runoff, the EPA will shift more of the burden of cleaning up the Chesapeake Bay Watershed to farmers and local governments. The agricultural community and local governments have made progress in cleaning up our waterways. In fact, almost every form of point source and agricultural related pollution in the Chesapeake Bay watershed shows a downward trend, while pollution related to stormwater runoff is rising at an alarming rate.

While our local residents are paying high fees to support construction of new sewage treatment plants that reduce phosphorus and nitrogen, runoff from developed land is increasing. Therefore, the construction industry needs to do its share to prevent increased pollution from stormwater runoff. The proposed stormwater regulations finally would require developers to join the agricultural community, industry and local governments in taking steps to reduce pollution in streams and rivers.

Further, a developer's most expensive fix for a stormwater problem is a retrofit. The least expensive solution is employing the best site design from the beginning of a project. In the end, these proposed stormwater regulations will be a win for communities, for the environment, and for the developer.

We also agree with the proposed regulation to change the amount of phosphorous allowed per acre to .28 pounds. We strongly disagree with the Home Builders Association proposal to keep the current load allowed which is .45 pounds per acre. We will never make progress in cleaning up our state waters if we leave the phosphorous standard as it is now.

And finally, the proposed regulations are not an unfunded mandate to local governments. DCR has established a fee structure so that the program will ultimately pay for itself.

Why do we need these regulations? To protect the following:

Our drinking water: A large number of Shenandoah Valley residents obtain drinking water from surface waters. Runoff from poorly planned development makes it more expensive for localities to provide clean drinking water to citizens.

Fishing and recreation: The flash of hot, dirty water that comes off parking lots, roads, and buildings after a rainstorm decimates good fishing streams.

Water supply. Improved stormwater management helps recharge our groundwater by letting the rain soak in. Destructive floods are made worse by heavy runoff from developed areas.

Thank you for the opportunity to comment. We plan to submit more detailed comments, especially concerning how the regulations would affect local towns and counties.

Royce Hylton

I'm Royce Hylton. I'm with Brunk and Hylton Engineering. And I'm also the grandfather of three. So I'm addressing you tonight on all of those points.

The reason I started out that way is because I think there was an effort within some communities to reestablish this state to predevelopment conditions starting back to about 1607. I'm not sure how realistic that is as our population continues to grow and we have to have housing for those new citizens of this Commonwealth.

When we consider the cost of that housing, I think the trend is that we go higher and higher in densities, which means we are more and more urban. As one speaker or two alluded to here, where are we going to go to smell the honeysuckle and those kind of things when we're in the midst of those urban areas?

We have urban development areas and we have another resource and that is land. With our zoning ordinance and things we have to deal with, that land gets to be a precious commodity too. And with these regulations that are being proposed, the increased use of that land for minimal results and reduction of phosphorus and other nutrients, I question whether or not that is a beneficial thing or whether it's just being a part of a regulated community. As we have already seen in our wastewater treatment plants where a tremendous amount of funding has gone in and continues to go in for minimal results because they are part of the regulated community.

I think the proposal that the Home Builders Association has brought forth is worthy of merit and consideration, because it invites some funding possibilities for the agricultural community where it has been pointed out by other speakers that there is considerable opportunities for improvement.

I would, although I don't speak for the development community, I work closely with them. I heard other speakers speaking about agricultural interests. I note there that the agricultural community is voluntarily doing these kinds of things. And when they do them voluntarily, they are also being subsidized. So I think that the development community has some worthy contributions there and has a win-win situation.

Finally, I think the devil is going to be in the details. Because we don't really know how that's going to work out until we start doing these projects. We already know that it's going to take considerable cost in the projects that we've done so far in terms of the initial cost, the maintenance cost, and also in the learning how the state's going to apply these regulations.

The engineering community is going to be caught between the locality and DCR in these things until it sees how it works out. I think there should be a period in which these regulations are phased in and the full impact is made known. At some point in time they need to be reviewed to see if it's really been worthwhile.

Thank you.

John Moore

My name is John Moore.

I think we need to do more not less. I think everyone needs to contribute. I think farmers need to do more. I think developers need to do more. I think the public sector needs to do more, especially in terms of our streets and road standards.

So I would again favor enhanced regulations. One of the things I'm concerned about is that it not be more difficult to develop small parcels of land. Because if these regulations contribute to sprawl it would be counterproductive.

I encourage these regulations.

Paul Bugus

My name is Paul Bugus. I work for the Department of Game and Inland Fisheries in Verona.

Two years ago, I was working a community event in Waynesboro on South River called Riverfest. Towards the end of the event we were out working on the river and a terrific thunderstorm came through. A bunch of us found ourselves huddled under the Broad Street bridge seeking shelter from the storm. The rains came down hard and fast and the next thing you know the drainpipes from the bridge were being activated considerably.

I stuck my hand out to feel what the water temperature might be like going through there. I was shocked; it was probably about 10 degrees warmer than the stream temperature.

As you all know we've been working considerably in the South River in Waynesboro and beyond to try to reclaim some of our fisheries in Virginia. The Shenandoah River is in terrific stress these days. We've been under the gun trying to figure out some of the stressors causing these fish kills that have been occurring for the last five years.

While farmers are making progress in nonpoint cleanup and municipalities are too, I think it's time to step up our impervious cleanup and slow the water down. Filter the water and cool it off before it returns to the river. That's the best thing we can do to start improving some of these fisheries and improving the biological health of the Shenandoah River.

So, that being said, we endorse the regulations here and tell you that we can't afford not to save the Shenandoah.

John Gibson

Thank for this opportunity to speak. My name is John Gibson. I own a river outfitting business on the Shenandoah River. I've been doing that for thirty-five years. I'm on the river seven days a week. So I've had an opportunity to observe the river every day.

There's been a lot of talk this evening about the improvements and the reduction of phosphorus and nitrogen that are going into the river. But from my perspective I haven't seen it. The river, the health of the river, I've seen a slow but steady decline over the thirty-five years that I've been doing my business.

I'm alarmed when we get an inch and a half rainfall and the river kicks up two feet and goes to coffee and cream. I'm alarmed in August when the river levels get terribly low and we get those green algae blooms on the river. I'm alarmed when we get an eighty percent small mouthed bass fish kill on the river in 2005.

So, as the population of the Valley has increased, and the development has increased in the Valley, it's just put more stress on the river. Each and every one of us, for each individual as the population grows the amount of effect on the river has to be reduced for every individual.

For all of the effort and improvements that have been done on a per capita basis we are just barely staying even or losing ground at this point.

So, I just wanted to make the point that, from a perspective of a person who is on the river every day, we need to double our efforts every day. So I do support the amendments to the regulations.

Thank you.

Mark Graham

Good evening. Thank you for the opportunity to speak. My name is Mark Graham. I'm the Director of Community Development for Albemarle County. I'm also a licensed professional engineer in Virginia since 1984 and have continually worked with stormwater since that date.

First I'm going to say that Albemarle County has always been a big supporter of water resources. We were the first locality that voluntarily undertook the stream buffers under the Chesapeake Bay Act program. We look forward to the opportunity to further our efforts on water resources protection and totally agree that these regulations do need to be updated.

With respect to the County, you will be getting written comments later, probably in August, but I did want to address some issues from the staff perspective. Especially things I haven't really heard discussed.

We have a staff that has decades of experience in stormwater management review and inspection. One of the things that we've learned is that there is probably too much emphasis on compliance by design and not enough focus on results and what is actually happening out in the field.

From that perspective we would encourage you to consider, for lack of an appropriate better word, a "dumbing down" from the runoff reduction method. It is a marvelous model but, quite frankly, I think it's far too complicated. When we get into our urban development areas we're going to find that the judgment calls you have to make to use such a model and apply it to these more intense development areas is going to require a lot of judgment and a lot of compromise and balance.

One of the things we've learned is that, like state government, local government has limited resources. Every hour that we're in the office going through design calculations, meeting with engineers, and meeting with developers trying to come up with compromises is an hour we cannot spend in the field actually inspecting how these facilities get built.

That leads to the second point. One of the things I'm encouraged with in these regulations, but also a little nervous about, is your recognizing that there's a lot of new stormwater facilities that can be used. Green roofs, bioretention swales. We've used all of these facilities. We've tried them. We've seen them fail. We've seen them succeed. One of the things we have learned is that the success or failure of those things has a lot to do with the construction inspection that goes on while those facilities are being installed.

When I go to the regulations section 114, I don't even see any discussion of construction inspection for those stormwater facilities while they're being installed. It talks about as built drawings after they are installed being provided by an engineer. When you get to that level, the facilities installed, and you can't see what's down there in the ground a lot of times. And that's going to be incredibly important for us as we move forward on these things.

So what I really encourage you to do is to take a look. See if we can't simplify the design process a little more. For example, instead of going through a very elaborate calculation on impervious cover and trying to come up with BMPs, set a range. 20% - 40% of impervious cover, here's a list of BMPs that work. 40% - 60% here's a list of BMPs. 60-80%, etc.

Keep it fairly general. Yeah, you're sacrificing something possibly as far as the level of protection you're getting. But you're providing the time for that staff to be out there in the field to make sure that these are being properly installed.

If we don't put more emphasis on this I think you're going to see that the end result is not going to match what your design is anticipating.

Thank you for your time.

Sally Thomas

Thank you. You're probably more than halfway through, aren't you?

I'm Sally Thomas; I'm on the Albemarle County Board of Supervisors. Like a lot of local officials I wear a number of hats. I'm on the Rivanna Water and Sewer Authority, and just a couple of weeks ago we did a ground breaking on a \$41 million wastewater treatment plant to try do our part in cleaning up that point source. I'm aware of that kind of effort being made.

I'm also on the Rivanna River Basin Commission and our partners there are the soil and water conservation districts and I'm aware of how long and hard they're working to get farmers to give up land in order to have riparian buffers. I also am on the local government committee for the Chesapeake Bay Program. So I'm very aware that something has to be done with suburban and urban runoff being the fastest growing source of harm. We must raise the bar.

In Albemarle County probably the most effective thing we've done for water quality is our land use. We have growth management decisions. Long before the word smart growth became popular we were designing areas for growth and for non growth.

The least pollution per capita is in compact growth patterns. Smart growth does work.

These regulations as written encourage sprawl, I'm afraid. Do think in terms of the entire watershed.

I would urge you to arrange an easy offsite trading program for nutrient offsets. Keep the requirements high, but have offsets built into the development plans. Possibly have a state fund set up to receive these offset funds without lowering the standards that are in the proposed regulations.

Thank you.

Sarah Lawson

My name is Sarah Lawson. I'm also from the Charlottesville area as were the last two speakers. I'm an environmental scientist with a company called Rainwater Management Solutions.

I'm here to speak generally in support of the regulations. I want to take a look at some of the costs which is understandably a concern to a lot of folks.

But one of the things we haven't looked at is the cost of not getting stricter stormwater management, which is a cost of not regulating it better. There's evidence throughout the state that we're not doing enough with stormwater management in terms of impaired streams, rivers, lakes, and of course the Chesapeake Bay.

The cost of not bringing the stormwater management regulations in line with any of the receiving waters is a lot less evident than we would talk about with development.

The costs include declining fisheries stock, increasing additional costs for drinking water treatment, declining surface water volume and potentially the loss of tourist income as we see decreases in the quality of our surface waters.

If you truly try to assess these costs, I think you would see that the potential cost of not regulating stormwater management better will outweigh the costs of these potential regulations.

These regulations are not cost prohibitive. Buildings are already in construction across the state using many of the proposed low impact development practices.

One of the basic tenants of environmental responsibility is decreasing pollution and one of the biggest problems that we've seen is convincing people that environmental responsibility is not contrary to economic growth. In fact at it's most basic way environmental responsibility is decreasing pollution which is a form of waste. I think

these regulations are a good step towards treating rainfall more as resource, as something to be treated responsibly, rather than as a waste product.

I'm here to speak in support of the regulations. Thank you.

Bruce Lundeen

My name is Bruce Lundeen and I'm the Executive Director of the Shenandoah Valley Pure Water Forum. We're a diverse forum promoting clean water and addressing water quality issues in the seven counties of the greater Shenandoah Valley.

There have been many eloquent stories and statements tonight. I'm going to be very brief.

Stormwater management programs are critically needed. We urge you to adopt the proposed stormwater regulations. I will go online and enter detailed comments on the Virginia Regulatory TownHall.

Thank you.

David Collins

I want to thank you for the opportunity. I have a bunch of hats. I'm a sixth grade teacher. I'm a father. I'm a grandfather. And I used to be a guy on the Shenandoah River.

The Chesapeake Bay Foundation said this locality right here is ground zero, and it is. I highly recommend that you adopt these provisions and give my grandchildren the opportunity to fish and swim.

Thank you.

Charles Rotgin, Jr.

My name is Chuck Rotgin. I'm a resident of Albemarle County a. I'm a principal of Great Eastern Management Company, a 35 year old plus real estate development, construction, management and finance firm. I'm a former board chair of our community hospital. I'm now the board member of a local community foundation, which makes significant grants to help facilitate affordable housing initiatives. I'm a board member of our local/private economic development partnership that seeks to replace and grow our region's revenue tax base and maintain and create career ladder jobs. I have also served on numerous city and county appointed committees over the years that have been charged

with finding ways to better our community by addressing issues from the water supply to protecting the rural areas and including stormwater management issues.

I have fought tooth and nail with a myriad of governmental officials over regulatory processes during these past 35 years, sometimes with a little bit of success. And I think it's quite unusual that tonight two very, very thoughtful members of our Albemarle County community, one an elected official and the other one head of the Community Development Department, and I are in agreement. As I indicated those individuals were quite thoughtful.

I might also say that you all with coats and ties up there, I have a coat and tie on today because I spend most of my days trying to convince bankers that we're still in business. And I want to look the part. This is a very difficult environment in which we ply our trade and regulatory issues become very important, really for our survival in some respects.

In short, I offer that little short background information in support of my "bona fides" to speak on the DCR's proposal to modify the existing stormwater regulations. I first want to acknowledge my personal as well as our corporate responsibility to participate in the efforts of all contributors (including costs) to help preserve the Chesapeake Bay. By all, I mean the development and construction industries, point source contributors, localities and the agricultural industry. And I commend the efforts of DCR to address this important issue, while, at the same time, expressing some degree of dismay with the current draft of the proposed regs.

Despite the comments offered at numerous technical advisory committee sessions and individual meetings with DCR officials, the Department has seemed to ignore those well intended overtures and has promulgated modifications that, in my opinion, at best, will have the unintended consequences of making implementation of local comprehensive plans' desired higher densities unattainable. Making affordable housing initiatives problematic. Creating very difficult barriers for new and renovated public infrastructure – including schools, libraries, fire and police and service facilities and the like.

As a result of costs and permitting challenges, the regulations jeopardize the Commonwealth's position as one of the most competitive states for business in the nation and thereby having a negative impact on the states ability to grow its tax base and create jobs.

And, most important, they will most assuredly not result in the benefits suggested. I think that there is virtually no daylight between the goals of the business and environmental communities as to what people desire for the Chesapeake Bay. The question is how best to achieve those.

For all of these reasons, I urge the Department to put adoption of these proposed modifications on hold and to continue engaging the broad based and growing coalition of

businesses, industries and localities who oppose the regulations in their current form. And that the resultant regulations reflect the important provision to “grandfather” those developments that have survived and secured local governmental approvals and have met the state standards for “vesting.”

Now, in concluding, I indicated I am from Charlottesville and you indicated that the studies, the reports, backing up these regulations were prepared by Virginia Tech. I have a little Wahoo blood running through me and I have some degree of suspect for what might come out of Blacksburg. So let me suggest that you add this to the public record as to what the costs of these regulations might be.

A copy of the document submitted by Mr. Rotgin is available from DCR.

Seth Kauffman

My name is Seth Kauffman. I live in Edinburg in Shenandoah County.

I just wanted to come tonight to support the adoption of these amendments to the stormwater regulations.

I'd like to reiterate a lot of things that were said tonight by Ms. Wofford, Ms. Watson and Mr. Bugus. I want to speak specifically to something that hasn't come up tonight and that's the issue of water quantity.

When that water runs off the impervious surfaces...and let me back up one second. The Chesapeake Bay program of the EPA documented that during the 1990s the impervious surfaces in the Chesapeake Bay watershed increased 40% while the population increased 8%.

That's a whole lot of concrete and a whole lot of asphalt and a whole lot of roofs for each percentage that the population has increased.

That water, once it has run off the hard surface and allowed in infiltrate back into the ground system is lost forever. It enters our creeks, our rivers, our streams and is gone. It leaves that county, that locality and isn't available for use by that county.

One of the worst things for a trout stream can be that hot dirty flush of water after an immediate storm event. The impact of that on our fisheries and our trout resources in the Shenandoah Valley can be really great and detrimental.

I think this needs to be a cooperative effort by all sectors. The agricultural sector, the developers, and the municipalities in their stormwater regulations they implement.

Another thing I would like to reiterate that was mentioned earlier is the karst terrain in the Valley. With the Clearinghouse of the BMPs that will be available with these regulations, I would recommend that these BMPs come with recommendations for those that are suitable for karst areas and those that are improper or not suitable for karst areas to make sure that the BMPs that are put in place are not going to affect the water quality of the groundwater in this karst area.

Again I'd just like to reiterate that I do support these regulations and urge the Board to adopt them.

Sara Hollberg

My name is Sara Hollberg; I'm representing the Valley Conservation Council which has the mission of promoting land use that sustains the farms for open space and cultural heritage in the Shenandoah Valley region. We have members throughout the eleven county region.

Stormwater management is complex, but it's a critical issue. We favor passage of the proposed regulations. We commend the state for an open and diligent process.

We also encourage you to apply the resources needed to fully develop and implement the supporting components, particularly outreach and education and continued research.

The Valley is known for its natural environment and that's what draws not only recreational visitors but also new residents and businesses. In 2006, the Great American Rivers named the Shenandoah River one of the most endangered rivers in the nation. It cited poorly managed new development as the predominant threat. Our own local waters are at stake, not just the Chesapeake Bay.

All sectors should do their fair share. New development is the only pollution sector that is worsening. So it is even more important to have a different strategy than in the past for this sector.

Farmers and point sources have been doing their part. The Valley has four of the top five farm counties in the state. Pollution is an issue, but a great deal of progress has been made. Farmers have been learning how to use Best Management Practices. We look to the development sector to learn new ways of operating as well.

Through our better models for development program we work with localities and developers to promote development that makes sense environmentally as well as economically.

We held the first workshop on low impact development in the Valley in 2006. And learning of the complexity and the difficulty and the expense involved we followed up

with a workshop on stormwater in 2007. So we do recognize how very complex this is. Our feeling, though, is that the least costly option in the long run is the one that will stop creating future impacts.

We can learn how to develop in a way that has less impact. It will be a steep learning curve, a shock at first that no one looks forward to. But if it's the right direction we hope that we go the sooner than better.

We have confidence in the flexibility of the private sector to make that switch and to continue building but in a different way. The point is not development or no development but how we develop. These regulations offer supporting materials options and different scales for different sites and we expect there to be improvements over time.

As for the proposal that it would be more cost effective for developers to pay into a fund rather than make site design changes, that is a dead end. It's getting harder and harder to make more reductions from agriculture. It's still only a cost share that the owners have to pay and do voluntarily.

More to the point is that if development continues eating up the landscape there would be fewer and fewer farmers over time to get those credits.

Finally we echo the concern of others. Make sure that the regulations do not encourage sprawl.

Thank you for your time and consideration.

Ms. Watlington: That completes the list of those individuals who signed up to speak. Are there other individuals who would wish to comment or leave written remarks?

Closing:

Ms. Watlington: 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.

Persons desiring to submit written comments pertaining to this notice and this meeting may do by mail, by the internet, or by facsimile. Comments should be sent to the Regulatory Coordinator at: Virginia Department of Conservation and Recreation, 203 Governor Street, Suite 302, Richmond, Virginia 23219. Comments also may be submitted electronically to the Regulatory TownHall. Or comments may be faxed to the Regulatory Coordinator at: (804) 786-6141. All written comments must include the name and address or email address of the commenter. In order to be considered, comments must be received by 5:00 PM on August 21, 2009.

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.

DCR Staff in attendance:

Christine Watlington
David Dowling
Ryan Brown
Michael Fletcher
Eric Capps
Larry Gavan
Kelly Vanover
Mark Chambers
Paul Demarsh

Members of the Public in attendance:

Chris Anderson, Page County Department of Environmental Services
Dennis Atwood, Shenandoah County
Tom Benzing
Richard Blackwell, Blackwell Engineering
Paul Bugus, Department of Game and Inland Fisheries
Ray Burkholder, Balzer & Associates
Ben Carter, Greater Augusta Regional Chamber of Commerce
Pat Coffield, Augusta County
Seth Coffman, Edinburg, Virginia
David Collins, L.S/P.E.
Gary Collins, Woods & Webers Magazine
Roger Eitelman, Charlestown, West Virginia
Emily Frances, Chesapeake Bay Foundation
Todd Flippen, Augusta County
Sara Hollberg, Valley Conservation Committee
Larry C. Howdyshen, Augusta County Board of Supervisors
Royce Hylton, Brynk & Hylton Engineering
John Gibson, Luray, Virginia
Mark Graham, Albemarle County
Don Huntley, Staunton, Virginia
Ann Jennings, Chesapeake Bay Foundation
Chris Jones, AHBA
Sarah Lawson, Charlottesville, Virginia
Margaret Lorenz, Friends of the North Fork of the Shenandoah River
Bruce Lundeen, Harrisonburg, Virginia

David Milstead, Dayton, Virginia
Judy Milstead, Dayton, Virginia
Bill Moore, Balzer & Associates
John Moore, Staunton, Virginia
Kip Mumaw, Balzer & Associates
Charles Newton, Stanley, Virginia
John Reno, PHR and A
Charles Rotgin, Jr. Great Eastern Management Company
Greg St. Ours, AHBA
J.M. Snell, Jr. VRI
Richard Stanford
Sally Thomas, Albemarle County
W. Lowrie Tucker, Warren County
Davis Walsh, Office of Senator Creigh Deeds
Leslie Watson, Friends of the North Fork of the Shenandoah River
Joe C. Wilder, Frederick County Public Works
Jay Willer, Blue Ridge Home Builders Association
Kate Wofford, Shenandoah Valley Network