

**Virginia Soil and Water Conservation Board  
Monday, October 05, 2009  
East Reading Room  
The Patrick Henry Building  
Richmond, Virginia**

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

Linda S. Campbell, Chair  
Darlene Dalbec  
Granville M. Maitland  
Jean R. Packard  
Raymond L. Simms

Susan Taylor Hansen, Vice Chair  
Gary Hornbaker  
Joseph H. Maroon, DCR Director  
Michael J. Russell

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

Jack A. Bricker, NRCS, Ex-Officio

**DCR Staff Present**

Russell W. Baxter  
Eric R. Capps  
David C. Dowling  
Douglas Fritz  
Larry Gavin  
Kim Hodges  
Ved Malhotra  
Christine S. Watlington  
Elizabeth Andrews, Office of the Attorney General

Ryan J. Brown  
Anne Crozier  
Michael R. Fletcher  
Jack E. Frye  
Lee Hill  
David Kearney  
John McCutcheon  
Gary R. Waugh

**Others Present**

Phil Abraham, VACRE  
David Anderson, Virginia Fountainhead Alliance  
Joe Battiatia, CWP  
R. Bradham, Greater Richmond Chamber  
Curt Bradley  
Barbara Brumbaugh, City of Chesapeake  
Claudia Cotton, TBA  
Tyler Craddock, Virginia Chamber of Commerce  
Joseph DuRant, City of Newport News  
Patrick Felling, Potomac Conservancy  
Chuck Fleming, City of Hampton  
Barbara J. Fried, Fried Companies  
B. Mark Fried, Fried Companies

Katie Frazier, Virginia Agribusiness Council  
Mike Gerel, Chesapeake Bay Foundation  
Larry Getzler, DPB  
Normand Goulet, NVRC  
Barrett Hardiman, Home Builders Association of Virginia  
Julia Hillegass, HRPDC  
Dave Hirschman, CWP  
Ann Jennings, Chesapeake Bay Foundation  
Donna Johnson, Virginia Agribusiness Council  
William J. Johnston, City of Virginia Beach  
Jeff Kelble, Shenandoah Riverkeeper  
Larry Land, VACO  
Joe Lerch, Virginia Municipal League  
David McGuigan, EPA  
Doug Moseley, GKY & Associates  
Roy Mills, VDOT  
Rick Parrish, Southern Environmental Law Center  
Jeff Perry, Henrico County  
David Phemister, The Nature Conservancy  
Chris Pomeroy, Virginia Municipal Stormwater Association  
Marirose Pruitt, Southern Environmental Law Center  
Scott Reed, CBNLT  
Khadija Abdur Rahman, Charlottesville  
Mike Rolband, WSSI  
David Slutzkey, Albemarle County  
Bob Steidel, City of Richmond  
Lee Stephens, Virginia Chamber Spotts Fain  
Heather Stevenson, McGuire Woods  
Bill Street, James River Association  
Jill Sunderland, City of Norfolk  
Shannon Varner, CBNLT  
Keith White, Henrico County  
Joe Wilder, Frederick County  
Kate Wofford, Shenandoah Valley Network

### **Call to Order**

Chairman Campbell called the meeting to order and asked for introductions. A quorum was declared present.

Chairman Campbell noted that the specific purpose for the meeting was the consideration of adoption of the recommended final amendments to the Stormwater Management Regulations.

*Chairman's Comments*

I would like to make a few comments at first and then we'll have staff give an overview.

Again I appreciate everyone's attendance this morning. We have a full room again. It's always good to see the public in attendance at our meetings and we look forward to hearing your further comments.

Today marks a significant milestone in the protection of the Chesapeake Bay and Virginia's rivers, lakes and streams. It also marks a significant milestone in the efforts to reduce the impacts many communities experience from severe channel erosion and downstream flooding from new development.

Although new construction is not the only source of polluted runoff in the Bay, it is currently the only growing source. At the same time, overall reductions are being made from agriculture and sewage treatment plants sources.

The adoption of these enhanced stormwater regulations will update 20 year old requirements utilizing new science and by employing techniques that will encourage the retention of water on site and its reuse, thus often reducing costs.

These final regulations also incorporate significant amendments made in response to key issues raised in the public comments received on the proposed regulations. The amendments include the addition of grandfathering provisions and additional offsite options including a state buy-down provision; more flexibility for localities to address sprawl and to handle inspections; and a recognition of the need of different standards for small sites and redevelopment areas. The amendments also include different water quality standards for Virginia's Southern rivers from that of the Bay Watershed, as the more stringent water quality standard was based on Chesapeake Bay modeling and science.

Finally, this has been a four-year process that's been a demonstration of what open government is all about. The open and inclusive process undertaken by the Board and the staff of the Virginia Department of Conservation and Recreation represents the best of state government.

With that, I'd like to move to staff to give us an overview of the final regulations that are being recommended to the Board for consideration for adoption.

### **Consideration of adoption of Parts I, II and III and Part XIII of the Virginia Stormwater Management Program Final Regulations**

#### *Staff Overview*

Mr. Dowling reviewed materials provided in member packets. Members were provided with an October 2, 2009 version of the regulations, and the fee forms incorporated by

reference. Members were also provided with an errata sheet to the September 30 version that had originally been released.

Mr. Dowling gave the following update.

### **Introductory remarks**

Today, the Department is bringing to the Board for consideration two final regulations amending the Board's Virginia Stormwater Management Program Permit Regulations. These include regulatory actions related to:

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

This is the next step in a process that began about 4 years ago and that has included significant opportunities for public and stakeholder involvement. As I mentioned at the last meeting, since the Board proposed the regulations in September of 2008, Department staff have attended well over 50 meetings with key stakeholder groups and individuals to gain additional insight into areas of concern and to discuss potential solutions. We also held five public hearings during the public comment period. Additionally, at your last Board meeting you received public comment on the draft key regulatory revisions under consideration. This process has been extremely open and responsive as we have worked hard to balance the necessary water quality improvements with potential economic concerns.

At your last meeting, we also provided you with an overview of the key issues raised in the over 3,400 public comments we received on the proposed regulations as well as copies of the comments received. You have also since been provided a table that outlines the comments and the Department's response to those comments.

Based on the comments and our conversations with a broad spectrum of stakeholders, we have prepared the final regulations that are before you today. The draft final language updates the proposed regulations that you approved in September of 2008. The changes from the proposed regulations are in brackets and highlighted in grey. I also want to bring to your attention that a few additional revisions, many grammatical in nature, were necessary to put the regulations in proper order and these edits have been highlighted in yellow in the version dated October 2, 2009 that is before you today.

### **Summary of Recommendations**

The regulations before you for consideration do represent a significant effort to work towards consensus on key issues and we suggest that the regulation provides a very responsive approach to addressing the wide variety of comments received. It will be our strong recommendation for the Board to adopt these final regulations.

We have worked hard and collectively accomplished a lot over the last year to develop these final regulations as well as to refine the BMP standards on the BMP Clearinghouse website, to develop a revised Stormwater Handbook, to update the Virginia Runoff Reduction Method Worksheets, and to conduct additional charrettes. Our efforts have resulted in a solid set of regulations that is supported by the best science available nationally.

As you may recall, I shared with you previously a letter from the Secretary of Natural Resources, L. Preston Bryant, Jr., to the technical advisory committee that emphasized the importance of this regulatory action. In that letter, Secretary Bryant said, "Let me emphasize a couple of goals.

- First, I believe it is critical that the final regulations address improvements to water quality and quantity criteria associated with construction activities.
- Second, the regulations must establish criteria by which a locality may be approved by the Board as a "qualifying local program" and be authorized to issue coverage under the construction general permit. Under such a scenario, jurisdictions that meet the criteria will then be able to provide "one-stop shopping" for project applicants, thereby allowing for significant streamlining of local erosion and sediment control and stormwater permitting processes."
- In closing, the Secretary stated that "[i]t is my hope that these stormwater regulation improvements will serve as the gold standard by which other states in the Chesapeake Bay watershed are measured. I can think of no better thing to have said about the work you are undertaking."

It is my opinion that the final regulations that we are recommending to the Board do meet the goals set out by Secretary Bryant.

However, no matter how much we firmly believe we have a quality regulation before you, we also recognize that to get to where we are today, we have had to make some substantial changes to the regulations from those proposed. In acknowledgement of that situation, we are also recommending to the Board today that following adoption of the final regulations for Parts I, II, and III and the adoption of the Part XIII language, that the Board suspend the regulatory process associated with these actions in accordance with the Administrative Process Act [§2.2-4015 (A)(4)] in order to allow for a 30-day public comment period on the changes made to the regulation between proposed and final stages. The 30-day public comment period shall commence upon publication of the Notice of Suspension of Effective Date and Extension of Public Comment Period in the Virginia Register. The suspension shall remain in place until the Board takes further action on these regulations at a subsequent meeting. Procedurally, following the close of this recommended public comment period, the Department will provide the Board with a summary of comments received and recommendations for the Board's consideration. The Board would consider readopting the final regulation at that time.

Specific motions to this affect are provided at the end of this document.

**Attorney General's Office**

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

### **Final Regulation Discussion**

Next, I would like to provide the Board with an overview of the regulations beginning with Part II. The outline presented below follows the regulatory outline provided to you in September of 2008 except that it has been updated to reflect the final regulations. In doing such, items in grey represent areas where changes have been made between the proposed and final regulations. These will be the areas that I will be primarily focusing on, recognizing that most of these are also the areas that were covered in detail at last month's meeting.

Key provisions of this regulatory action include the following:

(NOTE: Line numbers reflect those in the October 2, 2009 Regulation Version)

**Part II A and Part II B [4VAC50-60-40 through 4VAC50-60-99] [Lines 867 – 1757]**

- 1) In the final regulations, a new section numbered **4VAC50-60-48** and entitled **Grandfathering [Line 903]** is added. In order to accommodate the grandfathering provision, the proposed Part II was split into a Part II A and a Part II B. Part II A [**Lines 867 – 1602**] contains the new water quality and quantity technical criteria and Part II B [**Lines 1604 – 1757**] contains today's current standards that grandfathered projects will be subject to in accordance with the following:
  - Subsection A specifies that if a project receives general permit coverage prior to adoption of a local stormwater management program within the jurisdiction within which the project is located, the project shall remain subject to the Part II B criteria until June 30, 2014. This reiterates the process already embodied in the Construction General Permit.
  - Subsection B specifies that if the operator of a project has by July 1, 2010 met the three listed local vesting criteria related to significant affirmative governmental acts and has received general permit coverage also by July 1, 2010, then the project is grandfathered until June 30, 2014. If permit coverage is maintained by the operator, then the project will remain grandfathered until June 30, 2019.
  - Additionally, in the event that the affirmative governmental act or the general permit coverage is modified during the grandfathering period and the amendments do not result in any increase in the amount of phosphorus leaving the site through stormwater runoff or any increase in the volume or rate of runoff, the project may remain grandfathered.
  - Past June 30, 2019 or if the project's general permit coverage is not maintained, portions of the project not yet completed shall become subject to the new technical criteria set out in Part II A.
  - Subsection C specifies that a project that is part of a common plan of development or sale and that has obtained general permit coverage by July 1, 2010 shall remain grandfathered and subject to the Part II B criteria.
- 2) Section **4VAC50-60-63** entitled **Water Quality Design Criteria Requirements [Line 1058]** specifies that in order to protect the quality of state waters and to control stormwater pollutants, a local program shall apply the minimum technical criteria and statewide standards set out in this section for stormwater management associated with land disturbing activities unless such project is grandfathered as discussed above.

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

- Sites between 0 and 15% imperviousness for new development, all stormwater runoff goes virtually untreated.
  - New development above the 16% imperviousness threshold requires a post development pollutant load that is approximately 0.45 lbs/acre/year phosphorus.
  - A 10% reduction in the pre-development load is required on redevelopment sites.
- The water quality technical criteria for construction activity in the proposed regulations prior to the final changes outlined below were as follows:
    - For new development, a statewide 0.28 lbs/acre/year phosphorus standard was established.
    - On prior developed lands, total phosphorus loads were required to be reduced to an amount at least 20% below the pre-development phosphorus load.

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

- For new development, a 0.45 lbs/acre/year phosphorus standard is established except if the project disturbs greater than or equal to 1 acre in the Chesapeake Bay Watershed, for which the technical standard shall be 0.28 lbs/acre/year phosphorus (unless the project is within a Urban Development Area).
- If the project is within a UDA, authority is given to the qualifying local program to establish a standard between 0.28 and 0.45 lbs/acre/year phosphorus in order to encourage compact development that achieves superior water quality benefits.
  - In this situation, the qualifying local program is required to provide to the Board for approval a justification for any standards established greater than 0.28. Factors are provided upon which the standard may be based.
- On prior developed lands the following technical criteria apply:
  - Where land disturbance is greater than or equal to 1 acre, total phosphorus loads shall be reduced to an amount at least 20% below the pre-development phosphorus load.
  - Where land disturbance is less than 1 acre, total phosphorus loads shall be reduced to an amount at least 10% below the pre-development phosphorus load.
  - The total phosphorus load shall not be required to be reduced to below the applicable standard for new development unless a more stringent standard has been established by a qualifying local program.
- As was the case in the proposed regulations, the following continue to apply in the final regulations:
  - If a wasteload allocation for a pollutant has been established in a TMDL and is assigned to stormwater discharges from a construction activity, control measures must be implemented to meet the WLA.



- A qualifying local program may establish more stringent standards.

3) **Water Quality Compliance** set out in **4VAC50-60-65 [Line 1116]** specifies the following:

- Compliance with the water quality criteria shall be determined utilizing the Virginia Runoff Reduction Method. (The Method and associated spreadsheets were refined between proposed and final regulations.)
- BMPs listed in the BMP Pollutant Removal Efficiency table (Table 1) of Part II shall be utilized to reduce the phosphorus load. (The table was updated between proposed and final.) The practice names and several of the efficiencies have been updated in the table in the final regulations. Design specifications for the BMPs listed in the table can be found on the Virginia Stormwater BMP Clearinghouse website. Other approved BMPs available on this website may also be utilized to achieve compliance.
- A locality may establish use limitations on specific BMPs (such as wet ponds or certain infiltration practices).
- Offsite alternatives where allowed (as specified in a new section numbered 4VAC50-60-69) may be utilized to meet the technical standards. (Offsite options set out in 4VAC50-60-65 in the proposed regulations were moved to the new section in the final regulations and refined.)

- 4) A new section numbered **4VAC50-60-69** entitled **Offsite Compliance Options [Line 1329]** is added to the final regulations. The section is outlined as follows:
- Subsection A specifies that a qualifying local program shall have authority to consider the use of 4 specified offsite compliance options.
    - **COMPREHENSIVE PLAN:** Specifies that if a local comprehensive watershed stormwater management plan has been adopted for the local watershed within which a project is located, then the development may be able to use offsite options to achieve all or part of the water quality and quantity technical criteria. In the final regulations additional details on this option are set out in Section 4VAC50-60-92 (section 4VAC50-60-96 in the proposed version.)
    - **LOCAL PRO-RATA:** Specifies that a locality may use a pro rata fee in accordance with § 15.2-2243 or similar funding mechanism to achieve offsite the water quality and quantity reductions required. Participants will pay a locally established fee sufficient to fund improvements necessary to adequately achieve those requirements.
    - **NUTRIENT OFFSET:** Incorporates the new offset option passed by the 2009 General Assembly (HB2168) for water quality and is to be applied in accordance with the stipulations set out in the Code of Virginia (§10.1-603.8:1).
    - **DEVELOPER SITE:** The option was modified to specify that water quality controls must be located within the same HUC or within the upstream HUCs in the local watershed that the land disturbing activity directly discharges to. The option may be utilized where no comprehensive watershed stormwater management plan or pro-rata fee exists, or where a qualifying local program elects to allow this option.
  - Subsection B specifies a new STATE BUY DOWN option that may be utilized where 1) the 4 options outlined above are not available; 2) the fee established by a qualifying local program to offset a pound of phosphorus removal on site exceeds \$23,900; or, 3) a qualifying local program elects to allow its use. The section further specifies the following:
    - The payment shall be \$15,000 per pound of phosphorus not treated on site in a UDA and \$23,900 per pound in all other cases.
    - Payments will be deposited to the Virginia Stormwater Management Fund.
    - The Board shall establish priorities for the use of these payments by December 1 of each year (a list of priorities are provided for the Board to consider).
    - At least 50% of the payments shall be utilized for projects to address local urban stormwater quality issues.
    - The remaining payments shall be utilized to acquire certified nonpoint nutrient offsets where they exist and then any remaining funds may be utilized to establish contracts for long-term agricultural best management practices.
    - The Department shall track the monies received and expended and the reductions needed and achieved.

- The Department may annually utilize up to 6% of the payments to administer the stormwater management program.
  - The Board shall periodically review the payment amount, at least every five years or in conjunction with the development of a new construction general permit and shall evaluate the performance of the fund and the sufficiency of the payment rate in achieving the needed off-site pollution reductions. The Board shall adjust the payment amount based upon this analysis.
  - Use of the STATE BUY DOWN option is in accordance with the following limitations:
    - A new development project disturbing greater than or equal to 1 acre in the Chesapeake Bay Watershed must reduce its phosphorus discharge to a level of 0.45 pounds per acre per year of phosphorus on site, or less, and then may achieve all or a portion of the remaining required phosphorus reductions through a payment.
    - A new development project disturbing less than 1 acre in the Chesapeake Bay Watershed may achieve all necessary phosphorus reductions through a payment.
    - Development on prior developed lands disturbing greater than or equal to 1 acre must achieve at least a 10% reduction from the predevelopment total phosphorus load on site and then may achieve the remaining required phosphorus reductions through a payment.
    - Development on prior developed lands disturbing less than 1 acre may achieve all necessary phosphorus reductions through a payment.
  - Subsection C stipulates that where the Department is administering a local program, only the DEVELOPER SITE, NUTRIENT OFFSET, and STATE BUY-DOWN offsite options shall be available.
- 5) Section **4VAC50-60-66** entitled **Water Quantity [Line 1171]** specifies minimum standards to address channel protection and flood protection.
- Channel protection shall be achieved through one of the following:
    - Stormwater released into a man-made conveyance system from the 2-year 24-hour storm shall be done without causing erosion of the system.
    - Stormwater released into a restored stormwater conveyance system, in combination with other existing stormwater runoff, shall not exceed the design of the restored system nor result in instability of the system.
    - Stormwater released to a stable natural stormwater conveyance shall not cause the system to become unstable from the one-year 24-hour storm discharge and it shall provide a peak flow rate from the one-year 24-hour storm that is less than or equal to the pre-development peak flow rate as ascertained by the energy balance equation. [Keep a stable stream stable.]

- Stormwater released to an unstable natural stormwater conveyance shall provide a peak flow rate from the one-year 24-hour storm that is less than or equal to the good pasture peak flow rate as ascertained by the energy balance equation, unless the pre-developed condition is forested, in which case, both the peak flow rate and the volume of runoff from the developed site shall be held to the forested condition. (In the proposed regulation the specified standard was the forested condition instead of the good pasture condition that is now included in the final regulations.)
- In the final regulations, exceptions to the unstable natural stormwater conveyance situation were added for land disturbing activity less than 5 acres on prior developed lands or a regulated land disturbing activity less than 1 acre for new development. In these situations, the sites are only expected to improve upon the pre-developed runoff condition.
- Flood protection shall be achieved through one of the following:
  - The post-development peak flow rate from the 10-year 24-hour storm is confined within a man-made conveyance system.
  - The post-development peak flow rate from the 10-year 24-hour storm is confined within a restored stormwater conveyance system.
  - The post-development peak flow rate from the 10-year 24-hour storm is confined within a natural stormwater conveyance that currently does not flood.
  - The post-development peak flow rate from the 10-year 24-hour storm shall not exceed the pre-development peak flow rate from the 10-year 24-hour storm based on good pasture conditions in a natural stormwater conveyance where localized flooding exists, unless the pre-developed condition is forested, in which case the peak flow rate from the developed site shall be held to the forested condition. (In the proposed regulation the standard was the forested condition instead of good pasture condition that is now included in the final regulations.)
  - In the final regulations, exceptions to the criteria for natural stormwater conveyance systems where localized flooding exists were also added for land disturbing activity less than 5 acres on prior developed lands or a regulated land disturbing activity less than 1 acre for new development. In these situations, the postdevelopment peak flow rate for the 10-year 24-hour storm must be less than the predevelopment peak flow rate from the 10-year 24-hour storm.
  - As was the case with water quality, a qualifying local program may establish more stringent water quantity standards.
- If either of the following conditions are met, the channel protection and flood protection criteria do not apply:
  - The site's contributing drainage area is less than or equal to one percent of the total watershed area draining to the point of discharge.
  - The development of the site results in an increase in the peak flow rate from the one-year 24-hour storm that is less than one percent of the

existing peak flow rate from the one-year 24-hour storm generated by the total watershed area draining to the point of discharge.

**An additional correction that needs to be made is on line 1269 of Part II; the citation “(B)(4)” should be changed to “(C)(4)”.**

**An additional correction that needs to be made is on line 1313 of Part II; the citation “B 4 and C 4” should be changed to “B 4 and 5 and C 4 and 5”.**

- 6) Section **4VAC50-60-122** entitled **Qualifying Local Program Exceptions** in Part III A [**Line 2112**] specifies that a local program may also grant exceptions to the water quality and quantity provisions of Part II A and Part II B in accordance with the following:
- The exception is the minimum necessary to afford relief.
  - Reasonable and appropriate conditions are imposed to preserve the intent of the Act.
  - Granting will not confer on the permittee any special privileges denied to others under similar circumstances.
  - The exception requests are not based upon conditions or circumstances that are self-imposed or self created.
  - Economic hardship alone is not sufficient reason to grant an exception.
  - In the final regulations, additional language was added to tighten up the provision and specify that any exception to the water quality technical criteria of 4VAC50-60-63 subdivisions 1 and 2 shall require that all available offsite options be utilized before an exception is granted and that any necessary phosphorus reductions unable to be achieved on site, or through the available offsite options of subsection A of 4VAC50-60-69, be achieved through a payment made in accordance with subsection B of 4VAC50-60-69. In the case of the granting of an exception, the minimum on site thresholds of subsection B of 4VAC50-60-69 shall not apply.

**Part III A - D [4VAC50-60-102 through 4VAC50-60-159] [Lines 1765 – 2480]**

- 7) Section **4VAC50-60-106** entitled **Qualifying Local Program Administrative Requirements** [**Line 1791**] specifies the minimum criteria and ordinance requirements (where applicable) which include but are not limited to administration, plan review, issuance of coverage under the General Virginia Stormwater Management Program (VSMP) Permit for Discharges of Stormwater from Construction Activities, inspection, enforcement, reporting, and record keeping, for a Board-authorized qualifying local program (**Part III A**) or for a Board-authorized department-administered local stormwater management program (**Part III B**).

A local program shall provide for the following:

- a) Identification of the authority(ies) issuing permit coverage, reviewing plans, approving plans, conducting inspections, and carrying-out enforcement.
  - b) Any technical criteria differing from those set out in the regulations.
  - c) Plan submission and approval procedures.
  - d) Project inspection and monitoring processes.
  - e) Enforcement
  - f) Procedures for long-term inspection and maintenance of stormwater management facilities. (The order of e and f was switched in the final regulations.)
- An ordinance that incorporates the components (a - e) outlined above is required.
  - A local program shall report specified information to the Department.
  - A local program may require performance bonds or other financial surety.
- 8) Section **4VAC50-60-108** entitled **Qualifying Local Program Stormwater Management Plan Review [Line 1817]** specifies that a local program shall require stormwater management plans be that include the following elements:
- Location of points of discharge, receiving waters, pre and post-development conditions.
  - Contact information.
  - Project narrative.
  - Location and design of stormwater management facilities.
  - Hydrologic characteristics and structural properties of the soils utilized during facility installation.
  - Hydrologic and hydraulic computations of the pre and post-development runoff conditions for the required design storms.
  - Calculations verifying compliance with the water quality and quantity requirements.
  - A site map that includes the specified elements.
  - Plans shall be appropriately signed and sealed by a professional.
  - Plan approval is required prior to commencement of land disturbing activities.
  - The final regulations move the language in section 4VAC50-60-93 related to plan requirements in the proposed regulations into this section and strike the former section.

This section also establishes timelines for establishing plan and application completeness, for plan review and approval, and for plan modifications. It also establishes applicant notification requirements. [Line 1882]

- 9) Section **4VAC50-60-112** entitled **Qualifying Local Program Authorization of Coverage Under the VSMP General Permit for Discharges of Stormwater from Construction Activities [Line 1953]** establishes that coverage under the construction general permit shall be authorized in accordance with the following:
- The applicant must have an approved stormwater management plan.

- The applicant must have submitted proposed right-of-entry agreements or easements granted from the owner to the local program for the purposes of inspection and maintenance of stormwater management facilities as well as maintenance agreements, including inspection schedules, where required for such facilities.
  - An approved general permit registration statement.
  - The required fee form and total fee.
- 10) Sections **4VAC50-60-114** entitled **Inspections [Line 1983]** and **4VAC50-60-124** entitled **Qualifying Local Program Stormwater Management Facility Maintenance [ Line 2137]** collectively specify that inspections shall be conducted as follows:
- The local program or its designee shall inspect the land disturbing activity during construction.
  - At the termination of the project and prior to any bond or surety release of the performance bond or surety (if required), construction record drawings for the permanent stormwater facilities shall be submitted to the local program.
  - The owner of the stormwater management facilities shall conduct inspections in accordance with the inspection schedule in the recorded maintenance agreement and shall submit the inspection report to the local program.
  - The local program shall develop a Board approved inspection schedule.
  - In the final regulations language was added that specified that stormwater management facilities designed to treat stormwater runoff solely from an individual lot, at the qualifying programs discretion, are not subject to the locality inspection requirements (once every five years), homeowner inspections, maintenance agreement requirements, or construction record drawing requirements.
- 11) Section **4VAC50-60-116** entitled **Qualifying Local Program Enforcement [Line 2035]** outlines enforcement procedures and establishes a Schedule of Civil Penalties as guidance for a court as required by law.
- 12) Section **4VAC50-60-126** entitled **Qualifying Local Program Report and Recordkeeping [Line 2170]** specifies that information shall be reported by the local program to the Department on a fiscal year basis by October 1<sup>st</sup> annually as follows:
- Information regarding permanent stormwater facilities completed during the fiscal year.
  - Number of permitted projects inspected by acreage categories.
  - Number and type of enforcement actions taken.
  - Number of exceptions granted or denied.
- 13) Establishes in **Part III D [Lines 2422 – 2480]** the procedures the Board will utilize in authorizing a locality to administer a qualifying local program. The application package shall include the following:

- The local program ordinance(s);
- A funding and staffing plan based on the projected permitting fees;
- The policies and procedures, including but not limited to, agreements with Soil and Water Conservation Districts, adjacent localities, or other entities, for the administration, plan review, permit issuance, inspection and enforcement components of the program.
- The department shall operate a program in any locality in which a qualifying local program has not been adopted in accordance with a Board-approved schedule.

14) Establishes in **Part III C [Lines 2379 – 2421]** the criteria the Department will utilize in reviewing a locality's administration of a qualifying local program. The review shall consist of the following:

- An interview between department staff and the qualifying local program administrator or his designee;
- A review of the local ordinance(s) and other applicable documents;
- A review of a subset of the plans approved by the qualifying local program and consistency of application including exceptions granted;
- An accounting of the receipt and of the expenditure of fees received;
- An inspection of regulated activities; and
- A review of enforcement actions and an accounting of amounts recovered through enforcement actions.

**Part I [4VAC50-60-10 through 4VAC50-60-30] [Lines 7 – 292]**

15) Makes changes to definitions in **Part I** as follows [**Lines 4 – 813**]:

- Deletes unnecessary definitions;
- Establishes abbreviations for commonly used terms;
- Updates definitions such as “adequate channel”, “channel”, “development”, “drainage area”, “flood fringe”, “floodplain”, “floodway”, “impervious cover”, “local stormwater management program”, “permit-issuing authority”, “pre-development”, “site”, and “watershed”; and
- Adds needed definitions such as “comprehensive stormwater management plan”, “karst features”, “man-made stormwater conveyance system”, “natural channel design concepts”, “natural stormwater conveyance system”, “natural stream”, “point of discharge”, “pollutant discharge”, “prior developed lands”, “qualifying local program”, “restored stormwater conveyance system”, “runoff characteristics”, “runoff volume”, “site hydrology”, “stable”, “stormwater conveyance system”, “stormwater management standards”, “unstable”, “Virginia Stormwater Management Handbook”, and “Stormwater management standards”.
- In the final regulations, additional refinements were made to the definitions “adequate channel”, “comprehensive stormwater management plan”, “development”, “drainage area”, “flood fringe”, “linear development project”,



natural stream”, point of discharge”, “pollutant discharge”, “predevelopment”, and “runoff characteristics”.

- In the final regulations, definitions were added for “Chesapeake Bay Watershed”, “karst area”, and “urban development area”.

#### **DOCUMENTS INCORPORATED BY REFERENCE [Lines 2481 -2503]**

- 16) In the final regulations, the Documents Incorporated by Reference section [Line 2481] has been updated to include new dates and to include the Virginia Runoff Reduction Method Worksheet associated with Redevelopment.

#### **Part XIII [4VAC50-60-700 through 4VAC50-60-840] [Lines 6 – 866]**

- 17) Establishes in **Part XIII** a statewide fee schedule for stormwater management projects and notes that this part establishes the fee assessment and the collection and distribution systems for those fees.
- Permit fees were established at a level to allow a local program to cover stormwater program costs associated with plan review, permit review and issuance, inspections, enforcement, program administration and oversight, and travel. Fees also include costs associated with Department oversight functions and database management.
  - A qualifying local program with approval of the Board is authorized to establish a lower fee provided that they can demonstrate their ability to fully and successfully implement a program. This reduction cannot affect the Department’s portion of the fee. In the final regulations, additional authority is added to allow a qualifying local program to establish greater fees if they demonstrate to the Board that greater fees are necessary to properly administer a program. The Department’s share of the base fees does not increase.
  - 50% of the fees are due upon application and the remaining 50% at issuance of coverage. In the final regulations authority is given to the locality to determine the percentages, provided that no more than 50% of the base fee is required upon application.
  - The fees are split 72% to the local program and 28% to the Department. The 72% represents the full estimated costs (100%) associated with local program administration related to plan review, permit issuance, and project oversight and enforcement.
  - The fees shall be periodically assessed and revised as necessary through regulatory actions.
  - Permit fees are established for:
    - Municipal Separate Storm Sewer Systems new coverage (Individual and General Permit)
    - Municipal Separate Storm Sewer Systems major modifications (Individual)
    - Construction activity coverage (Individual and General Permit) (based on project acreage)

- Construction activity modifications or transfers (Individual and General Permit) [For those permits that require significant additional administrative expenses such as additional plan reviews, etc.]
- MS4 and Construction activity annual permit maintenance fees (Individual and General Permit) [For those projects that have not been completed and terminated within a year, allows for recovery in the out years of expenses associated with inspection, enforcement, etc.] In the final regulations, the permit maintenance fee for MS4's with general permit coverage has been reduced from \$4,000 to \$3,000 dollars.
- In the final regulations, the provision for an annual increase in fees based on the CPI-U is removed from the final regulations.
- In the final regulations, an updated Fee Form dated October 2009 is also incorporated by reference (and is included in your Board packet).

**An additional correction that needs to be made is on lines 36 – 38 of Part XIII; the last sentence needs to be stricken “The department may make such periodic adjustments in addition to the annual fee increases authorized by 4VAC50-60-840.” As noted above, this section has been removed in the final regulation.**

### Closing Remarks

With that overview of the Parts I, II, and III and the Part XIII regulatory actions based on the October 2<sup>nd</sup> version of the regulations provided in your Board packets and the three additional edits that I just mentioned, I would close by re-emphasizing that the Department has worked hard to prepare these recommended final regulations and has been responsive to the public comments we have received and again recommend that the Board adopt the regulations before you. These final regulations reflect the best methodologies available to achieve the requirements placed upon the Board by law and represent a reasonable balance between necessary water quality improvements and potential economic concerns raised regarding the proposed regulations.

With that, I will turn it back to you Madame Chairman for remarks from the EPA, for public comment, and for discussion and consideration of the adoption motions for Parts I, II, and III and a separate one for Part XIII and subsequently the corresponding suspension and public comment motions that are included on the last several pages of this document. (A total of 4 motions for the Board's consideration.)

### *Board Questions and Discussion*

Chairman Campbell called for Board member questions. There were none at this time.

Chairman Campbell called on Mr. David McGuigan from the EPA for a presentation.

*David McGuigan, EPA*

Mr. McGuigan gave the following remarks.

I am David McGuigan, head of NPDES Permits and Enforcement for EPA Region III. I appreciate the opportunity to provide comment to the Board on behalf of EPA. As you may know, EPA has submitted comments to the Virginia Joint Commission of Administrative Rules on September 16. At that time we noted several deficiencies which need to be addressed in order to use these regulations to meet CWA water quality requirements. We note that the Virginia Department of Conservation and Recreation has proposed modifications that address some of our concerns. It is EPA's opinion that the proposed regulation can meet federal water quality requirements with some additional limited modifications.

These regulations are an important milestone for Virginia in its attempt to address local and tributary water quality issues, and while advancing environmental concerns, it is also sensitive to smart development. These regulations, with the necessary modifications, will facilitate future development, while at the same time ensuring that the public is spared from future expensive urban retrofits.

### **Clean Water Act**

EPA is charged with administering the National Pollutant Discharge Elimination System Permit Program of Clean Water Act (NPDES). Discharges of pollutants into waters of the United States are prohibited except in compliance with specified sections of the CWA. The principal way for such a discharge to satisfy the CWA is for the discharger to obtain an NPDES permit. It is the permitting agency's responsibility to include limitations in the permit that ensures that the discharges will not cause or contribute to a violation of any water quality standard.

EPA has authorized the Commonwealth of Virginia to administer the NPDES program. Though Virginia is authorized, EPA maintains independent authorities and oversight responsibilities. In its oversight capacity, EPA may review the state's proposed permits to ensure that they conform to federal requirements. If EPA finds that a state's proposed permit does not comply with applicable requirements, then EPA may object to the issuance of such permit. If the state does not resolve the objection in a timely manner, then exclusive authority to issue the permit passes to EPA.

Similarly, EPA reviews state statutes and regulations prior to approving a state NPDES program and as a result of a state NPDES program modification.

### **Proposed Storm Water Regulations and their Relationship to the NPDES Program**

EPA regulates municipal stormwater discharges through the permit programs for Stormwater Construction and the Municipal Separate Storm Sewer Systems (MS4). These two permitting programs have specific requirements regarding the utilization of post construction Best Management Practices (BMPs). The required BMPs must be sufficiently stringent that the discharge will not cause or contribute to receiving water or

down stream water impairment. This is particularly true for impaired waters. If the proposed BMPs are inadequate, then a permit cannot be issued.

The Virginia NPDES Construction and MS4 permits require the permittee to meet the requirements of the Virginia Stormwater Regulations. These regulations are the operative requirements of these permit programs, and as such, EPA has a responsibility to review these regulations to ensure that they are protective of water quality. If these regulations are not protective of water quality, the Commonwealth cannot rely upon them to meet federal water quality requirements in NPDES permits. This would require the Commonwealth to develop site specific permits which is a time and resource consuming endeavor.

**Specific Comments Regarding Virginia's Proposed Storm Water Regulations** EPA would like to offer the following comments:

- **4VAC50-60-63 1(a) Water Quality Criteria:** The performance standard of 0.28 lbs/acre of phosphorus was developed by Virginia by estimating what would be the maximum load allowable from development in order to meet the Chesapeake Bay Tributary Strategy goals after all required BMPs have been employed. Any amounts greater than this without offsets would not permit attainment of water quality goals.
- **4VAC50-60-63 1(b) Water Quality Criteria Requirements.** EPA supports the goals of Urban Development Areas. Nonetheless, EPA is concerned that by allowing Local Qualifying Programs to establish relaxed phosphorus limits in the Bay Watershed, it will preclude the attainment of water quality goals. EPA believes that it is critical that the Local Qualifying Program demonstrate to the Board that the proposed limit is consistent with local and tributary water quality requirements when considering the jurisdiction as a whole. Any relaxation in Urban Areas must be compensated with either more stringent limits in other areas of the Local Qualifying Program or through the use of offsite controls or allowances.
- **4VAC50-60-65 F and G Utilization of offsite controls.** Where not feasible, EPA supports the use of off-site controls to meet post-development pollutant loads, provided that the use of off-site controls does not lead to the impairment of local water quality. However, credits for offsite controls can only be generated after the installation of required baseline BMPs necessary to meet water quality objectives.
- **4VAC50-60-48. Grandfathering.** It is EPA's view that projects that are currently operating under existing approved permits should be grandfathered. Upon reissuance, protective water quality requirements will have to be incorporated and the permittee will be required to meet them. Maryland has recently revised its stormwater regulations. Their regulations provide in essence a two year grandfathering period.

## **Conclusion**

The proposed regulations incorporating the comments above will provide certainty and cost savings to the municipalities, permitting agencies, and the development community.

In the event that these regulations are weakened or do not adequately address EPA's stated concerns, these regulations may not be relied upon to meet the water quality requirements for the Construction and MS4 permits. As such, the Commonwealth may be required to develop and issue site specific permits that would be subject to EPA review and approval. This could result in significant delay and expense to the permittee and the permitting authority.

Furthermore, regulations that do not adequately address water quality issues of today are merely creating a much more expensive problem for tomorrow. If similarly protective regulations had been in place previously, municipalities of the Mid-Atlantic States would not be faced with billions of dollars of expensive urban retrofits to meet water quality requirements.

EPA appreciates the opportunity to formally review Virginia's Stormwater Regulations when the Board approves them.

Chairman Campbell thanked Mr. McGuigan for his comments and asked if Board members had questions.

Ms. Packard asked if Mr. McGuigan had seen the latest changes from DCR and if his comments were based on that version.

Mr. McGuigan said that he had seen the changes prior to developing the comments.

### *Public Comment*

Chairman Campbell opened the floor for public comment. She said that each speaker would have three minutes and that the remarks would be timed.

The following individuals gave comments:

#### *David Slutzkey*

Thank you and good morning. First of all I want to thank the DCR folks and in particular Director Maroon for an extraordinary process. It's rare in my experience in dealing with government that regulators have so meaningfully engaged the stakeholder community to try and find a consensus solution that appeases everybody's relevant concerns. I think that this entire process has been a remarkable positive reflection on this Board and on the Commonwealth of Virginia.

I came before you a little while ago with some objections to the earlier proposed regulations and I wrote a fairly assertive comment which I submitted during the normal comment period, where I basically pointed out that we've got a challenge here, of promoting sprawl and stale zoning unintentionally through our efforts to try and protect the Bay.

I think that there has been an extraordinary amount of work done to address those concerns and I'm pleased to tell you that today, having read the most recent version and the errata that has been presented today, I am enthusiastically supporting the regulations in their current form. I think you have done a remarkable job of achieving balance between these legitimate concerns and competing objectives. And I don't think there will be stale zoning and I don't think there will be sprawl directly attributable to these regulations.

My final comment is just to share with you that I've had discussions over the last few months with numerous folks, both in the environmental community and in the developer community. And each has had very important and thoughtful issues of concern that they have expressed to me and obviously to others. And I'm pleased that you will today hear from folks representing both the environmental community and the developer community that are going to be in support of this current iteration of the regulations.

It's a rare accomplishment that a regulatory body can reach that kind of consensus under such difficult circumstances. But I think this has been a well done job and I think the outcome is where we should be.

My hope is if everyone is okay with the regulations that the General Assembly will choose to leave them alone and let them have an opportunity to operate. But we'll find that out next General Assembly session. But my belief is that we've done the best we can to try and bring disparate perspectives together around one outcome. And I think you've found that sweet spot.

Joe Maroon, particularly, you're to be commended but this Board if you do adopt these in their current form I think you will have done the Commonwealth a great service.

Thank you.

*Barbara J. Fried*

Good morning, I'm Barbara Fried from the Fried Companies. And our company, as Jean Packard may remember has been actively engaged with others in the development community in assessing the efficacy and impact of the proposed regulations. Our experience with best management practices as a developer of shopping centers, residential communities, and office parks covers some 40 years in Northern Virginia and now central Virginia.

All Virginians depend on the Chesapeake Bay. All of us eat. So we're ultimately farmers. All of us, who live in houses, travel on roads, attend schools, shop, and go to hospitals-are ultimately the beneficiaries of development. So, understand the reaction of the development community to the initial regulations, which imposed the entire burden of meeting the mandated nutrient reduction by 2030 on the development community with not much regard for the economic impact on developers and localities.

And remember, both the EPA and the Chesapeake Bay Foundation in its December 2004 report pinpoint point source and agricultural practices as the main source of pollutants, with the CBF emphasizing that development restrictions were the least cost-effective way of decreasing pollution. We should not blame farmers or impose expenses that they cannot afford. The development community has suggested better utilization of offsite credits to effectively pay for mitigation without cost to farmers.

Add to what we discussed what the engineers consider, at least the development community engineers consider, suspect science and the supposed results and the cost of compliance and the result was absolute opposition to the proposed regulations.

I cannot tell you standing here today that there is acceptance of the accuracy of DCR's projected results. We shall see in 2030. Nor can I tell you that there is agreement on many of the technical issues; quantity in particular. I can tell you that we, and others, can support the proposed regulations as promulgated in the September 30, 2009, and now October 2, 2009 version provided the precise language of 4VAC50-60-48 Grandfathering is retained. That language restores fairness and certainty.

I want to thank you. I know it's been a difficult and complex project and if we're all dissatisfied a little maybe that shows its right.

I would ask your indulgence to read into the record from another developer, Charles Rotgin, from Great Eastern Management Company in support of the regulations.

Chairman Campbell said the letter could be accepted as a second comment.

On behalf of Great Eastern\_ Management Company, I want to express our appreciation for the time and effort you and your staff have devoted to considering the myriad of comments received on the proposed DCR modifications to the statewide stormwater regulations. More specifically, your willingness to engage with David Slutzkey, Chairman of the Albemarle County Board of Supervisors and a thoughtful environmentalist with broad perspectives, as well as with others, has, we believe, resulted in significant improvements to the proposed modifications.

Based on our review of sections with applicability to grandfathering, off-site credits and water quantity and subject to a change to line 1363 clarifying that the \$23,900 refers to areas outside of Urban Development Areas and that \$15,000 will be applicable within such areas, Great Eastern is pleased to support and

recommend that the Stormwater Management Regulations (Final) Version: September 30, 2009 be adopted by the Soil and Water Conservation Board.

We continue to have some concerns about the "science" behind the proposed modifications and to their ultimate efficacy in relation to their potential compliance costs. These costs could impact the competitiveness of the Commonwealth in a very challenging market for new business investment, adversely affect desired redevelopment activities in Urban Development Areas and make Local comprehensive land use plan densities harder to achieve. And, of course, as has been noted, administering of the modifications is going to be a challenge for localities.

Nonetheless, we acknowledge the importance that all sectors, public, business, point source and agriculture, be participants in new efforts to protect the Chesapeake Bay as well as the rivers and streams of the Commonwealth and are willing to support the adoption of the proposed modifications at this time.

Again, thank you, particularly, for providing us the opportunity to participate in this process.

*Rick Parish*

Thank you Madame Chair. My name is Rick Parrish with the Southern Environmental Law Center in Charlottesville. I'd like to join in the appreciation expressed today for the phenomenal effort that DCR staff and management has conducted over the past four years developing these regulations. And also the volunteer members of the Technical Advisory Committee who met with them repeatedly during that time.

An enormous amount of thought and effort has been put into these regulations. And I believe there is a strong case been made for the fact that these are absolutely necessary to protect and restore water quality in the Chesapeake Bay.

We share the concern expressed about the potential unintended consequences of the original proposal and the potential impact on sprawl. And we agree that the changes that have been made over the past few months have more than accommodated that interest.

We also agree with the concerns that EPA has expressed here today that some slight additional modifications need to be made to ensure that the Bay is protected by these regulations. We don't want to have to come back here again in another couple of years and start all over.

With that having been said, we support the regulations with minor modifications, suggested by EPA. And we applaud the efforts of DCR in producing this package.

Thank you.



*Joseph DuRant*

Joseph DuRant, Deputy City Attorney for the City of Newport News.

At the previous meeting, I raised an issue and I'd like to reiterate that once again our concern is the 20% reduction mandated for redevelopment. Many of the older cities are built out and developed. Newport News by our best estimate is 95% built out. We have other cities, Norfolk and Portsmouth in Hampton Roads and others that are in that same situation.

Our concern is that putting a 20% reduction on redevelopment is counter productive. A local government's primary function is to maintain public health and safety.

Redevelopment is not just an economic issue. It goes toward alleviation of blight. With blight comes crime. With blight comes sprawl because the people move out of the cities and into the suburbs and create new suburbs.

Redevelopment is a hard sell to begin with because it's not particularly a profitable venture in most cases. Any redevelopment under current rules is going to allow for some reduction in the runoff because of the green space requirements and that type of thing.

But to set a 20% reduction or to pay in sums to reach that level is a further disincentive to redevelopment.

That's our concern and we would ask the Board to consider that.

*David Phemister*

Good morning, Madame Chair and members of the Board. My name is David Phemister, and I serve as Director of Government Relations for The Nature Conservancy in Virginia. I too want to thank the Soil and Water Conservation Board for this opportunity to provide comments, and I want to thank both the Board and the Department for their tireless and excellent work on the proposed amendments that are before you today.

I am here to ask you to vote yes. I ask you to vote yes because these regulations are needed to protect Virginia's waters. I ask you to vote yes because further study and debate will not yield a stronger product. I ask you to vote yes to reaffirm that Virginia can and must develop in ways that promote sustainability, protect our natural capital, and enhance our quality of life. Approving these amended regulations is the right thing to do and would represent an important step forward in the protection of our waters from stormwater pollution.

So the most critical task today is approving these regulations. But it is also important for the Board to consider how it might improve on the regulatory language presented by DCR. The Nature Conservancy submits that there are three issues that merit the Board's attention:

One, ensuring the buy-down program delivers the necessary water quality benefits; Two, ensuring that the grandfathering language is properly focused; and three, establishing a statewide 0.28 standard for phosphorus.

You will hear more details on the first two issues from some of my conservation colleagues who will speak to you later this morning. As for the statewide standard, I know you have heard from the Conservancy previously on this issue, so I will be very brief with my comments today. These regulations are designed and needed to protect Virginia waters, not simply those that drain into the Chesapeake Bay. While the emphasis on the Bay is certainly understandable on many levels, stormwater threatens not only the Rappahannock, but also the Roanoke, not only the James, but also the Clinch, and not only York, but also the Blackwater. Let's not come back here in 5 or 10 or 15 years to tighten down on 0.45 outside the Bay after lots of damage is already done. Let's do the right thing today and enact a truly protective standard statewide.

I have some line amendments that would return the amended regulations back to a statewide 0.28 standard. I'll pass those out. I have copies for the Board and staff. [Copies of these suggested amendments are available from DCR.]

Thank you again for your time. Let me emphasize that your most critical work is approving these amendments. They are necessary, they are justified, and they have broad public support. Your secondary task is to consider ways to improve on DCR's excellent work, and I hope that you will accept the conservation community's suggestions in that regard.

*Phil Abraham*

Madame Chairman, Members of the Board, I appreciate the opportunity to speak today. My name is Phil Abraham. I represent the Virginia Association for Commercial Real Estate which is an association of commercial and industrial developers in the Richmond, Northern Virginia and Hampton Roads areas.

We do appreciate a number of the changes that have been made to the regulations, particularly the revised grandfathering provisions that were incorporated into the version of the regulation that is before you today as well as the additional offsite payment options that you adopted.

We still, however, have significant concerns with the 0.28 phosphorus standard in the Bay area. We feel that standard is excessive. We do not agree that it is supported by sound science and we continue to ask you to not adopt that standard.

*Ann Jennings*

Madame Chair, Members of the Board, I am Ann Jennings, Virginia Director of the Chesapeake Bay Foundation and I do appreciate the opportunity to comment today and the opportunity that DCR has provided the Chesapeake Foundation to participate in a number of Technical Advisory Committees over the last three to four years on this matter.

What I would like to provide for you today are two technical suggestions for you to consider in your deliberations as well as our overall recommendation that you do move forward with this proposal today.

We ask that you consider two final language edits to ensure that new development that utilizes the state buy down program fully offsets all required phosphorus reductions not achieved on site.

We ask first that you look at improving the effectiveness of the buy down program by raising the payment for land disturbing activities outside a UDA to \$30,000 per pound of phosphorus.

Based on our assessment, this higher payment would more fully offset the cost to install the mix of stormwater retrofits or agricultural Best Management Practices that are dictated in the regulation.

The \$30,000 payment would maintain the incentive for smart growth with compromising the ability of the buy down program to achieve the needed offsite pollution reductions.

And you will note that there are three places in the regulations that would require those changes.

We also ask that the Board consider improving the accountability of the buy down program by making some revisions within lines 1405-1409 noted in the handout.

We recommend that the Board increase the frequency of review of the program to every year rather than every five years and that they make certain during the review that the reductions are occurring on the ground concurrent within the year of the development activity.

And we also ask that you consider halting use of the buy down program in individual river basins if you find that needed offsite reductions in that river basin are not being achieved.

We believe that these technical edits would ensure that the offsite reductions are more current with the pollution input and we also believe that it would be more consistent with attaining water quality standards.

With that said the Chesapeake Bay Foundation remains concerned that some of the language changes made to address the development community concerns may have gone too far and may undermine the water quality improvements of this program.

However, and I want to be clear, we do believe that this proposal represents a significant step forward. We very much appreciate the work of the Department and this Board.

We ask that you consider these changes today and we ask that you finalize this program and move forward today.

Thank you.

Ms. Packard asked if in the case of a river basin such as the Potomac where other states may contribute to the runoff if the CBF thought Virginia should be penalized.

Ms. Jennings said no, that would be just for Virginia utilizing an offset program for input within the Virginia portion of the Potomac River Basin.

*Tyler Craddock*

Good morning Madame Chairmen, Members of the Board, I'm Tyler Craddock. I represent the Virginia Chamber of Commerce. My remarks are much like Mr. Abraham's.

We certainly appreciate the changes that have been made to address some of the concerns that we have raised. They make some things a little more palatable.

Certainly, we still have concerns about the 0.28, the same concerns Mr. Abraham raised and I think some other folks may raise with you today. That some of Part II we still think needs some work.

The other part, setting up local programs, getting a structure in place to align stormwater with erosion and sediment control, certainly we think is pretty solid and makes good sense. But on the technical side we think some of it should still be held back to be sure.

Even with the changes that have been made, this is going to cost folks who develop land more money. In turn it's going to affect the competitiveness of the Commonwealth.

So, with that, I do appreciate the opportunity to speak to you this morning and I appreciate you taking our concerns into consideration.

Thank you.

*Bill Street*

Madame Chairman, Members of the Board, thank you once again for receiving public input. I cannot count how many times we've been together discussing this issue. I do not have extensive comments today.

I certainly want to say thank you to you and to DCR staff and really to all the stakeholders who have provided meaningful input and helped to craft what I think is a very, very important step towards the protection of our waters into the future and ensuring that we don't continue to dig our hole deeper as we're trying to restore the waters of the Commonwealth.

I applaud the effort that DCR has made in balancing the number of perspectives and concerns that they have heard over the past number of months and certainly the past four years.

It's not quite the mix that we probably would have come up with ourselves, but we understand the changes that have been made. We do have some concerns that will go forward as this program needs to be implemented.

We look forward to working with DCR and others to ensure that this program is implemented in a strong and effective manner, particularly the flexibility that is provided to the urban development areas. I appreciate the focus that has been provided to that program. But as with any regulatory program, there are going to be some questions that remain as to how it works when we actually implement the program.

So, we look forward to working on those.

I will reiterate some of the comments that have been made about the buy down program. Certainly, we heard from EPA that is an important element that we need to make sure that there is adequate accountability that we are achieving the reductions that are needed to protect our water quality. So we will probably have some more detailed comments and suggestions for you but I think that is certainly an area that we need to look at very closely.

Finally, I'll just say that the James River Association on behalf of all of our members appreciates your work and looks forward to working with you in the implementation phase.

We support the final adoption of these. Thank you.

*David Anderson*

Thank you Madame Chair. My name is David Anderson. I represent the Virginia Fountainhead Alliance a group of businesses and individuals who believe that the goals of economic development and environmental protection can and should be harmonized and made to move forward.

I'd like to also compliment the Director. He's done a wonderful job of trying to bring people together and having an open process and also he's been unfailingly courteous, he and his staff to me and those I work with.

I was here a few weeks ago to make the case that regulations lack a sound scientific basis, particularly both the 0.45 and the 0.28 standards. Nothing has happened in the mean time, I think, to affect that judgment.

I won't burden you by repeating those arguments. But I would suggest that we share with you the frustration that this has been a lengthy process. Certainly the frustration that the Bay program has not been as successful as we might all have hoped it could have been.

However, if you do not take the right action we will be back here again two years, four years, five years and these regulations will have imposed a terrific cost on an economy that is struggling to emerge from the worst recession since the Great Depression. Many economists think we may be emerging, not over the course of a year or two, but perhaps over the course of five or ten before employment reaches acceptable levels once again. That is a very huge price to pay.

So, I would urge this Board to take a step back. I know there is frustration, that this has been a four year process. But it is worth the time to get the science right. It is worth the time for EPA. It is worth the time for this Board. It is worth the time for my clients. It is worth the time for the Commonwealth and for those who are struggling to regain employment.

In the long run, a little extra time now will buy you a lot in the future.

So I ask you to put these aside and get the science correct. Thank you.

*Pat Felling*

Madame Chair, Members of the Board, my name is Patrick Felling. I am with Potomac Conservancy. I also want to express appreciation for the long and hard work put into developing these regulations. Especially the willingness of all parties to listen to varying perspectives and to consider that and to come to reasonable conclusions.

I do believe that these amendments are a very positive step to address a growing source of water pollution in the Commonwealth and I feel like we are moving in a good direction.

There are a couple of comments I'd like to ask as you consider approving these amendments. I'd ask that you'd consider raising the buy-down fee for non UDA projects to \$30,000 per lb. of phosphorus. That's on line 1368 in the September 30 version of your amendments.

Additionally, I would request that the Board discuss the appropriateness of one of the grandfathering program criteria in VAC50-60-48B. There is a criteria number 2 that suggests that an application for rezoning merits entry into the grandfathering program. Grandfathering is meant to avoid catching projects that are in the crossover between old regulations and new regulations that they would not be subject to a sudden change in the regulations as they are moving forward. I do not see how the rezoning section applies. Rezoning can be done 10, 20, 30 years ago, and does not necessarily apply to a need for grandfathering.

Overall I recommend that the Board approve these regulations as they are a strong movement in the direction of addressing water quality problems in Virginia.

Thank you very much.

*Jeff Kelble*

Madame Chairwoman and the Board, thank you for hearing my testimony. My name is Jeff Kelble and I am the Shenandoah Riverkeeper. This is the second time that I have gotten a haircut and shaved and put on a suit that I bought fourteen years ago. Today is my birthday, I turned 38. I bought this when I was 24 years old. And it's not often that you'll catch me in a suit. The last time I came before you to testify, I asked you to do some courageous things and you did one very courageous thing. You opened up the construction stormwater plans to the public. Which was an amazing move in my opinion.

Today I come to you to testify in support of these regulations and in support of passing these regulations. The Federal Clean Water Act was passed in 1972; the goal of the Clean Water Act said that there would be no more pollution put into our rivers by 1985. It says it right in the regulation, right in the law, right in the Act.

Since then, polluters and friends of polluters have convinced agencies and convinced elected bodies to find ways to push off those goals to not make them happen. I find that very difficult to swallow.

I'm here to encourage you to do a couple of things.

One is to pass this regulation today or when the Attorney General's Office says that it is a good time to pass it and you've met all the administrative requirements.

The other thing is to not put this off. I'm referring to the grandfathering clause. I have watched this sort of from afar. I was not involved in the formation of these regulations like a lot of the groups here have. But I have watched a lot of the main body of the science and the main body of these regulations be eviscerated basically by the builders lobby and the pressure they are able to put on your Board and on the administrative staff here at DCR and I find it sickening.

The final straw was the 2019 deadline for pushing off the requirements for these regulations to include any rezoning. 1985 to 2009 is 24 years. Arguably these issues should have been addressed 24 years ago. And we are looking at putting them off for 10 more years. I think that the larger more significant developments are the ones that we need to get to and those are the ones that are being developed by the group of developers who have the ability I think to sidestep these regulations by either rezoning or by putting in plans and getting VSMP authorization and I suggest, or request respectfully that you very much consider at least meeting what EPA has suggested and meet what Maryland is doing and reduce that to two years.

Thank you.

*Kate Wofford*

Good morning. My name is Kate Wofford and I am Director of Shenandoah Valley Network. We are a non-profit program linking community groups working on conservation issues in the Shenandoah Valley. Thanks for the opportunity to comment this morning.

I have spent a considerable amount of time over the past month talking to folks in the Shenandoah Valley about stormwater and about these pending regulations. I have talked with people in environmental community, local government officials, and citizen leaders and I think it's fair to say that people in the Shenandoah Valley care about clean water and believe that it's time that we do a better job managing our stormwater.

Agriculture has made strides as you know and is being asked to do more. Local governments have cleaned up wastewater treatment facilities and many people in the Valley feel strongly that it's time for our developing areas to clean up as well.

There is not complete agreement about all aspects of the regulations. But all in all these amendments are a step in the right direction and I urge you to adopt them.

I would like to make two recommendations for consideration as you prepare to adopt the regulations.



The first is with regard to the recently relaxed grandfathering provision. I would encourage you to restore the intent of the provision and ensure that it is not so broad as to include projects that are not substantially in process.

And second, the recommendation is in regard to diminished standards outside of the Chesapeake Bay Watershed. Although water in the Shenandoah River and tributaries ultimately flow to the Bay, support for better stormwater management in the Valley is largely motivated by a desire for cleaner local streams and rivers; cleaner streams and rivers for drinking water, for safe swimming and fishing, for our thriving tourism industry, and for our quality of life.

I believe that all Virginians deserve better, not just those that happen to live within the Bay watershed.

So please today, consider first more focused grandfathering positions and second, stronger standards outside of the Bay.

But most importantly, please after many years of work, and countless hours of stakeholder input, adopt these most important regulations.

Thank you.

*Curt Bradley*

Good morning. My name is Curt Bradley and I am a resident of Fairfax County.

I direct your attention to Section 69 of the stormwater management regulations which address the offside compliance options. Specifically to subsection B in lines 1361-1365 of the September 30 draft.

This provision effectively caps the fee that a locality can require for the removal of phosphorus at \$23,900 per lb. without regard to the actual cost of removing the phosphorus. It is my understanding that in some jurisdictions, including my own, the cost may be significantly higher and I ask how this cap can be justified.

There will always be tension between the development and the environmental communities. While cleaning up the Chesapeake Bay has been a goal for at least several decades, that goal has been derailed continually by half measures and compromises.

But the Bay has reached a point of no return. The avowed intention of a comprehensive review and modification of the stormwater regulations was finally to achieve acceptable water quality standards. But capping the cost of removing phosphorus at \$23,900 per lb. is another half measure that will result in the continuation of unacceptable levels of pollutants in our waterways.

I would ask that the Board remove the cap and Section 69b and allow the localities to generate the funds necessary to ensure appropriate water quality in the Bay and our other waterways. Whatever that cost may be.

The time for half measures and compromises has passed. Thank you.

*Barrett Hardiman*

Good morning Madame Chair, my name is Barrett Hardiman. I am here on behalf of the Home Builders Association of Virginia.

I am here today to request the same thing I've been requesting for the last year and a half that started in the TAC meetings last summer and that is that we need to take another comprehensive review of the underlying science that's been used to create this stormwater regulation.

The Home Builders Association still asserts that there is false evidence that has been used to create these standards. The tributary strategies do not include all of the information that is out there. The development community is not being given credit for stormwater management facilities that are on the ground, just like the farming community is not being given credit for the stormwater management facilities that are on the ground.

There have been a number of questions that have gone unanswered by the Department and it has been made clear to us since the beginning of this process that this regulation is going through regardless of the objections that we have.

Now, there are some changes that have been made that I think make it easier to comply with this regulation and we appreciate those changes. But we do not think this regulation is right and we do think that it is going to challenge the development community and increase the cost of living in Virginia and the cost doing business.

In my conversations for the last year and a half with a number of large corporations, one of them made a comment to me that in economic times like this, large corporations start looking at different states where they have operations to consolidate and when they look at the different states, these kinds of stormwater regulations and other things that are out there are things that they take into consideration. They said under these regulations they would choose not to consolidate their business in Virginia. That means lost jobs for Virginians.

So I am asking you once again to move forward with Parts I and III and XIII and hold back on Part II until there can be a comprehensive review of the underlying science included in this regulation.

Thank you.

*Joe Lerch*

Madame Chair, members of the Board. Joe Lerch representing the Virginia Municipal League. First I want to thank you for allowing comments back on the 17<sup>th</sup> of September, some of which have been addressed. The concerns we raised about the costs for local governments to run this program, especially the delegated program.

Working with DCR staff, one amendment that is being proposed that we support is the ability of local programs to raise the revenue necessary to review this permits as they go forward.

One issue that I didn't plan on addressing today because we addressed it in our comments, but it came up earlier with Mr. McGuigan's comments, related to the general permit. There was discussion today from the EPA about what they would consider acceptable and what they would not and it related to these standards. Post construction water quality standards.

The concern we raised in our comments I think is relevant to that. The construction permit is just for construction activities. It is not for post-construction. In fact, the existing general permit states under Section 1A, coverage under this permit, "the operator is authorized to discharge stormwater from construction activities."

You go on to Section 1B under limitation of coverage, it says "this permit does not authorize stormwater discharges that originate from the site after construction activities have been completed and has undergone final stabilization."

Now, we said this in our comments and we want this to be clear. We think this Board has the authority and should use the authority to set post-construction standards for water quality and quantity.

What we object to is putting this within a Clean Water Act permit. And we heard from the EPA today that they are going to use some authority under the Clean Water Act permit.

Now, I think some of the things we need to ask the EPA, and we would be willing to sit down and talk with them about it with you, is what other states have post-construction criteria under the general construction permit.

He had mentioned Maryland. It's my understanding that Maryland general, which does have tough post-construction standards, is not within the general construction permit.

So, we think this is an issue that as we move forward, after the 30 day period, that needs to be resolved.

Thank you.

*David Hirschman*

Madame Chair and Member of the Board. I am Dave Hirschman with the Center for Watershed Protection and in the interest of disclosure I would say that my organization has been under contract with DCR much of the whole regulatory development process to develop the spreadsheet and the specifications as well as to help assist with the design charettes and training workshops that were held around the state in conjunction with this regulatory process.

What I would like to say about the regulations, since I have been involved in it is, as you've heard from both sides, there are some challenges involved in these regulations. But I think these are positive challenges looking forward.

The challenges for our design professionals, engineers, architects and landscape architects are to look at stormwater in a new way. Look at stormwater as part of the site design and look at the full menu of BMPs that are now available. There are many more BMPs available now than with the existing program.

I think during a lot of the discourse, we have been kind of stuck with our old friends, the ponds, the basins that are going to get smaller or get very large. But, the existing program has a lot of very interesting BMPs such as sheet flow to a conservation area. Basically using vegetation, using trees and using our open spaces to treat stormwater. We have new specifications for things like rainwater harvesting. Which in my own prediction is going to become a very widespread management practice not only because of its runoff reduction capabilities but because of the economic advantages and the water conservation benefits.

So we have some new friends here, new BMPs for these site designers to try and to take a lot of different routes to achieve compliance with this regulation.

The challenge for our local government program colleagues is to look at a watershed based approach to stormwater management. Look at all the different tools that have been put into this regulation that are not available right now with the existing regulations.

Watershed based stormwater management challenges the local program to look at the most cost effective way to achieve these reductions on a watershed scale or within say an MS4. Look at ways you can assess a whole region or a whole watershed and think about a whole range of ways to collect the funds necessary and achieve these reductions in the most cost effective way.

So, these are big challenges but we have to look forward from here. We have to think how we are going to achieve our clean water objectives with these creative approaches. And I really commend DCR for crafting a forward looking program with these regulations.

So I think the challenge for all of us from this day forward is to say, not talk about why things can't be done or why we can't achieve these things, but to adopt a can do attitude and say how are we going to do it. Or the creative approach is look at all the different options under these regulations that say we can do it. We have a lot of tools on the table.

Thank you.

*Chris Pomeroy*

Madame Chair, Members of the Board, good morning. My name is Chris Pomeroy and I represent the Virginia Municipal Stormwater Association.

To begin I would like to thank you once again as well as DCR for the courtesy and the attention to our comments that have been shown during the process. Including over the past month or two where several of our concerns have been addressed and I would like to recognize that and say thank you.

Last month the main point that I made in our comments concerned the interface between the MS4 permits that Mr. McGuigan spoke of earlier and the regulation that is in question today. The main point there was that we need as local government permittees under the MS4 permit for our regulatory responsibilities as the implementer under this regulation to work well together.

In short we need to know that for post construction stormwater, compliance with this regulation is also compliance and not non-compliance with our MS4 permit. We need the two permit programs to work together.

For one area that I would just highlight in the regulation that gives us some concern. We would like to hear in this process that EPA and DCR alike are comfortable from a MS4 permit compliance standpoint with the new offsite options. We support offsite options. We think they make sense and we use them now in certain cases. We would like to continue to do so. We see a role for the buy down program.

The specific concern though is with the cap in section 69B. I think a speaker a few moments ago referred to it as a cap. Our concern is that to the extent that's an average cost for urban BMPs, in the about half of the situations by definition in the case of an average the cost is higher.

If our MS4 permit says those projects need to be done or certain offsite projects need to be done locally to ensure water quality compliance and MS4 permit compliance we would like the ability to have that happen locally.

So, the cap in section 69B of \$23,900 remains a concern as we try to ensure that by complying with this regulation in administering this regulation that we are also in compliance with our MS4 permit.

So we appreciate the process that is ahead and thank you once again for your time today.

*Julia Hillegass*

Thank you Madame Chairman, my name is Julia Hillegass and I'm here representing the Hampton Roads PDC and Hampton Roads are localities.

We certainly appreciate DCR's responsiveness to many of our concerns and we thank you for that.

The localities however, would like to go on record requesting official guidance and fear they are being stranded to figure out the regulation.

The complexity of the program mandates good guidance be issued from DCR to localities to support these regulations and to assist them in developing successful local programs which will likely include significant changes to local ordinances and standards.

Guidance which explores important consideration in meeting the regulatory requirements while allowing the utmost flexibility would be helpful to ensure complete and qualifying local programs.

In addition, our localities also request training opportunities for the design community as well as reviewing localities to again help ensure success of local programs.

We thoroughly encourage you to ensure that the full suite of resources needed for successful local programs are swiftly developed to aid in their implementation.

Thank you.

*Larry Land*

Madame Chair, Members of the Board, my name is Larry Land I'm from the Virginia Association of Counties. I was not planning on speaking today, but when somebody from the Virginia Municipal League gets up and speaks and somebody from VAMSA gets up and speaks I feel like I need to get up and speak.

I just want to echo the concerns that they raised. We appreciate an awful lot of work that has been done. We know that DCR just as everybody has acknowledged has really reached out and worked extremely hard to address as many concerns as they can.

I think the posture of the Virginia Association of Counties of course is to take advantage of the additional 30 day comment period that we suspect that we will have before us and submit comments in addition to those we have submitted already.

One area where we are particularly appreciative is the flexibility that is now being provided on the issue of fees. This is an issue that we did raise and given any opportunity that we had to raise it we raised it.

The cap again of the \$23,900 for the lb. of phosphorus, of course that is a major concern.

There is still feed back that we need to receive from our members on many aspects relating to the technical criteria. We plan to do that.

So we look forward to the opportunity of continuing to work with you.

Thank you very much.

*Shannon Varner*

I am Shannon Varner; I am here on behalf of the Chesapeake Bay Nutrient Land Trust. As you recall I spoke at your last Board meeting and CBNLT is a provider of offsite options for environmental compliance including the nutrient reductions that were authorized by HB2168.

At the last meeting I raised some concerns about the priority and consistency with HB2168 not being in the legislation. Some concerns about the impact of the regulations on the private market, the artificial nature of the \$15,000 to 23,900 fee and now the cap impact on the market. I am not going to go back over those details. I want to focus on a couple of points when you are considering and looking at the offsite options.

You recall that the type of nonpoint nutrient offset that CBNLT provides is on the ground today, it is on the ground before the land disturbing activity occurs that may require some kind of solutions and not being able to obtain those on site.

In addition they are above and beyond baseline. They are above and beyond anything that is funded by state or federal requirements or funding. Above and beyond legal requirements and tributary strategies. In fact, we have got a facility on the ground now that has been producing nutrient reductions for the last two years that could be utilized now to help out the development community.

When you look at Subsection A, a lot of those benefits that you see for offsets are not in the other options. There are four options in there; the comprehensive planning scenario, the pro rata share type program, and the developer type programs. None of those three require meeting the same types of standards that an offset requires. In addition, there is no guarantee that any of those reductions will occur prior to the land disturbing activity.

In those instances you will definitely lose water quality benefits that you have been acquiring.

In addition there is no guarantee in the language in the regulations that equivalent reductions would be provided.

I would encourage you to make all offsite options equivalent to the types of requirements that are required for an offset.

The same thing would apply to Subsection B in the use of the state fund. I would have concerns about the priorities in there rather than money first going to potentially very expensive urban retrofits. I think that they should be going to offsets and the Ag BMPs and then utilizing them for urban solutions.

I appreciate the opportunity for some additional comment period and I will provide more detail on that.

Thank you.

Chairman Campbell said that was the last of the speakers signed up to speak. She called for any additional comments from the public. There were none.

Chairman Campbell offered the Board the opportunity for comment and questions.

Ms. Packard asked Mr. Dowling about the staff response to the EPA comments.

Mr. Dowling said that staff view was that the regulations accomplish much of what EPA was looking for. He noted that EPA had made suggested language changes with regard to protections of impaired waters. He said that the concept was already contained within the general permit.

Mr. Dowling said that he thought the regulations met the necessary concerns but was willing to discuss further with EPA.

Ms. Packard noted a concern regarding the provision for one acre sites in the offsite program.

Mr. Dowling said that was a condition of the state buy down option, not necessarily a condition of the local program.

Ms. Packard said that the fee cap of \$23,900 was too low for most urban localities. She said the ideal solution would be to allow the localities to set the fee amount.



Mr. Dowling said that the staff believed the number to be reasonable based on other states and based on the process in place. He said that the Board could direct staff to take another look at the number.

Ms. Packard asked how often the regulations would be reviewed.

Mr. Dowling said that the assumption would be every five years, but the review period time was also at the Board's discretion. He said staff would like to allow time to assess how the regulations are working.

Ms. Hansen said that she shared Ms. Packard's concern and welcomed the suggestion that the Board review the regulations more frequently than every five years.

Ms. Hansen expressed a concern regarding the 0.45 standard for the Southern Rivers.

Ms. Packard noted that the stormwater handbook was still in draft form.

Mr. Maroon said that the handbook was nearing completion but that staff was waiting on final action on the regulations.

Mr. Dowling said that the regulations were needed before the handbook could be finalized. He noted that a complete draft of the handbook was on the Agency website.

Mr. Maroon said that it was important that the Board follow the process the staff was recommending. He said that if the Board chose to adopt the regulations, staff would ask them to suspend them for an additional 30 days. He said that was because substantial changes had been made from the proposed version that was released for public review.

Mr. Maroon noted that the actual on the ground application of the regulations would not occur for another two years. Localities must adopt a program and have the Board approve that program.

Chairman Campbell opened the floor for a motion.

MOTION: Ms. Packard moved the following:

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

The Board adopts these final regulations and authorizes the Director of the Department of Conservation and Recreation and the Departmental Regulatory Coordinator to submit the Board's final amendments to Parts I, II, and III of the Board's Virginia Stormwater Management Program (VSMP) Permit Regulations

and any other incorporated or associated forms or documents to the Virginia Town Hall and to the Registrar of Virginia.

SECOND: Ms. Hansen

DISCUSSION: None

VOTE: Motion carried with Mr. Maitland voting no and Mr. Maroon abstaining.

MOTION: Ms. Packard moved the following:

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

The Board adopts these final regulations and authorizes the Director of the Department of Conservation and Recreation and the Departmental Regulatory Coordinator to submit the Board's final amendments to Part XIII of the Board's Virginia Stormwater Management Program (VSMP) Permit Regulations and any other incorporated or associated forms or documents to the Virginia Town Hall and to the Registrar of Virginia.

SECOND: Ms. Hansen

DISCUSSION: None

VOTE: Motion carried with Mr. Maitland voting no and Mr. Maroon abstaining.

MOTION: Ms. Packard moved the following:

**Motion to suspend final regulations related to the Board's Virginia Stormwater Management Program (VSMP) Permit Regulations (Parts I, II, and III) and to solicit additional public comment**

The Board suspends the regulatory process associated with the final amendments to Parts I, II, and III of the Board's Virginia Stormwater Management Program (VSMP) Permit Regulations in accordance with §2.2-4015 (A)(4) in order to allow for a 30-day public comment period on the changes made to the regulation between proposed and final stages. The 30-day public comment

period shall commence upon publication of the Notice of Suspension of Effective Date and Extension of Public Comment Period in the Virginia Register. The Board is receiving comment only on the changes that have been made between the proposed and final stages of the regulations. The suspension shall remain in place until the Board takes further action on these regulations at a subsequent meeting.

The Board requests the Director of the Department of Conservation and Recreation or the Departmental Regulatory Coordinator, at the next meeting scheduled following the close of the public comment period, to provide the Board with a summary of comments received and recommendations for the Board's consideration.

SECOND: Ms. Hansen

DISCUSSION: Mr. Maroon clarified the timetable. He said that the filing of the regulations would occur on Wednesday, October 7 and that the publication date in the Virginia Register of Regulations would be October 26. That will begin the 30-day period for additional comment prior to Thanksgiving.

Ms. Hansen asked if the Board would receive additional comments at the December meeting.

Mr. Dowling clarified that it would be appropriate to receive comments only on those changes made between the proposed and the final regulations.

VOTE: Motion carried unanimously.

MOTION: Ms. Packard moved the following:

**Motion to suspend final regulations related to the Board's Virginia Stormwater Management Program (VSMP) Permit Regulations (Part XIII) and to solicit additional public comment**

The Board suspends the regulatory process associated with the final amendments to Part XIII of the Board's Virginia Stormwater Management Program (VSMP) Permit Regulations in accordance with §2.2-4015 (A)(4) in order to allow for a 30-day public comment period on the changes made to the regulation between proposed and final stages. The 30-day public comment period

shall commence upon publication of the Notice of Suspension of Effective Date and Extension of Public Comment Period in the Virginia Register. The Board is receiving comment only on the changes that have been made between the proposed and final stages of the regulations. The suspension shall remain in place until the Board takes further action on these regulations at a subsequent meeting.

The Board requests the Director of the Department of Conservation and Recreation or the Departmental Regulatory Coordinator, at the next meeting scheduled following the close of the public comment period, to provide the Board with a summary of comments received and recommendations for the Board's consideration.

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

Chairman Campbell thanked those who had submitted public comment and everyone who had participated in the process.

Chairman Campbell said that Mr. Maroon should be commended for bringing Virginia to this point.

### **Upcoming Meetings**

November 19, 2009, 9:30 a.m.  
West Reading Room  
The Patrick Henry Building  
Richmond, Virginia

December 9, 2009, 9:30 a.m.  
LOCATION TBA

### **Adjourn**

There was no additional business and the meeting was adjourned.

Respectfully submitted,

Linda S. Campbell  
Chair

Joseph H. Maroon  
Director