

**Virginia Soil and Water Conservation Board  
Tuesday, February 26, 2013  
West Reading Room, Patrick Henry Building  
Richmond, Virginia**

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

Herbert L. Dunford, Chair	Daphne W. Jamison, Vice-Chair
Joan DuBois	Susan Taylor Hansen
Gary Hornbaker	Jerry L. Ingle
Stephen Lohr	Raymond L. Simms
Richard A. Street	Wanda J. Thornton
David A Johnson, DCR Director, Ex-Officio	
John A. Bricker, NRCS, Ex-Officio	

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

Thomas M. Branin	C. Frank Brickhouse, Jr.
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**DCR Staff Present**

Jeb Wilkinson  
Robert Bennett  
David C. Dowling  
Michael R. Fletcher  
Doug Fritz  
Stephanie Martin  
John McCutcheon  
Virginia Snead  
Michelle Vucci  
Matthew Gooch, Office of the Attorney General

**Others Present**

Phil Abraham, Virginia Association of Commercial Real Estate  
Joe Brogan, York County  
Pat Calvert, James River Association  
John Fowler, Chesapeake Bay Foundation  
James Golden, Department of Environmental Quality  
Jeff Kelble, Shenandoah River Keeper  
Jenny Johnson, Joyce Engineering  
Adrienne Kotula, James River Association  
Blair Krusz, Virginia Agribusiness Council  
Chris Pomeroy, VAMSA  
Matt Rowe, Charles City County  
Peggy Sanner, Chesapeake Bay Foundation

Mike Toalson, Home Builders Association of Virginia  
Zach Trogdon, Charles City County  
Kendall Tyree, Virginia Association of Soil and Water Conservation Districts

**Call to Order**

Chairman Dunford called the meeting to order and declared a quorum present. He said that due to the fact that some members needed to leave early he would, with member's concurrence reorder the agenda to make sure that business requiring a vote would be covered first.

**Approval of Minutes from December 11, 2012**

MOTION: Ms. DuBois moved that the minutes from the December 11, 2012 meeting of the Virginia Soil and Water Conservation Board be approved submitted by staff.

SECOND: Mr. Street

DISCUSSION: None

VOTE: Motion carried with Ms. Hansen abstaining

**Regulatory Action**

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

Ms. Vucci presented the background for the regulatory action. She noted that there were minor updates to the version of the draft proposed regulations mailed to the Board on February 11<sup>th</sup>. She said that she would review those changes. A copy of this version of the regulations is available from DCR.

Ms. Vucci said that the regulatory process was similar to the process followed for the MS4 regulations that the Board reviewed and approved at their September meeting.

Ms. Vucci presented the following:

**Introductory remarks and overview**

Before you today for consideration and action is a proposed regulatory action that advances for the Board's consideration amendments to the General Permit for Discharges of Stormwater from Construction Activities. The regulation version before you for consideration and that is also in your packets, is dated February 26, 2013 and is the revised version with just a handful of additional updates that we have noted during final preparation for this meeting. These updates are highlighted in the version before you

today. We will bring these minor updates directly to your attention as we proceed with this discussion.

Again, the purpose of this action is to promulgate a new Construction General Permit. Regulations developed under the federal Clean Water Act (33 USC §1251 et seq.) and the Stormwater Management Act (§10.1-603.2 et seq. of the Code of Virginia) require that state permits be effective for a fixed term not to exceed five years. The existing 5-year General Permit became effective on July 1, 2009; thus necessitating the promulgation of a new General Permit before the July 1, 2014 expiration date. We are bringing this action to the Board now as the language in the draft regulations may affect the local ordinances that localities are beginning to develop as part of their stormwater program adoption process. In light of this, the Department is working towards having the regulation completed by late summer or early fall in case the language might affect such ordinances; however, the regulation will have a July 1, 2014 effective date.

I want to assure you that the Department has worked very hard to develop the best possible updated permit for the Board's consideration. We greatly appreciated the assistance and dedication of the Regulatory Advisory Panel (RAP) that worked with the Department to craft the regulation before you today. A list of the RAP members is provided within this presentation.

Through the RAP, we have tried to balance impacts on the regulated community and the public in general with the important water quality issues that require our attention. The Department has truly walked that fine line very closely. We have also been careful not to exceed federal requirements within this permit understanding that program implementation by the state and localities can ensure that other attributes of state law are appropriately enacted outside of the framework of the General Permit.

Ms. Vucci also recognized staff who contributed to the development of the regulations. Staff members involved in the development are Ginny Snead and Doug Fritz from DCR and Drew Hammond and Liz McKercher from DEQ.

The regulations that we present to you today include a number of technical issues. Where you have questions, please do not hesitate to ask us for additional clarification. We have a number of technical experts with us to assist in explaining these issues.

## **Framework of Stormwater Regulations**

This regulatory action amends Part XIV of the body of stormwater regulations as well the associated forms (highlighted items).

VIRGINIA STORMWATER MANAGEMENT PROGRAM (VSMP)  
PERMIT REGULATIONS [4 VAC 50-60-10 et seq.] (prior to 09-28-12  
amendments)

Part I: Definitions, Purpose, and Applicability

Part II: Administrative and Technical Criteria for Land-Disturbing  
Activities

Part II A: General Administrative Criteria for Regulated Land-  
Disturbing Activities

Part II B: Technical Criteria for Regulated Land-Disturbing  
Activities

Part II C: Technical Criteria for Regulated Land-Disturbing  
Activities: Grandfathered Projects and Projects Subject to the  
Provisions of 4VAC50-60-47.1

Part III: General Provisions Applicable to Stormwater Program  
Administrative Authorities and to Local Stormwater Management  
Programs

Part III A: Programs Operated by a Stormwater Program  
Administrative Authority

Part III B: Department of Conservation and Recreation Procedures  
for Review of Local Stormwater Management Programs

Part III C: Virginia Soil and Water Conservation Board  
Authorization Procedures for Local Stormwater Management  
Programs

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

Part V: Reporting

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

Part VII: VSMP Permit Applications

Part VIII: VSMP Permit Conditions

Part IX: Public Involvement

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

Part XI: Enforcement of VSMP Permits

Part XII: Miscellaneous

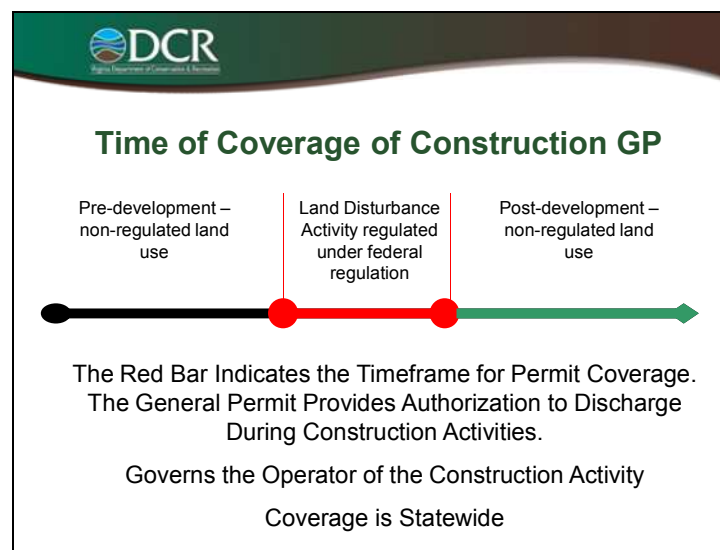
Part XIII: Fees

Part XIV: General Virginia Stormwater Management Program (VSMP)  
Permit for Discharges of Stormwater from Construction Activities –  
Effective July 1, 2009

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

Before we get started with an explanation of this proposed regulation and its key elements, Ginny Snead, the Department's Regulatory Programs Manager in our Stormwater Management Division will provide you with additional background on the Construction General Permit.

Ms. Snead gave an overview of the Construction General Permit.



### What is a SWPPP?

- Stormwater Pollution Prevention Plan:
- Approved Erosion and Sediment Control Plan
- Approved Stormwater Management Plan
- Pollution Prevention Plan

### Construction GP Reissuance

- Accelerated Timeframe
  - Local VSMP Program Adoption
  - July 1, 2014
- RAP Timeframe
  - Held 7 meetings
  - Began August 2012
  - Last was Friday, January 4, 2013
  - Permit Effective Date July 1, 2014

**Overview GP Primary Goals/Issues**

- Define Common Plan of Development
  - Guidance
- Specificity of ELGs – buffers, etc.
  - Utilize ESC Regulations Where Possible
- Address TMDL WLA
  - Increased Inspection Frequencies
- SWPPP Availability
  - Previous Language Removed from Permit
- Simplification
  - Permit Language Reorganization

Ms. Vucci outlined the process that guided the promulgation of the regulation.

**Process (Modified Administrative Process Act Procedures)**

The regulatory action before you today uses a modified Administrative Process Act (APA) process set out in §2.2-4006 subsection A8 of the Code of Virginia. Regulatory actions are typically comprised of three primary steps: the Notice of Intended Regulatory Action, the Proposed Regulations, and the Final Regulations. Routinely under the Administrative Process Act (APA), this takes about 2 years.

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

§ 2.2-4006. Exemptions from requirements of this article.

A. The following agency actions otherwise subject to this chapter and § 2.2-4103 of the Virginia Register Act shall be exempted from the operation of this article:

8. General permits issued by the (a) State Air Pollution Control Board pursuant to Chapter 13 (§ 10.1-1300 et seq.) of Title 10.1 or (b) State Water Control Board pursuant to the State Water Control Law (§ 62.1-44.2 et seq.), Chapter 24 (§ 62.1-242 et seq.) of Title 62.1 and Chapter 25 (§ 62.1-254 et seq.) of Title 62.1, **(c) Virginia Soil and Water Conservation Board pursuant to the Virginia Stormwater Management Act (§ 10.1-603.1 et seq.) of Title 10.1**, and (d) the development and issuance of general wetlands permits by the Marine Resources Commission pursuant to subsection B of § 28.2-1307, if the respective Board or Commission **(i) provides a Notice of Intended Regulatory Action in conformance with the provisions of § 2.2-4007.01, (ii) following the passage of 30 days from the publication of the Notice of Intended Regulatory Action forms a technical advisory committee composed of relevant stakeholders,**

**including potentially affected citizens groups, to assist in the development of the general permit, (iii) provides notice and receives oral and written comment as provided in § 2.2-4007.03, and (iv) conducts at least one public hearing on the proposed general permit.**

Accordingly the General Permit shall be exempt from portions of the APA if the Board:

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

The permits are also subject to additional federal National Pollutant Discharge Elimination System (NPDES) requirements relevant to the promulgation of general permits. These include:

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

A summary of the actions taken relative to this regulatory process to date are as follows:

**Key Actions to Date (Action 3679)**

- Board Motion: September 8, 2011

- NOIRA published May 21, 2012 in Volume 28: Issue 19 of the Virginia Register of Regulations
- The 30-day public comment period opened on May 21, 2012 and closed on June 20, 2012.
- We received a total of 17 official comments/ requests to be placed on the Regulatory Advisory Panel (RAP) during the NOIRA comment period. Of these, three contained substantive comments regarding the potential regulatory action. A copy of the three substantive comments received is available in your Board handouts today. These comments were also provided to the RAP for consideration and discussion as the proposed regulation was developed.
- The Construction General Permit RAP that was assembled was composed of 20 members (plus Department and DEQ technical staff) including those representing: local governments; conservation organizations; state agencies; federal agencies; associations; planning district commission; and consulting firms.
- The RAP meetings were facilitated by the Institute for Environmental Negotiation.

Ms. Vucci moved on to a review of the timeline.

**Remaining Timeline (Tentative – May be subject to change)**

- § **February 11, 2013**, complete proposed regulation and draft Federal Fact Sheet sent to Board.
- § **February 26, 2013**, Take proposed regulations to the Board.
  - § **March 20, 2013**, file by noon with the Registrar's Office.
  - § **April 8, 2013**, publish in the Virginia Register of Regulations.
  - § **April 8, 2013 to June 7, 2013**, 60-day public comment period.
  - § EPA official review during this time period
  - § Publish a notice twice in 10 newspapers (federal requirement) 30 days in advance of the close of the public comment period.
  - § **May 14, 2013, May 15, 2013, and May 16, 2013 (target dates only)**, hold at least three Public hearings mid-May 2013.
  - § Review Comments and Coordinate general permit approval with EPA.
- § **June 28, 2013**, send draft final regulation to EPA for unofficial review and comment.
- § **July 29, 2013**, target for EPA to respond with its unofficial comments on the final regulations.
- § **August 9, 2013**, send final regulation to EPA for official review and concurrence.
- § **August 10, 2013**, letter to be issued by Counsel in the Attorney General's Office.



- § Prepare Town Hall filing discussion forms and regulation in RIS.
- § **September 6, 2013**, target for EPA to provide verbal concurrence with the final regulations.
- § **September 15, 2013**, mail package to State Water Control Board.
- § **September 30/October 1, 2013**, take final regulation to State Water Control Board.
- § **October 16, 2013**, file on the Town Hall and with Registrar.
- § **November 4, 2013**, published in the Virginia Register of Regulations.
- § **December 4, 2013**, public comment period ends and regulations are final.
- § **July 1, 2014**, effective date.

Ms. Vucci moved on to a summary of the regulation.

### **Regulation Summary**

Global changes in this permit include:

- Federal Effluent Limitation Guidelines (ELGs) – In 2010, as a result of EPA rulemaking, new ELGs and new source performance standards to control the discharge of pollutants from construction sites became effective. This draft permit incorporates and clarifies these federal ELGs and source performance standards, which were previously established in Section II of the regulations.
- References – The proposed regulations ensure consistency with the MS4 proposed regulations and with other permitting regulations of the Department of Environmental Quality by addressing discharges to surface waters rather than state waters. State waters will continue to be managed through state and local program implementation.
- General Reorganization – This draft removes regulatory sections that are no longer needed and reorganizes the current permit conditions for clarity and simplification.

The key elements of each section of the proposed permit include:

- Section 1100: Definitions (page 1) – New definitions specific to this permit (Part XIV) relate to: a) “Immediately” b) “Impaired Waters”; c) “Initiation of Stabilization Activities”; and d) “Measurable Storm Event.” The draft removes the current definition of “Minimize” as the inclusion of this definition will be addressed in the final MS4 regulations that are scheduled to come before this Board for review and approval on March 27, 2013.

- Section 1110: Purpose (page 2) – This section has been updated by removing unnecessary language stating that industrial permits are not covered in the regulation and by removing language related to the goal of this state permit.
- Section 1120: Effective Date (page 2) - The draft regulation changes the general permit effective date from July 1, 2009 to July 1, 2014.
- Section 1130: Authorization to Discharge (page 2) – Existing language has been clarified. Prior to commencing land disturbing activities, operators must continue to obtain approval of an erosion and sediment control plan and approval of a stormwater management plan. Approvals for emergency-related construction activities are addressed in the proposed regulation.

This section also contains language related to discharges to impaired waters, which would include surface waters located within a TMDL watershed. An operator is eligible for coverage under the construction general permit provided that the operator has developed, implemented, and maintained a stormwater pollution prevention plan (SWPPP). This section also specifies the types of nonstormwater discharges that are authorized by the general permit.

Further, the draft permit adds language that the Board will notify any operator if a discharge is not eligible for general permit coverage if the discharge violates the antidegradation policy in Virginia Water Quality Standards and discharges are not consistent with the assumptions and requirements of a TMDL approved prior to July 1, 2014. Finally, language is added to this section to provide for the continuation of general permit coverage obtained in 2009.

- Section 1140: Delegation of Authorities (page 5) – This section of the regulations has been renamed and language has been rewritten to address a Board-approved VSMP authority's authorization to: a) accept registration statements; b) collect fees; c) review and approve plans; and d) undertake permit compliance and enforcement, where applicable.
- Section 1150: State Permit Application (page 5) – Language has been added to this section to require operators to provide registration information in an electronic database. Operators with coverage under the 2009 permit are required to submit a registration statement 90 days prior to the effective date of the general permit. Finally, language is also added to specify that discharges from construction activities permitted under a 2009 permit are considered unauthorized discharges in cases where there has been no continuance of a 2009 permit.
- Section 1160: Termination of Permit Coverage (page 8) – Operators would be required to provide information in an electronic database provided by the department. Furthermore, the notice of termination must also contain information regarding onsite and offsite control measures used to meet post-development

stormwater quality criteria, information regarding perpetual nutrient credits, and information regarding long-term maintenance of permanent stormwater management facilities. Please note that the Department has identified duplicative language existing on line 384 of the February 26 draft and Department staff recommends the removal of the duplicative text.

- Section 1170: General Permit (page 10) – This part of the regulations contains three sections. Section I addresses Discharge Authorization and Special Conditions. Section II addresses the Stormwater Pollution Prevention Plan (SWPPP) and Section III addresses Conditions Applicable to All State Permits. It is this regulatory section where most of the general reorganization noted above has taken place.

Specifically, the proposed regulation addresses the following in Section I:

- *A. Coverage (page 10)* – The draft permit addresses discharges related to new construction activities, previously covered construction activities, and emergency-related construction activities. Operators seeking general permit coverage must also identify support activities (e.g. concrete or asphalt batch plants, equipment staging yards, material storage areas, borrow areas) in each registration statement and language is added to ensure that all applicable state, federal, and local approvals are obtained for support activities.
- *B. Limitations on Coverage (page 11)* – Existing language has been rewritten for clarification. Language prohibiting the discharge of floating solids and visible foam has been relocated to this section for clarity. This section also addresses limitations on coverage for both impaired and exceptional waters.
  - With regard to impaired waters (lines 523-583), the draft permit has been revised to be consistent with the EPA Construction General Permit and to address conditions where permit coverage applies to discharges located within a TMDL watershed. The conditions include: a) identification of the impaired water(s); b) development of a SWPPP that minimizes applicable observed sources identified in the 2012 Water Quality Assessment Integrated Report required by the Clean Water Act, minimizes pollutants of concern identified in a TMDL approved prior to July 1, 2014, and is consistent with the assumptions and requirements of all associated TMDL wasteload allocations when applicable; and 3) use of a SWPPP inspection schedule. The schedule provides that inspections shall occur:
    - § At least once every four days; or
    - § At least once every seven days and not later than 48 hours following any measurable storm event. (In the event that the measurable storm event occurs where there are more than 48

hours between normal working days, then the inspection shall take place on the next working day.)

These requirements apply to construction activities that:

- Are outside of Tidewater, Virginia that discharge to a surface water in the Chesapeake Bay watershed and disturb greater than or equal to 20 acres;
- Are inside of Tidewater, Virginia that discharge to a surface water in the Chesapeake Bay watershed and disturb greater than or equal to 10 acres;
- Discharge to a surface water located within a TMDL watershed other than the Chesapeake Bay watershed and disturb greater than or equal to 5 acres; and
- Discharge directly to an impaired water.

For discharges to impaired waters, operators must also provide for permanent or temporary soil stabilization and apply nutrients in accordance with manufacturer recommendations.

- With regard to new discharges to exceptional waters (lines 584-608), the exceptional water(s) must be identified in the registration statement and the same SWPPP inspection schedule for impaired waters applies here. Provisions are also made for permanent or temporary soil stabilization.
- *C. Commingled Discharges* (page 14) – Existing language has been clarified and continues to state that discharges authorized under the general permit may be commingled.
- *D. Prohibition of Nonstormwater Discharges* (page 14) – Language has been updated to include and clarify required federal ELGs.
- *E. Authorized Nonstormwater Discharges* (page 14) – Language has been updated to include and clarify required federal ELGs.
- *F. Termination of State Permit Coverage* (page 15) – No changes have been proposed to this section.
- *G. Water Quality Protection* (page 15) – Language has been updated to specifically state that the Department may take enforcement action if an operator's discharge is compromising a water quality standard.

The proposed regulation addresses the following issues in Section II:

- *A.1. Stormwater Pollution Prevention Plan (SWPPP) (page 16)* – The proposed regulations allows operators with construction activities that are part of a common plan of development and disturb less than one acre to utilize a SWPPP template provided by the Department. In addition, these operators would not have to provide a separate stormwater management plan if one has been prepared and implemented for the planned development.
- *A.2. SWPPP Contents (page 16)* - This section has been reorganized for clarity and to address federally-required ELGs. Specifically, the section has now been reorganized into the following subsections:
  - *a. General Information (lines 714-747)* – Operators must submit: a) descriptive information about the construction activity; b) site plan information; and c) locations of control measures, surface waters, concentrated stormwater discharges, rain gauge information, and support activities.
  - *b. Erosion and Sediment Control Plan (lines 748-800)* – This control plan or an agreement in lieu of a plan must be included in the SWPPP. The control plans must include a statement describing the maintenance responsibilities for the controls used at the construction site. Plans must adequately: 1) control stormwater runoff and discharges; 2) minimize steep slope disturbances, exposed and compacted soil, and sediment discharges, and 3) provide for natural buffers and for stabilization.
  - *c. Stormwater Management Plan (lines 801-809)* – This plan must be provided in accordance with VSMP regulations. Operators that are not required to obtain a stormwater management plan approved from a VSMP authority or are not required to adopt Department-approved annual standards and specifications shall submit a plan to the Department for review and approval prior to land disturbance.
  - *d. Pollution Prevention Plan (lines 810-870)* – These plans must: 1) identify potential pollutant-general activities; 2) provide location information for pollutant-generating activities; 3) identify commingled stormwater discharges; 4) identify person(s) responsible for pollution prevention activities; and 5) describe procedures and practices to prevent leaks and pollutant discharges and to minimize pollutant discharge. This plan shall also include procedures for providing pollution prevention awareness.
  - *e. Applicable State or Local Programs (lines 871-880)* – The draft regulation provides that certain general permit requirements may be fulfilled by incorporating other plans developed under the federal Clean Water Act or BMP programs that meet or exceed the requirements of the SWPPP.
  - *f. Requirements for Discharges to Impaired Waters, Surface Waters Located with a TMDL Watershed, and Exceptional Waters (lines 881-898)* – The SWPPP is required to: 1) identify impaired water(s) and

exceptional waters where applicable 2) address both permanent or temporary soil stabilization, the applications of nutrients in accordance with manufacturer's recommendations, and the use of modified inspection schedules where applicable.

- g. Qualified Personnel (lines 893 and 894) - Information regarding qualified personnel conducting inspections must be required.
  - h. Delegation of Authority (lines 895 and 896) - Any individuals and positions with delegated authority must be included in the SWPPP.
  - i. SWPPP Signature (lines 897 and 898) – SWPPPs must be signed in accordance with conditions in Section III of this draft permit.
- *B. SWPPP Modification, Updates and Records (page 21)* – Operators shall amend the SWPPP to reflect changes in design, construction, operation, or maintenance that have a significant effect on the discharge of pollutants and when there is a determination that existing control measures are ineffective. SWPPP revisions must now identify only contractor(s) implementing and maintaining control measures. Updates shall be made no later than seven days following any SWPPP modifications and must include information regarding dates that grading activities or stabilization occurred, information regarding replace or modified controls, changes regarding a property's legal control, and measures taken to prevent the reoccurrence of any prohibited discharge.
  - *C. Public Notification (page 23)* – Upon commencement of land disturbance, operators shall maintain and prominently post near the main entrance of the construction activity the Notice of Coverage letter until the termination of permit coverage.
  - *D. SWPPP Availability (page 23)* – Operators must continue to have a copy of the SWPPP available for use by those having project implementation responsibilities under the SWPPP. Furthermore, operators must continue to make the SWPPP available upon request to the Department, the VSMP authority or other authorized inspection entity, the EPA, Virginia Erosion and Sediment Control Program (VESCP) authorities, local government officials, or the operator of an MS4 receiving discharges from the construction activity. Under this draft regulation, the operator would no longer be required to make the SWPPP available to the public for inspection.
  - *E. SWPPP Implementation (page 23)* – The operator continues to be responsible for implementing the SWPPP and all updates to it until the permit is terminated.
  - *F. Inspections (page 23)* – On-site and off-site inspections continue to be required and must be conducted by qualified personnel identified by the operator in the SWPPP. Inspections other than those related to impaired or exceptional waters will be conducted every seven days or at least once every

14 days and no later than 48 hours following any measurable storm event. Provisions continue to be made for areas temporarily stabilized or subject to winter conditions and for representative inspections. Requirements for inspections include:

- Recording date and time and the amount of cumulative rainfall since the last inspection (lines 1090-1091);
- Recording information on any discharges occurring at the time of inspection (lines 1092-1093);
- Recording land disturbing activities occurring outside of the approved erosion and sediment control plan (lines 1094-1095);
- Inspecting for the installation of certain measures in compliance with erosion and sediment control plans, maintenance needs, and effectiveness of sediment discharge minimization (lines 1096-1099);
- Inspecting areas that have reached final grade or will remain dormant for more than 14 days for both initiation and completion of stabilization activities (lines 1113-1117);
- Inspecting for any evidence that an erosion and sediment control plan has not been properly implemented or is not meeting plan requirements (lines 1118-1120);
- Inspecting pollutant generating activities identified in the pollution prevention plan for proper implementation, maintenance, and effectiveness (lines 1139-1141);
- Identifying any pollutant generating activities not included in the pollution prevention plan (lines 1142-1143); and
- Identifying and documenting any evidence of pollutant discharge prohibited under the conditions in this draft permit (lines 1144-1145).

Inspection reports must also be prepared documenting: a) the date and time of the inspection; b) inspection findings; c) the location of prohibited discharges; d) control measures as well as evidence of noncompliance with erosion and sediment control plans; e) information on corrective actions; and f) signature information regarding qualified personnel or designees. Operators must continue to retain inspection reports for at least three years.

- *G. Corrective Actions* (page 26) – Operators are required to implement corrective actions that have been identified in inspections as soon as possible but not later than seven days after discovery. Operators are also required to remove accumulated sediment deposits located outside of the construction activity as soon as practicable. Operators must also notify the Department and obtain appropriate authorizations, approvals, and permits prior to the removal of sediments.
- The following provides a crosswalk to how this section of the draft regulations was reorganized:

### Reorganization Outline – Section 1170

Current Permit	Draft Permit
<b><i>Section I – Discharge Authorization and Special Conditions</i></b>	
A. Coverage under this state permit (page 10)	Section remains and additional language is proposed.
B. Limitations on coverage (page 11)	Section remains and now addresses impaired and exceptional waters.
C. Commingled discharges (page 14)	Section remains and language has been clarified.
D. Prohibition of nonstormwater discharges (page 14)	Section remains and now addresses federal ELGs.
E. Releases of hazardous substances or oil in excess of reportable quantities. (page 15)	Section deleted. The release of hazard substances is covered in other parts of Section II and in Section III.
F. Spills (page 15)	Section deleted as provisions are addressed in Prohibition of nonstormwater discharges (page 14).
G. Termination of state permit coverage (page 15)	Section remains.
H. Water quality protection (page 15)	Section remains and language has been clarified.
<b><i>Section II – Stormwater Pollution Prevention Plan</i></b>	
A. 1. Stormwater Pollution Prevention Plan (page 16)	Section remains and additional language has been added regarding the use of a SWPPP template.
A. 2. SWPPP Elements (page 16)	Section remains and current language has been replaced. The following subsections have been added: a) General Information; b) Erosion and Sediment Control; c) Stormwater Management Plans; d) Pollution Prevention Plans; e) Applicable State or Local Programs; f) SWPPP Requirements for Discharges to Impaired Waters; g) Qualified Personnel; h) Delegation of Authority; and i) SWPPP Signature.
B. SWPPP review and making SWPPPs available (page 20)	Section remains and is now named <b>SWPPP Modifications, Updates and Records</b> . Existing language regarding SWPPP notification has been deleted and moved to a new section called



	Public Notification (page 23).
C. Maintaining and updated SWPPP (page 22)	Section remains and this section is now named <b>Public Notification</b> . Existing language has been moved to the SWPPP Modifications section (page 21).
D. Stormwater pollution prevention plan contents (page 26)	Section remains and this section is now named <b>SWPPP Availability</b> . Existing language has been deleted and moved to sections regarding General Information (page 16), SWPPP Availability (page 23), and Inspections (page 23).
E. No section in the current permit exists.	A new section named <b>SWPPP Implementation</b> (page 23) has been created. Provisions regarding control measures that were included in the Stormwater pollution prevention plan (page 27) contents section of the current permit have been included here.
F. No section in the current permit exists.	A new section named <b>Inspections</b> (page 23) has been created. Provisions regarding inspections that were included in the Stormwater pollution prevention plan contents section of the current permit (page 29) have been included here.
G. No section in the current permit exists.	A new section named <b>Corrective Actions</b> (page 26) has been created. Corrective actions addressed in the Stormwater pollution prevention plan contents section of the current permit (page 30) have been included here.

**Only the global changes noted above apply to Section III.**

The following regulatory sections are proposed to be repealed as the requirements in these sections were needed for the 2009 permit but are no longer needed for the 2014 permit (pages 38 to 42):

- Section 1180 (Applicability)
- Section 1182 (General)
- Section 1184 (Water Quality)
- Section 1186 (Stream Channel Erosion)

- Section 1188 (Flooding)
- Section 1190 (Regional [Watershed Wide] Stormwater Management Plans)

Mr. Hornbaker asked who performed the inspections.

Ms. Snead said that was the responsibility of the contractor. She said that there were also local government requirements for inspections but that for the purpose of the General Permit these were the self inspections contractors were required to do.

Ms. Hansen asked under public notification if a member of the public saw an activity could that person ask to see the SWPPP.

Ms. Vucci said that under the current law the SWPPP may be posted on the Internet or otherwise the contractor is required to make it available at least one time per month at a mutually agreeable time and place.

Ms. Hansen asked if there was a real time option for addressing the concern.

Ms. Vucci said that would depend. There is no current requirement to post the SWPPP on the Internet. She said that under the draft regulation, there is no longer a requirement for the private operator to make a SWPPP available to the public for viewing—However, both the current and revised regulation continue to allow a concerned citizen to go to an inspecting authority to address and report concerns regarding an construction activity.

Ms. Thornton asked if the locality would have to maintain a list of impaired waters.

Ms. Snead said that the impaired waters list is maintained by DEQ and posted on their website. This is referenced in the regulation.

Ms. Vucci reviewed potential issues that the Board could hear during the public comment period.

### **Potential Issues that the Board May Hear During Public Comment**

As noted previously, the RAP met on 7 occasions between August 29, 2012 and January 4, 2013. As noted in the January 4<sup>th</sup> meeting minutes that were shared with you, there was general consensus within the RAP concerning the language being recommended for inclusion in the general permit with the exception of the following three items.

#### **1) Common Plan of Development or Sale:**

Per the current definitions that reside in the stormwater regulations (Part I), a "Common plan of development or sale" means a contiguous area where separate and distinct construction activities may be taking place at different times on different schedules. A stormwater discharge from a construction activity disturbing less than one acre must secure authorization to discharge under a state permit if that

construction activity is part of a larger common plan of development or sale that would disturb one acre or more.

Conversations in the RAP suggested that more clarification regarding “common plan of development” might be helpful and that there are questions regarding when a land-disturbing activity is no longer a part of a common plan of development. It was noted that there are many developments that have been in place for a long time that contain lots that have never been built out. It was suggested that the magnitude of the issue is unknown but expected to be significant.

The Department has noted that the definition utilized in the regulations is the same definition used by EPA and is not recommending a change to that definition. However, the Department recognizes that additional direction on this issue is necessary and is committed to developing guidance on this issue concurrent with this regulatory action.

## **2) Site inspection periodicity; addition of 4-day requirement:**

Currently, site inspections are governed by the following language:

- a. Inspections shall be conducted (i) at least every seven calendar days or (ii) at least once every 14 calendar days and within 48 hours following any runoff producing storm event. Where areas have been temporarily stabilized or runoff is unlikely due to winter conditions (e.g., the site is covered with snow or ice, or frozen ground exists) such inspections shall be conducted at least once every month.

The proposed regulations that came before the RAP at its final meeting on January 4, 2013 contained updated site inspection requirements for three situations as noted below (impaired and exceptional waters handled similarly). It should be noted that site inspections are a federal requirement and must be included in the general permit and that there is an expectation by EPA that more frequent inspections would be conducted associated with projects that discharge to impaired water.

Limitations on coverage for discharges to impaired waters and for Limitations on coverage for new discharges to exceptional waters. - The following modifications to the SWPPP inspection schedule shall be implemented: (a) Inspections shall be conducted no later than 48 hours after a measurable storm event but no less than once every seven days. In the event that a measurable storm event occurs when there are more than 48 hours between normal working days, the inspection shall be conducted on the next working day.

Inspection schedule (Unless the site discharges to impaired or exceptional waters)

- Inspections shall be conducted at a frequency of:

- (1) No less than once every seven days; or
- (2) No later than 48 hours following any measurable storm event but no less than once every 14 days. In the event that a measurable storm event occurs when there

are more than 48 hours between normal working days, the inspection shall be conducted no later than the next business day.

At the January 4 meeting, some RAP members suggested that the proposed inspection requirements for impaired and exceptional waters increase costs over the current regulatory process and that certain increased frequencies may not result in additional benefits to water quality. The primary concern was related to the 48-hour inspection requirement. Language has been added to the draft regulations before you today resolve this item. The language, **contained on pages 12 through 14**, is as follows:

(3) The following modifications to the SWPPP inspection schedule shall be implemented:

(a) Inspections shall be conducted at a frequency of:

(i) At least once every four days; or

(ii) At least once every seven days or no later than 48 hours following any measurable storm event. In the event that a measurable storm event occurs when there are more than 48 hours between normal working days, the inspection shall be conducted on the next working day.

**3) Stormwater Pollution Prevention Plan (SWPPP) Availability:**

A SWPPP generally includes an approved erosion and sediment control plan, an approved stormwater management plan, a pollution prevention plan for regulated land-disturbing activities, and a description of any additional control measures necessary to address relevant TMDLs. Of these elements, the approved erosion and sediment control plan and the approved stormwater management plan are already publicly available from the VSMP authority and shall remain so.

The VSMP regulations (Part I) define the SWPPP as follows:

"Stormwater Pollution Prevention Plan" or "SWPPP" means a document that is prepared in accordance with good engineering practices and that identifies potential sources of pollutants that may reasonably be expected to affect the quality of stormwater discharges from the construction site. In addition the document shall identify and require the implementation of control measures, and shall include, but not be limited to the inclusion of, or the incorporation by reference of, an approved erosion and sediment control plan, an approved stormwater management plan, and a pollution prevention plan.

The entire SWPPP is required to be maintained by the operator at a central location onsite, or if an onsite location is unavailable, notice of the SWPPP's location must be posted near the main entrance at the construction site. The SWPPP is an ever changing document and is to be amended whenever there is a change in design, construction, operation, or maintenance that has a significant effect on the discharge of pollutants to surface waters and that has not been previously addressed in the SWPPP.

The current general permit regulation provides availability of the entire SWPPP to the general public in a limited fashion:

For discharges that commence on or after July 1, 2009, that have not previously held coverage under a state or VPDES permit, the operator shall make the SWPPP available to the public for review. A copy of the SWPPP for each site shall be made available on the Internet or in hard copy. The website address or contact person for access to the SWPPP shall be posted on the sign required by subdivision B 4 of this section. If not provided electronically, access to the SWPPP may be arranged upon request at a time and at a publicly accessible location convenient to the operator or his designee but shall be no less than once per month and shall be during normal business hours. If a reproduced copy of the SWPPP is provided to the requestor, the requestor shall be responsible for the costs of reproduction. Information excluded from disclosure under applicable law shall not be required to be released. Information not required to be contained within the SWPPP by this state permit is not required to be released. (lines 954 to 965)

During the RAP proceedings, similar replacement language was initially under consideration:

The operator shall make the SWPPP for each site available on the internet in electronic form or in hard copy for public review. If not provided electronically, access to the SWPPP may be arranged upon request at a time and at a publicly accessible location convenient to the operator or his designee but shall be no less than once per month and shall be done during normal business hours. Information excluded from disclosure under applicable law shall not be required to be released. Information not required to be contained within the SWPPP by this permit is not required to be released.

During the final RAP discussions of the proposed regulations on January 4<sup>th</sup>, it was recommended that this language be removed from the draft permit.

The argument that may be articulated to the Board by some constituents to the best of our understanding, is that the requirements of the SWPPP are set out in the permit, therefore the SWPPP should be made available to the public. Constituents have suggested that the SWPPP must be considered part of the permit in order for the citizens to have the ability to enforce the permit and that via its removal the Commonwealth has eliminated a portion of the permit that is essential to public participation and has weakened the Construction General Permit. Constituents have raised concerns that the removal of this provision takes away an important vehicle used to bring problematic pollution sites into compliance.

However, in support of the removal of this language, the Department has noted that public availability of the entire SWPPP exceeds federal requirements and, in concurrence with RAP concerns expressed by a portion of those members present

at the January meeting, is in agreement that public access to the SWPPP from the construction site operator should be removed from the proposed general permit.

In response to a question as to whether the SWPPP is part of the permit, Counsel noted in the January 4 RAP meeting that the SWPPP is not part of the permit (which is to be made publicly available) and that the Federal Court (7<sup>th</sup> Circuit) ruled that the Clean Water Act does not require public access to the SWPPPs. It should also be noted that DEQ does not have a provision within their industrial general permit that requires making SWPPPs publicly available. However, should a SWPPP be submitted with the permit application (which is not an application requirement) it would become part of the public record and would be provided if a Freedom of Information Act request was made. By federal and state law, a SWPPP must be available to site inspectors and shall be maintained on the construction site.

In summary, it is the Department's position that a state regulation imposing on a private sector entity a requirement to provide information to another private sector entity should be avoided and that if a citizen has a concern, then that concern should instead be registered with the inspecting authority who has the authorization to institute a review of the SWPPP and an inspection of the land-disturbing activity.

Mr. Dunford called for discussion by the Board.

Ms. Hansen said that she had serious concerns regarding the removal of the SWPPP availability. She said that she was not persuaded on legal grounds. She noted that with regard to the court ruling that Virginia is not in the 7<sup>th</sup> Circuit, but in the 4<sup>th</sup> circuit. She said that she had a concern because the Board frequently heard from localities regarding their lack of proper resources. She said that the Board also heard frequently regarding enforcements that were initiated by a member of the public. She said that when the time was appropriate, she would move to restore that language.

Ms. Thornton said that she would look at it from a different perspective. She said in her locality there are organizations that oppose any type of development and would seek any obstacle they could make use of to impair the development. She said that she believed that if every local citizen was allowed to review the SWPPP that would hinder the development.

Ms. DuBois said that as a former member of a Board of Supervisors that she would agree with Ms. Thornton.

Ms. Hansen said that she believed that having the information available provided a needed balance.

Mr. Johnson noted that with regard to conversations with the EPA regarding SWPPP availability that EPA did not consider this a part of the permit.

Mr. Hornbaker asked what happened when a contractor became insolvent.

Ms. Snead said that there were stabilization requirements that would fall under the Erosion and Sediment Control laws.

Mr. Hornbaker said that with the coming transfer of programs to DEQ he would like to get the perspective of the State Water Control Board.

Ms. Snead said that DEQ had been heavily involved in the drafting of the regulation.

Mr. Dowling said that staff had been working hard for an orderly transition of programs to DEQ.

Ms. Thornton expressed concern that the Eastern Shore had not been represented on the RAP.

Mr. Dunford asked if the public hearings would be publicly noticed.

Ms. Vucci said that there would likely be at least three public hearings. These will be posted on the Regulatory Town Hall and in other appropriate media.

Mr. Dunford asked that the Board be notified of the public hearing dates and locations.

*Public Comment*

Mr. Dunford called for public comment.

Peggy Sanner, Chesapeake Bay Foundation

Thank you, Mr. Chairman, Members of the Board. I am Peggy Sanner, Senior Counsel at the Chesapeake Bay Foundation. I very much appreciate the opportunity to speak this morning.

I served on the Regulatory Advisory Panel that Ginny and others have mentioned this morning. I would like to express my deep appreciation for that opportunity and for the very professional way DCR ran that Regulatory Advisory group.

I do want to address principally the public access issue that has been discussed already this morning, just to briefly talk about three points that were raised and then to get to my main point which wasn't addressed.

The Bay Foundation does not say that federal law requires the inclusion of the public access provision. I know we're not doing a legal argument here this morning. There's no case law that says it must be in or must be out. The court opinion that has been discussed

simply says it's not required. In that case, as Ms. Hansen said, does not apply to this jurisdiction.

Second point, there were discussions about what is or is not [required as part of] an industrial stormwater permit. I would say for a variety of reasons that may not provide a particularly persuasive source of authority because, for example, it is also up for revision starting this week with the first session of the Regulatory Advisory group for the new permit coming up. So it doesn't make sense to look at an example that itself will be reviewed.

Third I would like to simply address what I think today is a more germane source of authority and that is the Watershed Implementation Plan (WIP) Phase I which I know that this Board has been hearing a great deal about for the last two years. This plan among other things requires all source sectors for pollution, nutrients and sediment in the Bay watershed to individually and separately and equitably to live up to their pollution reduction responsibilities. And I emphasize that equitable word.

It also recognizes that Virginia, like other Bay states has long standing obligations and commitments to reduce pollution that have not yet been successful. So the WIP requires, as part of its guiding principle (in fact on page 2 of the WIP) a regime of reasonable assurance which essentially means, and it's defined in the WIP itself, accountability provisions. What kind of reductions, what are the plans out there and do the plans work, and how can we fix the plans.

Finally, I just want to say on that point that this proposed permit does in fact address many aspects of the WIP. As discussed it provide specifics and detailed treatment for what operators must do to achieve pollution reduction.

Many of them are found in portions of the SWPPP, the pollution prevention plan portion of the SWPPP. For example, there are more frequent inspections and more rapid soil stabilization in certain circumstances as well as requirements that the operator must minimize the discharge of pollutants of concern. Those are all good and strong improvements to this permit. What the permit does not do adequately in the view of the Bay Foundation is provide sufficient resources to meet the WIP to make sure this is actually going to happen.

I think you know the SWPPP includes the stormwater management plan that would be subject to approval. It includes erosion and sediment control that is subject to approval. But not all portions of the SWPPP are available to the locality unless the locality asks for it.

I ask those of you who have some ability or experience in local government whether there is going to be a regular opportunity for the locality to ask that for the plan and each of the regular updates that were alluded to earlier. There simply is not enough time in the day to make that happen in a timely way given the fact that the discharge from a



construction site is particularly deleterious to the receiving water after rainfall. In other words, quickly occurring events lead to problems.

So what is the purpose of the public availability of the SWPPP? It's simply to get another set of eyes, another set of information that the locality could use or not use.

I would say in connection to the RAP discussion of this issue, not a single incident was raised that this provision, which is now in Virginia law, has been abused. No one says it has been abused. Removing it takes away a potential tool. It does so without a basis in actual evidence that is needed.

The removal of the SWPPP leaves the locality with fewer options in terms of getting information. It leaves the public with fewer abilities to understand what their government is doing. I think no one is inclined to disagree that transparency of government operations including inspection of sites that would affect all of our resources; no one would argue that's a bad thing. There is simply no reason for the evidence to remove that provision. There is every reason in the commitment that Virginia made in its Watershed Implementation Plan to ensure that members of the public can be a part of the effort, that members of the public can help ensure that all source sectors, not just farmers, members of the construction industry, are all bearing their responsibilities equally.

One last point on that subject. Other source sectors are also subject to transparency obligations. I think you all know that a farmer that has an animal operation of a certain size has to have a nutrient management plan. That is open to the public view; for the same reason that I would suggest that this is appropriate. So I would ask you to favorably reconsider reinstating the public access requirement.

Two other things I want to raise, and that is as you know the Board has been engaged in reviewing and overseeing the process of transferring authorities from the Board and the Department to localities to oversee these programs. I have included in a letter that I sent about that issue that I think the draft permit does a very good job of saying that the Board has the authority; it has the ultimate authority in issuing the permit. I think it should be strengthened in the case I mentioned to ensure the Board has the ultimate enforcement authority and they don't give that up.

In the Clean Water Act authority to enforce goes to the Board.

In closing, I would just say this is a new regime. It's time for Virginia to use all their resources it has to gather the information for this permit period in case something needs to be tweaked for the next permit period. We need to move forward with more and more information so that all sectors will contribute to clean waters.

Thank you very much.

*Roy Mills, VDOT*

Good morning Mr. Chairman, Members of the Board. My name is Roy Mills. I am the statewide administrator for the VDOT stormwater program. I'm here representing VDOT.

First I'd like to commend DCR on the efforts put forth in this permit, specifically Ginny Snead and Doug Fritz. There were many conversations during the RAP meetings and after RAP meetings on various issues that I saw as a condition that VDOT may have difficulty meeting within the regulatory language that was being developed.

I think for the most part we've gotten everything pretty well resolved. There are a couple of issues that I wanted just to bring to your attention. I'm not sure there's anything we can do about them.

One may resolve itself through the ePermitting process. The other issue, I'm not sure there is a resolution. With any action, there are consequences. So I wanted to make everyone aware of the consequences that may occur as a result.

I would say that VDOT is probably the biggest stakeholder in the construction permitting process. We have over 600 active projects under the permit. That pretty much is a constant. One of the issues we have to deal with is a re-permitting process. Come July 1, 2014, we will have to re-permit all of those projects that are under permit currently. As I understand the process of the existing data base that DCR has will be dumped into the ePermitting system and by pushing this button you will get a registration statement that we can issue to DCR and re-register that project and a new number. If all that works, that's great. I've been around long enough to know that stuff doesn't always work like you want it to, especially when it comes to computers and software.

If it works fine, that's one thing. There's a significant amount of resources in printing another registration statement and getting that resubmitted and getting numbers back and getting numbers out to the field on 600 projects. There's money involved in that. If we have to go in and put in information that doesn't come out of the ePermitting system or add information to it, we could be talking about \$200,000 to \$300,000 to get projects re-permitted. If the ePermitting system works like DCR says it's going to work the majority will be handled electronically and we won't have to expend management hours to add or revise information.

The other issue that will cost money is updating SWPPPs to include all the new requirements and projects under construction. We typically don't permit our projects until they go to construction. So we'll have in the neighborhood of 600 projects that will have to have updated SWPPPs to include any new requirements of the permit.

I think DCR has done a great job of trying to match federal ELGs to existing standards in the Erosion and Sediment Control Regulations. I think for the most part we will be able to say that our projects already meet these requirements. There are some specific requirements in the permit that will have to be revised, specifically, the inspection schedule. The majority of our projects will be in an area where will have to go to the

seven day inspection schedule. We currently have a fourteen day inspection schedule that matches the Erosion and Sediment requirements. That's an additional cost that will have to be absorbed by the project.

Also associated with the pollution prevention plan (PPP), there are a lot of new requirements; there are more specific requirements in the PPP. Some of those specific requirements I think we can match up with some of our existing specifications. So our SWPPPs won't have to be updated for that particular aspect, but there are some things that will be required to be updated, for example the concrete washout requirements. Those are not currently in our specifications at least to the requirements in the new permit.

Also the pollution prevention awareness that the contractor has to provide to his employees is not a part of our current specifications or our current contracts. All of those are going to cost money. The contractor is not going to do it for nothing. Those are the result of work orders. So I took an estimate of 500 projects with one big work order for each project I got an estimate today that could cost a thousand dollars per work order. So we're talking a half million dollars just to process the work orders to update the SWPPPs.

To look at actual work that will have to be done to implement the requirements of the updated SWPPP, we could be talking five million dollars or greater. That's just assuming \$10,000 per project. These's lot of money attached to updating the SWPPPs to incorporate requirements from the new permit for projects that are under construction.

I would submit to you that by the time all these projects that are under construction have their SWPPPs updated and have this stuff implemented the projects may be very well complete, so what have we gained? We spent five, six, seven million dollars. What have we gained actually on the project as far as environmental compliance? Probably not a whole lot.

I'm thinking we can probably patch a lot of potholes with five or six million dollars.

Anyway, as I said, I talked to DCR about this on several occasions. I'm not sure anything could be done but I do want to make you aware that there are consequences associated with actions and I would be remiss in my job duties if I didn't point that out to you.

I would like to be able to see some type of way we can work around this, some type of grandfathering where those projects that are under construction don't have to have SWPPPs updated with the new requirements. Especially those requirements that would require contract revisions and work orders and time and money spent that could be well spent elsewhere on other projects or other activities.

Thank you very much.

*Jenny Johnson, Joyce Engineering*

Hello Members of the Board. I am Jenny Johnson, I work for Joyce Engineering.

I would like to urge you to move forward with these regulations, with these permits, and allow the public process to happen.

From the standpoint of local governments, they have a lot to do in a short amount of time to get these programs up and running. DCR recently sent out an email that the application to the Board is likely to be due in January, 2014. Localities need to have ordinances before they can go to their Boards of Supervisors and explain what's in the ordinance.

I would urge you to consider these comments, but also to move forward.

*Mike Toalson*

Good morning, Mr. Chairman, Members of the Board and staff as well. I am Mike Toalson, the CEO of the Home Builders Association of Virginia. I represent the regulated community, those who will have to live with this new general permit and the new inspection schedules that have been outlined.

I would also start with commending staff and their efforts to manage the RAP. I think I lived mostly with the DCR staff over the last six months of 2012.

I'd like to say I'm happy with the General Permit as proposed. Unfortunately more often than not, I think what I heard and what other members of the regulated community heard more often than not was that EPA requires it. I get that but that's very disappointing.

I think the first thing I'd like to comment on is section 10 the definition of "Common Plan of Development." I don't know if you have had the opportunity to read it or not but if you had I think you would agree with me that it may cover individual lots in new plans of development and it may not. I can share with you that per my colleagues across the country, that in some states they are required and in some states they are not. My disappointment is that if you look at what appears to be required in the SWPPP in a planned community, for an individual home building lot, every one of them within the common plan of development that has an overall stormwater permit. The SWPPP duplicates with one little exception what is required for E & S.

Here we are paying additional fees. Higher fees. You have these additional inspection schedules over and above what is already required for E & S and for the most part there's no additional benefit for water quality. It's just duplication.

My hope would be that in guidance DCR would consider an in lieu of program that if you had an E & S permit issued by your local government that it would in effect be the VSMP permit.

My second comment would be the inspection schedule especially for within impaired waters. I'm not going to make a recommendation for you today but I do think it's a little bit too aggressive. Maybe something along the line of every fifth day would be appropriate to allow you to inspect once a week on a regular schedule as part of a regulated community as opposed to something along the lines of once every seven days or within 48 hours after a rain event. It's defined in here as 0.25 inches within 24 hours.

The other thing I'd like to share is the SWPPP availability issue. I would concur with the comments of the Director. I ask you to keep in mind that before this was a DCR program it was administered and enforced by the state. It will now be administered and enforced by local governments meaning you're going to have hundreds and hundreds of employees out in the field every day on behalf of local government overseeing this process. That alone to me seems like it should dictate that what is being proposed is adequate.

I'd also share with you the notion of property rights. The notion of individual public members coming on private property and requesting information on a home building site is something that shouldn't be approved by the Commonwealth of Virginia. And most importantly I think, particularly on these individual building sites I hope you will keep in mind that our industry has been through the most difficult time since the great depression. We have had a significant reduction in staff. We've had a significant reduction in margins. Any additional cost coming out of this permit over and above what it's already going to require, is something that I would urge you to object to.

My final comment would be on the re-permitting process. I too share lots of concerns, particularly by the fact that reapplication packages have to be postmarked 90 days prior to the termination date. My hope would be that the Board would direct staff to do everything they can to inform existing permit holders that in fact they need to renew those permits and what the schedule is. There are many other consequences of not renewing your permits. It's a big concern of mine.

I know on our part we'll be doing everything we can within the industry to ensure they're notified of the need to do that. But I do think it should be an obligation of the Board and staff to make sure that notification process is complete.

Thanks for your time. We'll probably have more public comments, especially on the inspection schedule as the public comment period continues.

Thanks for this opportunity to comment.

*Phil Abraham, Virginia Association of Commercial Real Estate*

Mr. Chairman, Members of the Board. My name is Phil Abraham; I'm representing the Virginia Association of Commercial Real Estate. We represent commercial and industrial developers in the Northern Virginia, Hampton Roads and Richmond regions.

We too appreciate the work of the staff on these regulations. I participated in the RAP and feel that all agree that what you have before you are a greatly strengthened set of regulations that are going to provide significantly improved water quality in the state.

Our main issue today is to support the recommendation regarding public availability. I would urge you to consider the costs and benefits of restoring the requirement. The responsibility for administering these permits is pushed down to the local level so the public will have much easier access to the SWPPPs than they have under current regulatory structure.

The developers in the state and the contactors in the state are not typically the ones who are interacting with the public on permit requirements. We feel like that is most appropriately done by the local government. This will in no way restrict the ability of the public to make a complaint to a locality if they see something at a site that concerns them and they are free to report it to the regulatory authority. We think the current requirements regarding public availability are appropriate and I urge you to accept them.

We also will provide additional comments during the public comment process. We have some concerns about the inspection frequency requirements and will be submitting further comments.

Thank you for your time today.

*Pat Calvert, James River Association*

Good morning. My name is Pat Calvert. I'm the Upper James Riverkeeper with the James River Association. I want to thank DCR and DEQ staff for a standup job of herding cats and making this RAP happen. I sat on the RAP and learned a great deal. As the Upper James Riverkeeper I have had to deal with some situations of the public coming to me and asking me to follow up on complaints that they have, concerns about potential violations.

So I've created some great relationships with staff, locality staff, and DCR staff in managing some erosion and sediment control issues, many from construction sites. And it's cooperative.

I can see where it could be considered at times to be conflicted. That's an opportunity I think. To fear conflict is not necessarily the answer.

Transparency is a good thing. So, I suggest the SWPPP language and availability be preserved and ask you to seek from DCR some feedback on what sort of responses they have received from that language being included in the current law. I do urge you to ask those questions.

We're not asking for trespass. Criminal trespass is a different thing. The public sometimes wants to respond. The public has a concern. It's my job to create that conduit

with the permittee and the government to figure out how we can better work together to better educate and to respond to issues so that the public won't just walk on somebody's property. That's certainly not what we're seeking. But, to deny access that you've already provided is a step backwards.

Great information, great requirements. DCR staff has gone to a great deal of effort to address concerns. One thing that does cause me pause is the withdrawing of that language. I was really relieved to hear that there is adequate staff from some localities to deal with people like me who will be coming and trying to cooperatively work towards finding out whether there are violations and solving them as soon as possible.

However, I represent a large rural constituency. So I'm sensitive to rural needs and expectations. Many of these regulated communities have very few staff. To get a response quickly takes time and resources, often times these communities just don't have this. So I knock on doors and call and call in order to get what is necessary to accomplish these needs. I think taking out the public availability is not necessarily the answer to making that happen.

I believe the ePermitting system might also give the opportunity to post the SWPPP and not be burdensome. It may be less burdensome in the end.

I appreciate this opportunity. Thank you for what you do.

*Jeff Kelble, Shenandoah Riverkeeper*

Thank you, Mr. Chairman and thank you Board for your time. And thank you DCR and DEQ for working through this permit.

My name is Jeff Kelble. I am the Shenandoah Riverkeeper. This is the second time I've come to Richmond to speak to this Board. Some folks have raised the issue very well. I came in 2009 to speak to the same issue. We've had some interesting testimony by some folks who knew some of the same issue.

What I provide to the Board is on the ground experience. My role as Shenandoah Riverkeeper has taken upon the role to protect the river. We've worked on all sources of pollution. We started with sewage treatment plants and industrials the first three or four years, then during the construction boom we found our water quality testing was demonstrating impacts in areas that had a lot of building, we'd never seen numbers like this before, and I decided it was time to work on the construction sites.

Back to construction sites and back to 2009. When this permit came to the Board I drove to Richmond and at that time we had the same debate with the Technical Advisory Committee (TAC) about the SWPPP availability. The same arguments were presented on both sides and that was that citizens on occasion-need these provisions to be able to bring about compliance at a construction site.

To protect our local streams, that's what ultimately I do. That's what ultimately my neighbors do. They're protecting where their kids play. They're protecting where they fish. When I made that argument to DCR during the previous process, they chose not to publish these provisions in the end. The provisions were in during the TAC process and were taken out in the end. Largely like we did this time. I remind the Board that we pointed out that land owners who had farm operations were required to have public availability of nutrient management plans, that sewage treatment plants had to have all their pollution documents available for public review, and that this was an inequity to not have construction sites have them available.

At that time the Board stopped the meeting during lunch and instructed DCR to go back and draft language to add the provisions back to the permit. That was your action in 2009. This is your provision. Not the Agency's, not mine. I viewed it as an experiment.

So for the next four years, even during the decline in construction, we still had some construction sites that were still happening and in a few instances in Fairfax for example, despite 17 VDOT inspections, a site remained out of compliance.

I spent about a year going to that site walking on public property and identified what my attorney said were 16,000 violations of the Clean Water Act.

I did that and was able to do that because I had the availability of the SWPPP. I could see that despite the builder's own observations, despite repeated attempts to fix the same problems over and over again, they never got fixed for a year and a half.

It wasn't until we filed a Clean Water Act case that Attorney General Cuccinelli filed his own case and agreed with the exact same complaints and brought about a change in the way they reviewed their Erosion and Sediment control plan and that was when the pollution stopped.

In those four years I've used the provision twice. I'm probably as active as anyone in the state. I've only seen the desire to use it twice. I've never used it because of construction or to bother the landowner. I don't know of a case where this has occurred and we asked the home builders during the process to help us understand how much of this has occurred. There was none.

It's been four years that this provision has been on the books. In four years it hasn't been an issue but I wonder if this is really an issue. Are citizens really going to take advantage of this? Trading on that potential fear are we really leaving out what could be important provision to empower citizens to actually make pollution reductions.

This is free to the Agency. It didn't cost DCR a thing to have me on that site for a year. Why would we give up a provision where citizens are there on their own time, their own funding, because they decide that they want to protect their local streams. If someone invades my home we have laws to allow you to defend yourself. I'm talking about being professional, calling the phone number listed on the permit, which is what I do in every circumstance. I call and ask for the provisions of the SWPPP. I ask to be walked around



the site with a hard hat on. They always give me one on the site to absolve the OSHA issues. It's never been an issue. I think in a time where everyone is looking to cut spending, I think this is an opportunity to allow citizens to do the work for you.

I know there are those who I can't influence their opinion, but for those who I might be able to influence, the provision does not require you to go to the local government. It allows you to address the developer. What's interesting about these situations is that it's never the first thing I do. It's never the first thing a citizen does. Typically what happens is that we find out these sites have been inspected for years. They've been out of compliance. Inspectors are either unable to influence builders to bring them into compliance or they are understaffed.

In the Shenandoah Valley, when I started doing construction sites, we estimate that 30% of the building sites actually had permits and that DCR had only inspected 10% of them. With those numbers I was faced with, this is why I fought for the provision in the first place; I have to have them to protect my river. I could probably go on, this is my issue.

I urge the Board to bring these provisions back as you did four years ago. I'll be happy to answer any questions and I appreciate your time.

#### *Board Discussion*

Ms. Thornton asked about locality authority to adopt more stringent regulations.

Ms. Snead said that the provision for more stringent regulations was for water quality protection.

Mr. Gooch said cited 10.1-603.7 from the Code of Virginia which read:

*Localities are authorized to adopt more stringent stormwater management ordinances than those necessary to ensure compliance with the Board's minimum regulations, provided that the more stringent ordinances are based upon factual findings of local or regional comprehensive watershed management studies or findings developed through the implementation of a MS4 permit or a locally adopted watershed management study and are determined by the locality to be necessary to prevent any further degradation to water resources, to address TMDL requirements, to protect exceptional state waters, or to address specific existing water pollution including nutrient and sediment loadings, stream channel erosion, depleted groundwater resources, or excessive localized flooding within the watershed and that prior to adopting more stringent ordinances a public hearing is held after giving due notice. Localities shall report to the Board when more stringent stormwater management ordinances are determined to be necessary pursuant to this section.*

Ms. Jamison asked if a citizen saw a violation in a locality where they were not a resident could the request still be filed.

Mr. Gooch said that citizens of the Commonwealth could make FOIA requests in other jurisdictions within the Commonwealth.

Mr. Ingle asked staff to address the VDOT concern regarding the five-year plan cycle.

Ms. Snead said that Mr. Mills mentioned a couple of things that continued to be of concern. She said that the hope was that the ePermitting process would address the renewal concerns.

MOTION: Ms. Thornton moved the following:

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

The Board approves these proposed regulations and authorizes the Director of the Department of Conservation and Recreation and the Departmental Regulatory Coordinator to submit the proposed amendments to Part XIV of the Board's Virginia Stormwater Management Program Permit Regulations [entitled "General Virginia Stormwater Management Program (VSMP) Permit for Discharges of Stormwater from Construction Activities"] and any other required documents or document deletions to the Virginia Regulatory Town Hall, the Virginia Registrar's Office, and the U.S. Environmental Protection Agency.

In accordance with the Administrative Process Act exemption requirements specified in § 2.2-4006 A8 and other public participatory rules, the Board further authorizes at least one public hearing to be held by the Department with notice of the public hearing(s) posted on the Town Hall at least seven working days prior to the date of the hearing and that the Department make provisions to receive public comment concerning the proposed regulations. Upon closing of the public comment period, the Department is authorized to make revisions to the proposed regulations in response to comments received and to hold additional stakeholder meetings as it deems necessary.

In implementing this authorization, the Department shall follow and conduct actions in accordance with the Administrative Process Act exemption requirements specified in § 2.2-4006 A8, the Virginia Register Act, and other technical rulemaking protocols that may be applicable. The Department shall also implement all necessary public notification and review procedures specified by Federal Regulation regarding General Permit reissuance.

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

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

SECOND: Mr. Street

MOTION: Ms. Hansen moved that the Board amend the motion to include restoring the language regarding the availability of the SWPPP to the public.

SECOND: Ms. Jamison

DISCUSSION regarding Motion to amend: NONE

VOTE: The motion to amend failed

DISCUSSION: There was no further discussion on the original motion.

VOTE: The motion carried unanimously

**DCR Recommendation and Board Action for Utilization of Funds for SWCD IT Needs**

Mr. Bennett presented the background on the recommendation.

The Virginia Association of Soil and Water Conservation Districts IT Committee prepared a report on the IT needs of Districts titled 2012 Annual Report, IT Findings and Recommendations, presented at the 2012 annual meeting of the Association. Subsequently, Department of Conservation and Recreation staff met with leadership of the Association and the IT Committee to discuss the opportunity to fund some of the District IT needs identified in the report. The Association, IT Committee, and the Department are preparing a contractual agreement to identify specific goals to be accomplished with the funding.

The Department's recommendation to provide this funding is being brought before the Board as Item 360 A1 of Chapter 3 of the 2012 Virginia Acts of Assembly (the Appropriations Act) requires the Board to approve distributions to local Soil and Water Conservation Districts associated with administrative and operational support.

MOTION: Ms. Jamison moved the following:

**Motion to authorize the Director of the Department of Conservation and Recreation to enter into an agreement with the Virginia Association of Soil and Water Conservation Districts to assist with the information technology needs of the local Soil and Water Conservation Districts in the amount of \$300,000:**

In accordance with Item 360 A1 of Chapter 3 of the 2012 Virginia Acts of Assembly, and as a policy determination of the Board to

provide financial support to Districts to ensure the availability of current technology in support of program implementation and delivery, the Board authorizes the Director of the Department of Conservation and Recreation to enter into an agreement with the Virginia Association of Soil and Water Conservation Districts in the amount of \$300,000 to provide funding assistance to Districts to address their information technology needs.

SECOND: Ms. DuBois  
DISCUSSION: None  
VOTE: Motion carried unanimously

### **Erosion and Sediment Control**

Mr. McCutcheon presented the Erosion and Sediment Control actions.

*Local Programs recommended to be found consistent based on Program Reviews:*

#### Charlotte County

Mr. McCutcheon presented the background for Charlotte County.

Staff conducted a program review of the Charlotte County Erosion and Sediment Control Program on September 24, 2012 and conducted a close-out meeting with the County. The scores for the individual program elements were as follows: Administration 95 – Plan Review 70 – Inspection 80 – Enforcement 100. All program elements received a score of 70 or higher. Therefore, staff recommends that the Virginia Soil and Water Conservation Board find the Charlotte County Erosion and Sediment Control Program consistent with the Virginia Erosion and Sediment Control Law and Regulations.

#### Pittsylvania County

Mr. McCutcheon gave the background for Pittsylvania County.

Staff conducted a program review of the Pittsylvania Erosion and Sediment Control Program on October 10, 2012 and conducted a close-out meeting with the County. The scores for the individual program elements were as follows: Administrative 80 – Plan Review 100 – Inspection 80 – Enforcement 70. All program elements received a score of 70 or higher. Therefore, staff recommends that the Virginia Soil and Water Conservation Board find the Pittsylvania County Erosion and Sediment Control Program consistent with the Virginia Erosion and Sediment Control Law and Regulations.

MOTION: Ms. Hansen moved that the Virginia Soil and Water Conservation Board commend Charlotte County and Pittsylvania County for

successfully implementing their respective Erosion and Sediment Control Programs to be fully consistent with the requirements of the Virginia Erosion and Sediment Control Law and Regulations, thereby providing better protection for Virginia's soil and water resources.

SECOND: Ms. DuBois  
DISCUSSION: None  
VOTE: Motion carried unanimously

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

Amelia County

Mr. McCutcheon gave the background for Amelia County.

Staff conducted a CAA review of Amelia County on November 26, 2012 to determine if all required items of CAA were completed. As a result of the CAA review, staff determined that all required items of the CAA had been completed. Therefore, staff recommends that the Amelia County Erosion and Sediment Control Program be found consistent with the Virginia Erosion and Sediment Control Law and Regulations.

Buckingham County

Mr. McCutcheon gave the background for Buckingham County.

Staff conducted a review of the Buckingham County Erosion and Sediment Control Program Corrective Action Agreement on January 9, 2013 to determine if all required items of the CAA were completed. As a result of the CAA review staff determined that all required items of the CAA had been completed. Therefore, staff recommends that the Buckingham County Erosion and Sediment Control Program be found consistent with the Virginia Erosion and Sediment Control Law and Regulations.

Madison County

Mr. McCutcheon presented the background for Madison County.

Staff conducted a review of the Madison County Erosion and Sediment Control Program Corrective Action Agreement on December 12, 2012 to determine if all required items of the CAA were completed. As a result of the CAA review, staff determined that all required items of the CAA had been completed. Therefore, staff recommends that the Madison County Erosion and Sediment Control Program be found consistent with the Virginia Erosion and Sediment Control Law and Regulations.

York County

Mr. McCutcheon presented the background for York County.

Staff conducted a review of the York County Erosion and Sediment Control Program Corrective Action Agreement on November 15, 2012 to determine if all required items of the CAA were completed. As a result of the CAA review, staff determined that all required items of the CAA had been completed. Therefore, staff recommends that the York County Erosion and Sediment Control Program be found consistent with the Virginia Erosion and Sediment Control Law and Regulations.

Mr. Brogan from York County thanked staff and the Board for the recommendation to approve the program. He offered to answer any questions. There were none.

City of Bristol

Mr. McCutcheon gave the background for the City of Bristol.

Staff conducted a review of the City of Bristol's Erosion and Sediment Control Program Corrective Action Agreement on January 9, 2013 to determine if all required items of the CAA were completed. As a result of the CAA review, staff determined that all required items of the CAA had been completed. Therefore, staff recommends that the City of Bristol's Erosion and Sediment Control Program be found consistent with the Virginia Erosion and Sediment Control Law and Regulations.

MOTION: Mr. Lohr moved that the Virginia Soil and Water Conservation Board commend Amelia County, Buckingham County, Madison County, York County, and the City of Bristol for successfully implementing their respective Erosion and Sediment Control Programs to be fully consistent with the requirements of the Virginia Erosion and Sediment Control Law and Regulations, thereby providing better protection for Virginia's soil and water resources.

SECOND: Mr. Hornbaker

DISCUSSION: None

VOTE: Motion carried unanimously

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

Charles City County

Mr. McCutcheon gave the background information for Charles City County.

Staff conducted a program review of Charles City County's Erosion and Sediment Control Program on August 23, 2012 and conducted a close out meeting with the County. The scores for the individual program elements were as follows: Administration 45 – Plan Review 10 – Inspection 0 – Enforcement 0. All program elements did not receive a score of 70 or greater. Therefore, staff recommends that the Virginia Soil and Water Conservation Board find the Charles City County Erosion and Sediment Control Program inconsistent with the Virginia Erosion and Sediment Control Law and Regulations and approve the draft CAA for the County.

Mr. Matt Rowe spoke on behalf of Charles City County. He noted that he began his employment with the County on September 12 and that the audit began on September 13. He said that he has worked with staff and that all sites are now consistent and that the program has been modified accordingly. He said that the County looks forward to returning in 180 days and being rated consistent. He said that in Charles City County there were not many plan reviews but that the County looked forward to appearing again before the Board under better circumstances for the Program.

MOTION: Ms. Hansen moved that the Board accept the staff recommendation to find the Charles City County Erosion and Sediment Control Program inconsistent with the Virginia Erosion and Sediment Control Law and Regulations and approve the CAA as drafted for the County. The Board directs DCR staff to monitor the implementation of the CAA by the County to ensure compliance.

SECOND: Mr. Simms

DISCUSSION: None

VOTE: Motion carried unanimously

*Acceptance of Sussex County Alternative Inspection Program for consideration*

Mr. McCutcheon presented the background for Sussex County.

Sussex County is currently under a CAA where one of the items in the Inspection element of the program needing corrective action is inspection frequency. The County has submitted a proposed Alternative Inspection Program to assist them to effectively provide a priority of inspections and to become consistent with that element of the CAA.

Mr. McCutcheon said that the program did not require action by the Board. The program will be presented for approval at a future meeting.

*Chesapeake Bay Preservation Act Programs*

Chesterfield County

Ms. Salvati gave an update regarding Chesterfield County.

Chesterfield County revised its policy regarding designation of Resource Protection Areas (RPAs) on November 29, 2012. This policy was originally adopted by the County in 2008 to address a DCR Bay Act compliance evaluation and was subsequently revised again in 2009 after the Chesapeake Bay Local Assistance Board determined that the 2008 policy did not adequately address the compliance condition. This policy addresses the Bay Act requirement that non-tidal wetlands that are connected and contiguous to tidal wetlands be included as components of RPAs.

In the 2009 policy, September 23, 2009 was established as the date after which all new site plans and plats would need to comply with the County's revised RPA policy. The County further intended, however, that under the following circumstances, the previous 2008 policy would still apply: 1) Any site plan or plat that had been submitted prior to September 23, 2009 and, 2) Request to adjust tentative subdivision plats or site plans submitted after that date, where the original submission predated September 23, 2009.

As the County implemented the RPA policy, it was found that the language in the policy was not clear. Accordingly, the County adopted a revision clarifying that the RPA designation policy applies to those plats and site plans submitted after September 23, 2009, but not to adjustments to plats or plans which were approved prior to September 29, 2009. As the revision is a clarification of an existing policy, staff has determined that the amendment represents a minor program modification to the County's Bay Act program and that it is consistent with the Chesapeake Bay Preservation Act and its attendant regulations.

Ms. Salvati said that the staff recommendation was that the DCR Director deem *Chesterfield County's Environmental Engineering Policy: A08005.002 Designation of RPAs* adopted on November 29, 2012 to be consistent with the Chesapeake Bay Preservation Area Designation and Management Regulations.

Ms. Salvati said that no Board action was needed regarding this item.

Northampton County

Initial Compliance Evaluation for Northampton County – Not Fully Compliant.

Ms. Salvati gave the background regarding Northampton County.

Department of Conservation and Recreation staff met with Northampton County staff to discuss the compliance evaluation process, the local program, review additional information, review plan files and to carry out field investigations over October 15-16, 2012. Northampton County has for the most part, developed and implemented a successful program. There are two areas where the County needs some additional work.



One area is that the County must adopt an ordinance provision to address the requirement is for the notation on the plat for the five-year pump-out requirement for onsite septic systems. The other area is that the County must develop a plan for ensuring that all active agricultural lands have undertaken an agricultural assessment.

Ms. Thornton said that she appreciated Ms. Salvati and other staff coming to speak to the Accomack County Board of Supervisors. She said that one of the questions was whether the landowner was responsible or if the farmer was responsible. She said that approximately 2/3 of the land farmed on the Eastern Shore is leased land. She suggested that it was perhaps an issue that the Attorney General's Office would need to address.

Mr. Gooch said that he would review the issue and report back to the Board.

MOTION: Mr. Hornbaker moved that pursuant to §10.1-2103 of the Act and § 4 VAC 10-20-250 of the Regulations, the Virginia Soil and Water Conservation approve a Corrective Action Agreement for Northampton County's Chesapeake Bay Preservation Act Program which requires the County to address the two conditions for compliance outlined in the staff report no later than February 26, 2014.

SECOND: Mr. Simms

DISCUSSION: None

VOTE: Motion carried unanimously

#### *Local Stormwater Management Program (VSMP) Adoption Schedule*

Ms. Snead presented the Local Stormwater Management Program (VSMP) Adoption Schedule.

#### **Introductory remarks and overview**

In accordance with the requirements of § 10.1-603.3 (A) of the Code of Virginia and utilizing the timeframes set out in this Code section, the Virginia Soil and Water Conservation Board is required to set a Virginia Stormwater Management Program adoption schedule.

#### **Code and Regulatory Authority**

The Act requires localities to adopt the VSMP programs no sooner than 15 months and no later than 21 months of the September 13, 2011 effective date of the regulations "according to a schedule adopted by the Board". This time frame is from December 13, 2012 through June 13, 2013. The law further authorizes the Board to grant a 12-month extension of this time frame, provided the Department finds that the locality has made substantive progress in the development of the local VSMP. Adopted programs shall become effective on July 1, 2014.

**§ 10.1-603.3. Establishment of Virginia stormwater management programs.**

A. **Any locality, excluding towns, unless such town operates a regulated MS4, shall be required to adopt a VSMP for land-disturbing activities** consistent with the provisions of this article **according to a schedule set by the Board**. Such schedule shall require adoption no sooner than 15 months and not more than 21 months following the effective date of the regulation that establishes local program criteria and delegation procedures, unless the Board deems that the Department's review of the VSMP warrants an extension up to an additional 12 months, provided the locality has made substantive progress. Localities subject to this subsection are authorized to coordinate plan review and inspections with other entities in accordance with subsection H.

G. The Board shall approve a VSMP when it deems a program consistent with this article and associated regulations, including the Virginia Stormwater Management Program (VSMP) General Permit for Discharges of Stormwater from Construction Activities.

M. VSMPs adopted in accordance with this section shall become effective July 1, 2014, unless otherwise specified by the Board.

The Virginia Stormwater Management Program (VSMP) Permit Regulations contain the following authority applicable to this timeline and its implementation:

**4VAC50-60-150. Authorization procedures for Virginia stormwater management programs.**

A. **A locality required to adopt a VSMP in accordance with § 10.1-603.3 A of the Code of Virginia or a town electing to adopt its own VSMP in accordance with § 10.1-603.3 B of the Code of Virginia, must submit to the board an application package** which, at a minimum, contains the following:.....

C. **Upon receipt of a complete application package, the board or its designee shall have 120 calendar days for the review of the application package, unless an extension of time, not to exceed 12 months unless otherwise specified by the board in accordance with § 10.1-603.3 M of the Code of Virginia, is requested by the department, provided the VSMP authority applicant has made substantive progress.** During the 120-day review period, the board or its designee shall either approve or disapprove the application, or notify the locality of a time extension for the review, and communicate its decision to the VSMP authority applicant in writing. If the application is not approved, the reasons for not approving the application shall be provided to the VSMP authority applicant in writing. Approval or denial shall be based on the application's compliance with the Virginia Stormwater Management Act and this chapter.

D. **A VSMP authority applicant in accordance with § 10.1-603.3 A of the Code of Virginia shall submit a complete application package for the board's review pursuant to a schedule set by the board in accordance with § 10.1-603.3 and shall adopt a VSMP consistent with the Act and this chapter**

**within the timeframe established pursuant to § 10.1-603.3 or otherwise established by the board. ....**

**Background information for Motion for Board Approval of VSMP Adoption Schedule**

The Virginia Stormwater Management Act (Act), as amended in 2012, requires all Virginia counties, cities and those towns implementing Municipal Separate Storm Sewer Systems (MS4) to adopt a local Virginia Stormwater Management Program (VSMP). These programs are required to be consistent with the VSMP regulations that became effective in September 2011 and the General Permit for Discharges from Land Disturbing Activities. The Act also allows towns that are not implementing MS4s to adopt local VSMP programs if they so choose.

Staff projects that there are 142 localities that are required to adopt VSMPs and that there may be additional towns that will opt into the program. In accordance with the Act, all of these locally developed VSMPs will have to be approved by the Board. Regulatory Program staff developed and implemented the following initiatives to assist localities in developing local VSMPs.

**Outreach:** Staff undertook a three tiered outreach program to explain the details of these requirements to the affected localities from January through October of 2012. The first tier of the outreach program involved Regulatory Program management staff presenting the VSMP requirements to the local elected and administrative officials. The next tier involved presenting general information on the VSMP requirements to local staff. During the final tier, locality staff received one-day long training, at sessions across the state, on the details of the regulations, the technical background behind the requirements and how the requirements are to be incorporated into local programs and ordinances. The second and third tier outreach sessions were very well received and attended with many of the sessions being attended by up to 100 local representatives.

**Tools:** Staff has crafted a suite of tools to assist localities with the development of local VSMPs. The tools include a model VSMP ordinance, a checklist for activities that constitute substantive progress in the development of a VSMP, and a Frequently Asked Questions document about the VSMP requirements. Staff also developed a comprehensive tool kit containing various examples of procedures, plan review checklists, BMP maintenance agreements, and other tools that aid in the administration of a local stormwater management program. These tools are currently in active use by localities.

**Certification Program:** Staff is in the process of finalizing a stormwater certification program that will be similar to the current certification for the Erosion and Sediment Control Program. The certification program will be complete in the spring of this year.

**Program Development Fiscal Support:** On November 15, 2012, the Governor announced the award of 59 Virginia Locality Stormwater Program grants totaling more than \$2 million statewide. These grants will assist more than 100 local governments in developing locally run programs to reduce stormwater runoff from developed lands. Additional grants are planned for 2013.

**Establishment of Guidance Detailing Requirements of “substantive progress:”** The Director adopted guidance on December 13, 2012 titled *Activities Constituting “Substantive Progress” Towards Local Development of a Virginia Stormwater Management Program* that sets out the information that a local government should submit that will constitute “substantive progress” in the development of their local stormwater management program. Those steps included in the following:

1. Identification of the authorities accepting registration statements, completing plan review and plan approval, and conducting inspections and enforcement functions;
2. Draft of the local stormwater management ordinance (the draft local ordinance does not have to be approved by the local elected and/or appointed local officials prior to submittal); and
3. Draft staffing and funding plan.

Ms. Salvati reviewed the recommended adoption schedule.

**Recommended Virginia Stormwater Management Program (VSMP) Adoption Schedule:**

- |                     |  |
|---------------------|--|
| • December 13, 2012 | Earliest date for adoption of Local VSMP   |
| • April 1, 2013     | Due date for request for 12-month extension, with draft program information demonstrating “substantive progress” |
| • June 6, 2013      | Board consideration of 12-month extension requests   |
| • June 13, 2013     | Final VSMP adoption date without 12-month extension  |
| • December 15, 2013 | Due date for preliminary local VSMP application packages for those with extension                                |
| • April 1, 2014     | Final adopted VSMP ordinances submitted for review for those with extension                                      |
| • June 13, 2014     | Final date for localities with an extension to adopt a VSMP  |
| • June 2014         | Final date for Board approval of local VSMPs   |

MOTION: Mr. Street moved the following:

**Motion to approve the VSMP Adoption schedule and to authorize the Department to conduct specified administrative functions to implement and to ensure compliance with the schedule:**

Pursuant to § 10.1-603.3, the Board approves the VSMP Adoption Schedule recommended by the Department. The Board also authorizes the Department in accordance with the schedule to receive and review “substantive progress” materials provided by localities and to develop recommendations to the Board regarding extensions of up to an additional 12 months to allow the Department to continue its review of local program adoption information where submittals have justified such and extension for a given locality.

In accordance with 4VAC50-60-150, the Board designates the Department to receive and review complete VSMP applications and to develop recommendations to the Board regarding VSMP approvals.

Further, in order to ensure compliance with this schedule, the Board authorizes the Director of the Department to take any administrative actions allowable under the provisions of the Virginia Stormwater Management Act to implement the schedule and to compel localities to adopt VSMP programs.

The Board requests that the Department report to the Board the status of actions taken pursuant to the schedule of and this motion at subsequent Board meetings.

SECOND: Ms. Thornton

DISCUSSION: None

VOTE: Motion carried unanimously

#### *District Director Resignations and Appointments*

Ms. Martin presented the District Director Resignations and Appointment recommendations.

#### Big Walker

Recommendation of Matthew Miller, Wythe County, to fill the VCE appointed director position. The position is vacant. Mr. Miller was appointed to the seat as a result of the December 11, 2012 Virginia Soil and Water Conservation Board Meeting, however, he failed to take the required oath of office before January 1, 2013 and did not qualify for the position (term of office to begin on 3/26/13 – 1/1/17).

#### Blue Ridge

Resignation of Aaron B. Lyles, Roanoke County, effective 2/6/13, elected November 6, 2011 (term of office expires on 1/1/16).

#### Chowan Basin

Recommendation of Kelvin Wells, Sussex County, to fill the VCE appointed director position. The position is vacant. Mr. Wells was appointed to the seat as a result of the

December 11, 2012 Virginia Soil and Water Conservation Board Meeting, however, he failed to take the required oath of office before January 1, 2013 and did not qualify for the position (term of office to begin on 3/26/13 – 1/1/17).

Eastern Shore

Recommendation of Theresa Long, Northampton County, to fill the VCE appointed director position. The position is vacant. Ms. Long was appointed to the seat as result of the December 11, 2012 Virginia Soil and Water Conservation Board Meeting, however she failed to take the required oath of office before January 1, 2013 and did not qualify for the position (term of office to begin on 3/26/13 – 1/1/17).

Lord Fairfax

Resignation of Craig L. Orndorff, Shenandoah County, effective 1/10/13, elected director position (term of office expires 1/1/16).

Recommendation of Joan M. Comanor, Shenandoah County, to fill unexpired term of Craig L. Orndorff (term of office to begin on 3/27/13 – 1/1/16).

Natural Bridge

Recommendation of Thomas A. Stanley, Rockbridge County, to fill the VCE appointed director position. The position is vacant. Mr. Stanley was appointed to the seat as a result of the December 11, 2012 Virginia Soil and Water Conservation Board Meeting, however, he failed to take the required oath of office before January 1, 2013 and did not qualify for the position (term of office to begin on 3/26/13 – 1/1/17).

New River

Resignation due to the passing of Betty Whittaker, Carroll County, effective 1/16/13, at large appointed director position (term of office expires 1/1/15).

Ms. Thornton asked if localities had input into these recommendations.

Ms. Martin said that Districts generally write the locality, but the recommendation comes from the District, not the locality.

MOTION: Ms. Jamison moved that the Virginia Soil and Water Conservation Board approve the list of District Director Resignations and Appointments as presented by staff.

SECOND: Ms. Thornton

DISCUSSION: None

VOTE: Motion carried unanimously

**Director's Report**

Mr. Johnson gave the Director's Report.

Mr. Johnson said that much had been happening since December. He noted that the General Assembly Session had recently concluded. He said that he would address three areas: ongoing staff work, General Assembly Session, budget and legislation.

Mr. Johnson said that much of the ongoing work had already been addressed in the meeting. He said that the stormwater management rollout was a daunting task, but also a landmark activity for the Commonwealth. Localities will be taking over permitting and inspections of stormwater management in July, 2104. He said that staff was constantly engaged in the project.

Mr. Johnson said that with regard to grants to the localities that DCR had awarded \$2 million in 2012. He said that \$1 million came from a General Assembly appropriation and an additional million was found through the Chesapeake Bay grants to use for localities in the Chesapeake Bay watershed.

Mr. Johnson said that he had asked staff to move quickly so that grants for the current year could be awarded by June.

Mr. Johnson said that the other major area with regard to permitting was the MS4 permits. He said that DCR was in active negotiations regarding individual permits of which there are eleven. He noted that the Arlington permit is now formally in the draft stage. A public hearing for input will be held in Arlington on March 22. Mr. Johnson said that the permit for Prince William was moving along and that discussions have been initiated with Chesterfield.

Mr. Johnson said that Regulatory Advisory Panel has been holding discussions regarding the Nutrient Trading Regulations.

With regard to legislation, Mr. Johnson said that the Department had no sponsored bills for the year. He said that there was legislation to move all of the DCR water quality programs to DEQ. As initially proposed, the entire division of stormwater management would have moved. The final legislation directed that the agriculture programs remain at DCR along with the Virginia Soil and Water Conservation District Operations.

Mr. Johnson said that DCR staff were in meetings with DEQ regarding how to make the transition. He noted that DCR would be moving to offices across the street from DEQ and that eventually DEQ would likely move into the same building.

Mr. Johnson said that with the transition, the permits and non-agricultural regulations would become the responsibility of the State Water Control Board. However, he noted that the current process could not stop just because a change was coming.

Mr. Johnson said that with regard to the budget, he expected \$23-24 million available for cost-share in FY14. He said of that amount that \$2.3 million would go to Districts for technical assistance.

Mr. Johnson said that the legislation did change the size of the Soil and Water Conservation Board from twelve members to nine. This adjustment will happen through attrition.

At this time the Board recessed for lunch.

### **Partner Reports**

#### *Natural Resources Conservation Service*

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

Mr. Bricker said that, at the time of the meeting, he could not answer questions regarding the impact of the Sequester. He said that NRCS hoped not to have to furlough employees. He said that the agency had about 700 vacancies nationwide.

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

Ms. Tyree gave the update for the Virginia Association of Soil and Water Conservation Districts.

Ms. Tyree said that the Association had made their position clear with regard to consolidation. She said that the Association had held a number of public meetings to discuss what this would mean for Districts.

Ms. Tyree noted that legislation gave the Board more authority regarding cost-share funds. She noted that a high priority had been funding for dam maintenance. This was successfully accomplished in the budget.

Ms. Tyree noted that the Summer Study for the funding of Districts had been continued and will require the submittal of a report by October 1 of each year.

Ms. Tyree noted that the Association would be submitting recommendations regarding appointments or replacements for Board members whose terms are expiring.

Ms. Tyree thanked the Board for approving the \$300,000 grant to assist with District IT needs. She said that the Districts would focus on hardware, software, information sharing, and training.

### **Legislative and Budget Report**



Mr. Dowling gave the following legislative and budget report.

**Virginia Department of Conservation and Recreation  
2012 Legislative Session Update  
February 26, 2013**

**LEGISLATION**

**Virginia Soil and Water Conservation Board**

- **HB2048 (Sherwood) and SB1279 (Hanger) - Water quality; transfer of responsibility for administration of programs. GOVERNOR'S BILL**

This legislation moves several water quality programs currently administered by the Department of Conservation and Recreation to the Department of Environmental Quality. The Department of Environmental Quality and the State Water Control Board will have oversight of water quality planning and laws dealing with stormwater management, erosion and sediment control, and the Chesapeake Bay Preservation Areas. The Virginia Soil and Water Conservation Board will have continuing responsibility for oversight of the soil and water conservation districts and of resource management planning. The Virginia Soil and Water Conservation Board, with its amended membership, will continue to be responsible for administration of the flood prevention and dam safety laws. The Board will continue to be staffed by the Department of Conservation and Recreation.

**Virginia Soil and Water Conservation Board Membership Amendments:**

§ 10.1-502. Soil and Water Conservation Board; composition.

The Virginia Soil and Water Conservation Board is continued and shall perform the functions conferred upon it in this chapter. The Board shall consist of ~~12~~ *nine* voting members. The Director of the Department of Conservation and Recreation, or his designee, shall be a nonvoting ex officio member of the Board. ~~Six~~ *Three* at-large members of the Board shall be appointed by the Governor. After the initial staggering of terms, nonlegislative citizen members shall be appointed for a term of four years. ~~At least two members shall be appointed by the Governor as of the at-large members should~~ *[and] shall have a demonstrated interest in natural resource conservation with a background or knowledge in dam safety, soil conservation, or water quality protection, or urban point or nonpoint source pollution control. At least three of the at-large members, by their education, training, or experience, shall be knowledgeable of stormwater management and shall be representative of business and local government interests.* Additionally, four members shall be farmers *at the time of their appointment* and two members shall be farmers or district directors, appointed by the Governor from a list of two qualified nominees for each vacancy jointly submitted by the Board of Directors of the Virginia Association of Soil and Water Conservation Districts, *in consultation with the Virginia Farm Bureau Federation [and] the Virginia Agribusiness Council*, and the Virginia Soil and Water Conservation Board, each for a term of four years. All appointed

members shall not serve more than two consecutive full terms. Appointments to fill vacancies shall be made in the same manner as ~~described above~~ *the original appointments*, except that such appointments shall be for the unexpired terms only. The Board may invite the Virginia State Conservationist, Natural Resources Conservation Service, to serve as an advisory nonvoting member. The Board shall keep a record of its official actions, shall adopt a seal and may perform acts, hold public hearings, and promulgate regulations necessary for the execution of its functions under this chapter.

**Key Enactment Clauses that Outline Administrative Procedural Steps for the Transition:**

3. That the provisions of [[§ 10.1-502 Board Membership](#)], as amended by this act, shall not be construed to affect existing appointments for which the terms have not expired. However, any new appointments or appointments to fill vacancies made after the effective date of this act shall be made in accordance with the provisions of this act. [Meaning, overtime, the Board membership will be decreased from 12 members to 9 members.]

10. That the full-time employees and the total maximum employment level employed in the administration of the programs being transferred by this act shall be transferred from the Department of Conservation and Recreation to the Department of Environmental Quality. The Department of Conservation and Recreation is directed to transfer to the Department of Environmental Quality all appropriations, including special funds, for programs identified for transfer by this act. The Department of Environmental Quality is authorized to hire additional staff to operate the programs transferred by this act.

11. That 30 days prior to (i) the transfer of any full-time employees and total maximum employment level employed in the administration of the programs being transferred by this act, the Secretary of Natural Resources shall report to the Chairs of the Senate Committee on Finance, the Senate Committee on Agriculture, Conservation and Natural Resources, the House Committee on Appropriations, and the House Committee on Agriculture, Chesapeake and Natural Resources on such transfers and (ii) the transfer of appropriations, including special funds, for programs identified for transfer in this act, the Secretary of Natural Resources shall report on such transfers. By December 1, 2013, the Secretary of Natural Resources shall also report on the process by which the Department of Environmental Quality will distribute funds to local soil and water conservation districts as provided for in § 319 of the federal Clean Water Act and § 6217 of the federal Coastal Zone Management Act.

12. That the Directors of the Departments of Environmental Quality and Conservation and Recreation, the Commissioner of Agriculture and Consumer Services, and members of the Senate Committee on Agriculture, Conservation and Natural Resources and the House Committee on Agriculture, Chesapeake and Natural Resources, appointed by their respective Chairs, shall convene public meetings throughout the Commonwealth to evaluate the role of soil and water conservation districts in providing effective delivery of

**water quality services and technical assistance.** In their deliberations the representatives of the executive branch agencies and legislators shall:

- A. Discuss the provisions of this act and its implications and solicit comments from the public and affected parties;
- B. Determine the extent of the role soil and water conservation districts should play in providing assistance in delivery of water quality services for nonpoint source pollution management and providing technical assistance for such programs as erosion and sediment control and stormwater management; and
- C. Determine whether the mission of soil and water conservation districts is more effectively delivered under the current statutory framework or whether organizational changes would enhance the effectiveness and efficiency of the delivery of such services.

14. That the Secretary of Natural Resources, working with the Directors of the Departments of Environmental Quality and Conservation and Recreation, shall take steps to enhance collaboration and communication among the natural resources agencies to ensure the effective and efficient implementation of the Commonwealth's water quality and soil and water conservation programs.

Status: Senate and House agreed to Conference report.

Action on HB2048

02/22/13 House: Conference report agreed to by House (76-Y 19-N)

02/23/13 Senate: Conference report agreed to by Senate (30-Y 9-N)

Action on SB1279

02/23/13 Senate: Conference report agreed to by Senate (29-Y 11-N)

02/23/13 House: Conference report agreed to by House (76-Y 21-N)

- **HB2209 (Knight) and SB1309 (Hanger) Virginia Soil and Water Conservation Board; powers and duties.**

This legislation amends the Virginia Soil and Water Conservation Board's powers and duties. The bill transfers authority for nutrient management certification program regulations and responsibility for adopting regulations on nitrogen application rates from the Department of Conservation and Recreation to the Virginia Soil and Water Conservation Board. The bill also empowers the Board to oversee districts' programs and to allocate general fund moneys to soil and water conservation districts to support their operations.

§ [10.1-505](#). Duties of Board.

In addition to other duties and powers conferred upon the Board, it shall have the following duties and powers:

3. To ~~coordinate~~ ~~oversee~~ the programs of the districts ~~so far as this may be done by advice and consultation.~~

10. To adopt regulations (i) for the operation of the voluntary nutrient management training and certification program as required by § [10.1-104.1](#) and

*(ii) that amend the application rates in the Virginia Nutrient Management Standards and Criteria as required by § [10.1-104.2:1](#).*

*11. To provide, from such funds appropriated for districts, financial assistance for the administrative, operational and technical support of districts.*

§ [10.1-546.1](#). Delivery of Agricultural Best Management Practices Cost-Share Program.

Districts shall locally deliver the Virginia Agricultural Best Management Practices Cost-Share Program described under § [10.1-2128.1](#), under the direction of the ~~Department~~ Board, as a means of promoting voluntary adoption of conservation management practices by farmers and land managers in support of the Department's nonpoint source pollution management program.

Status: Enrolled; Signed by Speaker; Signed by President

## Water Quality

- **HB2137 (Byron) Local governments; environmental impact reports, prohibits purchase of certain deicing agents, etc.**

This legislation raises from \$500,000 to \$2 million the cost threshold at which a locality will be required to obtain an environmental impact report for a highway project. For certain projects costing more than \$500,000 and less than \$2 million, the locality is required to consult with the Department of Historic Resources to make efforts to minimize impacts to historic resources. The bill also exempts the sale of deicing agents containing urea from the current prohibition on such sales where the deicing agent is to be used by a political subdivision at a municipal airport.

Status: Enrolled;

- **HB2190 (Cosgrove) Stormwater management ordinances; requires localities to adopt more stringent requirements, etc.**

This legislation speaks to processes by which a locality may develop more stringent ordinances, may preclude the onsite use of an approved BMP on a specific land-disturbing activity, or may uniformly preclude jurisdiction-wide or otherwise limit geographically the use of a BMP approved by the Director or Board. Such processes include checks and balances including determinations to be made by the Department and potential appeals to the Board.

Status: Enrolled;

- **SJ380 (Senator Hanger and Delegate Sherwood) Commending the 10 River Basin Grand Winners of the Clean Water Farm Award.**

The resolution commends the 10 River Basin Grand Winners of the Clean Water Farm Award.

Status: Resolution printed and delivered to Department

## BUDGET

### Reconvened Session will be April 3, 2013.

#### **Governor's Introduced: Secretary of Natural Resources**

Elimination of Required Deposit to WQIF Reserve. Includes language stating that no deposit will be made to the Water Quality Improvement Fund Reserve. This reserve fund is used to ensure funding remains available for Virginia's water quality efforts when revenue surpluses are unavailable. The WQIF Reserve Fund was established by the General Assembly in 2004.

#### **General Assembly:**

Item [358](#) #1c

#### **Natural Resources**

Secretary Of Natural Resources

Language

#### **Language:**

Page 317, strike lines 32 and 33.

#### **Explanation:**

(This amendment eliminates the language stating that no deposit shall be made to the Water Quality Improvement Fund Reserve. Created by the General Assembly in 2004 to eliminate the wide fluctuations in the amount of funding available for Virginia's water quality initiatives, the reserve has been used to ensure continuing funding for the implementation of the agricultural best management practices outlined in the Commonwealth's watershed implementation plan.)

#### **Governor's Introduced: Nonpoint Source Pollution Funding (WQIF).**

Provides \$16.9 million GF the first year, representing the entire year-end general fund surplus which is statutorily designated for deposit to the Water Quality Improvement Fund. Out of this amount, \$14.6 million is proposed for the implementation of agricultural best management practices through the Natural Resources Commitment Fund (8 percent of this amount is to be used by Soil and Water Conservation Districts for technical assistance). The remaining \$2.3 million is proposed for development of local storm water management programs. Because the entire statutory deposit is used for nonpoint programs, language is included to override the Code of Virginia, which would otherwise require 30 percent of the fund be used for wastewater treatment plant upgrades.

#### **General Assembly:**

*M.1. Notwithstanding § 10.1-2129 A., Code of Virginia, \$16,949,115 the ~~second~~ first year from the general fund shall be deposited to the Virginia Water Quality Improvement Fund established under the Water Quality Improvement Act of 1997. Of this amount, \$14,649,115 is authorized for transfer to the Virginia Natural Resources Commitment Fund, a subfund of the Virginia Water Quality Improvement Fund, and ~~\$2,300,000~~ \$1,000,000 is designated for direct deposit to the Virginia Water Quality Improvement*

*Fund for use for local stormwater assistance grants and for developing an agency program to provide assistance to localities with stormwater programs. Pursuant to paragraph B of Item 358, \$1,300,000 is designated for deposit to the reserve within the Virginia Water Quality Improvement Fund. The monies transferred to the Virginia Natural Resources Commitment Fund shall be disbursed in accordance with § 10.1-2128.1, Code of Virginia, including the eight percent for distribution to soil and water conservation districts to provide technical assistance.*

**Governor’s Introduced: Department of Conservation and Recreation Local Stormwater Assistance Program.**

Authorizes the Virginia Public Building Authority to issue up to \$35.0 million GF in bonds for matching grants to local governments for eligible capital projects for the planning, design, and implementation of stormwater management practices to reduce water pollution loads. The Soil and Water Conservation Board is to issue eligibility and grant distribution guidelines. Eligible capital projects include: new stormwater management practices, stormwater retrofits, stream restoration, low impact development, buffer restoration, and wetland restoration. This effort is part of addressing the Virginia’s Watershed Implementation Plan.

*3. The Virginia Soil and Water Conservation Board shall issue guidelines for the distribution of moneys from the Fund. The process for development of guidelines shall, at a minimum, include (a) a 60-day public comment period on the draft guidelines; (b) written responses to all comments received; and (c) notice of the availability of draft guidelines and final guidelines to all who request such notice.*

	<b>Item <u>C-39.40</u> #2c</b>		
<b>Central Appropriations</b>	<b>FY 12-13</b>	<b>FY 13-14</b>	
Central Capital Outlay	\$0	\$221,000,000	NGF

**Language:**

Page 473, after line 3, insert:

"C-39.40. Comprehensive Capital Outlay Program

Fund Sources: Bond Proceeds \$0 \$221,000,000."

"A. 1. The water quality and supply projects in paragraph B of this item are hereby authorized and may be financed in whole or in part through bonds of the Virginia Public Building Authority issued pursuant to § 2.2-2263, Code of Virginia. The aggregate principal amounts will not exceed \$221,000,000 plus amounts to fund related issuance costs, and other financing expenses, in accordance with § 2.2-2263 of the Code of Virginia.....

**B. 1. Stormwater Local Assistance Fund. From the appropriation and bond authorization provided in this item, up to \$35,000,000 of the bond proceeds shall be provided to the Department of Conservation and Recreation for the Stormwater Local Assistance Fund, established in accordance with the provisions of Item 360 of this Act. In accordance with the purpose of the Fund set out in Item 360, the bond proceeds shall be used to provide grants**

**solely for capital projects meeting all pre-requirements for implementation, including but not limited to: i) new stormwater best management practices; ii) stormwater best management practice retrofits; iii) stream restoration; iv) low impact development projects; v) buffer restoration; vi) pond retrofits; and vii) wetlands restoration. Such grants shall be in accordance with eligibility determinations made by the Virginia Soil and Water Conservation Board under the authority of the Department of Conservation and Recreation.**

**Explanation:**

(This is a technical amendment that authorizes the bonds associated with projects contained in the Secretary of Natural Resources in Item 360 and Item 366.)

**Governor's Introduced: Soil and Water Conservation Districts.**

Reorganizes funding for the state's 47 soil and water conservation districts to include a new service area for the Agricultural Cost Share program and the shifting of \$1.9 million GF the second year in existing appropriations from the Stormwater Management service area to the Financial Assistance to Soil and Water Conservation Districts service area.

**General Assembly:**

A.1. Out of the amounts appropriated for Financial Assistance to Soil and Water Conservation Districts, \$4,487,091 the first year and ~~\$4,487,091~~ \$6,387,091 the second year from the general fund shall be provided to soil and water conservation districts for administrative and operational support. These funds shall be distributed to the districts only in accordance with the program, financial and resource allocation policies of and upon approval by the Soil and Water Conservation Board. These amounts shall be in addition to any other funding provided to the districts for technical assistance pursuant to subsections H. and K. of this item. *Of these amounts, \$1,300,000 the second year shall be allocated in accordance with historical distribution to districts and ~~\$300,000~~ \$600,000 for efforts associated with achieving targeted total maximum daily loads (TMDLs).*

2. The Secretary of Natural Resources shall convene a continuing stakeholder group consisting of representatives including, but not limited to, the Secretary of Agriculture and Forestry, the Department of Agriculture and Consumer Services, the Department of Conservation and Recreation, the soil and water conservation districts, the Virginia Association of Soil and Water Conservation Districts, the Virginia Farm Bureau Federation, the Virginia Agribusiness Council, the Chesapeake Bay Commission, and the Chesapeake Bay Foundation to examine funding needs for administration and operation of the soil and water conservation districts and the technical assistance they provide for implementation of agricultural best management practices needed to meet Virginia's Watershed Implementation Plan as well as the Southern Rivers Total Maximum Daily Load limits.

The stakeholder group is directed to conduct a review of the following and ~~make~~ publish a report making recommendations to the Governor and the Chairmen of the Senate



Finance and the House Appropriations Committees **no later than October 1, 2012 of each year:**

- a. The historical distribution of funding for administration and operations of all soil and water conservation districts and a projection of future funding needs and any recommended changes to the methodology for distribution of these funds;
- b. The historical distribution of funding for technical assistance for agricultural best management practices and a projection of the future funding and staffing needs necessary for districts to provide efficient and effective technical assistance to farmers;
- c. Operational and technical assistance needs in relation to the amount of agricultural best management practices cost-share dollars allocated to the districts; and,
- d. The process, timing and methodology for distribution of agricultural best management practices cost-share funds to be provided to farmers by the Department of Conservation and Recreation through the districts.

3. The Soil and Water Conservation Board shall not create, merge, divide, modify or relocate the boundaries of any district pursuant to § 10.1-506, Code of Virginia, until such time as the General Assembly has received the recommendations of the stakeholder group and taken action on any such recommendations.

*4. The department shall provide a quarterly report to the Chairmen of the House Appropriations and Senate Finance Committees of how appropriations for each soil and water conservation district have been dispersed in the current quarter and the planned disbursements for the upcoming quarter by district for the following: (i) the federal Conservation Reserve Enhancement Program, (ii) the use of Agricultural Best Management Cost-Share Program funds within the Chesapeake Bay watershed, (iii) the use of Agricultural Best Management Cost-Share Program funds within the Southern Rivers area, and (iv) the amount of Technical Assistance funding."*

E. 1. Notwithstanding § 10.1-552, Code of Virginia, Soil and Water Conservation Districts are hereby authorized to recover a portion of the direct costs of services rendered to landowners within the district and to recover a portion of the cost for use of district-owned conservation equipment. Such recoveries shall not exceed the amounts expended by a district on these services and equipment.

*2. Out of the amounts for this item, \$300,000 the second year from the general fund is provided to increase the operational support appropriated for each of the 47 soil and water conservation districts from \$80,539 per district to \$86,922 per district.*

**Draft Fiscal Summary:**

\$6,387,091 to Districts for administrative and operational support (\$1.3 million allocated in accordance with historical distribution and \$600,000 for TMDLs)  
 \$300,000 for additional operational support split evenly to each of the 47 districts  
 \$1,200,000 in technical assistance associated with \$9.1 million (from recordation tax fee)  
 \$1,171,929.20 in technical assistance (from 8% of \$14,649,115 in Ag cost-share funds)  
**Total:** \$9,059,020.20 in operational support and technical assistance

**Modifications to Existing Budget Language on Dam Safety**

**General Assembly:**

Item 360: F.1. Out of the amounts appropriated for Dam Inventory, Evaluation, and Classification and Flood Plain Management, \$600,000 the first year and ~~\$600,000~~ \$1,850,000 the second year from the general fund shall be deposited to the Dam Safety, Flood Prevention and Protection Assistance Fund, established pursuant § 10.1-603.17, Code of Virginia. The funding provided in this paragraph shall be used for the provision of either grants or loans to localities owning dams in need of renovation and repair or for the provision of loans to private owners of dams in need of renovation and repair. Out of these amounts, \$254,000 the second year from the general fund shall be provided for maintenance and small repairs of Soil and Water Conservation District-owned dams; \$400,000 the second year from the general fund shall be provided to match federal and local funding for the renovation of Todd Lake Dam in Augusta County; and \$500,000 the second year from the general fund shall be provided for repairs to the Lake Jackson Dam in Prince William County.

2. Notwithstanding § 10.1-603.19, Code of Virginia, the Director, Department of Conservation and Recreation, in consultation with the Virginia Resources Authority, is authorized to provide financial or other assistance from the Dam Safety, Flood Prevention and Protection Assistance Fund, including the provision of a grant to a locality of up to \$408,402, or 25 percent of the costs of modifying a high hazard dam operating under a conditional certificate extension and that has received approval as of November 30, 2010, for federal funding from the U.S. Department of Agriculture's Natural Resources Conservation Service for at least 65 percent of the cost of repairing the locally-owned dam. The local government shall contribute 10 percent of the total costs of modifying this high hazard dam.

3. Included in the amounts provided for Dam Inventory, Evaluation and Classification and Flood Plain Management is \$258,290 the first year and \$231,706 the second year from the general fund for the improvement of a high hazard dam, originally constructed in 1960, to comply with a Special Order issued by the Director, Department of Conservation and Recreation, on June 24, 2011, and in order to meet dam safety requirements.

**Explanation:**

(This amendment provides an additional \$1.25 million from the general fund to the existing dam safety appropriation and directs that funding shall be provided for maintenance and small repairs of SWCD-owned dams, renovation of the Todd Lake Dam in Augusta County, and repairs to the Lake Jackson Dam in Prince William County. The amendment also provides additional funding in the second year for the rehabilitation of a high hazard, recreational use dam that includes within its dam break inundation zone numerous residences, several rural roads, and U.S. 460. While the Department of Conservation and Recreation staff report the dam is generally well-maintained, the special order was based on an inadequate spillway. The requested amount would fully repair the spillway and permit the facility to comply with Virginia's dam safety regulations.)

## New Language regarding reports on Conservation Innovation Grants

### General Assembly:

Item [360](#) #9c

#### Natural Resources

Department Of Conservation And  
Recreation

Language

#### Language:

Page 322, after line 3, insert:

"P. The Department of Conservation and Recreation shall report on the number of Conservation Innovation Grants provided to Virginia farmers or other entities by the U.S. Department of Agriculture, the assistance provided by the department in support of Conservation Innovation Grant applications, the financial assistance the department provides to farmers and other entities who have been awarded Conservation Innovation Grants, how farmers and other entities awarded Conservation Innovation Grants are notified about the department's financial assistance or the rescission of such financial assistance, and the technical assistance the department provides to farmers and other entities awarded Conservation Innovation Grants. The Department of Conservation and Recreation shall provide this report to the Chairmen of the House Appropriations and Senate Finance Committees by October 15, 2013."

#### Explanation:

(This amendment requires the Department of Conservation and Recreation to report about Conservation Innovation Grants awarded to Virginia farmers and other entities and the financial and technical assistance provided by DCR to those recipients.)

## Modifications to Existing Budget Language on Friend of Chesapeake Bay License Plates

### General Assembly:

L. Included in the amounts for this item is \$307,662 the first year and \$366,822 the second year in special funds provided from the sale of "Friend of the Chesapeake" license plates to carry out the recommendations of the Chesapeake Bay Restoration Fund Advisory Committee.

#### Explanation:

(This amendment allocates the revenue collected from the sale of "Friend of the Chesapeake Bay" license plates in the form of grants to nonprofit environmental organizations. For fiscal year 2014, the Chesapeake Bay Restoration Fund Advisory Committee is recommending that 68 grants be allocated to nonprofit organizations ranging in size from \$700 to \$14,000. About half of these grants are issued to state agencies, localities, public schools, soil and water conservation districts, and state park friends groups. The remainder are provided to

## Stormwater Management

### *Acting Division Director Report*

Mr. Bennett said that DCR had recently received approval for filling seven stormwater management related positions. He said that he expected this to help improve morale. This includes two nutrient management planners, two CDCs, two stormwater specialists and a stormwater engineer.

Mr. Bennett said that he would be attending all six area meetings.

*Overview of Proposed Municipal Separate Storm Sewer System Individual Permit for Arlington County*

Ms. Snead noted Mr. Johnson had addressed this in his remarks. She noted that a handout and a copy of the public notice was provided in member packets.

Ms. Snead said that the Arlington Phase I MS4 permit was one of 11 in the Chesapeake Bay Watershed. All have been administratively continued since 2002. They are supposed to be renewed every five years.

Ms. Snead noted that the Arlington permit was put out for public comment on February 10. A public hearing will be held on Friday, March 22. This has been publicized in the newspaper and on the Regulatory Town Hall. The public comment period ends March 29.

**Dam Safety and Floodplain Management**

*Acting Division Director Report*

Mr. Wilkinson gave the update for Dam Safety and Floodplain Management.

Mr. Wilkinson said that DCR dam engineers recently attended a seminar on dam overtopping.

Dam first aid training will be held at the end of April. DCR has purchased four trailers which are currently housed at Pocahontas State Park. The trailers are almost fully stocked.

DCR is currently in the process of hiring two new floodplain positions. In dam safety, DCR is in the process of hiring an engineer and a GIS position.

Mr. Wilkinson said that dam owner training was scheduled for the upcoming weekend at the Koger Center in Midlothian. This is in conjunction with the Virginia Lakes and Watershed Association Program.

Mr. Wilkinson said that staff is in the process of scheduling dam owner trainings in Lynchburg and Charlottesville. He said that information will be provided to the Board.

He reported that the Agency had held floodplain training in Henrico and Norfolk. About thirty people attended each program.

Mr. Wilkinson said a committee had been assembled with representatives from DCR, NRCS, and the Virginia Association of Soil and Water Conservation Districts to discuss a

report to the General Assembly concerning Public Law 566 dams. These are dams that were built by the federal government fifty years ago. The federal responsibility for these dams is expiring. This applies to about 150 dams of which 104 are District owned dams. He said that the dams remain but the federal money and obligation will be discontinued.

### *Enforcement Report*

Ms. Crosier gave the Enforcement Report.

Ms. Crosier said that Ivy Hill Lake Dam in Bedford County had recently been in the news. The dam was given to Liberty University in 2009. The University has operated the dam according to the requirements and has kept the dam in good operating condition. The University has also performed a dam inundation modeling. In September 2012 the certification expired. Based on engineer reports, the University found that the dam spillway did not meet the minimum requirements.

DCR issued a conditional certificate that expires in August 2014. The preliminary engineering and evaluation indicates that updating the spillway will cost in excess of \$2 million. The University believes that the cost of maintaining the lake may outweigh the benefits to the University. The University is considering the options of repairing the dam, transferring ownership, or draining the lake and breaching the dam.

Ms. Crosier said there was some controversy between the University and the lake residents. She said that this was not a DCR issue. She said that the University is cooperating and acting as a responsible dam owner. She said that the decision on further action would be between the University and the lake residents.

Ms. Crosier said that the report provided to members gave a progress report on some 20 additional enforcement cases. A copy of this report is available from DCR.

Ms. Crosier said that Rainbow Forest Dam has received additional funding to make repairs to the spillway.

### **Public Comment**

There was no further public comment.

### **New Business**

There was no further new business.

### **2013 Meeting Schedule**

The 2013 meeting schedule was listed as follows:

- March 22, 2013 (Friday), Arlington MS4 Public Hearing

- March 27, 2013 (Wednesday) VSWCB Meeting
- May 9, 2013 (Thursday) VSWCB Meeting
- June 6, 2013 (Thursday) VSWCB Meeting

Mr. Dunford noted that some concern had been expressed that not all members could make these dates. He asked that staff survey members regarding attendance and if necessary, make a proposal for a schedule adjustment.

**Adjourn**

There was no further business and the meeting was adjourned.

Respectfully submitted,

Herbert L. Dunford  
Chair

David A. Johnson  
Director

Attachment #1

**NRCS REPORT**  
**Virginia Soil and Water Board Meeting**  
**February 26, 2013**  
**Richmond, VA**

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**EQIP, CBWI, CSP, and WHIP Programs**

NRCS has preapproved 552 EQIP applications for \$14,544,358 following the first ranking period.

- Nine EQIP applications for \$883,751 from Socially Disadvantaged Farmers
- 20 EQIP applications for \$890,943 from Beginner Farmers
- A minimum of 10% of FY13 program funding was set aside for Beginning Farmers and Socially Disadvantaged Farmers.

The second EQIP sign-up period ended on February 15, 2013. We have 564 unfunded applications at this time.

Made 2012 CSP payments to participants wanting 2012 tax year payments.

Received \$4,167,000 in funding for the Chesapeake Bay Watershed Initiative. New applications will be accepted through March 15, 2013.

Did not receive any new funding for WHIP in FY-13. We are funding wildlife habitat practices, the Golden Winged Warbler Initiative, and the Longleaf Pine Initiative out of EQIP.

Plans have begun for the installation of a methane digester on a large dairy in Rockingham County.

By expanding the EQIP Aquaculture practices statewide, which establish procedures to clean crab pots without degrading water quality, we have increased involvement to growers on the seaside of the Eastern Shore. We have received 11 applications.

**Easements**

There are 9 new WRP agreements.

**Dam Rehabilitation**

- South River 10A – Construction is on-going; received \$300,833 for construction
- Pohick 8 – Final designs approved, Project Agreement draft out for review
- Upper North River 10 – Final design process started, Sponsor obtained geotech
- Town of Culpeper – ranking 2 dam rehab applications
- Town of Tazewell – onsite meeting with Town and Dam Safety to discuss rehab

**DamWatch**

DamWatch is a new web based dam monitoring tool that will soon be available for watershed project sponsors and the Natural Resources Conservation Service (NRCS) to monitor NRCS-assisted flood control dams. It alerts essential personnel via electronic medium such as email, text message, or pager when dams are experiencing a high rainfall or earthquake even and also provides a “one-stop” source for critical documents, databases, and geospatial information

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through an interactive Web interface. This will allow NRCS and watershed project sponsors to more efficiently manage and access important project dam information such as as-built plans, operation and maintenance agreements, emergency action plans, inspection reports, photos, videos, assessment reports, etc. on a DamWatch Web site. NRCS is currently loading information about dams into the DamWatch system.

### **Watershed Programs**

Plans have begun to support the NWQI in two watersheds in the Smith Creek Showcase Watershed with an emphasis on the Ware Branch sub watershed as a result of data collected by USGS.

Received NRCS Chief's authorization for rehabilitation plan for Upper North River 10.

Closed out the Little Reed Island Creek ARRA project.

### **Virginia No-Tillage Alliance**

Four VANTAGE No-Till Workshops were held in the month of February with a total of 600 attendees. Jay Fuhrer, a key NRCS expert on soil health through enhanced crop diversity, was one of the featured speakers at all the events.

### **Soil Health Initiative**

Members of the Virginia Soil Health Team met with NRCS Soil Health Specialist Ray Archuleta to hear about the soil health movement taking place across the country and brainstorm ideas for the VA Soil Health Initiative. Ray also gave a presentation on the NRCS soil health philosophy to the VA Crop Production Association annual meeting which was attended by over 120 fertilizer salesmen, Certified Crop Advisors, and agency partners. NRCS' approach to this proposed initiative is the use of partnerships and leveraging CIG to expand our on-farm demonstrations and educational training to learn the aspects of soil health.

NRCS continues efforts to promote new and innovative approaches to grazing management, stockpile forage and multi-species cover crop with an emphasis on soil health through field days, on farm demonstrations, test plots and laboratory results. The end result is to gain momentum for increased interest in soil health and improve the health of the Chesapeake Bay.

### **Energy Audits**

The number of energy audits is up over 300% from FY12. Over \$320,000 has been approved for the energy initiative: 64 audits approved for \$132,000 and 7 contracts for Practice 374 for \$191,339.

### **Soils/NRI/GIS**

NRI – data collection has begun for the 2011-2012 seasons. Both years are now available for Virginia. Soil Resource Specialists are working with field staff on training and other preparation. Deadline for completion is March 31, 2013.

### **1099 Forms**

After the National Finance Center became aware that some incorrect 1099s were sent directly to participants, they stopped issuance of the forms. The NFC is currently researching the problem and plans to send corrected 1099s around March 8.



## **Outreach**

Conducted the first ever Virginia CIG Showcase on January 10 where over 35 NRCS employees and over 25 partners from SWCDs, DCR, DEQ, VCE, and other agencies could see the work NRCS is supporting through CIGs. Presentations were on current State CIG projects with a special focus on cover crops.

Staffed a joint booth with FSA at the Biological Farming Conference in Richmond, Virginia on Feb. 8-9. There were over 500 attendees – many expressing great interest in Hoop Houses and transitioning to organic farming

Moderated a farmer panel discussion on cover crops at a King & Queen County Extension meeting which helped build interest and excitement about innovative cover crops. The event was attended by 80 producers, crop advisors, bankers, and other industry representatives.

Conducted two outreach events highlighting stockpiling and strip-grazing as a management strategy to extend the grazing season. Over 90 producers attended the sessions.

Developed and printed the 2013 Virginia Grazers' Planner as an educational and outreach tool for grassland farmers.

Partnered with VFGC to conduct winter forage conferences in four locations across the state focusing on grazing management (soil health). Over 600 participants attended.

Despite the winter storm, about 30 female landowners/managers gathered at the Lexington Horse Center for the Women and Land Conference on Jan. 26 for a day of sharing, networking, and presentations. Female natural resource professionals from multiple agencies presented information on state and federal programs that provide funds to landowners to support good land management.