Virginia Soil and Water Conservation Board
December 11, 2012
East Reading Room, Richmond, Virginia

Virginia Soil and Water Conservation Board Members Present

Herbert L. Dunford, Chair
Daphne W. Jamison, Vice-Chair
C. Frank Brickhouse, Jr.
Joan DuBois
Gary Hornbaker
Jerry L. Ingle
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
Susan Taylor Hansen
Stephen Lohr

DCR Staff Present

Jeb Wilkinson, Chief Deputy Director
Robert Bennett
Jacob Bauckman
Scott Crafton
Anne Crosier
David C. Dowling
Michael R. Fletcher
Ken Harper
Stephanie Martin
John McCutcheon
Joan Salvati
Virginia Snead
Michelle Vucci

Others Present

Joe Battiata, Center for Watershed Protection
Michael Flagg, Hanover County
John Fowler, Chesapeake Bay Foundation
Chris French, Filterra
Cherie Hainer, City of Virginia Beach
Charles Hassen, City of Virginia Beach
Ann Jennings, Chesapeake Bay Foundation
Greg Johnson, City of Virginia Beach
Ed Kay, Imbrium
Adrienne Kotula, James River Association
Roy T. Mills, VDOT
David Powers, Williamsburg Environmental Group
David Sample, Virginia Tech
Kendall Tyree VASWCD
Peggy Sanner, Chesapeake Bay Foundation

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Jane Walker, VWRRC/Virginia Tech
Matt Williams, Town of Occoquan

Call to Order

Chairman Dunford called the meeting to order and declared a quorum present.

Mr. Dunford introduced Wanda Thornton, the newest member of the Board from Chincoteague. Ms. Thornton is a member of the Accomack County Board of Supervisors.

Approval of Minutes from September 27 and 28, 2012

MOTION: Ms. Jamison moved that the minutes from the September 27 and 28 meetings of the Virginia Soil and Water Conservation Board be approved as submitted.

SECOND: Mr. Simms

DISCUSSION: None

VOTE: Motion carried with Ms. Thornton abstaining.

Director's Report

Mr. Johnson gave the Director's report. He noted that urban stormwater was moving forward with Phase I MS4 permits. He said that Arlington County was moving forward with final comments from the EPA.

Mr. Johnson said that one of the things resolved was the schedule for Phase I MS4 permits. He noted that Board members would recall there had been some conflict with the EPA in this regard.

Mr. Johnson said that with regard to the potential transfer of stormwater programs from DCR to DEQ that everyone within the program would transfer. He said that staff would work to make the transition seamless. He noted that other permitted activities would remain under the control of the State Water Control Board.

Mr. Johnson said that DCR was not the lead agency regarding legislation to transfer the programs. That bill is being managed by DEQ. He said that other than that, DCR did not anticipate having significant legislation during the upcoming session of the General Assembly.

Mr. Johnson said that all agencies were required to submit 4% suggested budget reductions in operations. He said the Governor would be releasing his budget the

following Monday. Until that time, the agency did not know what recommendations would be accepted to move forward.

Ms. Jamison asked which committee of the General Assembly the reorganization bill would fall under.

Mr. Johnson said that had not yet been selected, but that he assumed it would be the committees that deal with Agriculture.

Mr. Hornbaker said that he would like to express his appreciation for Director Johnson. He said that he had been impressed with the process of reorganization and the commitment to efficiency and getting programs in the right place.

Regulatory Action

Mr. Dowling presented the proposed regulatory action.

Mr. Dowling gave the following prepared remarks:

Introductory remarks and overview

Mr. Chairman, members of the Board, it is a pleasure to have an opportunity to be back before you this morning. I thank the Board for their thoughts and prayers during my absence.

Before you today for consideration and action is a fast-track regulatory action that advances for the Board's consideration amendments to the Virginia Stormwater Management Program (VSMP) Permit Regulations that add a new PART XVI titled "Procedures For Reviewing and Approving Design Specifications and Pollutant Removal Credits for BMPs." The regulation version before you for consideration and that is also in your packets, is labeled November 27, 2012 version WITH EDITS. Any additional edits that have been made since the version sent to you on November 27, 2012 are shown within the document highlighted in yellow. The changes are largely grammatical in nature (punctuation, sentence structure, regulatory citation corrections, consistent use of terms or spelling, etc.) or have been made to add additional clarity for your readers. Most edits reflect the recommendations of our technical reviewers that gave the document one last read over the last several weeks since the mailing. As we review the key elements of the regulation with the Board, we will bring to your attention amendments made, where content may have been affected by those final edits.

The key element of these regulations is the Virginia Technology Assessment Protocol for Evaluating Stormwater Management Treatment Devices or VTAP as it will be referred to throughout these remarks. VTAP is a scientifically defensible procedure for testing manufacturing stormwater management treatment devices or MTDs to verify their designs and determine the level of pollutant removal they perform for Total Phosphorous (required), Total Suspended Solids (required), and Total Nitrogen (required).

The Board's Virginia Stormwater BMP Clearinghouse Committee and its subcommittees and expert panel have worked since 2007 on the development of the VTAP as called for in the Board's stormwater regulations. The process was very open and responsive to questions raised and ideas offered. Section 4VAC50-60-65 C of the regulations, states:

> *"BMPs differing from those listed above* [the list of non-proprietary stormwater BMPs already approved in Subsection B of that section of the regulation] *shall be reviewed and approved by the director in accordance with procedures established by the BMP Clearinghouse Committee and approved by the board."*

In accordance with this regulation, the VTAP sets out procedures that must be used in order for a MTD manufacturer to verify a pollutant removal efficiency and achieve approval for use and sale in Virginia.

At its recent November 13th meeting, after a six year effort, the Committee passed a Motion to advance the VTAP to the Virginia Soil and Water Conservation Board for approval. The Motion read as follows:

> In accordance with 4VAC50-60-65, the Virginia Stormwater BMP Clearinghouse Committee approves the transmittal of procedures set out in the document titled Virginia Technology Assessment Protocol For Evaluating Stormwater Manufacture Treatment Devices to the Virginia Soil and Water Conservation Board for approval. The Committee recognizes that the document containing such procedures may be subject to amendment prior to Board approval as the Department develops regulations that complement and incorporate by reference these procedures and as the document undergoes final policy and legal review. It is understood by the Committee that such changes implemented by the Department will be largely organizational and administrative in nature and will not be substantive without subsequent notification to the Committee. It is also recognized that a definitions section may be added. The Committee also requests that the Department distribute the regulations and amended procedures to the Committee after they have been distributed to the Board.

Upon that approval, the Department worked in earnest to separate the VTAP document into the administrative regulations that are before you today, leaving in the VTAP document the technical procedures related to the BMP approval process. It is also important to note that this action has been flagged as a regulatory reform action for the Governor's Office as it will provide additional certified tools to and options for, developers thus allowing them to achieve their required nutrient and sediment reductions with potentially more inexpensive strategies for their varied land-disturbing projects.

It also should be noted that the Board has seen and been briefed on a prior version of this VTAP document at its December 7, 2011 Board meeting. At that time, the Board received an overview of the document and voted to approve the protocol "in concept" in accordance with 4VAC50-60-65 C of the Stormwater Management Regulations. Since

that time, as noted previously, the Committee has further refined the document and we have developed regulations to better advance the administrative portions of the program.

Before continuing, I want to take this opportunity to thank Scott Crafton and John McCutcheon from our Stormwater Management Division, as well as some of their DCR predecessors such as Lee Hill, for their hard work on getting us to this juncture as well as the immense efforts and dedication to this project by Jane Walker and Dr. David Sample of Virginia Tech. I also want to thank the Committee members, subcommittee members, and DCR Panel of Academic BMP Researchers (expert panel) members, both past and present, for their work on this project. I know a number of those individuals are here today and I would ask them to identify themselves when we get to the public comment portion of this morning's regulatory proceedings.

I also want to note the importance of putting these procedures in place as most manufacturers we have heard from are anxious to begin testing their devices and seeking approval for their use in Virginia. It is important to have as many of these products available as possible when the new stormwater regulations are implemented in July of 2014 as the BMP research process may take up to two years for some. It is important to provide the regulated community with a wide variety of pollutant reduction devices and to encourage competition within the market place. It is our goal to stimulate innovation.

I would also note for the Board's information that should you wish to read more about the Virginia Stormwater BMP Clearinghouse and the BMP specifications already in place you may visit the Clearinghouse website at: http://vwrrc.vt.edu/swc/. Additionally, a new e-mail address for VTAP application submittal and communications has been established as: VTAP@dcr.virginia.gov.

Framework of Stormwater Regulations

This regulatory action creates a new Part XVI within the body of the stormwater regulations, incorporates a new document by reference, as well as includes four new associated forms. (highlighted items).

VIRGINIA STORMWATER MANAGEMENT PROGRAM (VSMP) PERMIT REGULATIONS [4 VAC50-60-10 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 VSPM 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

Part XVI: Procedures for Reviewing and Approving Design Specifications and Pollutant Removal Credits for BMPs.

DOCUMENTS INCORPORATED BY REFERENCE
Virginia Technology Assessment Protocol For Evaluating Stormwater Manufactured Treatment Devices, December 11, 2012.

FORMS
Confidentiality and Non-Disclosure Agreement, DCR199-217 (12/12)
Manufactured Treatment Device Application Fee Form, DCR199-218 (12/12)
Stormwater MTD Demonstration Site Summary Form, DCR199-219 (12/12)
Use-Designation Application Form, DCR 199-220 (12/12)

Mr. Dowling continued:

Before we continue with my overview of this regulatory action and its key elements, I would like to have Scott Crafton, Special Projects Coordinator, in our Stormwater Management Division provide you with additional background on Stormwater Best Management Practices and key issues associated with this action. Scott is currently serving as the Chairman of the BMP Clearinghouse Committee.

Mr. Crafton gave the following presentation:

Testing Pollutant Removal Performance of Various Kinds of SWM BMPs: Virginia Technology Assessment Protocol

New VA SWM Regulations

- Included new stormwater BMP design specifications for "non-proprietary" (public domain BMPs)
- Includes traditional BMPs
- Includes a half-dozen new LID BMPs
- Much monitoring data available
- New emphasis on *runoff volume reduction*.

Manufactured Treatment Devices (MTDs)

- Emerged over last 15-20 years
- Six listed in 1999 VA SWM Handbook
- Borrowed from wastewater treatment technologies
- Often involve "proprietary" (trade-secret) processes or components
- Often underground to save surface space
- Have undergone less performance testing
- Most testing has focused on TSS removal, NOT nutrients

DCR is BMP Approver in VA

- SWM Regs say DCR Director must approve BMPs for use in Virginia
- All approved BMPs to be listed on BMP Clearinghouse website
- Virginia localities look to DCR for advice regarding BMPs
- To make these decisions, DCR depends upon
    - Results of past and present monitoring and testing
    - Advice from recognized and reliable sources

Virginia Stormwater BMP Clearinghouse

- Lab testing and field testing have different benefits and limitations
- Variations from one test site to another
- Nature and weather not typically predictable nor cooperative – procedures must deal with these variables
- Monitoring equipment is complex and can malfunction
- Standardized procedures for both lab and field tests are needed to ensure reliable results and consistency in testing from one BMP to another
- Testing for some pollutants more complex than for others (nutrients among them)

DCR did not "Reinvent the Wheel"

- DCR borrowed appropriately from protocols established by other states
  - TARP (six states including Virginia, but principally New Jersey)
  - TAPE (state of Washington)
  - USEPA monitoring standards and procedures
  - ASTM testing procedures
- DCR engaged a panel of nationally-recognized BMP monitoring experts to help establish proper scientific rigor along with practical flexibility
- DCR conducted an open discussion involving MTD manufacturers in the process of developing the testing protocol that will apply to their products

Issue 1: Focuses on MTDs Only

- Fundamentally a competitiveness issue
- However, non-proprietary BMPs have unique characteristics that would make testing under the proposed VTAP difficult
  - They are public domain (no one "owns" them); therefore, no commercial incentive to pay high costs to test them, if subject to VTAP
  - Testing typically *funded through grants* by universities and localities
  - Manufacturers recommend requiring them to be tested through VTAP via DCR permits or grant programs; but this would significantly increase cost of land development or local SWM program implementation
  - Those testing non-proprietary BMPs outside Virginia will not feel compelled to follow Virginia procedures to test these BMPs, especially if this increases the cost of testing
  - There is typically much more monitoring data available for non-proprietary BMPs than for MTDs

- Therefore, DCR proposes to consider how to test non-proprietary BMPs through a separate process that accounts for these differences

Issue 2: Lab Accreditation Requirement

- Requiring analytical laboratory accreditation assures labs are using best practices when running tests and using and maintaining equipment

- This standardizes lab practices and ensures consistency in analyses from one BMP to another
  - It is DCR's understanding that the manufacturers' trade association is not concerned about this because there are many labs in numerous states do have Virginia lab accreditation

- Manufacturers have insisted on importance of ensuring an "even playing field" – all must follow the same procedures

- DCR's legal counsel has indicated that existing state and regulatory requirements necessitate such a requirement

Runoff Volume Reduction BMPs

Traditional BMP Performance Goal:

- BMP performance based on treatment process only:
  - EMC in vs. EMC out where EMC = Event Mean Concentration (mg/1)
- Performance for some BMPs under-reported

Runoff Reduction Goal:

- Pollutant removal from *runoff (volume) reduction*

  +

  Pollutant removal from EMC reduction

  =

  ***Total* BMP Performance (Mass pollutant removal)**

Mr. Ingle asked if it monitoring equipment could fail.

Mr. Crafton said that it may not necessarily fail but could break down during the process. He said that the need was to collect data from 24 qualifying storms to achieve a certain level of confidence in the data.

Ms Thornton asked if this had been tested on an island.

Mr. Crafton said that each of the BMPs on the current list has design criteria, which indicate where the BMPs are applicable and where they should not be used. He said that not all BMPs would be appropriate in every setting. He said that localities would need to look at the design criteria.

Mr. Dowling said that one of the intents of the regulations was to be able to provide consistency so that additional BMPs could be used where appropriate.

Mr. Crafton reviewed a comparison of criteria in Virginia's procedures to those of other states. A copy of this comparison is available from DCR.

Mr. Hornbaker asked for a definition of a storm event.

Mr. Crafton said a storm event was a rainfall event that exceeds 1/10 inch of rain.

Mr. Hornbaker asked if there was consideration given to the varying regions of the state.

Mr. Crafton said that these examples were for manufactured devices. He said these typically would apply to a storm drainage system.

Mr. Dowling continued with his remarks.

Fast-Track Regulatory Process

With that overview, I now wish to take a minute and outline the fast-track regulatory process that we recommend the Board follow to promulgate this regulation.

These regulatory documents reflect to the best of our understanding a general consensus of the various stakeholders affected by the regulation (BMP manufacturers, local governments, state agencies, environmental organizations, etc.). Throughout the process the Department was very responsive to stakeholder suggestions. As such, the Department believes that this action is eligible to go through a fast-track regulatory process (process outlined below).

As noted above, the BMP Clearinghouse Committee at its recent November meeting passed a Motion to advance the VTAP to the Virginia Soil and Water Conservation Board for approval. When the regulation and updated technical document were sent to the Board, the documents were also sent to the Committee and the technical reviewers for any final comments and edits they may have. A handful of edits were received and are reflected in the documents.

One letter of dissent and one of support were received and have been included in your packet [copies of these letters are available from DCR], and responses to the concerns raised are outlined later in my remarks, but generally speaking we believe that the regulatory documents before you represent the collective wisdom over a six-year period of a broad spectrum of experts on this subject matter, and those affected by this action, and it is believed by the Department that these procedures represent a sound and balanced approach to the subject.

- The Fast-track process is **appropriate when an action is expected to be noncontroversial.** A rulemaking is deemed noncontroversial if no objections are received from (1) certain members of the General Assembly or (2) ten or more members of the public.

- After approval of the draft final language by the Board, the regulations would be filed for review by the Administration. With an affirmative action today by the Virginia Soil and Water Conservation Board, the Department would target filing this fast-track action for review by the Administration by January 1, 2013.

- Upon filing, the Department of Planning and Budget has 10 days to determine whether a fast-track approach is appropriate and if affirmative, will complete their review of the regulatory action within 30 days. Upon the completion of DPB's

review, the Secretary of Natural Resources is allotted 14 days to complete his review. The action is then advanced to the Governor's Office for review.

- After subsequent review by the Administration (DPB, SNR, and Governor), a notice of a proposed fast-track rulemaking will be published in the *Virginia Register of Regulations* and will appear on the Virginia Regulatory Town Hall. This will be followed by a public comment period of at least 30 days.

- If, during the public comment period, an objection to the fast-track regulation is received from:

    - Any member of the applicable standing committee of Senate,
    - Any member of the applicable standing committee of the House of Delegates
    - Any member of the Joint Commission on Administrative Rules (JCAR), or
    - 10 or more members of the public,

  then publication of the fast-track regulation will serve as the Notice of Intended Regulatory Action (NOIRA) and standard rulemaking process is followed to promulgate the regulation.

- If there are no objections as described above, the regulation will become effective 15 days after the close of the public comment period, unless the regulation is withdrawn or a later effective date is specified by the Board.

Key Actions to Date and Background on the Virginia Stormwater BMP Clearinghouse

A summary of the actions taken relative to the development of these regulatory documents is as follows:

- Since 2007, DCR has partnered with the Virginia Water Resource Research Center at Virginia Tech to establish a Virginia Stormwater BMP Clearinghouse program. The Clearinghouse was established in the spring of 2007 with two main functions; 1) to put BMP information from the stormwater handbook, regulations, etc. on the web (for ease in updating); and 2) to list other devices permitted for use. The Committee operates under and established set of by-laws.

- The Virginia Stormwater Clearinghouse Committee (current members list appended following this section) provides recommendations as to the contents of the Clearinghouse and coordinates with the Department on the development of BMP review procedures such as those under consideration today.

- The Clearinghouse also established a Research Protocol Subcommittee on June 21, 2007 that took the first stab at developing a protocol for Virginia that served

as the precursor for these regulations and associated documents. It held its first meeting on October 17, 2007. Subsequent meetings were held on: December 4, 2007, May 8, 2008, November 3, 2008, November 24, 2008, December 1, 2008 and February 4, 2009.

- Of note, while membership on the Clearinghouse Committee is open only to those appointed by DCR, membership in a subcommittee is open to the public so that anyone with an interest in the subject is able to join a subcommittee. Thus, additional representatives of MTD manufacturers were able to be involved with development of the VTAP beyond those represented on the Committee.

- The work of the Research Protocol Subcommittee was further guided and refined by a DCR Panel of Academic BMP Researchers (expert panel), headed up by subcommittee member Dr. David. Sample. The expert panel compared the relevant VTAP sections developed by combining sections of TARP and TAPE with the modified sections of the VTAP as proposed by the work group of vendors. The expert panel decided that the vendor's version of the VTAP should advance as the basis for developing a testing protocol for total phosphorus. The panel was composed of the following experts:

  Dr. David Sample, Virginia Tech BSE Dept.
  Dr. Thomas J. Grizzard, Virginia Tech CEE Dept. and OWML
  Dr. Allen P. Davis, University of Maryland, CEE Dept.
  Dr. John Sansalone, University of Florida, EES Dept.
  Dr. Rob Roseen, University of New Hampshire, CEE (now with Geosyntec)

- The expert panel completed their work, and Dr. Sample presented their results of the Clearinghouse Committee at the April 19, 2010 meeting.

- At that meeting an additional subcommittee was formed, called the VTAP subcommittee. This subcommittee met twice with the purpose to review and update the consensus protocol developed by the expert panel for inclusion in the VTAP. Meetings were held on June 21, 2010 and July 9, 2010.

- The Clearinghouse Committee met to discuss the VTAP at its meetings on August 12, 2010 and January 21, 2011. Comments were accepted from the public following the January 24, 2011 meeting until February 11, 2011. At the April 18, 2011 meeting, the Clearinghouse Committee finalized their consensus document of the VTAP, and a few additional edits were proposed at the July 25, 2011 Clearinghouse Committee meeting.

- In December of 2011, the Virginia Soil and Water Conservation Board approved the VTAP "in concept."

- Since that time, the Clearinghouse Committee has continued to meet on a quarterly basis to further refine the document culminating in the Committee's November 13, 2012 motion to advance the VTAP to the Virginia Soil and Water Conservation Board for approval.

A list of the membership of the Virginia Stormwater BMP Clearinghouse Committee is available from DCR.

Attorney General's Office

"I have reviewed the above-referenced fast-track regulations. It is my opinion that the Virginia Soil and Water Conservation Board has authority to adopt these regulations based upon applicable law, including Article 1.1 of Chapter 6 of Title 10.1 of the Code of Virginia."

Regulation Summary

As noted in the beginning of my remarks, the regulation version before you for consideration and that is also in your packets, is labeled November 27, 2012 version WITH EDITS. This version reflects a handful of edits made to the version sent to you on November 27, 2012. As I outline the key elements of this regulatory action, I will bring to your attention amendments made to those elements where content may have been affected by those final edits.

First, from a regulatory layout perspective, it should be noted that Part XVI has four general components to it.

1. The 1st component includes an "Authority" section and a "Definitions" section that are applicable to the entire Part.
2. The 2nd component, titled Section I: Virginia Technology Assessment Protocol (VTAP) For Evaluating Stormwater Manufactured Treatment Devices (MTD)s, contains the key elements of the administrative process regarding the submittal and evaluation of BMP permit use applications for manufactured treatment devices.
3. The 3rd component, titled Section II: Procedures For Approving Non-Proprietary Devices, contains the authority and framework for the Director to review and approve non-proprietary devices and calls on the Committee to investigate supplemental procedures that may be appropriate for providing additional scientific rigor and consistency to the testing of non-proprietary BMPs. It is envisioned that the Committee will begin work on guidance in January that outlines their thoughts on this issue while this regulatory action moves through the approval process.
4. The 4th component, titled Section III: Procedures For Approving Manufactured Pre-Treatment Devices, contains the procedures for approving certain MTDs that are designed to reduce sediment and gross solids but do not

provide nutrient filtering. It has been included to provide authority for less costly approval procedures than those associated with the VTAP.

Within this framework, the following specifics are included:

Sections applicable to the entire PART

- The Authority section (4VAC50-60-1300) cites Subsections 2 and 11 of § 10.1-603.4 of the Code of Virginia that provide authority for the Board to establish minimum design criteria for measures to control nonpoint source pollution and localized flooding and that authorize the regulations to provide for the evaluation and potential inclusion of emerging or innovative stormwater control technologies that may prove effective in reducing nonpoint source pollution. In accordance with these Code authorities the section cites 4VAC50-60-65 that stipulates that BMPs differing from those already listed in 4VAC50-60-65 shall be reviewed and approved by the Director in accordance with procedures established by the BMP Clearinghouse Committee and approved by the Board.

    - This section was updated to spell out Total Phosphorus, Total Nitrogen and Total Suspended Solids.

- The Definitions section (4VAC50-60-1310) outlines descriptions of the terms utilized within the Part.

    - Additional definitions are also included in the Virginia Technology Assessment Protocol for Evaluating Stormwater Manufacture Treatment Devices.
    - There are also definitions in Part 1 of the Virginia Stormwater Management Regulations that apply to this Part and that were not repeated in Part XVI.
    - Many of these terms utilized in this Part are from the TAPE program in Washington State, so they should be terms that manufacturers are already familiar with.
    - This section was updated as follows:
        - § The term "Applicant" was broadened to clarify that is any person seeking approval for the permitted use of a technology through the VTAP or other board authorized process. Not just related to MTDs.
        - § The term "Reporting limit" was alphabetically out of order and was re-sequenced.
        - § The terms for "Total nitrogen" and "Total phosphorus" were reorganized to have parallel construct and were amended to include the measurement of TN or TP "where applicable, in plant or animal tissue." This addition was important to address the

potential for BMP nutrient trading strategies such as Phragmites or algal removal strategies or oyster removal for example.

- § The term "Total suspended solids" was further amended for clarity to clarify to include the word "fiber" in the phrase "standard glass fiber filter."
- § The term "Virginia Stormwater BMP Clearinghouse Committee" was further amended to clarify that the Committee provide recommendations on "BMPs" and not just "MTDs".

Section I – VTAP For Evaluating Stormwater Manufactured Treatment Devices (MTDs)

- The Authority section (4VAC50-60-1320) specifies that MTD's shall be assessed in accordance with this section and the VTAP document.

- The Liability section (4VAC50-60-1330) states that "the department shall not accept or have responsibility or liability for performance of stormwater technologies being evaluated using the "VTAP" and that "the department remains solely responsible for decisions made regarding implementation of this Part."

- The Use of Devices section (4VAC50-60-1340) outlines the authority of localities to regulate the use of permitted BMPs and the processes under which such determinations may be made.

- The Board, Director and Department Administrative Responsibilities section (4VAC50-60-1350) outlines the responsibilities of these three entities in the MTD process for permitted use approval. The section specifies that MTDs may not be installed in Virginia for pollutant removal for the treatment of post-construction stormwater runoff unless the Director grants a status of Pilot Use Designation (PUD), Conditional Use Designation (CUD), or General Use Designation (GUD).

- The Applicant's or Technical Advisor's Responsibilities section (4VAC50-60-1360) includes a list of responsibilities for these entities including: submittal of the use-designation application, status reports, and current Quality Assurance Project Plans (QAPPs); and meeting other informational needs.

- The Virginia Stormwater BMP Clearinghouse Committee Administration and Responsibilities section (4VAC50-601370) stipulates the role of the Department in administering the Committee, the necessary experience of Committee members, member voting restrictions to avoid conflict of interest, the responsibilities of the Committee, and other meeting protocols.

- The Application Submittal and Review Process section (4VAC50-60-1380) outlines what is expected of the applicant, the Department, the Department's technical evaluator, and the Committee, regarding the application process.

- The applicant is required to submit a: 1) Completed Use-Designation Application Form; 2) Stormwater MTD Demonstration Site Summary Form for each field test site; 3) Technical Evaluation Report (TER) (contains information regarding performance testing and associated data); 4) Certification and Authorization Statement developed in accordance with this section; and 5) Appropriate Fees.
- The technical evaluator is required to review the applications for completeness (within 20 calendar days of receipt) and if found to be complete, complete the draft assessment of the application within 60 calendar days of the receipt of a complete application.
- Within seven calendar days of the issuance of the technical evaluator(s)' assessment, the TER shall be posted on the website for public comment for a period of 30 days commencing the date of posting.
- The technical evaluator(s) shall review and evaluate the public comments within 30 calendar days of the closure of the public comment period of the TER.
- The Committee shall review the application materials, recommendations made by technical evaluator(s), public comments, and responses to the comments. The Committee shall consider recommendation and determine the Committee's recommendations.
- The Department shall forward the technical evaluator(s) shall review and Committee's final recommendations to the Director and the applicant.
- The Director shall consider the application materials; recommendations made by technical evaluator(s), by the Committee, and by Department staff; and public comments and the responses to the comments; and using his best professional judgment, determine and appropriate use designation and pollutant removal credit within 45 calendar days following the receipt of the final recommendations.
- The Director shall decide to approve a permitted use designation, revoke the current use designation, or grant an extension of the testing period for a specified time.
- SEE Page 6 of the Virginia Technology Assessment Protocol for Evaluating Stormwater Manufactured Treatment Devices document for a flow chart of this process.

- The Processing Timelines section (4VAC50-60-1390) provides a relief clause from the timelines of the previous section to the Department, the technical evaluator, or the Committee should application volume or other issues outside of their control result in avoidable delays in process. Such an extension "to the minimum amount necessary to accommodate the proper processing of the applications" may be granted by the Director or his designee.

- The MTD Application Process – Technical Evaluator'(s) Responsibilities section (4VAC50-60-1400) provides for the application and evaluation process. The Technical Evaluator has nine responsibilities under this section that are: 1)

application review for completeness and consistency; 2) review of quality assurance project plans and updates; 3) review of status reports and recommendations for compliance and testing changes; 4) periodic inspection related to field testing; 5) review of data validation; 6) written recommendations regarding the need for additional testing and identification of any limitations of evaluated MTDs; 7) written recommendations regarding pollutant removal credits to assign to MTDs and recommendations related to use-designated levels; 8) draft responses for comment received during the public comment period for a technology evaluation report, and 9) work with the applicant to develop information for the website regarding approved MTDs. The Technical Evaluator is not eligible for appointment to the Committee but shall serve as a technical advisor to it.

- The Confidentiality section (4VAC50-60-1410) sets out requirements related to the disclosure of proprietary information, such as secret formulae, secret processes, or secret methods used.

    - This section provides that the Department may require an applicant to furnish information necessary to evaluate a MTD application, but the disclosure of proprietary information shall not be included in such application.
    - Proprietary information may instead be submitted separately to the Department along with a completed Confidentiality and Non-Disclosure Agreement.
    - Email transmission of such information is discouraged and the Director (or his designee) shall evaluate the confidentiality and either sign the Agreement or deny the request.
    - If the Agreement is signed, the information is considered part of the application and is only shared with the Department's contractors.
    - If the request is denied, then the Department shall notify the applicant and return the information if requested by the applicant or will dispose of the information and it will not be distributed as part of the MTD application.

- The Technical Advisor, Data Verifier, and Data Validator Responsibilities section (4VAC50-60-1420) sets out the duties of these individuals.

    - For Technical Advisors, the duties consist of oversight of performance testing of the MTD, including certification of: 1) the quality assurance project plan; 2) oversight of plan implementation, and 3) the technology evaluation report. The Technical Advisor is required to sign a certification statement for each item that must be submitted to the applicant and to the Department. The language of the certification statement is specified in this section and it shall be to the Department. The Technical Advisor is also required to annually review the quality assurance project plan (QAPP).

- For the Data Verifier, the duties consist of reviewing the project's data records: 1) for completeness; 2) for actual content; and 3) against project specifications to ensure and document reported results to reflect that work was actually performed. All data verification shall be conducted during or at the culmination of field and laboratory data collection activities. Following data verification, each Data Verifier shall submit the verified data and certification statement to applicant. The language of the certification statement is specified in this section and the applicant shall provide the data verification report and certification statement to the Department.
- For the Data Validator, the duties consist of determining the quality of a specific data set relative to the end use. The Data Validator shall evaluate whether data quality goals have been achieved and the validation also includes a determination, where possible, of the reasons for any failure to meet a method or procedure and an evaluation of the impact of such failure on the overall data set. The Data Validator shall sign a certification statement and the language of the certification statement is specified in this section and the applicant shall provide the data verification report and certification statement to the Department.

- The Conflict of Interest by Technical Advisor section (4VAC50-60-1430) addresses any financial or other conflict of interest issues between a technical advisor and an applicant. Financial interest includes: 1) ownership interest in a manufacturer; 2) royalties from an MTD; or 3) dividends or commissions from a manufacturer. Receipt of a fee for conducting or overseeing testing from one or more manufacturers is not considered a conflict of interest. The section outlines examples of financial conflicts of interest. Technical advisors are also required to submit a disclosure record of all previous and current personal, professional and financial relationships with an applicant and with other MTD manufacturers. A disclosed relationship does not represent a conflict of interest when a consultant, university, or analytical laboratory receives fees for the testing or overseeing testing of MTDs. Technical advisors must submit a signed conflict-of-interest statement to the Department.

- The Reporting section (4VAC50-60-1440) sets out that, once a MTD has been permitted for pilot or conditional-use, that the applicant must submit status reports in accordance with a quarterly schedule. Such reports must be submitted electronically and must include at least ten elements addressing such issues as field test site location, a summary of findings, and an updated milestone chart.

- The QAPP [Quality Assurance Project Plan] Development, Review, and Approval section (4VAC50-60-1450) addresses quality assurance project plans.

    - MTD applicants must submit this plan to the Department for each field test site. Such plans(s) shall specify procedures for ensuring test result

and conclusion validity. Following submittal to the Department, each plan shall be reviewed within 60 calendar days by the technical evaluator, with recommendations provided to the Department. Committee members shall also be provided an opportunity to review the plan(s).

- This section also states that the quality assurance project plans shall be consistent with the VTAP and address all applicable elements found in EPA requirements for quality assurance plans. This section of the regulations outlines the elements to be provided in the plan(s), including monitoring documents such as a health and safety plan, maintenance logs and chain of custody.
- Under this section, the Director (or his designee) shall review and approve or disapprove a submitted quality assurance project plan. Plans that are disapproved may be modified and resubmitted by the applicant for another review. Upon approval of a plan for a test site, the applicant is then authorized to commence field testing. Applicants are required to seek approval from the Director (or his designee) to use an amended plan and the Director has 30 calendar days for review of the amendments.

- The Field Monitoring and Testing section (4VAC50-60-1460) lists out ten elements related to the scope of field monitoring and testing states that applicants must conduct specific activities and requirements associated with each of these ten elements.

    - Monitoring programs shall be designed in accordance with the quality assurance project plan. Furthermore, applicants must verify that the MTD can treat runoff from one-inch of rainfall and applicants must include methods and calculations used to select the size of the MTD based on standard design criteria for the MTD.
    - For the purpose of testing the MTD, the minimum number of qualifying storm events with measurable inflow and outflow to be sampled is set at 18, provided that the confidence level exceeds 50% and approval is granted by the Department. Otherwise, 24 qualifying storm events with measurable inflow and outflow must be sampled.
    - This section also provides that at least one qualifying storm event must have greater than one-inch of rainfall and there must be at least three qualifying storm events with greater than 0.5 inches of rainfall sampled. At minimum, five sets of two qualifying storms (10 storms) must be sampled.
    - All laboratory analyses of qualifying storm event data must be conducted by an independent laboratory. Use of a certified or accredited laboratory under the Virginia Department of General Services' regulations is required to receive a general use designation.

- The Suspension or Revocation of Permitted Use Approvals section (4VAC50-60-1470) addresses the conditions under which the Director may take suspension or revocation actions. Specifically, this section specifies:

    - Suspension if there is a failure to submit progress reports or to demonstrate satisfactory progress during the testing period. Issue regarding lack of progress can be resolved if the applicant demonstrates satisfactory progress in providing required information. Continuing failure to submit progress reports may result in revocation.
    - Suspension or revocation may occur if a MTD is not functioning as permitted and its continued use may result in a degradation of receiving waters. Suspension or revocation is dependent upon whether the MTD may be re-engineered or modified to address environmental impacts.

- The Extension section (4VAC50-60-1480) specifies that a MTD permitted for pilot or conditional-use shall expire 24 months from the time that the quality assurance project plan is approved. However, at least 45 calendar days before the expiration date, an applicant may request an extension from the Department. If an extension is not granted, then the applicant must re-apply to have a MTD permitted.

- The Virginia Stormwater BMP Clearinghouse Website section (4VAC50-60-1490) addresses the use of the Clearinghouse Website as an electronic registry of MTDs permitted for use in Virginia, including a listing of the permitted use conditions and any suspensions and revocations. MTDs with conditional or pilot-use designations shall be noted as conditionally permitted. The Department may deny a registry listing if an applicant misrepresents information and all MTDs must be listed within 15 calendar days of approval by the Director.

- The Disposition of Underperforming MTDs section (4VAC50-60-1500) provides for situations where a permitted MTD may not be performing at the level approved by the Director. If a MTD, approved for either pilot-use or conditional-use designation, is found to be underperforming and its permitted use has been either revoked or its operating conditions revised, including a reduction in pollutant removal credits, then the MTD device is not required to be removed.

- The Technical Standards section (4VAC50-60-1510) specifies the VTAP shall be used for the assessment of MTDs for permitted use to treat post-construction stormwater runoff, as the testing protocol is intended for volume-based and flow-rate-based stormwater MTDs.

- The Exceptions section (4VAC50-60-1520) states that the Director has the authority to approve or deny written requests for exceptions to specified elements of the VTAP. The section also states that exceptions cannot be granted for the use

of a BMP that is not found on the website registry of the Virginia Stormwater BMP Clearinghouse Committee.

- The Appeals section (4VAC50-60-1530) provides that any applicant aggrieved by an action of the Director or Department is entitled to use the procedures for making appeals outlined in the state law under the Administrative Process Act.

- The Use Permit Application Fees for MTDs section (4VAC50-60-1540) specifies that a fee of $10,000 per Use Designation Application shall be remitted to the Department. The fees are to be used to support the program oversight costs, such as technical assistance, training, and research, related to the development of innovative stormwater technologies. If an applicant requests a review for Total Nitrogen and the MTD is approved for Total Nitrogen pollutant credits in addition to credits for Total Phosphorus and Total Suspended Solids, then the fee per Use Designation Application is $15,000, to recognize the additional costs associated with the pollutant credits for Total Nitrogen.

  The section also states that, between the effective date of this regulation and June 30, 2014, all fees are to be paid prior to issuance of a use permit for the MTD and a permit shall not be issued until the fee is paid. Beginning July 1, 2014, the fee is remitted at the time that the application is submitted for review and no review will commence until the fee is paid. Applicants will receive a 75% refund for applications found to be incomplete. All fees shall be deposited to the Virginia Stormwater Management Fund.

Section II – Procedures for Approving Non-Proprietary Devices

- The Applicability section (4VAC50-60-1550) provides for an approach to verifying pollutant removal credit for non-proprietary BMPs that is different from those outlined in the VTAP (Section I). The section addresses a streamlined process for approving devices, recognizing that non-proprietary BMPs have the following characteristics: 1) a large history of performance research; 2) research that is publicly funded with limited funding availability; and 3) no commercial purposes involved in testing and evaluation.

- The Procedures for Approving Non-Proprietary BMPs section (4VAC50-60-1560) sets out the processes for manufacturers of non-proprietary devices to apply for approval by the Director. The conditions under which the Director will consider approval are:

  - For existing BMPs for which the Department has previously granted approval, the Department, Technical Evaluator, and BMP Clearinghouse Committee shall evaluate recommendations for BMP design modifications and make seek advice from different organizations with technical expertise.

- § This section was updated to add Technical Evaluator(s) as persons who shall evaluate recommendations.
- § This section was also updated to insert the word "shall" in front of "evaluate recommendations" to emphasize the importance of the evaluation process and the need for it as it related to approved non-proprietary BMPs.
- § This section was modified to ensure that the Department, Technical Evaluator(s), and the Committee shall evaluate recommendations "to modify BMP design specifications ~~made by~~ and may solicit advice from one or more of the following: the Center for Watershed Protection, the Chesapeake Stormwater Network, or the United States Environmental Protection Agency's Chesapeake Bay Program." Prior to the amendment, the regulations suggested that evaluation requests could only come from the noted entities. The revisions suggest that requests may come from any entity and that the noted entities may be contacted for advice.

- o The Department, Technical Evaluator, and the BMP Clearinghouse Committee will consider new BMP design specifications and pollutant removal credits by evaluating presentations made and research and testing data. As is the case with existing BMPs, advice may be sought from different organizations with technical expertise.

  - § This section was modified to ensure that the Department, Technical Evaluator(s), and the Committee will consider the approval of new BMP design specifications and pollutant removal credit by evaluating presentations "~~as well as additional recommendations made by~~ and may solicit advice from one or more of the following: the Center for Watershed Protection, the Chesapeake Stormwater Network, or the United States Environmental Protection Agency's Chesapeake Bay Program." Like above, this edit clarifies that requests can come from any entity and that the noted entities may be contacted for advice.

- o Approved devices will be posted to a website registry. The Department will also investigate supplemental procedures that might be suitable for providing additional scientific rigor to testing and VTAP procedures will be used as a guide.

Section III – Procedures for Approving Manufactured Pre-Treatment Devices

- The Applicability section (4VAC50-60-1570) specifies that manufacturers of certain MTDs, those designed to reduce sediment and gross solids, may choose not to test their devices within the VTAP due to additional costs and in cases where the device may have already been tested and approved under either TARP

or TAPE. The procedures set out in Section III permit the use of MTDs in these situations, where a device may reduce sediment and solids but not provide for nutrient filtering.

- The Procedures for Approving Manufactured Pre-Treatment Devices section (4VAC50-60-1580) sets out the processes for manufacturers of the pre-treatment devices to apply for approval by the Director. Any manufacturer applying must provide documentation of approval through either the TARP testing process or TAP based treatment procedures, with information regarding assigned pollution removal credit. The Department, Technical Evaluator, and BMP Clearinghouse Committee will evaluate every application and forward recommendations to the Director. Approved devices will be posted to a website registry.

- The Use Permit Application Fee for Manufactured Pre-Treatment Devices section (4VAC50-60-1590) specifies that a fee of $3,000 per Use Designation Application shall be remitted to the Department. The fees are to be used to support the program oversight costs, such as technical assistance, training, and research, related to the development of innovative stormwater technologies.

FORMS

- Updates FORMS to include four documents that will be utilized to administer the use permit application process.

DOCUMENTS INCORPORATED BY REFERENCE

- Adds to the DOCUMENTS INCORPORATED BY REFERENCE a document titled "The Virginia Technology Assessment Protocol For Evaluating Stormwater Manufactured Treatment Devices".

MTD Assessment Protocol Summary

The Virginia Technology Assessment Protocol For Evaluating Stormwater Manufactured Treatment Devices will be incorporated by reference in the regulation.

This document sets out the technical procedures for testing the performance of stormwater MTDs, and reporting the results to DCR. Based on the test results, DCR will be able to approve a use permit and pollutant removal credit for the device and list it on the Virginia Stormwater BMP Clearinghouse website as an approved BMP for use in Virginia.

Section 1 of the document provides a description of the three use level designations that may be applied to an applicant's MTD and the kinds of testing that must be achieved to qualify for each use level. Section 1 also summarizes the assessment process, providing a flow chart to supplement the description.

Section 2 establishes the technical procedures required for field monitoring and data evaluation. It addresses:

- Monitoring site selection;
- Development and documentation of a quality assurance plan for the project;
- Design of the monitoring project;
- Selection, design and installation of the monitoring equipment;
- Proper procedures for sample collection, analysis and quality control;
- Data verification, validation, certification and management;
- Data quality assessment; and
- Methods for determining pollutant removal.

Section 3 explains the application process and goes into great detail regarding the Technical Evaluation Report (TER) that must be submitted with the application. This TER provides a performance claim for the MTD and details of previous testing done on the MTD and the results achieved, including any prior certifications or approvals granted in other states.

The VTAP document also provides several appendices outlining relevant information important in preparing the application and monitoring project design, as well as evaluating system performance.

As with the proposed regulation, minor editorial changes have been made to the document since its mailing to the Board two weeks ago. These changes are not substantive. Most are minor punctuation and technical corrections that make the document more accurate and help to prevent creating confusion that might result otherwise. For example, in two definitions we replaced the term "absorb" with the more correct term "adsorb," reflecting a slight spelling difference but a significant difference in the process it intends to describe.

Upon a closer reading, some phrases or sentences were removed as being redundant or otherwise not necessary to the meaning. Some definitions were removed because they already appeared in the regulation document. Some terms needed to be capitalized or, alternatively, de-capitalized, as appropriate. Where more than one term was used to refer to the same thing or more than one spelling of a term was used, we made a decision about which single term or spelling to use consistently throughout the document. This avoided having to define more than one term with the same meaning. Some changes were made by the Panel of Experts upon their review of the final document, in an effort to assure that the document provides optimum clarity and technical correctness.

None of these edits changes anything substantively that the BMP Clearinghouse Committee and participating manufacturers had agreed upon at the October and November Committee meetings following a years-long development process that involved a lot of negotiation and compromise. However, to the degree that we can edit

now to avoid future confusion, we believe we should do so before these documents are introduced as regulations and achieve final approval.

Issues

In this final section of my remarks, I have attempted to address two concerns that you may hear today during the public comment period and that Mr. Crafton alluded to during his PowerPoint presentation. For each of these items I have tried to capture in a simplified form the issues being raised and have provided DCR's thoughts regarding why we have structured the regulatory documents in the manner that we have following a consideration of these concerns.

1) The first issue concerns the required use of state certified laboratories in accordance with § 2.2-1105 of the Code of Virginia for the analysis of field and laboratory samples related to applications for general use designation (GUD). Section 4VAC50-60-1460 E stipulates that "[u]se of a laboratory certified under 1VAC30-45 or accredited under 1VAC30-46 [the regulations developed in accordance with§ 2.2-1105] is required to receive a GUD designation unless otherwise exempted from such use". Some manufactures have expressed concerns regarding this requirement largely as they have testing that has been done utilizing non-certified laboratories. The Department has actively considered those concerns and has continued to uphold the laboratory use requirements set out in the regulation on both legal and administrative grounds. This determination is based on the following:

    - Section 2.2-1105 of the Code of Virginia establishes the Environmental laboratory certification program and requires that the Department of General Services shall by regulation establish a program for the certification of laboratories conducting any tests, analyses, measurements, or monitoring required pursuant to Chapter 13 (§ 10.1-1300 et seq.) of Title 10.1, the Virginia Waste Management Act (§ 10.1-1400 et seq.), or the State Water Control Law (§ 62.1-44.2 et seq.).
    - Accordingly there is a requirement for environmental laboratories in Virginia doing work in support of the State Water Control Law to have VELAP accreditation.
    - DCR's Counsel in the Attorney General's Office has reviewed the issue and has supported DCR's position that VELAP certification is required for monitoring conducted pursuant to State Water Control Law (see Code 2.2-1105(A)), which includes the state's TMDLs. It is Counsel's position that VELAP certification is required to validate the TMDL reduction numbers.
    - We also note that coverage under the Construction General Permit, that requires the implementation of BMPs permitted for use, is required under§ 62.1-44.5 of the State Water Control Law or such land disturbing projects are otherwise prohibited from discharging to state waters.
    - This approach is also being advanced from a policy perspective to instill additional standardization into the process.

- The Department of Environmental Quality (DEQ) has stated that they require VELAP certification for VPDES permit reporting. The Construction General Permit is a VPDES permit and is required as noted in the proceeding bullet under the State Water Control Law.
- Should these regulations be transferred to DEQ as part of pending consolidation legislation they will become directly subject to the State Water Control Law.
- Research has shown that use of such labs should not be burdensome to manufactures as a review of the VELAP Accredited Commercial Laboratories WITH FIELD OF ACCREDITATION (FOA) DETAIL list (updated 7/25/2012 revealed that there are about 70 commercial labs that are certified for TP analysis at this time. Similarly, about 30 non-commercial labs have VELAP certification for TP.
- In conversations with the VELAP staff at DGS they stated that VELAP certified labs are required for any monitoring involved with meeting requirements of the Virginia State Water Control Law. They stated their opinion that VELAP certification should be required for labs analyzing test data to assign pollution removal efficiencies for products that could then be used to meet TMDL and other regulatory water quality requirements.
- It should also be noted that the laboratory(ies) utilized by the manufactures raising this concern would likely be eligible for certification if the laboratory administrator (s) was willing to apply or they may contract out with a VELAP accredited laboratory for certain analyses. [As of yesterday, we understand that one academic lab has done just that. They have contracted with a private lab who is VELAP accredited for analysis of the appropriate pollutants.]
- The DCR Panel of Academic BMP Researchers noted that: "there are laboratories, particularly those in universities, which have a long history of performing environmental and treatment process studies. The requirement to acquire accreditation in compliance with VELAP will certainly create a burden. The panelists, all being academicians, are cognizant of this burden. One of the panelists recently achieved such accreditation in Florida and did not find it to be insurmountable. In Virginia, at least one state university laboratory has already been awarded VELAP accreditation, and two others are in progress. We believe that this requirement is driven by regulation, that no exception should be created for academic laboratories, and that such a requirement, while taxing, is not an undue burden on such laboratories."
- It should be noted that the VELAP requirement is no different than DCR requiring in its stormwater regulations that a professional licensed by the Virginia State Corporation Commission's Division of Professional and Occupational Regulation seal site plans and calculations associated with stormwater management plans.

2) It has been brought to our attention that the Stormwater Equipment Manufacturers Association (SWEMA) is opposed to the current Section II of the proposed regulations (Procedures for Approving Non-Proprietary Devices). SWEMA believes that the testing should be the same for Proprietary and Non-Proprietary Devices and that the current language should be removed. The manufactures have noted that government has a legal and ethical obligation to treat all sectors in a fair and unbiased manner. Failure to address this issue may result in:
    a. The state of Virginia may unintentionally create the inequitable comparability of stormwater BMPs by not having one water quality testing protocol all research and monitoring programs are held accountable to.
    b. Economically prejudicing private sector companies to costs not required by non-proprietary solutions.
    c. Decreased stormwater BMP options available to the Virginia marketplace.

    DCR offers the following comments regarding these concerns:

    - The Department contends that Section II of the regulations should be retained as written. In summary, the Section contains the authority and framework for the Director to review and approve non-proprietary devices and calls on the Committee to investigate supplemental procedures that may be appropriate for providing additional scientific rigor and consistency to the testing of non-proprietary BMPs. It is envisioned, and recommended, that the Committee begin work on guidance in January that outlines their thoughts on this issue while this regulatory action moves through the approval process. This will allow the Clearinghouse Committee to continue to weigh the options without slowing the current regulatory initiative. The Board motion calls for the Committee to begin such proceedings.
    - DCR recognizes that in the end, best professional judgment is applied to the data generated from monitoring all stormwater BMPs, including MTDs that will be subject to the VTAP. However, the judgments pertaining to MTD performance will typically be based on a few test sites, whereas the judgments applied to non-proprietary BMPs are typically based on many test sites and a broad array of literature applicable to these BMPs. DCR does agree that more monitoring and testing of ALL BMPs is needed in order for continuous improvements to be made; although, we are not ready to state that proprietary and non-proprietary devices must require the use of the same sampling protocols.
    - DCR agrees with its panel of academic BMP researchers that there is no clear impulse (such as profit motive) driving the testing and evaluation of non-proprietary BMPs in Virginia or, for that matter, in any other specific state. Non-proprietary BMP research tends to occur at academic institutions or within local jurisdictions where there is specific interest and funding can be cobbled together to accomplish the research. Our understanding of the performance of non-proprietary BMPs is based on many monitoring projects for any specific BMP type (e.g., bioretention)

conducted in many different states, as opposed to a few more focused tests typically applied to the same design of a specific MTD.

- Given the significant differences in both the knowledge base and the issues surrounding how to fund the testing, DCR and the Committee need to take the time to consider this matter. That is essentially what we have accomplished through the language in Section II. Additionally, the DCR Panel of Academic BMP Researchers that considered this issue did not believe it is appropriate to automatically submit non-proprietary BMPs to the current VTAP protocol focused on MTDs. Specifically they noted the following:
  - "The statement that "non-proprietary BMPs are modified each and every time they are installed," while "a manufactured product is constructed in a controlled factory environment, assuring compliance" is a gross oversimplification of the process. Many non-proprietary BMPs have a large history of performance research, several of which have been published and peer reviewed. We acknowledge gaps in this knowledge, particularly in agricultural and catchment-scale BMPs. The current Bay program's emphasis on implementation without sufficient verification does likely weaken its ability to achieve compliance. Verification is taking place in some jurisdictions, albeit under less than uniform conditions. However, this does not obviate the need for certification of proprietary practices, about which we know much, much less. Going to the core of the argument is the "fairness" of requiring testing. The panel does not feel that this argument holds water, no pun intended. No entity stands to gain from the certification of nonproprietary practices; whereas there are substantial potential rewards associated with certification of proprietary practices. Thus the risk and reward appear to be commensurate."

Mr. Chairman, that concludes our overview of the regulatory documents and the process and I turn it back to you for further explanation of the proposed regulations at the Board's request or for public comment and Board action. A motion for your consideration is provided.

Mr. Dunford called for discussion by the Board.

Mr. Street noted that it was safe to say that there was a testing facility within one hour of everyone in Virginia. He asked if DCR would be providing a letter for facilities that had not been tested that their removal rate was 30%.

Mr. Dowling said that from the DCR perspective when a permit is issued it will be issued with conditions clearly spelled out. He said the efficiency would be spelled out in the permit.

Mr. Crafton said that during the period of evaluation the technical evaluation report and application are posted for 30 days for public comment. The public gets to see the testing that has been done and the locality gets to weigh that information before a decision is made.

Public Comment

Mr. Dunford called for public comment.

Greg Johnson, Virginia Beach

Good morning, I will try to be brief. I know you want to get on with today's activities.

Good morning Mr. Chairman, ladies and gentlemen of the board. My name is Greg Johnson. I am a professional engineer in the Commonwealth of Virginia. I work in the City of Virginia Beach in the stormwater division. I was an original member of the Clearinghouse Committee and have served now about five years.

Since its inception, the Clearinghouse has worked on the Virginia Technology Assistance Protocol. We have enlisted experts, scientists, vendors and DCR staff. The document before you today is the product of many hours of dedicated work. The details in the document were debated and reviewed and in some areas revised many times over. The strength of this document is that it was written by academic experts and fully discussed before the Clearinghouse.

This is a modern, sound guideline. It is likely the most advanced type of guidance in the country. I have witnessed the document's development and can recommend it without hesitation. I have listened to many discussions about the protocol. Input from all sectors was incorporated.

I know that vendors have concerns about how they will meet the requirements of the guidance. I've also heard the technical reasons for the protocol. I believe it will be a balanced achievement

With that said, I would like to read for the record, a letter from the City of Virginia Beach that is addressed to David Johnson, Director of DCR and is from William J. Johnson, Virginia Pollution Discharge Elimination System Administrator.

The letter read:

> Dear Mr. Johnson:
>
> I am writing in support of the Virginia Technology Assessment Protocol (VTAP) as embodied in the November 27, 2012 draft version.

> The City of Virginia Beach finds this to be a timely balance of various interests following extensive discussions and negotiations with the goal of further restoring and protecting the Commonwealth's Waters with current and to-be-developed technologies. The process includes pilot use designation, conditional use designation, and general use designation and protocol for approval of manufactured treatment devices. Both processes will allow the City and others to continually advance the state-of-the-art in stormwater quality management in a consistently improving and economically efficient manner.
>
> This City, like others in coastal southeastern Virginia, continues to work toward finding the most applicable, cost effective, nutrient and suspended solids reduction/removal opportunities for a built-out coastal plain community. To that end, the City of Virginia Beach will be forwarding material to the Commonwealth for review and consideration of non-traditional methods for improving water quality which can be economically implemented, with the beginning of the New Year.

A copy of this letter is available from DCR.

David Sample, Virginia Tech

Good morning, I'll try to be brief. I'm David Sample with the Biological Systems Engineering Department at Virginia Tech. I've been engaged with the BMP Clearinghouse in the past four years since I've been at Virginia Tech.

I've recently resigned my role on the BMP Clearinghouse committee since I will be assuming the role as technical advisor when these regulations become effective.

I just wanted to reiterate that this was an open stakeholder process. I was proud to serve as the expert panel committee chair working with Tom Grizzard from Virginia Tech, Alan Davis from the University of Maryland, and others.

What we tried to achieve in the review of these regulations was to try to strike a balance. We wanted to make sure we have the right balance. What we want is for these new technologies to be implemented so that we can take advantage of better treatment.

I'm very proud to have served in this role. To speak to the issues that were raised:

On the lab certification, many of the academics were actually against lab certification. It is sort of an educational process. An element of trust. As the process gets bigger and bigger, you need that certification to stand behind it because basically what I can do at my lab bench is not enough to do this. You need that certification.

On the non proprietary BMP, the issue relating to that is really talking about apples and oranges. There is quite a lot of evidence, albeit it is not in a nice technical evaluation report, but we have that body of literature on many of these BMPs on how they perform.

Could we do more? I'm the first person to say that we should. I've been saying that since I came to Virginia and I'll be consistent with that. But I don't think that's a reason to hold up these regulations.

I think what DCR has come up with is an appropriate compromise. Thank you.

Chris French

Mr. French distributed written comments for members of the Board. He also referenced a letter from the Stormwater Equipment Manufacturer's Association which was sent to the Board. Copies of both documents are available from DCR.

Ladies and Gentlemen, my name is Chris French. I'm with Filterra Bio Systems. I am the new regulatory manager for the company. It is a position that was just created earlier this year.

First I would like to say that we appreciate all of the work that's been done with the BMP Clearinghouse Committee with all of the various members, the academic advisors and everyone else. In my written comments I only note four years of work, but am now corrected that this has been six years of work. I would like to recognize all of the efforts that have come to this point so far.

As a whole, the Filterra company would like to see this process move forward. Like many others, there exists a great degree of regulatory uncertainly without program management. And, having something in place that gives everyone an opportunity to understand what the rules are, what the expectations are that the agency wants us to look at.

The biggest concern that we have, and we see these as two outstanding issues. In regard to some of the issues that both the industry as well as Filterra have. The shared concern is with Section 2 that has been added to the VTAP document, the regulatory document that came out toward the end of November. If you look at page three of my comments it goes to various points and things that both the industry as well as Filterra share concerns with. Primarily, what we really feel that is implementation of this program without respect to all stormwater Best Management Practices would be creating inadequacies across the board. You would not be able to equally compare the removal efficiencies of pollution from non manufactured devices to manufactured devices. That would create inconsistent scientific comparisons of data.

We have noted as Mr. Crafton noted earlier we can see other states starting to do comparisons between proprietary systems as well as non proprietary systems utilizing these protocols. Mr. Crafton mentioned the Washington Department of Technology use of a program in Washington State were we see that all MS4 phase one communities are required to go out there and do monitoring of specific BMPs in their jurisdiction. It's their choice as to which BMPs they will monitor. But they have the ability to monitor

both proprietary and non proprietary systems. That is actually being done. If the Board so desires I have a handout of what is currently being done in Washington State.

In addition to that, the University of Massachusetts in Amherst is responsible for implementing the Massachusetts Environmental Review Program for manufactured systems as well. In addition to that they also look at non proprietary systems as well as proprietary systems. I have copies of two of their evaluations with me. These are actually studies done by some of the most prominent researchers in green infrastructure criteria.

From a consistency perspective we would request that this process as it moves forward be set so that it can incorporate non proprietary systems. VTAP really should be applicable to everyone involved.

If that's not the desire of everybody here today it is our opinion and that of the manufacturer's association that Section 2 of the regulation should be stricken from the document. That way the process that Mr. Crafton discussed as well as Mr. Dowling in regards to a new process for non manufactured systems can be vetted to the Stormwater Clearinghouse Committee. It must be noted that Section 2 was not discussed at the last committee meeting.

The second point that I want to bring up specifically has to do with the VLAB requirements and if you flip over to the fourth page of the Filterra comments, this illustrates the points I want to bring out as far as the applicability of VLAB in regards to use for this particular program. Specifically it needs to be noted that the State Code, VLAB is a regulation underneath the Department of General Services, Consolidated Laboratory Services. The enabling legislation for the VLAB certification program specifically spells out that it is applicable to the Virginia Air Pollution Control Law, and the Waste Management Act as well as the State Water Control Law. The Stormwater Management Act is not spelled out and stated in this portion of the Code of Virginia.

As a result, because it is not explicit, we feel that this is not applicable and that the VLAB does not specifically apply to stormwater management activities at this time period. We've expressed in our previous comments to both DCR as well as the Clearinghouse committee that we're not against such ideas. We're very much in favor of using certified laboratories, but we feel that this one is overly restrictive because it is Virginia-centric. And when you look at other protocols such as the National Laboratory Accreditation Program as well as other programs such as state certified labs in North Carolina, there are a lot more options rather than this very strict protocol.

It also must be noted that EPA, DEQ and DCR all utilize water quality data, the TMDL program that is not VLAB certified. One of the options and issues that was brought up in our discussions is that the TMDL program is the driver behind this. And because of that this is how this falls underneath the stipulation of the Water Control Law. That's just simply not the case in this regard.

If you look at the various amounts of data that goes into developing a TMDL, from development implementation phase all the way up, the data that people are using to establish the BMP efficiencies, the various things that systemic to the body of available scientific research, that majority of which is not certified under VLAB protocols. It may be certified under other laboratory protocols, but not this specific one.

So in that regard we feel that this is very restrictive. This is also true in regards to specific TMDLs at the local level, the Chesapeake Bay TMDL, and also we talked about it in regards to the information that was used to develop the Runoff Reduction Model.

For example in regards to data that is not being utilized in that regards, the Virginia Department of Health for its beach monitoring and shellfish bacterial monitoring programs do not consider themselves to be subject to the VLAB provision.

I have a map that shows the various programs in the United States that are participating in the National program in which you can see there are only fourteen states participating. All the other states are basically running their own state laboratory certification programs. We feel that it's appropriate if someone wants to do testing outside of the State of Virginia for the certification that they should allow the ability to utilize laboratories that are certified by other states and there should be some reciprocity.

Last I want to point out that the VLAB requirement is counter to Executive Order 14 from the McDonnell Administration promulgated in 2010 which directs regulatory agencies to identify and assess the least costly means, including reasonable and available alternatives to new regulation.

We feel that because there are a lot of other options available beyond just VLAB that this is very appropriate to consider. In that regard we would ask that DCR consider changing the wording regarding VLAB from require to recommend and allow other state laboratory programs around the United States to be considered for use in the VTAP program.

If anyone has any questions or concerns I will be happy to make myself available. Thank you.

Joe Battiata, Center for Watershed Protection

Thank you, my name is Joe Battiata. I'm with the Center for Watershed Protection. I'm up here today to throw my support behind this testing protocol. Hopefully I can support it without confusing the issue.

This process actually started in the mid-1990s. The Commonwealth took a very reactionary mode in dealing with this very complicated issue. The lack of a formal process created a downward spiral in the use of manufactured products. It is very hard to explain how a BMP the size of a school bus could eventually be whittled down to a 48 inch manhole with everyone saying this will do the job.

The lack of the process was not negligence on the state's part. It was more a reflection of how complex this is. Manufacturers understand the process of water quality better than anyone. Typically they can run circles around the local plan reviewer who is trying to decide to approve or not. The VTAP now represents a very well conceived and thorough testing, monitoring and data verification process. It creates a platform that all manufacturers can rely on, from research and development to the market place.

There's been a lot of talk about the cause of stormwater volume in the Chesapeake Bay and how are we going to pay for all of this. We figured out who is paying for it, not how we are paying for it. Without having a platform to encourage innovation and research and development, we can't afford to guess anymore.

VTAP answers an important question of why can a product be designed and implemented completely differently from everything we know about the process of water quality. That's what the manufacturers are trying to achieve. They're grasping the concept of water quality and packaging it in a package that is economical, maintainable, doesn't take a lot of space. We've got a body of evidence on all of these school bus size BMPs out there. And every time NC State, or Virginia Tech or ODU or any of the universities do a study, they're adding a few data points to a very large body of evidence.

We don't need to have one or two tests slam dunk the performance of the practice that's been around for twenty years. What we need is one or two tests that can introduce brand new products to the marketplace. This is a very rigorous and complex testing protocol, but it's valid, it's well conceived.

There is no substitute for field testing. There are labs that will simulate rainfall outside and will get 20 storms in a couple of months because they determine the scale, but this is an important feature. In a natural environment there is a wet and dry cycle over a point in time. Lab testing by itself also misses a very important factor of the long term maintenance cycle, the longevity of a BMP.

The VTAP is not trying to cut any corners. With that it is just important to remember that the biggest obstacle to innovation, to inviting private capital into the marketplace, the stormwater banks and everyone else didn't want to touch it because it is so complicated. Every locality is doing things differently. This is a protocol that has gotten a lot of attention across the country and I think you will see a lot of states start to defer to Virginia's testing. That hasn't been available before now. The biggest obstacle to innovative technology is fear, uncertainty and doubt. There's a lot of that when you start talking about these manufactured BMPs. So this process hopefully does a great job of eliminating that by establishing a very stable process for the manufacturers to use to bring products to the marketplace.

Thank you.

Michael Flagg, Hanover County

Good morning, I'm Mike Flagg, I'm the Public Works Director for Hanover County. I want to commend the efforts of DCR and certainly those of the committee for bringing this forward. I think we all acknowledge that moving forward this is a continuing process. We all have a lot of opinions in this arena.

I would ask DCR in moving forward to perhaps modify the thinking in how we deploy other items. I would ask that you consider in any of the policies as they move forward, putting a hold harmless for these conditionally approved BMPs. Let's not go backwards and have localities go back and account for what would be minor, insignificant differences.

Let's encourage the use of these innovative practices. Let's allow these manufacturers to come forward and give us new and better solutions.

I have often heard Mr. Johnson speak about where's the science. Science tells us there is a tremendous amount of variability in these systems that we're working under. Any of these conditionally approved practices that have been installed constitutes such an insignificant fraction of the ultimate demand and load that we must reduce, I just submit to you to modify your thinking. Let's open up the door. Under what is a very good program, let's let these things be installed without recomputing that.

If you would please consider that. Again I commend you. I think you're putting us on a solid foundation moving forward.

Thank you.

David Powers

My name is David Powers. I'm a water resource engineer with Williamsburg Environmental Group. I've been working on urban water quality issues in Virginia for about 20 years. I've been on the Virginia BMB Clearinghouse Committee since its inception as well. What I'd like to do is speak on behalf of the regulations you have in front of you, endorsing them, and offer my perspective on how we got to be where we are.

One thing we have to acknowledge is the incredible amount of work and consensus building that went on through this process, and no one is more responsible for that than Scott Crafton. The BMP Clearinghouse Committee was made up largely of municipal representatives, there were a number of folks from private industry, and there were some vendors. It was a very diverse group bringing very diverse interests and ideas to the table.

As you heard it's been a six year process. As you can imagine a lot of that diversity manufactured itself in opposing views without the opportunity to build consensus we probably wouldn't be here today.

A lot o people have conceded strong opinions. Myself being one of them. I think that most of the people that represent the vendors also conceded some strong opinions. At the end of the day we have a strong consensus among committee members for the product that we have.

The one other thing I'd like to point out is that we have a very dynamic stormwater environment right now. There is a lot of burden being placed on our municipal officials who are really very bearing the majority of the load for this. It's going to be important to get a process in place to give them the tools they need to meet their goals and objectives and the requirements they have in the program.

I think that this fast track process, while in some ways not ideal, is necessary because we have got to get these tools available and in the ground to start helping these municipalities meet their requirements.

Thank you and good afternoon.

Ed Kay

Thank you and good afternoon. My name is Ed Kay. My residence is in Hanover County. I'm an environmental scientist. I've now worked with two different stormwater MTD manufacturers. I have just a couple of comments on the regulations and VTAP.

Procedurally I've been involved for about four years. That doesn't make fast-track seem the right term for the procedure. I'm very glad to see the conclusion or the end in sight. I think that's been echoed as well by others. We very pleased to see this coming to a conclusion.

The other people that will be pleased to see this come to conclusion will be the business and localities. Essentially this is opening up the doors to lots of competition providing a lot more options to comply with the TMDLs and local regulations. It's not just about manufacturers; it's also about the localities as well.

From a business point of view the regulations are great because it's going to level the playing field. The protocol truly does aim to compare apples to apples in the field and especially with two test sites as well. As an environmental scientist this innovation allows new systems to come to the market place and for them to be tested and to be proven so that there is justification for using them. All of it is going to help water quality in the Chesapeake Bay and other localities.

On a personal note, thanks to Scott Crafton and Jane Walker who put in some much work behind the scenes with the committee.

Mr. Dunford said that the Board appreciated the input from the speakers.

Board Action on Final Regulation

Ms. Jamison asked which Virginia agency gave the labs their accreditation.

Mr. Johnson said that was General Services.

Mr. Street moved the following:

Motion to approve, authorize and direct the filing of a fast-track final regulation related to amendments to the Board's Virginia Stormwater Management Program (VSMP) Permit Regulations that add a new PART XVI titled "Procedures For Reviewing and Approving Design Specifications and Pollutant Removal Credits for BMPs"

The Board approves this fast-track final regulation that establishes within the Virginia Stormwater Management Program (VSMP) Permit Regulations a new PART XVI titled "Procedures For Reviewing and Approving Design Specifications and Pollutant Removal Credits for BMPs" and authorizes the Director of the Department of Conservation and Recreation and the Departmental Regulatory Coordinator to submit this fast-track regulation, the Virginia Technology Assessment Protocol For Evaluating Stormwater Manufactured Treatment Devices that is being incorporated by reference, the four associated forms, and any other required documents to the Virginia Town Hall and upon approval by the Administration to the Registrar of Virginia.

This authorization is related to those changes that are subject to the Administrative Process Act and to the Virginia Register Act. The Department shall follow and conduct actions in accordance with the Administrative Process Act, the Virginia Register Act, the Board's Regulatory Public Participation Procedures, and the Governor's Executive Order 14 (2010) on the "Development and Review of Regulations Proposed by State Agencies".

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

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

Further, the Board calls on the Department and the Stormwater BMP Clearinghouse Committee to collaboratively consider the procedures that should be utilized for approving non-proprietary devices and for the Committee to develop guidance outlining their recommended procedures for the Board's consideration. The Committee's recommendations should include procedures that may be appropriate for providing additional scientific rigor and consistency to the testing of non-proprietary devices and should use the VTAP procedures as a guide in this process.

SECOND: Ms. DuBois

DISCUSSION: None

VOTE: Motion carried unanimously

At this time the Board recessed for lunch.

Stormwater Management

Division Director's Report

Mr. Bennett gave the division director's report.

Mr. Bennett said that staff had attended the recently concluded meeting of the Virginia Association of Soil and Water Conservation Districts. He said that he had announced the winners of the annual Clean Water Farm Awards.

Mr. Bennett said the recently developed Virginia Enhanced Conservation Initiative and announced by the Governor in a press release would provide 100% cost share funding for livestock stream exclusion practices.

Mr. Bennett said that when he became Division Director there had been considerable difficulty in getting timely and accurate payments to the districts. He said that the Division has made this a priority and that it was understood that districts are faced with very tight budgets.

Mr. Bennett said that the agency had transitioned to a new accounting system where all payments were tracked via a computer based system. He said that there were the obvious challenges with a new program. He noted that all payments are now up to date. He said that DCR made the decision rather than making quarterly payments that all operational and technical assistance funds would be distributed to districts. He said that the intent is to allow districts a better opportunity to manage cash flow.

Mr. Bennett said that at the last meeting there was a discussion regarding Monacan Soil and Water Conservation District. The District had lost a contract with one of their localities. He said the District had requested assistance from DCR with regard to additional funding. He said that staff had determined that the best option was to assist the District with identifying other sources of funding that might be available. He said that DCR getting all of the District funding out will allow Districts such as Monacan time to look for additional funding.

Mr. Bennett said that some Districts have participated in the storm water rollout program.

Mr. Bennett said the last item related to the increase of FY 13 General Funds in the amount of $300,000. He said that in the last session of the General Assembly $200,000 was removed and then returned to the allocation. He said the total also included $100,000 of targeted TMDL funds.

Mr. Bennett said that at the Association meeting there had been a thorough discussion of District IT needs. He said that DCR considered that the $300,000 could be invested in District IT needs. A meeting has been set up with the Association committee as well as NRCS. He said the intent is to determine where best to invest these funds.

Approval of the establishment of a fee for Department review of annual erosion and sediment control standards and specifications for wetland mitigation or stream restoration banks (in accordance with § 10.1-563 of the Code of Virginia)

Mr. Dowling referenced a handout in member packets entitled "Authority to Establish Specified Fees for Services." A copy of this was mailed to members. A full copy of this document is available from DCR.

Mr. Dowling said that this was a straightforward issue. He said a similar issue had come before the Board previously.

Legislative Action

Erosion and Sediment Control, Stormwater Management, and Chesapeake Bay Preservation Acts, integration of programs bill [Chapters 785 and 819 of the 2012 Virginia Acts of Assembly; (HB1065 – Delegate Sherwood and SB407 – Senator Hanger)]

- Amended § 10.1-563 of the Code of Virginia relating to the filing of general erosion and sediment control standards and specifications for wetland mitigation or stream restoration banks annually with the Department for review and approval.
- Included a fee authorization provision;
    - Allows the Board to "*charge fees equal to the lower of (i) or (ii) an amount sufficient to cover the costs associated with the standards and specification review and approval, project inspections, and compliance*." This allows a fee to be applied to offset the costs associated with wetland mitigation or stream bank restoration annual standards and specification review.

Background on Fees for Review of General Erosion and Sediment Control Specifications

§ 10.1-563. Regulated land-disturbing activities; submission and approval of erosion and sediment control plan.

E. Any person engaging, in more than one jurisdiction, in the creation and operation of a wetland mitigation or stream restoration bank or banks, which have been

approved and are operated in accordance with applicable federal and state guidance, laws, or regulations for the establishment, use, and operation of wetlands mitigation or stream restoration banks, pursuant to a mitigation banking instrument signed by the Department of Environmental Quality, the Marine Resources Commission, or the U.S. Army Corps of Engineers, may, at the option of that person, file general erosion and sediment control standards and specifications for wetland mitigation or stream restoration banks annually with the Department for review and approval consistent with guidelines established by the Board.

The Department shall have 60 days in which to approve the specifications. If no action is taken by the Department within 60 days, the specifications shall be deemed approved. Individual approval of separate projects under this subsection is not necessary when approved specifications are implemented through a project-specific erosion and sediment control plan. Projects not included in this subsection shall comply with the requirements of the appropriate local erosion and sediment control program. The Board shall have the authority to enforce approved specifications and charge fees equal to the lower of (i) $1,000 or (ii) an amount sufficient to cover the costs associated with standards an specification review and approval, projection inspections, and compliance. Approval of general erosion and sediment control specifications by the Department does not relieve the owner or operator from compliance with any other local ordinances and regulations including requirements to submit plans and obtain permits as may be required by such ordinances and regulations.

Annual Standards and Specifications Cost Estimate

DCR's Cost per Type of Annual Standards and Specifications

Annual Specification Type	Staff Hours	Staff Costs @ $36/hr.	Travel
VDOT	520	$18,720	$1,500
Utility and Railroad	30	$1,080	$100
Wetland and Stream Bank	55	$1,980	$600
Non-VDOT State Agencies	65	$,2,340	$100

DCR's Costs for Annual Standards and Specifications

Annual Specification Type	Number of Types	Total Costs
VDOT	1 @ $20,220	$20,220
Utility and Railroad	24 @ $1,180	$28,320
Wetland and Stream Bank	5 @ $2,250	$12,900
Non-VDOT State Agencies	10 @ $2,240	$24,400
Grand Total	**40**	**$85,840**

Average cost per Annual Standard & Spec Type = $2,146

Observations

- The cost estimate numbers outlined above represent an estimate of time spent by staff to conduct specification reviews and inspections (including travel).
- This estimate is probably on the conservative side. An increasing emphasis on compliance will likely result in more inspections thus driving Agency costs higher.
- In all cases, the costs are well above the maximum amount that the new E&S Law change would allow DCR to charge for annual specification review, project inspection and compliance activities.

Mr. Ingle asked if the last part of the fees were retroactive.

Mr. Dowling said that this was the same language from the previous year. He noted the bill went into effect on July 1, 2012. However, there were a couple of actions not brought before the Board. The action taken by the Board at this meeting would be retroactive.

MOTION: Mr. Street moved the following:

Motion for the Board to authorize the immediate establishment of a $1,000 fee for the review of annual standards and specifications pursuant to § 10.1-563 E of the Code of Virginia.

In accordance with Chapters 785 and 819 of the 2012 Virginia Acts of Assembly (HB1065 andSB407), § 10.1-563 E of the Erosion and Sediment Control Law has been amended, effective July 1, 2012, to authorize that "[t]he Board shall have the authority to enforce approved specifications and charge fees equal to the lower of (i) $1,000 or (ii) an amount sufficient to cover the costs associated with standard and specification review and approval, project inspections, and compliance."

Pursuant to this authority, the Virginia Soil and Water Conservation Board authorizes the immediate establishment of a $1,000 fee for the review of such annual standards and specifications. This fee shall be retroactive to all such standards and specifications. This fee shall be retroactive to all such standards received for review and approval since the effective date of the law on July 1, 2012.

SECOND: Mr. Brickhouse

DISCUSSION: None

VOTE: Motion carried unanimously

Erosion and Sediment Control

Mr. McCutcheon gave the erosion and sediment control report.

Franklin County Program Review and Corrective Action Agreement (CAA)

Mr. McCutcheon gave the background for Franklin County.

Staff conducted a program review of the Franklin county Erosion and Sediment Control Program on March 19-23, 2012 and conducted a close-out meeting with their County. The scores for the individual program elements were as follows: Administration 45, Plan Review 80, Inspection 90, and Enforcement 100. All program elements did not receive a score of 70 or greater. Therefore, staff recommended that the Virginia Soil and Water Conservation Board find the Franklin 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.

At the September Board meeting staff from Franklin County requested the Board to reconsider the scores given as a result of the program review. The Board requested DCR staff to revisit the scores given to Franklin County to determine if the scores were recorded properly and to obtain any further information regarding the Franklin County Program Administration if available and directed staff to make a report at the December meeting.

DCR staff subsequently met with Franklin County officials and determined that the County has delegated Administration of the Erosion and Sediment Control Program to several of the staff and that there is no single person or position that is designated as the Program Administrator and that the County staff members who administer the program are all properly certified. Staff also determined that the Franklin County Erosion and Sediment Control Ordinance needed to be amended to designate the Program. However, since the September Board meeting, the exempt changes to the ESC regulations became effective November 21, and designation of positions of authority in the program is no longer required. Because the requirement in the regulations that caused the program to be inconsistent no longer exists, staff recommends that the findings of the program review for Franklin County be amended to find the Erosion and Sediment Control Program consistent with the Virginia Erosion and Sediment Control Law and Regulations.

MOTION: Ms. Jamison moved that the Board accept staff recommendations to find the Franklin County Erosion and Sediment Control Program consistent with the Virginia Erosion and Sediment Control Law and Regulations and commends Franklin County for successfully implementing the County's Erosion and Sediment Control Program 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. The Board also directs DCR staff to revise the scoring of Franklin County's ESC program review to reflect the requirements of the revised regulations.

SECOND: Mr. Simms

DISCUSSION: None

VOTE: Motion carried unanimously

Local Programs to be found consistent based on Initial Program Reviews

Hanover County

Mr. McCutcheon gave the background for Hanover County.

Staff conducted a program review of the Hanover County Erosion and Sediment Control Program on September 19-20, 2012 and conducted a close-out meeting with the County. The scores for the individual program elements were as follows: Administrative 95, Plan Review 70, Inspection 80, and Enforcement 80. All program elements received a score of 70 or higher. Therefore, staff recommends that the Virginia Soil and Water Conservation Board find the Hanover County Erosion and Sediment Control Program consistent with the Virginia Erosion and Sediment Control Law and Regulations.

Mr. Flagg noted that the program review had been going on for three years. He commended DCR staff for building a partnership and working to resolve disagreements. He expressed appreciation to Jacob Bauckman.

Mr. Flagg said that he had been with the County for 16 years and that this was the first time the County's program had been found consistent. He said that the County had developed a strong enforcement program.

Accomack County

Mr. McCutcheon gave the background report for Accomack County.

Staff conducted a program review of Accomack County's Erosion and Sediment Control Program on June 25, 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, and Enforcement 80. All program elements received a score of 70 or higher. Therefore, staff recommends that the Virginia Soil and Water Conservation Board find the Accomack County Erosion and Sediment Control Program consistent with the Virginia Erosion and Sediment Control Law and Regulations.

Big Sandy Soil and Water Conservation District/Buchanan County

Mr. McCutcheon gave the background for the Big Sandy Soil and Water Conservation District.

Staff conducted a program review of the Big Sandy SWCD Erosion and Sediment Control Program (for Buchanan County) on September 12-13, 2012 and conducted a close-out meeting with the District. The scores for the individual program elements were as follows: Administration 85, Plan Review 70, Inspection 80, and 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 Big Sandy SWCD Erosion and Sediment Control Program consistent with the Virginia Erosion and Sediment Control Law and Regulations.

City of Galax

Staff conducted a program review of the City of Galax Erosion and Sediment Control Program on November 1-2, 2012 and conducted a close-out meeting with the City. The scores for the individual program elements were as follows: Administration 100, Plan Review 100, Inspection 100, and 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 City of Galax Sediment Control Program consistent with the Virginia Erosion and Sediment Control Law and Regulations.

MOTION: Ms. DuBois moved that the Virginia Soil and Water Conservation Board commend Hanover County, Accomack County. Big Sandy Soil and Water Conservation District and the City of Galax 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. Thornburg

DISCUSSION: None

VOTE: Motion carried unanimously

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

City of Petersburg

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

Staff conducted a CAA review of the City of Petersburg on September 9, 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 City of Petersburg's Erosion and Sediment Control

Program be found consistent with the Virginia Erosion and Sediment Control Law and Regulations.

Town of Wytheville

Staff conducted a review of the Town of Wytheville's Erosion and Sediment Control Program Corrective Action Agreement on August 7, 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 Town of Wytheville Erosion and Sediment Control Program be found consistent with the Virginia Erosion and Sediment Control Law and Regulations.

Wythe County

Staff conducted a review of the Wythe County Erosion and Sediment Control Program Corrective Action Agreement on October 4, 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 Wythe County Erosion and Sediment Control Program be found consistent with the Virginia Erosion and Sediment Control Law and Regulations.

Stafford County

Staff conducted a review of the Stafford County Erosion and Sediment Control Program Corrective Action Agreement on October 22, 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 Stafford Erosion and Sediment Control Program be found consistent with the Virginia Erosion and Sediment Control Law and Regulations.

Town of Pulaski

Staff conducted a review of the Town of Pulaski's Erosion and Sediment Control Program Corrective Action Agreement on September 21, 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 Town of Pulaski's Erosion and Sediment Control Program be found consistent with the Virginia Erosion and Sediment Control Law and Regulation.

City of Virginia Beach

Staff conducted a review of the City of Virginia Beach's Erosion and Sediment Control Program Corrective Action Agreement on November 13, 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 City of Virginia Beach's Erosion and Sediment Control Program be found consistent with the Virginia Erosion and Sediment Control Law and Program.

Mr. Hassen said that the City had been present at the June meeting and that the City had worked hard to get to this point. He noted that with him was Cherie Hainer who is the building official with Virginia Beach. He said that the City was glad to be back and had made the adjustments that DCR had said needed to be made. He said that the City was very fortunate to have Noah Hill and Ian Edwards to work through the process.

Mr. Hassen said that DCR identified the problems and brought them to the attention of the City. Staff also suggested enhancements to make the program stronger. The process took several visits but the City believes they have a strong Erosion and Sediment Control program. He said that the customers understand the need for change and are taking the appropriate steps to comply.

Mr. Hassen expressed appreciation to DCR staff for their assistance.

MOTION: Mr. Ingle moved that the Virginia Soil and Water Conservation Board commend the City of Petersburg, the Town of Wytheville, Wythe County, Stafford County, the Town of Pulaski and the City of Virginia Beach 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. Jamison

DISCUSSION: None

VOTE: Motion carried unanimously

Local Programs to be found inconsistent based on Initial Review and request for Board approval of CAA.

Sussex County

Mr. McCutcheon gave the background for Sussex County.

Staff conducted a program review of the Sussex County Erosion and Sediment Control program on May 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 100, Inspection 35, and Enforcement 20. All program elements did not receive a score of 70 or greater. Therefore, staff recommends that the Virginia Soil and Water Conservation Board find Sussex County's Erosion and Sediment Control Program

inconsistent with the Virginia Erosion and Sediment Control Law and Regulations and approve the draft CAA for the County.

Greene County

Mr. McCutcheon gave the background for Greene County.

Staff conducted a program review of the Greene County Erosion and Sediment Control Program on August 21-22, 2012 and conducted a close out meeting with the County. The scores for the individual program elements were as follows: Administration 95, Plan Review 45, Inspection 25, and Enforcement 80. 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 Green 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.

MOTION: Mr. Hornbaker moved that the Virginia Soil and Water Conservation Board accept staff recommendations to find the Sussex and Green County Erosion and Sediment Control Programs inconsistent with the Virginia Erosion and Sediment Control Law and Regulations and approve the CAA as drafted for the Counties. The Board directs DCR staff to monitor the implementation of the CAA by the Counties to ensure compliance.

SECOND: Ms. Thornton

DISCUSSION: None

VOTE: Motion carried unanimously

Local Programs recommended to be found inconsistent based on failure to complete required items of the approve Corrective Action Agreement (CAA):

Town of Farmville

Mr. McCutcheon gave the background for the Town of Farmville.

Staff conducted a review of the Town of Farmville's Erosion and Sediment Control Program Corrective Action Agreement on October 24, 2012 to determine if all required items of the CAA were completed. As a result of the CAA review, staff determined that the Town has not implemented the necessary compliance actions identified by the Board within the time period granted. Therefore, staff recommends that the Town of Farmville's Erosion and Sediment Control Program be found inconsistent with the Virginia Erosion and Sediment Control Law and Regulations and request the Board to issue a Special Order to the Town to complete all of the required CAA items in accordance with the Virginia Erosion and Sediment Control Law.

MOTION: Mr. Street moved that the Board accept staff recommendations to find the Town of Farmville Erosion and Sediment Control Program inconsistent with the Virginia Erosion and Sediment Control Law and Regulations and requests the Director to issue a Special Order to complete all the required Corrective Action Agreement items in accordance with the Virginia Erosion and Sediment Control Law.

SECOND: Ms. DuBois

DISCUSSION: Mr. Ingle asked Mr. McCutcheon to elaborate on the Special Order.

Mr. McCutcheon said that staff would work with the Director's office and the regional office as well as the Town to put in the order specific items not completed in the CAA and to specify a new acceptable date that the Town felt could be met. He said that staff would consult with the Attorney General's office when drafting the order. He said the motion was to request that the Director write the order.

Mr. Ingle said he was seeking information regarding what the order would contain.

Mr. Gooch said that under the statute, the order could impose a civil penalty up to $5,000 per day to a maximum of $20,000. He said that DCR did not wish to impose the penalty and was suggesting the waiving of the fee and ordering the Town to comply.

Mr. McCutcheon said that plan approval as the main item of concern.

Ms. Thornton asked if there were mitigating circumstances and why the Town did not comply.

Mr. McCutcheon said that generally if there is a good reason for non-compliance, staff would recommend and extension of time. The regional office did not make that recommendation and felt something needed to be done to resolve the problem.

Mr. Bachmann said that staff had offered technical assistance but the Town had declined because they believed they were handling the program correctly.

Mr. Johnson asked if the Town had been unwilling to make the necessary changes.

Mr. Bauckman said that he believed the Town would make the necessary changes.

Mr. Hornbaker said that he would like to offer a friendly amendment to clarify that the Special Order would not carry a civil penalty. He also suggested a specific date of compliance be established.

Mr. McCutcheon said that setting the February Board meeting as the date could be problematic.

Mr. Dunford suggested the date be set for the March meeting.

A friendly amendment was accepted that the Special Order require the Town to be in compliance by March 15 in order for the Board to review at the March 27, 2013 meeting.

VOTE: Motion carried unanimously.

Local Programs requesting extension of time following review of Corrective Action Agreement (CAA):

Rappahannock County

Mr. McCutcheon gave the background for Rappahannock County.

Staff conducted a review of the Rappahannock County Erosion and Sediment Control Program Corrective Action Agreement on June 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 not been completed. However, substantial progress towards implementing the Corrective Action Agreement has been made. The county has not received ESC plans for review and approval for any projects since the CAA was signed. Staff recommends an extension to allow time for plan submittal and approval to properly evaluate the remaining plan review CAA item.

MOTOIN: Ms. Jamison moved that the Virginia Soil and Water Conservation Board accept staff recommendations and grants Rappahannock County an extension until June 1, 2013 to fully comply with the outstanding CAA. The Board further requests that the Director of DCR and his staff evaluate the County's compliance with the outstanding CAA and provide a report at the June 2013 Board meeting.

SECOND: Mr. Street

DISCUSSION: None

VOTE: Motion carried unanimously

Chesapeake Bay Preservation Act Compliance Evaluations

Ms. Salvati gave the presentation for the Chesapeake Bay Preservation Act Compliance Evaluations. She noted that two of the programs she would be presenting had concurrent Bay Act and Erosion and Sediment Control reviews.

Accomack County's Chesapeake Bay Preservation Act Program and Corrective Action Agreement (CAA)

Staff conducted a compliance evaluation of Accomack County's Chesapeake Bay Preservation Act Program June 25 to June 27, 2012. All of the required program elements were found to be acceptable except for the requirement that the County's ordinance require five specific plat notations and the requirement for development of a plan ensuring that an assessment is undertaken for all agricultural activities in the County's Chesapeake Bay Preservation Areas. Therefore, staff recommends that the Virginia Soil and Water Conservation Board finds Accomack County's Chesapeake Bay Preservation Act Program not fully compliant with the Chesapeake Bay Preservation Area Act and Regulations and that the Board approves a draft CAA which requires the County to address these two conditions for compliance.

Recognition of Hanover County's Chesapeake Bay Program Act Program

Ms. Salvati gave the background for Hanover County.

Staff conducted a compliance evaluation of Hanover County's Chesapeake Bay Preservation Act Program November 19 and 20, 2012. All of the required program elements were found to be acceptable. Therefore, staff recommends that the Virginia Soil and Water Conservation Board find Hanover County's Chesapeake Bay Preservation Act Program fully compliant with the Chesapeake Bay Preservation Act and Regulations.

Recognition of the City of Petersburg's Chesapeake Bay Preservation Act Program

Ms. Salvati gave the background for the City of Petersburg.

Staff conducted a compliance evaluation condition review of the City of Petersburg's Chesapeake Bay Preservation Act Program June 20, 2011 and found that one condition had not been acceptably addressed. Since that time, the one outstanding condition has been addressed and now all of the required program elements are acceptable. Therefore, staff recommends that the Virginia Soil and Water Conservation Board find the City of

Petersburg's Chesapeake Bay Preservation Act Program fully compliant with the Chesapeake Bay Preservation Act and Regulations.

MOTION: Ms. DuBois moved that the Virginia Soil and Water Conservation Board commend the Town of Occoquan, Hanover County and the City of Petersburg for successfully implementing their respective Chesapeake Bay Preservation Act Programs to be fully compliant with the requirements of the Chesapeake Bay Act and Regulations, thereby providing better protection for Virginia's soil and water resources.

SECOND: Mr. Simms

DISCUSSION: None

VOTE: Motion carried unanimously

Accomack County's Chesapeake Bay Preservation Act Program and Corrective Action Agreement (CAA)

Staff conducted a compliance evaluation of Accomack County's Chesapeake Bay Preservation Act Program from June 25 to June 27, 2012. All of the required program elements were found to be acceptable except for the requirement for development of a plan ensuring that an assessment is undertaken for all agricultural activities in the County's Chesapeake Bay Preservation Areas. Therefore, staff recommends that the Virginia Soil and Water Conservation Board find Accomack County's Chesapeake Bay Preservation Act Program not fully compliant with the Chesapeake Bay Preservation Area Act and Regulations and that the Board approves a draft CAA which requires the County to address these two condition for compliance.

MOTION: Ms. Jamison moved that the Virginia Soil and Water Conservation Board accept staff recommendations and find Accomack County's Chesapeake Bay Preservation Act Programs not fully compliant with the Chesapeake Bay Act and Regulations and approve the CAA. The Board directs DCR staff to monitor the implementation of the CAA by the County to ensure compliance.

SECOND: Mr. Street

DISCUSSION: Mr. Simms asked what constituted an agriculture assessment in this particular case. He asked who provided the manpower and associated cots.

Ms. Salvati said that there were a variety of options for the locality. The landowner can do so by hiring a private plan writer to do an assessment. Some localities work with the local Soil and Water

Conservation District and through cost share also do a conservation assessment at the same time.

VOTE: Motion carried with Ms. Thornton abstaining.

Town of Warsaw's Chesapeake Bay Preservation Act Program and Corrective Action Agreement (CAA)

Ms. Salvati gave the background for the Town of Warsaw.

Staff conducted a compliance evaluation of the Town of Warsaw's Chesapeake Bay Preservation Act Program on November 13, 2012. All of the required program elements were found to be acceptable except for the requirement that the Town's ordinance require depiction of Resource Protection Area and Resource Management Area boundaries and septic pump-out notification on plants and plans. Therefore, staff recommends that the Virginia Soil and Water Conservation Board find the Town of Warsaw's Chesapeake Bay Preservation Act Program not fully compliant with the Chesapeake Bay Preservation Act and Regulations and that the Board approve a draft CAA which requires the Town to address this condition for compliance.

MOTION: Mr. Street moved that the Virginia Soil and Water Conservation Board accept staff recommendations and find the Town of Warsaw's Chesapeake Bay Preservation Act Program not fully compliant with the Chesapeake Bay Preservation Act and Regulations and approve the CAA. The Board directs DCR staff to monitor the implementation of the CAA by the Town to ensure compliance.

SECOND: Ms. DuBois

DISCUSSION: None

VOTE: Motion carried unanimously

Resignations and Appointments

Ms. Martin presented the resignations and appointments. She noted that all 47 SWCD Virginia Cooperative Extension agent appointments needed to be approved for a four year term of office from January 1, 2013 to January 1, 2017.

Ms. Martin presented the following list of recommended SWCD Extension Agent Director appointments:

SWCD	AGENTS
Appomattox River	Michael J. Parrish, Dinwiddie

Big Sandy	W. Bradley Mullins, Dickenson
Big Walker	Matt Miller, Wythe
Blue Ridge	Cynthia Martel, Franklin
Chowan Basin	Kelvin Wells, Sussex
Clinch Valley	D. Scott Jesse, Russell
Colonial	Dan Nortman, York
Culpeper	L. Brad Jarvis, Jr., Madison
Daniel Boone	Amy Osborne, Lee
Eastern Shore	Theresa M.J. Long, Northampton
Evergreen	Andy Overbay, Washington
Halifax	K. Jason Fisher, Halifax
Hanover-Caroline	Jim Schroering, Hanover
Headwaters	Matt Booher, Augusta
Henricopolis	Karen F. Carter, Henrico
Holston River	Phillip K. Blevins, Washington
James River	T. Scott Reiter, Prince George
John Marshall	Timothy A. Mize, Fauquier
Lake Country	C. Taylor Clarke, Jr. Brunswick County
Lonesome Pine	W. Bradley Mullins, Dickenson
Lord Fairfax	Robert A. Clark, Shenandoah
Loudoun	Corey Childs, Loudoun
Monacan	Rachel Grosse, Powhatan
Mountain	Rodney P. Leech, Highland
Mountain Castles	Mary Catherine Lawrence, Botetourt
Natural Bridge	Thomas A. Stanley, Rockbridge
New River	Kevin Spurlin, Grayson
Northern Neck	Kelly Liddington, Richmond
Northern Virginia	Adria Bordas, Fairfax
Patrick	Travis Bunn, Patrick
Peaks of Otter	Scott M. Baker, Bedford
Peanut	Glen Slade, Surry
Peter Francisco	David Smith, Cumberland
Piedmont	Haley McCann, Nottoway
Pittsylvania	Jamie Stowe, Pittsylvania
Prince William	Paige E. Thacker, Prince William
Robert E. Lee	Bruce Jones, Appomattox
Scott County	Scott Jerrell, Scott
Shenandoah Valley	Matthew Yancey, Rockingham
Skyline	John Vest, Floyd
Southside	Robert L. Jones, Charlotte
Tazewell	John Blankenship, Tazewell
Thomas Jefferson	Carrie Swanson, Albemarle
Three Rivers	Keith Balderson, Essex
Tidewater	David M. Moore, Middlesex
Tri-County/City	Mike Broaddus, Caroline
Virginia Dare	Watson Lawrence, Jr. Chesapeake City

MOTION: Mr. Brickhouse moved that the Virginia Soil and Water Conservation Board approve the list of Extension Agent appointments as submitted.

SECOND: Mr. Ingle

DISCUSSION: None

VOTE: Motion carried unanimously

Mr. Hornbaker said that it would be helpful if extension agents could have training.

Ms. Martin said that has been done in the past. She said that last year DCR hosted a Director orientation. She said that DCR follows up with training for new agents.

Assessment of SWCD Compliance with the FY 11-12 Scope of Services for DCR Operating Funds

Ms. Martin presented the DCR Assessment of SWCD Compliance with DCR/SWCD FY11-12 Grant Agreement Deliverables. A copy of this document is available from DCR.

There was no action necessary regarding this item.

Dam Safety and Floodplain Management

Division Director's Report

Mr. Wilkinson gave the Division Director's report.

Mr. Wilkinson noted that he had been at a dam owner training earlier that morning in Norfolk. He said that there were additional trainings occurring around the state. These trainings are being sponsored by engineering firms.

Ms. Jamison said that she was not able to attend the training in Salem, but the District employee who attended said the training was very beneficial.

Mr. Wilkinson said that with regard to the dam first aid program, four trailers will be deployed in the spring. There will be some additional training for dam safety engineers conducted at Staunton River State Park. He noted that very few states have a program of this nature.

Mr. Wilkinson said that the new dam safety regulations went into effect on November 8. Letters were sent to dam owners explaining the changes. DCR is working with Virginia

Tech to hire an additional person to address these changes. The hope was to have someone hired and on board by January.

Mr. Wilkinson said that progress was being made regarding the dam break early warning system. This is a web based system that will be used as a warning system and a database. The goal is to have this fully operation in the next 6-9 months.

Status of High Hazard Dams

Mr. Wilkinson noted that the list showing the status of High Hazard dams was included in member packets. A copy of the list is available from DCR.

Enforcement Report

Ms. Crosier gave the enforcement report. A copy of the enforcement report is available from DCR.

Ms. Crosier said that the Farmville Lake Dam was a success story. This is in Prince Edward County. In the late spring and early summer the dam was in a significantly unstable condition. The property had changed hands a number of times. DCR has been working with the dam owner and issued a deficiency report. Pursuant to the schedule of compliance the owners made necessary repairs and maintenance. Part of their cost was reimbursed with grants.

Ms. Crosier said that Rainbow Forest was another success story located in Botetourt County. They are completing repairs and construction. They had a special order issued by the director. Maintenance and repairs have been done as well as removing trees and giving a good cover of grass. The construction of the spillway should be completed by May 2013.

Ms. Crosier said that since the last Board meeting, DCR staff had moved to take action in 13 new cases. Three of those are owned by the Department of Game and Inland Fisheries. All three are designated high hazard and are at present operating in unsafe conditions. DCR will be working with staff at DGIF.

Partner Reports

Natural Resources Conservation Service

Mr. Bricker gave the report for NRCS. A copy of this report is included as Attachment #1.

Virginia Association of Soil and Water Conservation Districts

Ms. Tyree spoke on behalf of the Virginia Association of Soil and Water Conservation Districts.

Ms. Tyree noted that the recently concluded Annual Meeting was the highest attended on record. All but one District was represented. She said that the Association voted on their legislative agenda as well as operational funding. She noted that this information was posted on the Association website.

Ms. Tyree said that the Association supports the move of stormwater and District operations from DCR to DEQ with some caveats. The formal motion has been distributed to Association members.

Ms. Tyree noted that the Association legislative day was scheduled for January 14.

Ms. Tyree noted that the new Association President is Lou Ann Wallace from Clinch Valley SWCD.

Ms. Tyree said that the Association was disappointed that the Soil and Water Conservation Board and the Association Board could not meet in conjunction. She said that she hoped that would happen with the December 2013 Annual Meeting in Williamsburg.

Public Comment

There was no further public comment.

New Business

There was no new business.

Future Meetings

Tentative meeting dates for 2013 are as follows:

Tuesday, February 26, 2013
Wednesday, March 27, 2013
Thursday, May 9, 2013
Thursday, June 6, 2013

Adjourn

There was no further business and the meeting was adjourned.

Respectfully submitted,

Herbert L. Dunford, Jr.
Chair

David A. Johnson
DCR Director

Attachment #1

NRCS REPORT
Virginia Soil and Water Board Meeting
December 11, 2012
Richmond, VA

EQIP, CBWI, CSP, and WHIP Programs

In fiscal year 2012, obligated $24,509,413 in EQIP, CBWI, CSP, and WHIP in 1,034 contracts and several CIG and Contribution Agreements.

Currently, setting up fund pools and preparing for FY13 program delivery. A minimum of 10% of FY13 program funding will be set aside for Limited Resource Farmers, New and Beginning Farmers and Socially Disadvantaged Farmers. Fact sheets and news releases announcing the sign-up have been distributed at JED sessions and posted to the website so that field offices can access them.

Worked to set up a new national initiative of regional payment schedules for our Farm Bill Contracts. Payment schedules were finalized and uploaded into ProTracts and Toolkit on 11/9/12. The national initiative to regionalize the payment schedules will provide consistency in practice scenarios and payment costs from state to state. Virginia is in the Appalachian Region with Tennessee, North Carolina, West Virginia and Kentucky.

Conservation Initiative Grants

A CIG Showcase event has been scheduled for January 10 for agencies and organizations to present their CIG projects to NRCS and others.

Dam Rehabilitation

- South River 10A – Construction is on-going
- Upper North River Site 10 – Completed dam rehabilitation plan.
- Pohick 8 – Final designs complete; awaiting construction funds
- Town of Culpeper – Received two new applications for assistance
- Upper North River Site 77 – Sediment survey completed

Watershed Programs

Coordinated the recent Hurricane Sandy event with field staff and had several teleconferences with NHQ. Fortunately, Virginia escaped damage that would have led to the need for recovery measures under the Emergency Watershed Program.

Developed close-out supplements for the following three PL-566 land treatment watershed projects – Sandy Creek, Hays Creek, and Three Creek Watersheds.

Virginia No-Tillage Alliance

The schedule for the VANTAGE No-Till Workshops has been set. Jay Fuhrer, a key NRCS expert on soil health through enhanced crop diversity, will be one of the featured speakers at all the events. Workshops will be held on:

- February 12 – Harrisonburg, VA
- February 13 – Pittsylvania, VA
- February 14 – Colonial Heights, VA

Joint Cost Share Program

The Joint Cost Share Program, "Virginia Conservation Enhancement Initiative" or VCEI, has been tabled for the next fiscal year. Stalled progress on resolving critical details have unfortunately led to the delayed deployment of this "joint initiative".

Soils/NRI/GIS

MLRA staffs are working on the 2013 Soil Data Joint Re-correlation Initiative. This effort will be the first phase to make similar map units between the counties and states the same. All map units for every survey in the nation will eventually be evaluated and possibly modified in the database. This effort is necessary for soil survey issues as well as for CDSI use at the field level.

NRI – data collection should begin for the 2011-2012 seasons during FY13 – most likely between October and December if the schedule holds. Our NRI Specialist, Mark Van Lear, will be leaving Virginia shortly. We will coordinate with the Eastern Remote sensing Lab in Greensboro and work with the area NRI contact from the State Office.

Outreach

A Fall Field Day was held on November 8 in Smith Creek. Yield information was provided to document the advantages of rolled cover crops, nutrient management, soil nitrate testing and poultry litter injections. NRCS, SVSWCD and VCE participated. Over 30 farmers attended.

Warrenton Service Center coordinated farm tours for the National Headquarters administrative staff which provided a better understanding of what Field Office activities entail.

An Innovative Manure Technologies Field Day was held on November 2. Phosphorous separation technology using liquid dairy injectors and a poultry litter sub-surfer were demonstrated. Sponsors of the event included NFWR, VCE, and NRCS.

A stockpile Fescue Field Day was held on November 18 in the Smith Creek watershed.

DC Derek Hancock participated in the Prince Edward County Forestry and Wildlife Tour on October 19. He provided an overview of NRCS assistance and easements to approximately 40 landowners.

DC Dana Bayless spoke at the High Tunnel Field Day at Hill Farm in Louisa County. The group toured the High Tunnel and then watched PowerPoint and video presentations. There was a lot of interest in the event but participation was capped at 30 people.

Women and Land Workshops

NRCS, FSA, and VDOF have planned four additional Women and Land Workshops for the coming year. The first of the four interactive workshops will be held December 5th from 4 p.m. to 8 p.m. at the Ivy Creek Natural Area's education building in Charlottesville, VA. Female natural resource professionals will present information on state and federal programs that provide funds to landowners to support good land management. Additional workshops are planned through February in Rockingham/Staunton, Washington, and Fauquier/Loudoun counties.

Hispanic and Women Farmer Claims

Our agency reached 100+ historically underserved landowners at the VSU Small Farm Conference in Danville. Over 175 people braved Hurricane Sandy to attend. Steve Cassada and Rachel Loveday met dozens of farmers and gave out contact information for follow up by local offices. Jake Browder talked to an 80+ standing room only crowd about high tunnels, and State FAC Chair Ellen Davis explained the Hispanic and Women Farmers Claims Process to five interested parties during a special USDA outreach workshop.

NRCS Twitter Account

NRCS has launched a new twitter account to help expand the use of social media in Virginia. Daily tweets are being posted on the new Virginia twitter account to send news and links to people who want to "follow" or read our posts. The Virginia Grain Producers have already "re-tweeted" one post to 117 of their followers. You can help spread the word by becoming a follower at https://twitter.com/NRCS_VA .

PBS Presentation

The Dust Bowl, a two-part, four-hour documentary series by Ken Burns, aired on PBS November 18 and 19. This series chronicled the worst man-made ecological disaster in American history and the creation of the Soil Conservation Service (NRCS).

USDA Deputy Secretary Visits Virginia

Public Affairs coordinated with DC Kory Kirkland for Deputy Secretary Merrigan to visit the Local Food Hub in Charlottesville on October 5. The Food Hub provides fresh produce to more than 50 local schools and hospitals and is one of the few USDA Certified Organic operations in the area. Farm Manager Steve Vergo discussed USDA's assistance including a $75,000 state CIG grant to train local farmers and EQIP funds for a seasonal high tunnel. The farm is partnering with the International Rescue Committee to train four refugees from Bhutan whose families are settling nearby.