

Virginia Soil and Water Conservation Board
Thursday, September 20, 2007 – 9:30 a.m.
Friday, September 21, 2007 – 9:00 a.m.
Library of Virginia
Richmond, Virginia

MINUTES

Virginia Soil and Water Conservation Board Members Present

Linda S. Campbell, Chair	Susan Taylor Hansen
Darlene Dalbec	Michael J. Russell
Granville M. Maitland, Vice Chair	Raymond L. Simms
Michael Altizer	
Wade Biddix for John A. Bricker, NRCS, Ex Officio	

Virginia Soil and Water Conservation Board Members Not Present

Jean R. Packard	Joseph H. Maroon, Director, DCR
Richard E. McNear	

DCR Staff Present

Russell W. Baxter	Ryan J. Brown
David C. Dowling	Jim Robinson
Jack E. Frye	Lee Hill
William Browning	Robert VanLier
Doug Fritz	Pam Landrum
Jim Echols	
Elizabeth Andrews, Office of the Attorney General	

Others Present

John S. Bailey, Lake of the Woods
Lisa Cahill, Watershed Services
Shelley Clinger, Virginia Community College System
Joe DuRant, City of Newport News
Ken Eyre, Virginia Municipal Stormwater Association
Mike Gerel, Chesapeake Bay Foundation
Norm Goulet, NVRC
Jean Haggerty, AMEC
Ann Jennings, Chesapeake Bay Foundation
Stephen Kindy, Virginia Department of Transportation
Robin Knepper, The Free Lance-Star
Joe Lerch, Chesapeake Bay Foundation
Doug Moseley, GKY & Associates, Inc.
Will Nash, Town of Farmville

Rich Parrish, SELC
Chris Pomeroy, Virginia Municipal Stormwater Association
Allan Rowley, Arlington County
Eldon Rucker, Lake of the Woods
William H. Street, James River Association

Call to Order and Introduction of Members

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

Approval of Minutes of July 19, 2007 Meeting

MOTION: Mr. Maitland moved that the minutes of the July 19, 2007 meeting be approved as submitted.

SECOND: Mr. Altizer

DISCUSSION: None

VOTE: Motion carried unanimously

Director's Report

Ms. Campbell reported that DCR Director Joseph Maroon would not be at the meeting due to a health issue. We will keep him in our thoughts. Mr. Baxter will make the Director's Report.

Mr. Baxter stated that this was a two-day meeting.

Mr. Baxter highlighted several of the major items on the Board's agenda over the next two days.

Mr. Dowling reviewed the following upcoming schedule relating to the Impounding Structure Regulations.

Impounding Structure (Dam Safety) Regulations Public Comment Period

- Proposed regulations printed in *The Virginia Register* on August 20, 2007
- 60-day public comment period began on August 20, 2007
- Public Comment period ends on October 19, 2007 at 5:00 p.m.
- 5 public hearings will be held beginning at 7:00 p.m. on the following dates and locations:

October 4, 2007

Roanoke City Council Chambers
Noel C. Taylor Municipal Building

215 Church Avenue Southwest
Roanoke, Virginia 24011

October 9, 2007

Hampton City Hall
22 Lincoln Street, 8th Floor
Hampton, Virginia 23669

October 10, 2007

Henrico County Government Complex
Board Room
4301 East Parham Road
Richmond, Virginia

October 16, 2007

City of Manassas Council Chambers
9027 Center Street
Manassas, Virginia 20110

- Comments may be submitted in writing, by fax, and the Internet.

Written comments should be sent to: The Regulatory Coordinator at:
Virginia Department of Conversation and Recreation, 203 Governor
Street, Suite 302, Richmond, VA 23219.

Comments may also be faxed to the Regulatory Coordinator at:
(804) 786-6141.

Electronic comments may be submitted to:

<http://townhall.virginia.gov/L/entercomment.cfm?stageid+4047>.

Municipal Separate Storm Sewer Systems (MS4) General Permit

Mr. Dowling made the following presentation:

Introductory comments

For both of the regulatory actions you will discuss today and tomorrow, I want to assure you that DCR has worked very hard to develop the best possible products for the Board's consideration. We have tried to be inclusive of ideas generated not only by the TAC members but also those individuals watching the process that have provided us with their thoughts.

That does not mean that every comment has been included but I promise you it was discussed. This also does not mean that the regulations are perfect. We know that there may be elements that may be improved. We have tried to balance impacts on the regulated community and the public in general with the significant water quality issues

that require our immediate attention. I believe that we have truly walked that fine line very closely.

I also know that some of the concerns that remain are based on misunderstandings of process and how all of the regulatory actions will inter-relate in the end. Again, we realize some of these issues and will work to provide further explanation and education in areas where it is needed.

However, some concerns may be valid, and for those we pledge to continue to work with our partners to make further improvements to these regulations as we work to finalize them over the coming months.

The regulations that we will present to you over the next two days include a number of technical issues. Where you have questions, please do not hesitate to ask us for additional clarification. We have a number of technical experts with us both today and tomorrow to assist in explaining these issues.

Before we get started with my explanation of the MS4 regulation, we thought we would have Mr. Fritz, our MS4 Program Manager, provide you with additional background on this regulatory issue.

[Presentation by Mr. Fritz is available from the Department's regulatory website.]

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

Actions to Date

- Board Motion: September 28th, 2006
- Filed NOIRA: February 13th, 2007
- The 30-day public comment period opened on March 5th and closed on April 4th.
- We mailed out approximately 340 notices of the NOIRA and the regulatory Town Hall sent notices to 738 individuals.
- We received 8 comments and 16 requests to be placed on the TAC. A summary of the comments received was provided to each Board member.
- Finalized TAC composition May 29, 2007; The MS4 TAC was composed of 26 members including local governments (12); environmental groups (3); state agencies (5 - representing 4 agencies); federal agencies (3 members - representing 2 agencies); colleges and universities (2); planning district commission (1).

- The TAC was facilitated by Dr. Frank Dukes of the Institute for Environmental Negotiation.

Committee Meetings

- The 1st meeting of the TAC: June 19, 2007
- The 2nd meeting of the TAC: July 26, 2007
- The 3rd meeting of the TAC: August 22, 2007
- Approximately 12 internal discussions and drafting meetings throughout the process.

Process (Modified Administrative Process Act Procedures)

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

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

9. General permits issued by the (a) State Air Pollution Control Board pursuant to Chapter 13 (§ 10.1-1300 et seq.) of Title 10.1 or (b) State Water Control Board pursuant to the State Water Control Law (§ 62.1-44.2 et seq.), Chapter 24 (§ 62.1-242 et seq.) of Title 62.1 and Chapter 25 (§ 62.1-254 et seq.) of Title 62.1, **(c) Virginia Soil and Water Conservation Board pursuant to the Virginia Stormwater Management Act (§ 10.1-603.1 et seq.) of Title 10.1,** and (d) the development and issuance of general wetlands permits by the Marine Resources Commission pursuant to subsection B of § 28.2-1307, if the respective Board or Commission (i) **provides a Notice of Intended Regulatory Action in conformance with the provisions of § 2.2-4007.01, (ii) following the passage of 30 days from the publication of the Notice of Intended Regulatory Action forms a technical advisory committee composed of relevant stakeholders, including potentially affected citizens groups, to assist in the development of the general permit, (iii) provides notice and receives oral and written comment as provided in § 2.2-4007.03, and (iv) conducts at least one public hearing on the proposed general permit.**

[Note: some will refer to this as an expedited process. However, that is not to say that it does not allow for due diligence and public comment. Public comment opportunities are the same as they are for any other APA process. It is the Administrative review that has been eliminated from the process.]

Timeline

- Upon Board adoption of the proposed regulations, should you take that action today; File on Sept. 26th with the Registrar's Office; Published on October 15th in the Virginia Register of Regulations

- A 60-day public comment period will begin on October 15th (Ends December 14th)
(EPA will also review during this time period)
(We also have newspaper publishing requirements (federal) during this time period)
- Public hearings will most likely be held in early December (Roanoke and Richmond) – Daytime meetings – probably 1:30 p.m.
- We would then hopefully bring the Final regulation to the Board at the January 18th (tentative) meeting. We would expect to have the amended General Permit regulation in place sometime in March with an effective date of July 1, 2008.

TAC Member Evaluation

[Note: We felt we had a very engaged TAC that was very knowledgeable in this issue and that provided us with substantial guidance.]

**University of Virginia: Institute for Environmental Negotiation
Evaluation by Members of the MS4 Technical Advisory Committee
Aug. 22, 2007 Meeting**

+ (what we liked)

- Flexibility of process
- Good representation of interests
- Thorough nature of examination and discussion
- DCR listened
- DCR was responsive to members, incorporating suggestions or explaining why not
- Quality of participants
- The process led to learning and improving the program and assisting members in implementing their own programs
- IEN facilitator kept the group on track
- There was a resolution (wording for a proposed regulation)

Δ (what we would change)

- The facility was challenging (utilized the Science Museum which has acoustics problems)
- The EPA representative should have been here throughout
- It would have been helpful to have material for review earlier
- This could be combined with workshops held around Virginia to explain elements of the permit

[Note: We felt that the TAC was generally supportive of the direction we were heading.]

EPA Preliminary Feedback on the Draft Proposed Regulation

EPA contacted the Department last Friday (Sept 14th) and indicated that they did not see any problems with the draft proposed regulation. However, this was not a complete legal review and they may offer additional comments during the formal comment period.

Attorney General's Office

Ms. Andrews stated the above-referenced amendments to Part XV of the VSMP Permit Regulations had been reviewed and based upon DCR's representations, it is her opinion that the Soil and Water Conservation Board has authority to promulgate the regulations under applicable law, including Chapter 6 of Title 10.1 of the *Code of Virginia*. It is also Ms. Andrews' view that under Va. Code § 2.2-4006.A.9, the amendments are excluded from Article 2 of the Virginia Administrative Process Act.

[Note: Again, remember that the regulation we are about to review is part of a federally-mandated program under the Clean Water Act.]

Regulation Summary

Overview:

This regulatory action, that amends the general permit for small Municipal Separate Storm Sewer Systems, is necessary as the existing general permit is good for 5 years and is set to expire on December 9, 2007. If operators submit a registration statement by December 7th, their existing coverage will be administratively continued until July 1, 2008 when coverage under this permit would commence for another 5-year period. These amendments serve to further advance water quality protections to the maximum extent practicable, advance water quality improvements where a wasteload allocation from a TMDL has been assigned to an MS4, provide greater clarity to localities as how to administer and improve/advance their MS4 programs, and specify sampling protocols where applicable and necessary reporting requirements.

[Note: As requested by the Board at the last meeting, we have attempted to build a summary for the regulatory amendments. I will review the summary with the Board first and then at the Board's direction, will review the sections in a more detailed fashion if you wish. I also want to bring to your attention that a few additional changes were made between the draft you were mailed and the one in your packets today (September 19, 2007 version). All were non-substantive and most reflected sentence structure, misspellings, inconsistency in terminologies used, etc. that were caught by the AG's Office and us.]

The key changes to this permit include:

- 1) Updating and adding needed definitions such as "maximum extent practicable", "TMDL", "wasteload allocation" and "MS4 program plan" (lines 6 - 762); PART I [section 10] and PART XV [section 1200].
- 2) Updating exemptions and special situations associated with the general permit coverage such as de minimus discharges (such as carwashes), discharges resulting from spills beyond the operator's control, and portions of an MS4 covered under an industrial stormwater discharge VPDES permit (lines 825 - 890); PART XV [section 1220].

- 3) Updating registration statement requirements such as submittal deadlines and filing information (type of facility, HUC codes that receive discharges, acreage of drainage area discharging to impaired waters, and listing any wasteload allocations to the MS4) including specifying the elements of a MS4 Program Plan (proposed BMPs to be implemented, their associated goals, and an implementation schedule that is established by the MS4) (lines 892 - 988); PART XV [section 1230].
- 4) Specifying special procedures within the general permit that a small regulated MS4 shall employ if a wasteload allocation (WLA) as part of a TMDL has been assigned to the MS4 prior to the effective date of the permit (unless reopened) including:
 - a. MS4 Program Plan updates within 18 months of permit coverage to include measurable goals, strategies and implementation schedules to address the WLA;
 - b. Review of ordinances, policies, plans, procedures and contracts that are applicable to reducing the pollutant;
 - c. Outfall reconnaissance procedures for outfalls discharging to the surface water to which the WLA has been assigned;
 - d. For operator owned or operated property, pollutant identification and sampling procedures; and
 - e. An estimated annual characterization of the volume of stormwater discharged and the quantity of the pollutant identified in the WLA discharged (lines 990 – 1139); PART XV [section 1240, SECTION I].
- 5) Specifying that a Municipal Separate Storm Sewer System Management Program shall reduce pollutants from the MS4 to the maximum extent practicable, improve impaired waters that the MS4 discharges into, protect water quality, and address WLAs; as well as, establish a schedule for MS4 Program Plan Review and submittal and the public notice procedures for the plan (lines 1141 – 1177); PART XV [section 1240, SECTION II A]
- 6) Clarifying and expanding minimum criteria within the general permit associated with the six minimum control practices which are (PART XV [section 1240, SECTION II B]):
 - a. Public education and outreach (lines 1178 – 1206);
 - Requires the operator to increase individual and household knowledge of steps to reduce stormwater pollution; increase public employee, business and general public knowledge of the hazards associated with illegal discharges and improper disposal of waste; increase local involvement in water quality improvement initiatives; increase strategies to reach diverse, disadvantaged, and minority audiences as well as special concerns related to children, and target strategies towards local

- groups of commercial, industrial, and institutional entities likely to have stormwater impacts.
- b. Public involvement/ participation (lines 1207 – 1222);
 - Requires the operator to promote the availability of the MS4 Program Plan, provide public access to the annual report, and to participate in local activities aimed at increasing public participation in the reduction of stormwater pollutant loads and in improving water quality.
 - c. Illicit discharge detection and elimination (lines 1223 – 1286);
 - Requires the operator to develop, implement and enforce an illicit discharge and elimination program, maintain a storm sewer system map, effectively prohibit nonstormwater discharges into the storm sewer system, develop procedures to detect and address nonstormwater discharges, and prevent to the maximum extent practicable the discharge of hazardous substances or oil in the stormwater discharges.
 - d. Construction site stormwater runoff control (lines 1287 – 1342);
 - Requires program consistency with the Erosion and Sediment Control Law and attendant regulations.
 - e. Post-construction stormwater management in new development and redevelopment (lines 1343 – 1402); and
 - Requires program consistency with the Virginia Stormwater Management Act and attendant regulations.
 - f. Pollution prevention/ good housekeeping for municipal operations (lines 1403 – 1432).
 - Requires municipal operations to reduce pollutant discharges, eliminate illicit discharges, dispose of waste materials properly, protect soluble or erodible materials from precipitation, apply fertilizers and pesticides appropriately, and for state agencies to develop and implement nutrient management plans.
- 7) Establishing a program self-evaluation requirement once every 5 years in accordance with EPA guidance (lines 1466 – 1478); PART XV [section 1240, SECTION II E].
 - 8) Clarifying minimum reporting requirements such as submittal of MS4 Program Plan updates, WLA pollutant reduction estimates, number of illicit discharges identified and how they were eliminated, information regarding new stormwater management facilities brought on line, and a list of agreements with third parties for the implementation of control measures, as well as establishing a time schedule for reporting (by October 1st of each year for the previous July 1 – June 30) (lines 1479 – 1510); PART XV [section 1240, SECTION II E].
 - 9) Refining the basic EPA boilerplate language that applies to all VSMP permits (lines 1522 – 1894); PART XV [section 1240, SECTION III].

- 10) Updating the incorporated General Permit Registration Statement form to track the amended regulation (lines 1896- 1907); FORMS.

Madame Chairman, that concludes my summary and I turn it back to you for further explanation of the proposed regulations at the Board's request or for public comment.

Public Comment on MS4 General Permit

Ms. Campbell opened the floor for public comment.

Ann Jennings Chesapeake Bay Foundation

Chairwoman Campbell, members of the Board, I am Ann Jennings Virginia Executive Director for the Chesapeake Bay Foundation. Thank you for this opportunity to comment. CBF participated as a member of both the MS4 General Permit and Stormwater Regulations Technical Advisory Committees. Before the members of my staff provide specific comments today and tomorrow on the draft regulations I wish to say a few words regarding the significance of your decisions today and in the coming year with regard to stormwater management and restoration of the Chesapeake Bay.

As you are certainly aware, Virginia – along with Maryland, Pennsylvania and DC – committed in 2000 to restore the water quality of the Chesapeake Bay and its tidal tributaries by reducing nutrient pollution. A recent report by the Chesapeake Bay Foundation documented continued algal blooms, dead zones, and fish kills throughout the Bay watershed this summer. There is much that needs to be done.

Yet, Virginia has already taken important steps to reduce nutrient pollution by implementing and funding landmark regulations that will result in significant reductions of nutrients from municipal and industrial wastewater treatment facilities.

With adequate funding and staffing, CBF believes your Agricultural Cost Share BMP Program will play an instrumental role in reducing nutrient inputs from farmland runoff. CBF has joined with a coalition of agriculture and environmental groups asking Governor Kaine to fully fund and staff the agriculture bmp program. I will leave the Board copies of the coalition letter for your information.

Stormwater – and thus, what you are doing today and in the coming year – is the third essential leg of the Bay restoration stool. Without strong controls on existing and new urban and suburban development, the steps Virginia has already taken cannot ensure a restored Bay.

According to a report released just this week by the EPA Inspector General, urban runoff pollution in the Chesapeake Bay watershed has increased 16% over a 20-year period

(1985-2005). With Virginia's population increasing by 100,000 persons each year, it is expected that stormwater pollution from development will only increase.

We know that there are improved models for land use planning and design that can reduce the amount of polluted discharges entering our waterways. An integral part of these models are the rules that govern how local governments, developers and citizens treat stormwater pollution.

Therefore, as these regulations move forward in the public comment process, we will continue to urge that you require the best available technology and practices to reduce runoff pollution.

We thank you for your dedication to this effort and we commend DCR staff for their herculean efforts in drafting these regulations in collaboration with members of the Technical Advisory Committees and other interested stakeholders. Thank you for your time.

Mike Gerel
Chesapeake Bay Foundation

Chairwoman Campbell, members of the Board, thank you for the opportunity to speak to you today regarding the proposed small MS4 General Permit. My name is Mike Gerel I'm a staff scientist with the Chesapeake Bay Foundation.

As Ann noted, the regulations that will be considered by the board today and in coming meetings will play a significant role in reducing stormwater pollution and determining the future health of Virginia's water in the face of the rapid development and population growth facing suburban and rural edges of metropolitan areas across the Commonwealth.

It was a pleasure to serve on the technical advisory committee that helped develop today's proposal. I want to commend DCR staff for operating a collaborative committee that resulted in some notable improvements to the permit.

- For example, MS4s that discharge to an impaired water that were assigned a waste load allocation in an approved TMDL clean up plan now must comply with their allocated load by defining measurable goals, implementing BMPs, and completing field monitoring and reporting of program effectiveness.
- Further, some additional requirements are now included within the six minimum control measures that should help all MS4s better achieve water quality standards during this 5-year permit cycle.

However, I would like to describe two areas where today's proposal falls short in reducing stormwater pollution from MS4s.

First, we believe that the numeric waste load allocation must be included in the general permit for any MS4 assigned a waste load allocation in a TMDL.

While they differ in the manner of collection and discharge, under the Clean Water Act, MS4s that discharge treated stormwater are no different than municipal and industrial treatment plants that discharge treated wastewater. These are all point sources that require discharge permits. If assigned a waste load allocation in a TMDL, wastewater dischargers must always receive that same numeric waste load allocation in their permit as an enforceable limit. On the other hand, today's proposal deviates from this approach by issuing a permit for stormwater dischargers that does not require the inclusion of the numeric waste load allocation.

Further, EPA guidance does not preclude inclusion of the waste load allocation in MS4 permits, and in fact, a September report from the EPA Office of Inspector General suggests the inclusion of measurable, numerical goals established through the TMDL program in future MS4 permits.

Thus, CBF finds that the proposal should be modified to ensure that numeric waste load allocations are included in the MS4 permit to maximize nutrient pollution reductions and improve the consistency and enforceability of the Clean Water Act in Virginia.

Next, we feel that expanded controls-beyond the six minimum controls-must be required of MS4s that discharge to impaired waters where a TMDL has yet to be completed.

Virginia has completed approximately 180 of the 1700 TMDL reports required to date. Lack of funding is the primary reason over 1500 TMDLs are still to be completed-not that any stream reach is more or less in need of clean up than another. We fail to understand why less protection would be provided to an already impaired stream just because a TMDL has not been completed.

EPA, is also concerned about this issue. EPA comments to DCR regarding the draft MS4 individual permit for the City of Norfolk expressed concern that the nutrient reductions in the Chesapeake 2000 Agreement would not be met unless tributary strategy clean-up plan requirements are included in MS4 permits.

Thus, CBF finds that the proposal should be modified to include expanded controls to ensure that MS4s discharges to the Bay watershed meet tributary strategy goals, and that MS4 discharges to impaired waters across the state reduce stormwater pollution to a level consistent with what will be required under a future TMDL.

CBF looks forward to providing more detailed written comment at proposal and continuing to work with DCR on the final regulation and necessary guidance. We ask

that the Board consider these concerns in your further discussions with DCR regarding this proposal.

We thank you again for your dedication to this important issue, and thank you for the opportunity to speak to you this morning.

William H. Street
James River Association

Good morning Madame Chairman and members of the Board. My name is Bill Street and I am the Executive Director of the James River Association. The James River Association is a river conservation group focused on restoring the James River from its headwaters in Allegheny to the mouth in Hampton Roads. We have served on the technical advisory committees of both the small MS4 general permit as well as the stormwater regulations that are before you tomorrow. Through that process we have worked with a number of groups and so our comments today reflect the interest of those groups as well and that includes the Chesapeake Bay Foundation, the Southern Environmental Law Center, the Nature Conservancy and the Friends of the Rappahannock.

I want to reiterate, as Ann Jennings did, the importance of the regulations you have before you today as well as in the contexts of the series of regulatory actions that will come before you over the next year or so. Five or six key regulatory actions related to stormwater will really shape how the stormwater program functions going forward and how future development really impacts Virginia's environment. In my mind these regulations will really determine the future health of Virginia's waters. In addition to the challenges that face our waters today, fish kills, algal blooms and the other issues that Ann Jennings mentioned before, it is also important to keep in mind what lies ahead. Governor Kaine in many of his talks on land conservation and the environment mention statistics that are very disturbing and challenging, although it has some benefits as well. But from an environmental standpoint is very challenging in that in the next forty years Virginia's on pace to develop as much land in that forty years as it did in the first four hundred years. And so clearly, we need to make sure that we have the rules and regulations in place to protect our waters while at the same time accommodate our future growth that we know is coming. Clearly these regulations that are before you today are very important.

I'd also like to commend the work of DCR since it has assumed the full stormwater program. I think we have seen a number of advances because of the dedication and priority that DCR is placing on this program, with compliance rates, with permits, inspection rates, we are seeing a lot more application across the state, so I'd really like to thank DCR and their staff on the work that they have done.

I'd also like to commend the localities. We see examples across the Commonwealth of where localities are doing terrific programs going above and beyond the minimum

control measures by doing stormwater retrofits, stream restoration, restoring of our current buffers and developing management plans. There is a wide array of examples where localities are moving forward and that's very encouraging.

That's brings us to the regulations before you today, the MS4 permits. We think that the proposed regulations right now would not ensure that we achieve the water quality standards that have been established in Virginia and particularly the Chesapeake Bay and Virginia's tidal waters. The tributary strategies were developed through an extensive process by the Commonwealth and really lay out the level of effort that we will need to meet those water quality standards. We know we need to go well beyond where we are today and so those tributary strategies, which are often referred to as TMDL-like or at least an equivalent analysis to those TMDLs, details specific practices that we need to achieve in order to meet those water quality standards. These MS4 permits do not ensure that these practices would be implemented. The federal regulations suggest that that should be done. The recent report by the EPA's Inspector General suggests the MS4 permits should include those provisions so we think that's a key area where this general permit and the regulations needs to be improved. We will be working with DCR to develop some alternative language for that and provide that in our written comments. We look forward to working with you in the future on all these program.

Chris Pomeroy
Municipal Stormwater Association

Good morning. My name is Chris Pomeroy and I am speaking on behalf of the Virginia Municipal Stormwater Association. Thank you for this opportunity.

By way of introduction, the Municipal Stormwater Association is a new statewide association recently established by Virginia localities. The initial members are:

- *Cities:* Charlottesville, Harrisonburg, Lynchburg, Richmond, Norfolk, and Virginia Beach
- *Counties:* Albemarle, Arlington, Fairfax, Hanover, Loudoun, Roanoke, and Stafford

In addition, the Municipal Stormwater Association coordinates closely with the staffs of the Virginia Municipal League, the Virginia Association of Counties, and planning district commissions particularly in Hampton Roads and Northern Virginia.

The Municipal Stormwater Association intends to be a responsible voice for local government on matters that appear before this Board as well as the General Assembly, the Virginia Department of Conservation and Recreation, and the U.S. Environmental Protection Agency. The Association's interest is in the development and implementation of stormwater policy based on good science, good public policy, and a balanced approach to environmental and fiscal sustainability.

At this time, the Municipal Stormwater Association's members cannot help but be struck

by the sheer magnitude and rapid pace of Virginia's development of new stormwater requirements. For example, the draft MS4 General Permit Regulation includes new, sweeping requirements on local governments, VDOT and other permittees to implement Total Maximum Daily Loads (TMDLs). Why is that significant? Within the Chesapeake Bay Program, work is underway to issue TMDLs for nitrogen, phosphorus and sediment in 2010 that will affect two thirds of Virginia. The Commonwealth's Chesapeake Bay Tributary Strategies have an estimated implementation cost of \$10 billion. Of this \$10 billion, fully 75 percent of the costs are for "Urban BMPs." That is an extremely heavy, if not impossible, burden for localities. Considering that Urban Runoff accounts for approximately 17 percent of the nutrient load (and less of the sediment load), it is also questionable whether 75 percent of the money should be spent on 17 percent of the problem.

Beyond the TMDL requirements of the draft General Permit, there are many new requirements that give rise to local government concerns about the rapid pace at which it appears local government program expansion would be required. We would encourage the Board and the Department to investigate the issue of pace of improvements as the General Permit development continues.

As the Board moves forward with this and other stormwater initiatives, we would ask that you be mindful of the *cumulative* impact of these rapidly expanding requirements. Please consider:

- **Phase 1 MS4 Permits** - The Phase 1 MS4 Permits currently under development contain new requirements even more extensive than the Phase 2 MS4 General Permit.
- **Impounding Structure Regulations** - The Board's proposed Impounding Structure Regulations are currently out for public comment. These have a state estimated cost of \$250 million. Members of the Municipal Stormwater Association suspect that costs for the planning elements and construction of spillway upgrades at 166 dams will far exceed the State's \$250 million estimate.
- **Stormwater Management Regulations** - The Stormwater Management Regulations on tomorrow's Board agenda go far beyond the initial objective of delegating the program to localities by adding major new requirements. Members of the Municipal Stormwater Association have reported that major technical challenges remain in this particular regulation that would be benefit from more advisory committee work and consensus before the formal proposal.

Requiring a transition from relatively young programs to advanced programs on a very short schedule will create many challenges ranging from the obvious local budgetary challenges to management and technical challenges as well. The Municipal Stormwater Association would greatly appreciate the Board's attention to these challenges as we move forward.

On behalf of the Association, thank you for this opportunity this morning. We would welcome the opportunity to work in partnership with you in the future.

[End of Public Comment]

Mr. Russell moved the following motion:

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

The Board approves these proposed regulations and incorporated forms and authorizes the Director of the Department of Conservation and Recreation and the Departmental Regulatory Coordinator to submit the proposed amendments to Part XV of the Board's Virginia Stormwater Management Program Permit Regulations [entitled "**General Virginia Stormwater Management Program (VSMP) Permit for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems**"] and other approved sections, including but not limited to, Part I definitions, and the VSMP General Permit Registration Statement form which is incorporated by reference, and any other required documents to the Virginia Regulatory TownHall, the Virginia Registrar's Office, and the U.S. Environmental Protection Agency.

In accordance with the Administrative Process Act exemption requirements specified in § 2.2-4006 A9, the Board further authorizes at least one public hearing to be held by the Department not less than 45 days after publication of the proposed regulations in the Virginia Register of Regulations and that the Department make provisions to receive public comment concerning the proposed regulations. Upon closing of the public comment period, the Department is authorized to make revisions to the proposed regulations in response to comments received and to hold additional stakeholder meetings as it deems necessary.

In implementing this authorization, the Department shall follow and conduct actions in accordance with the Administrative Process Act exemption requirements specified in § 2.2-4006 A9, the Virginia Register Act, and other technical rulemaking protocols that may be applicable. The Department shall also implement all necessary public notification and review procedures specified by Federal Regulation regarding General Permit reissuance.

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

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

Motion made by: Mr. Russell

Motion seconded by: Ms. Hansen

Action: Motion carried unanimously

Ms. Campbell noted that the board is to move forward with the regulations with the expected timeline to file of September 26 and publish in the Virginia Register October 15. Thank you to everyone involved in the process to date, to staff, the advisory committee and to the public comment opportunities. Each and every public comment is appreciated.

Erosion and Sediment Control Program

Mr. Hill reviewed the flow chart outlining the Local Erosion and Sediment Control Program Review and Corrective Action agreement (CAA) Process. A copy of the flow chart is available from DCR.

Ms. Campbell stated the chart clearly outlines the process in terms of the timeline and the various steps. It is to the benefit of the program managers to have this information and to work with it so that it gives them the opportunity to ask the questions along the way as well as make it clear to the Board what the timeline and process will be.

Mr. Baxter indicated Board involvement in the program is increasing as well as the contacts made with local governments. Letters are being sent to the Chief Administrative Officer of the jurisdiction; not just the program administrator.

MOTION: Ms. Hansen moved the motion to endorse the procedures as outlined.

SECOND: Mr. Russell

DISCUSSION: None

VOTE: Motion carried unanimously

Mr. Hill presented the list of local programs found consistent.

MOTION: Mr. Altizer moved that the Virginia Soil and Water Conservation Board commend the following localities for successfully improving the localities' Erosion and Sediment Control Program to become 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:

City of Buena Vista
City of Emporia

City of Fairfax
City of Falls Church
City of Hampton
City of Martinsville
City of Norton
City of Winchester
Bland County
Hanover County
Madison County
Orange County
Shenandoah County
Town of Abingdon
Town of Bridgewater
Town of Dublin
Town of Farmville

SECOND: Ms. Dalbec

DISCUSSION: None

VOTE: Motion carried unanimously

Mr. Hill presented the list of localities with Corrective Action Agreements.

MOTION: Mr. Simms moved that the Virginia Soil and Water Conservation Board recognize the following localities that have signed a Corrective Action Agreement (CAA) making the localities erosion and sediment control program conditionally consistent with the Virginia Erosion and Sediment Control Law and Regulations. The Board also understands that the CAA contains established dates by which the County is to implement corrective actions to bring the erosion and sediment control program into consistency with the law and regulations. Therefore, the Board requests the localities to provide an updated status report regarding the implementation of the CAA to the Department of Conservation and Recreation (DCR) by October 12, 2007. The Board directs DCR staff to obtain the requested report and to develop recommendations regarding the localities to be presented at the Board's next meeting.

Arlington County
Essex County
Mecklenburg County
Northampton County
Nottoway County
Powhatan County
Southampton County

Sussex County
Town of Haymarket
Town of Occoquan
Town of South Hill

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

Mr. Hill presented the list of Alternative Inspection Programs.

MOTION: Mr. Simms moved that the Virginia Soil and Water Conservation Board receive the staff update and recommendation regarding the proposed Alternative Inspection Program for the City of Fredericksburg. The Board concurs with the staff recommendation and accepts the City of Fredericksburg's proposed Alternative Inspection Program for review and future action at the next Board meeting.

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

MOTION: Ms. Hansen moved that the Virginia Soil and Water Conservation Board approve the proposed Alternative Inspection Program for the City of Newport News as being consistent with the requirements of the Erosion and Sediment Control Law and Regulations. The Board requests the DCR staff to monitor the implementation of the alternative inspection program by the City to ensure compliance.

SECOND: Ms. Dalbec
DISCUSSION: NONE
VOTE: Motion carried unanimously

Mr. Hill presented the following Alternative Erosion and Sediment Control Program for the Town of Hillsville.

MOTION: Mr. Altizer moved that the Virginia Soil and Water Conservation Board receive the staff update and recommendation regarding the

proposed Erosion and Sediment Control Program for the Town of Hillsville. The Board concurs with the staff recommendation and approves the Erosion and Sediment Control Program for the Town of Hillsville as being consistent with the requirements of the Erosion and Sediment Control Law and Regulations. The Board requests the DCR staff to monitor the implementation of the erosion and sediment control program by the Town to ensure consistency with the law and regulations.

SECOND: Ms. Dalbec

DISCUSSION: None

VOTE: Motion carried unanimously

Dam Safety Certificates and Permits

Mr. Browning presented the Dam Safety Certificates and Permits.

Compliance Issues

Mr. Browning gave an update on the Enforcement Actions. A copy of the update is available from DCR. There were no recommended Board actions.

Conditional Operational and Maintenance Certificate Recommendations

Mr. Browning presented the Conditional Certificates recommendations.

02102 Crab Orchard Creek Dam	BLAND	Class II Regular	3/31/09
06101 Warrenton Dam	FAUQUIER	Class II Regular	3/31/08
06109 Kinlock Farm Dam	FAUQUIER	Class I Regular	3/31/08
06143 Lower Warrenton Lakes Dam	FAUQUIER	Class III	9/30/08
10939 Willow Ridge Dam	LOUISA	Class III	9/30/09

MOTION: Ms. Maitland moved that the Virginia Soil and Water Conservation Board approve the Conditional Operation & Maintenance Certificate Recommendations as presented by DCR staff and directs staff to communicate the Board actions to the affected dam owners.

SECOND: Ms. Hansen

DISCUSSION: None

VOTE: Motion carried unanimously

Mr. Browning gave an update on Lake of the Woods Association (LOWA) dam. He reported that this Board is aware of a communication that was transmitted to Lake of the Woods dated August 6. As a result of that communication, on August 30, Lake of the Woods and DCR met to work through the issues that were cited. On September 13, DCR received submissions from LOWA and their engineers that had documents for furthering the engineering work dealing with the alternative spillway design. Staff reviewed those materials and the submission revealed that substantial progress had been made toward the completion of the engineering design plan specifications and financial plan for that particular spillway to pass the PMF. It is anticipated that work will progress over the next few months utilizing a different rainfall distribution methodology to determine spillway gate size. Staff will communicate acknowledgement of the progress that has been made to the owner and if necessary provide a list of additional information that is needed.

Regular Operation and Maintenance Certificate Recommendations

Mr. Browning presented the recommendations for regular certificates.

MOTION: Mr. Altizer moved that the Virginia Soil and Water Conservation Board approve the Regular Operation & Maintenance Certificate recommendations as presented by DCR staff and directs staff to communicate the Board actions to the affected dam owners.

00334	Birdwood #2 Dam	ALBEMARLE	Class I	9/30/13
00346	Birdwood #13 Dam	ALBEMARLE	Class III	9/30/13
00384	North Fork Park Dam	ALBEMARLE	Class II	9/30/13
04702	Mountain Run Dam #11	CULPEPER	Class II Regular	9/30/13
04703	Mountain Run Dam #50	CULPEPER	Class I Regular	9/30/13
06521	Fluvanna Correctional Ctr.	FLUVANNA	Class III Conditional	9/30/13
06904	Cherokee Dam	FREDERICK	Class II Conditional	9/30/13
09529	Eastern Pond Dam	JAMES CITY	Class III Conditional	9/30/13
10738	Red Cedar Lake 2 Dam	LOUDOUN	Class III Construction	9/30/13
16503	Lower North River #83 Dam	ROCKINGHAM	Class I Conditional	9/30/13
16507	Lower North River #82 Dam	ROCKINGHAM	Class I Conditional	9/30/13
17719	Hunting Run Dam	SPOTSYLVANIA	Class I	9/30/13

SECOND: Mr. Maitland

DISCUSSION: None

VOTE: Motion carried with Ms. Campbell abstaining.

Construction and Alternation Permits

Mr. Browning presented the Construction and Alteration Permit recommendations.

MOTION: Ms. Hansen moved that the Virginia Soil and Water Conservation Board approve the Permit recommendations as presented by DCR staff and directs staff to communicate the Board actions to the affected dam owners.

05992 Pohick Creek Dam #4	FAIRFAX	Class I Alteration	3/31/09
06143 Lower Warrenton Lakes Dam	FAUQUIER	Class III Alteration	6/30/08
11316 Woodberry Forest Lake Dam	MADISON	Class III Construction	9/30/09

SECOND: Mr. Simms

DISCUSSION: None

VOTE: Motion carried unanimously

Mr. Maitland asked why Lower Warrenton Lakes Dam was coming in for an alteration permit when it was originally considered size exempt.

Mr. VanLier stated that Lower Warrenton Lakes was formerly a size-exempt dam. In 2002, a previous dam engineer wrote to that homeowners association that owns the dam informing them that they were to be regulated due to changes in the Code of Virginia. Unfortunately, that letter had the wrong address on it and was returned, so they never were notified. To this point they had never been regulated and have no certificate. Now that there are issues with their lake they have asked for our assistance. The procedures for obtaining a certificate and to make the necessary repairs were reviewed with them.

Extensions

Mr. Browning presented the extension recommendations. He noted that 35 dams were under consideration for extensions at this meeting. He indicated that several are from DGIF and were discussed previously. In November the Board will receive a report on the steps taken to bring these dams into compliance.

MOTION: Mr. Maitland moved that the Virginia Soil and Water Conservation Board approve the following extensions as provided.

00385 Mountain Valley Dam #1	ALBEMARLE	Class III Conditional	1/31/08
01504 South River Dam #10A	AUGUSTA	Class I Conditional	9/30/08
01908 Spring Lake Dam	BEDFORD	Class III conditional	1/31/08
04142 Lake Patrick Henry Dam	CHESTERFIELD	Class III Regular	1/31/08
05104 White Oak Creek Dam	DICKENSON	Class II Conditional	3/31/08
05106 Laurel Lake Dam	DICKENSON	Class III Conditional	11/30/07
05907 Pohick Creek Dam #8	FAIRFAX	Class I Conditional	9/30/08
05992 Pohick Creek Dam #4	FAIRFAX	Class I Conditional	3/31/09
05923 Pohick Creek Dam #2	FAIRFAX	Class I Conditional	9/30/08

05928 Pohick Creek Dam #3	FAIRFAX	Class I Conditional	9/30/08
06102 DiGuilian Dam	FAUQUIER	Class III Conditional	7/31/08
06107 Thompson Dam	FAUQUIER	Class I Conditional	11/30/07
06112 Lake Brittle Dam	FAUQUIER	Class II Conditional	11/30/07
06702 Upper Blackwater River Dam #4	FRANKLIN	Class I Conditional	1/31/08
08302 Conner Dam	HALIFAX	Class III Conditional	11/30/07
08539 Mattawan Dam	HANOVER	Class II Conditional	3/31/08
08714 Lake Overton Dam	HENRICO	Class II Conditional	9/30/08
08909 Horse Pasture Creek Dam	HENRY	Class II Conditional	1/31/08
08910 Lanier Dam	HENRY	Class II Conditional	1/31/08
08913 Smith River Dam	HENRY	Class I Regular	1/31/08
10733 Lawrence Dam	LOUDOUN	Class III Conditional	3/31/08
10934 South Anna Dam #22	LOUISA	Class II Regular	1/31/08
10936 Lake Ellen Dam	LOUISA	Class III Regular	1/31/08
11310 Hablutzel Dam	MADISON	Class III Regular	1/31/08
14113 Ararat River Dam #63	PATRICK	Class III Regular	11/31/07
14114 Ararat River Dam # 2	PATRICK	Class III Regular	11/31/07
16701 Laurel Bed Dam	RUSSELL	Class I Regular	11/30/07
16901 Bark Camp Dam	SCOTT	Class II Regular	1/31/08
17104 Woodstock Dam	SHENANDOAH	Class I Conditional	1/31/08
17906 Hidden Lake Dam	STAFFORD	Class II Conditional	1/31/09
19701 Rural Retreat Dam	WYTHE	Class I Regular	11/30/07
70001 Lee Hall Lower Reservoir Dam	CITY OF NEWPORT NEWS	Class II Conditional	3/31/08
70006 Lee Hall Upper Reservoir Dam	CITY OF NEWPORT NEWS	Class II Conditional	3/31/08
80003 Lake Burnt Mills Dam	CITY OF SUFFOLK	Class III Conditional	7/31/08
90011 Western Branch Dam	CITY OF SUFFOLK	Class I Conditional	9/30/09

SECOND: Ms. Hansen

DISCUSSION: None

VOTE: Motion carried unanimously

Mr. Browning shared with the Board concerns of dam owners as to why they need to spend money to mitigate wetlands. DCR staff along with the Elizabeth Andrews from the Office of the Attorney General has researched this issue and find that this is under the authority of DEQ. Guidance documents will be put together for dam owners.

Mr. Browning updated the Board on Jolly Pond Dam. Mr. Browning reported that Jolly Pond has submitted the paperwork and a conditional certificate has been issued based on the finding and all the documentations that their engineers submitted were sound.

Review of Dam Safety Loans and Grants Manual

Mr. Brown gave the following presentation on the proposed Dam Safety, Flood Prevention and Protection Assistance Fund Loan and Grant Manual. Mr. Brown noted that this is a joint venture between DCR and the Virginia Resources Authority. The manual is for the administration of the Virginia Dam Safety Flood Protection and Assistance Fund. A copy of this presentation is available from DCR.

Virginia Dam Safety, Flood Prevention and Protection Assistance Fund Loan and Grant Manual Program Year 2008

Background

- Dam Safety, Flood Prevention and Protection Assistance Fund (VA Code § 10.1-603 116)
- Expanded in 2006
- Fund to be administered by the Virginia Resource Authority
- Loans and grants to be provided by DCR with the concurrence of the Board
- Grants and loans may be awarded to local governments for:
 - Repair of dams owned by a local government
 - Dam break inundation zone mapping
 - Funding of a program to be administered by a local government that repairs private dams
 - Flood prevention and protection studies
 - Flood prevention and protection projects
- Loans may be provided to private dam owners for spillway upgrades and structural repairs to dams not meeting the Board's regulatory standards, with priority given to high hazard dams.
- Cost-share with federal agencies is also authorized for flood protection studies of statewide or regional significance.

Loan & Grant Eligibility

- Loan assistance will be awarded:
 - On a competitive scoring base
 - With a required 10% match
- Grant assistance will be awarded:
 - When available
 - With a required 50% match

Project Categories – Category I

- Applicant-Owned Dam Rehabilitation

- Both local governments and private dam owners will be eligible for loan funding
- Local government may be eligible for grant funding as well in future years
- Authorized uses include emergency spillway upgrades and repairs related to the structural integrity of Class I and II dams holding a current Regular or Conditional Certificate and Alteration Permit
- Loans will be given in amounts up to \$300,000 per project

Category 2

- Locally-Administered Dam Rehabilitation Programs
 - Local governments will be eligible for loan funding to assist them in developing their own grants/loans program for private dams located in their jurisdiction that need emergency spillway upgrade and/or repairs related to structural integrity
 - Similar to this Fund, those programs must only fund repairs necessary to bring those dams into compliance with the Board's regulations
 - Loans will be available in amounts up to \$300,000 per dam, with a locality receiving a maximum of \$600,000

Category 3

- Dam Break Inundation Zone Mapping and Digitization
 - Grants may be made to localities to map the downstream inundation zones of dams located within their jurisdiction, both public and private
 - All dams mapped must be regulated by the Board
 - Due to funding limitations, no grants will be awarded this program year

Category 4

- Flood Hazard Identification Plans, Studies, and Mapping
 - Local governments will be eligible for loans that develop new floodplain studies or supplement existing studies (including floodplain boundary information, floodplain maps, plans to prevent or mitigate damage from flooding, and other studies that assist in the assessment of flood risks)
 - Loans will be given in amounts of up to \$100,000 per project; grant funding may be available in future years.

Category 5

- Flood Hazard Damage Mitigation and Reduction Activities
 - Local governments will be eligible for loan funding to assist in implementing techniques necessary to mitigate and reduce flood impacts

- Loans will be given in amounts of up to \$100,000 per project; grant funding may be available in future years.

Actions since July Meeting

- Additional discussions with Division of Dam Safety and Floodplain Management
- Solicited comments from Dam Break Inundation Zone Legislation Working Group

Summary of major changes made to Manual

- Changed manual from “2007 Program Year” to “2008 Program Year”
- Added an explicit definition of what constitutes a “local government” that is eligible for funding (p.1)
- Added an explicit definition of what constitutes a “private entity” eligible for funding (p.1)
- Added a paragraph specifying the sources of money that are included in the Fund (p.2)
- Included money appropriated by the General Assembly, assessments made on flood insurance premium income, funds returned in the form of interest and loan principal on loans from the Fund, income from the investment of monies, and other funds.
- Specified that funding may be provided at a level less than what is requested by the applicant if the details of the project do not indicate that a higher level of funding is necessary, if the applicant does not appear credit worthy for the full amount requested, or if the full amount requested is not available in the Fund. (p.3)
- Specified that if all available funding for floodplain projects is not utilized, the remaining funds may be expended on remaining dam rehabilitation projects. (p.3)
- Added language making clear that DCR will announce the opening and closing dates for loan rounds, along with the total amount of funding available for each category. (p.3)
- Specified that in the event of a scoring tie between projects, funding will be divided equally. (p.9)
- Made clear that projects are expected to proceed in a timely fashion, and that funding may be withdrawn if projects are not commenced within a reasonable time. (p.9)
- Reworked the application form to include more information that will be useful to private applicants and to ease use of the form overall. (p.11)
- Added a simplified quarterly reporting form to replace the previous Milestone Table. (p.16)
- Made clear in the scoring criteria that dam rehabilitation projects should be related to spillway upgrades and repairs affecting the structural integrity of a dam. (pp. 20 and 24)

- Removed the scoring criteria related to the value of property contained in a dam's inundation zone due to that factor being difficult to determine. (pp. 20, 23 and 26)

Ms. Hansen asked if the program had any protection built in to make sure that the project the funds were awarded for is actually completed.

Mr. Brown noted that these are secured loans. The manual outlines the eligibility. VRA will have a separate process to determine credit worthiness, terms and actions that will be taken if the recipient does not perform or if the loan is not paid. Built into the process is a measure that ensures that the applicant has full funding of the project before funds are provided through this process.

Mr. Altizer asked what funding is available in 2008.

Mr. Dowling indicated that at this point there was about \$2 million but with pending deposits the fund could raise to \$2.6 million.

MOTION: Mr. Russell moved that the Virginia Soil and Water Conservation Board approve the Virginia Dam Safety, Flood Prevention and Protection Assistance Fund Loan and Grant Manual as presented.

SECOND: Mr. Maitland

DISCUSSION: Ms. Hansen inquired whether it was DCR's intention to keep some of the seed money or to spend down what is available each year.

Mr. Brown indicated that this was a subject for further discussion with the Director. DCR will spend a large amount of what is available but won't totally deplete the fund in the first round. The hope is to keep the fund up and running.

Ms. Campbell asked if any of the interest money being paid would be put back into the fund.

Mr. Brown indicated that the interest money would be going back into the fund to build back the fund. Interest rates have not been set but DCR will work with VRA to set the interest rate.

Mr. Dowling noted that since the concept was announced two years ago there has been a lot of interest expressed. There is now a locality taking a serious look at it.

Ms. Hansen expressed concern over the cost of repairs and would be interested in seeing an average of what these projects would

cost. She expressed concern whether people can afford a loan or have the ability to secure such a loan.

Mr. Brown noted that this was a serious concern. He indicated that we know we will have people who would like to be funded but whether they can afford to be funded is another issue.

Mr. Baxter asked Mr. Brown to clearly define the roles of DCR and VRA in terms of what happens once the applications are received.

Mr. Brown indicated that applications would come into DCR and be reviewed for merit in accordance with the criteria in the manual. Those findings would be reviewed with Mr. Maroon and the recommendations would be brought to the Board. Once the Board has made its selections, VRA will then do a financial capability analysis. The projects that ultimately receive funding may not be those identified as a top priority of the Board because of financial ability to carry out the loan.

Ms. Campbell inquired what the process would be should if those individuals selected by the Board are determined not to be candidates for funding. Does that allocated money that has been set aside go back into the pot or do we look at the list of reviewed applicants that have been prioritized.

Mr. Brown indicated that it could be work either way, but that the current intent was for the money to be awarded to the next qualified applicant. He stated that anyone who qualifies according to the criteria is going to be deserving of funding.

Mr. Simms asked how the relationship was going to be between funding for privately versus publicly owned dams. Is there any feeling how the funds would be allocated?

Mr. Brown noted that was one of the things to be determined before the funding round goes forward.

Mr. Simms asked about what the repayment period would be.

Ms. Barnes (VRA) reported that currently being discussed is a repayment period of up to 20 years for a local government and no more than 10 years for a private entity.

Mr. Russell asked who would take the lead, DCR or VRA, on making periodic inspections to see if the improvements were being done.

Mr. Brown reported that a Memorandum of Understanding between DCR and VRA has been developed governing the administration of the program.

VOTE: The motion carried unanimously

Soil and Water Conservation District Related Topics

Director Resignations and Appointments

Mr. Frye presented the following list of District Director Resignations and Appointments.

James River

Recommendation of George A. Beadles, Jr., Chesterfield County, to fill unexpired elected term of David B. Robinson (term of office to begin on or before 10/21/07).

Skyline

Resignation of Roger Goughnour, Pulaski County, effective 3/21/07, elected director position (term of office expires 1/1/08).

Recommendation of Blair Sanders, Pulaski County, to fill the unexpired elected term of Roger Goughnour (term of office to begin on or before 10/21/07 – 1/1/08).

Tri-County/City

Resignation of Richard Street, Spotsylvania County, effective 6/15/07, appointed director position (term of office expires 1/1/11).

Recommendation of Gregory L. Cebula, Spotsylvania County, to fill unexpired appointed term of Richard Street (term of office to begin on or before 10/21/01 -1/1/11).

MOTION: Mr. Altizer moved that the list of District Director resignations and appointments be approved as submitted.

SECOND: Mr. Simms

DISCUSSION: None

VOTE: Motion carried unanimously

Mr. Frye reported to the Board that the election coming up in November will be the first four-year election cycle. All 47 districts will be holding elections. There are 239 elected director positions in the 47 districts; there are 225 candidates on the ballot. The number of existing incumbent district directors seeking re-election is 178. There are 47 candidates seeking election for the first time. Out of the 47 districts some have the exact number of candidates for the number of seats, there are 13 districts that have some competition and 19 districts that do not have a sufficient number of candidates (some having none). This information was shared with the Association of Soil and Water Conservation Districts. It is possible that the change from a 3 to a 4 year term may have some impact. If a district does not have candidates for the election the director would be appointed by the local board. There will be a lot of new faces after the election that will need to be brought up to speed about their roles and responsibilities as district directors at the local level.

Partner Agency Reports

Department of Conservation and Recreation

Mr. Frye gave the report for the Department of Conservation and Recreation. A copy of this report is included as Attachment #1.

Natural Resources Conservation Service

Mr. Biddix gave the report for the Natural Resources Conservation Service. A copy of this report is included as Attachment #2.

The Board recessed until 9:00 a.m. Friday, September 21, 2007.

The Board reconvened at 9:00 a.m.

Virginia Soil and Water Conservation Board Members Present

Linda S. Campbell, Chair	Susan Taylor Hansen
Darlene Dalbec	Michael J. Russell
Granville M. Maitland, Vice Chair	Raymond L. Simms
Michael Altizer	Jean R. Packard
Ken Carter for John A. Bricker, NRCS, Ex Officio	

Virginia Soil and Water Conservation Board Members Not Present

Richard E. McNear	Joseph H. Maroon, Director, DCR
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DCR Staff Present

Russell W. Baxter	Ryan J. Brown
David C. Dowling	Scott Crafton
Jack E. Frye	Lee Hill
John McCuteheon	Joan Salvati
Jim Echols	Pam Landrum
Elizabeth Andrews, Office of the Attorney General	

Others Present

John S. Bailey, Lake of the Woods
Joe Battiata, Contech Stormwater
Michelle Brickner, Fairfax County DPWES
Mike Gerel, Chesapeake Bay Foundation
Norm Goulet, NVRC
Jean Haggerty, AMEC
David Hirschman, CWP
Ann Jennings, Chesapeake Bay Foundation
Stephen Kindy, Virginia Department of Transportation
Robin Knepper, The Free Lance-Star
Joe Lerch, Chesapeake Bay Foundation
Roy Mills, Virginia Department of Transportation
Doug Moseley, GKY Associates, Inc.
Reggie Parrish, EPA - CBPO
James Patteson, Fairfax DPWES
Glen Payton, Filterra
Chris Pomeroy, Virginia Municipal Stormwater Association
David Powers, Michael Baker Group
Melissa Pritchard, Timmons Group
Allan Rowley, Arlington Co. DES

William H. Street, James River Association
Dan Sweet, VHB, Inc.
William H. Street, James River Association
Keith White, Henrico County, DPW

Stormwater Management Regulations

Introductory remarks by David Dowling (Policy, Planning and Budget Director)

Today it is my pleasure to share with you two regulatory actions (Part I, II, III – Definitions, Water Quality and Quantity Technical Criteria, and Local Program Criteria) and (Part XIII – fees) for Board discussion and public comment.

Following my presentation and the public comment, we will also want to discuss the Board's perception on whether we have developed a solid regulation and several procedural options and recommendations with the Board regarding these regulatory actions.

Actions to Date

- Board passed a motion authorizing the development of NOIRA(s): July 21, 2005
- The NOIRAs were filed on: November 15, 2005
- On December 26, 2005 the two Notices of Intended Regulatory Action or NOIRAs related to Stormwater Management were published in the Virginia Register of Regulations by DCR on behalf of the Board. They were:
 - The Virginia Stormwater Management Program VSMP Permit Regulations NOIRA related to the development of local stormwater program criteria and permit delegation procedures; and
 - The Virginia Stormwater Management Program VSMP Permit Regulations NOIRA related to the changes in the statewide stormwater fee schedule.
- The public comment period for each of these NOIRAs opened on December 26, 2005 and closed 60 days later on February 24, 2006 at 5:00 p.m.
- Two public hearings were held on these NOIRAs. One on February 16, 2006 in Roanoke and one February 17, 2006 in Richmond.
- The public meeting held in Roanoke was attended by 24 people (primarily localities, engineering companies, and state agencies). No one wished to provide any formal comments, although clarifying questions were asked by a number of individuals in attendance.

- The public meeting held in Richmond was attended by 23 people with 4 people who spoke. Again, questions were asked by other individuals in attendance. In addition to the individuals who spoke at the public meetings, 10 people submitted written comments on stormwater issues.
- During March and April of 2006 the Department selected the TAC and secured a facilitator.
- The TAC was composed of 23 members including local governments (9); environmental groups (3); state agencies (5 members; 4 agencies); federal agencies (1); consultants - Home Builders (3); soil and water conservation district (1); planning district commission (1).

Committee and Subcommittee Meetings

- The 1st meeting of the TAC: May 4, 2006 at the Science Museum of Virginia.
 - Three Parts under consideration in the regulatory action:
 - Part II (Minimum Local stormwater management program Water Quality and Quantity Criteria)
 - Part III (Local Program Administrative and Delegation Procedures and Requirements)
 - Part XIII (Fees)
- The 2nd meeting of the TAC: May 18, 2006 at Department of Forestry. (Part II)
- The 3rd meeting of the TAC: June 8, 2006 at Department of Forestry. (Part III)
- The 4th meeting of the TAC: June 20, 2006 at the Science Museum of Virginia. (Part XIII overview, Part III, subcommittee formulation)
 - Part III subcommittee meeting: August 8, 2006 at DEQ regional office.
 - Part II subcommittee meeting: August 16, 2006.
- The 5th meeting of the TAC: August 21, 2006 at the Science Museum. (Part III)
 - Part XIII subcommittee meeting: August 29, 2006 at DEQ regional office.
 - Part II subcommittee meeting (2nd meeting): September 21, 2006 at DOF in New Kent.
- The 6th meeting of the TAC: October 3, 2006 at DOF in New Kent. (Tributary Strategies Presentation, Part II, Part III)
 - Part II technical discussion meeting; October 12 at DCR.
- The 7th meeting of the TAC: October 16, 2006. (Part XIII)
- October 23, 2006: DCR advised the TAC that the Department was extending the target date for filing proposed regulations. The extension enabled DCR to address the following key items as listed below. Our intention was to complete the analyses and then to reconvene the TAC to discuss our findings.
 - 1) Allow for a thorough scientific review and evaluation of the current Part II water quality and quantity draft regulations. The review was contracted out to the Center for Watershed Protection. They were asked to

critique the draft proposed regulations, determine whether BMPs and other practices exist to achieve the draft load limits, and to develop recommendations of potential regulatory amendments for the TAC's consideration should further revisions be advisable; and

- 2) Allow for the Department to discuss the current Part III local Stormwater Management Regulations and delegation procedures with the EPA and to consider potential revisions to this and perhaps related sections.

- The Department contracted with the Center for Watershed Protection to provide recommendations to the Department and the Board regarding the water quality standards portion of the regulations and their achievability. The Center, utilizing the best data sets and scientific methodologies available in the nation, put forth recommended revisions to the Department that are both achievable and that employ the best stormwater strategies. These recommendations have been included into the current proposed regulations.

- The 8th meeting of the TAC: May 22, 2007. (Presentation of the CWP results, Part II)
- The 9th meeting of the TAC: June 14, 2007. (all Parts)
- The 10th meeting of the TAC: June 26, 2007. (Part III and Part XIII)
- The 11th meeting of the TAC: June 29, 2007. (Part III and Part XIII)
- The 12th meeting of the TAC: August 21, 2007. (Part I and Part II)
- We held over 50 internal discussions and team drafting meetings.

Conversations with the EPA

- Preliminary conference call with EPA on regulations: August 31, 2006.
- Conference call with EPA to discuss their review of the proposed regulations: October 27, 2006.
- Draft regulations were submitted to EPA for review on December 21st, 2006.
- Comments on the draft regulations were received from EPA on March 2nd, 2007.
- EPA Conference call March 22, 2007
- Overall, they characterized the regulations as an “exciting and innovative product”. Based on these conversations, we believe that we should be able to address EPA's issues.

Regulation Summary

Overview:

So why are these regulations needed? Many of the reasons are the same ones articulated by CBF, JRA, and others yesterday.

A recent EPA Office of the Inspector General report entitled “Development Growth Outpacing Progress in Watershed Efforts to Restore the Chesapeake Bay; Report No.2007-P-00031; September 10, 2007, noted that “new development is increasing nutrient and sediment loads at rates faster than loads are being reduced from developed lands. Little progress has been reported in reaching nutrient and sediment load reduction goals from developed lands. The Chesapeake Bay Program Office estimates that impervious surfaces in the Bay watershed grew significantly – by 41 percent – in the 1990s. Meanwhile, the population increased by only 8 percent. Because progress in reducing loads is being offset by increasing loads from new development, greater reductions will be needed to meet the Bay goals. The CBPO estimated that loads from developed and developing lands increased while loads from agriculture and wastewater facilities decreased. Loads from developed and developing lands were 12 to 16 percent higher in 2005 than in 1985.”

Additionally, you may have seen articles in local newspapers across the Commonwealth this week that quoted the recently released Chesapeake Bay Foundation report entitled “Bad Waters” regarding Chesapeake Bay water quality problems.

- According to the report, fish kills, algae blooms and low oxygen in the water were a serious problem from the mouth of the Bay to its upper reaches this summer.
- According to the newspaper accounts, the Foundation’s report says that millions of fish were sickened or killed in the Susquehanna River, Baltimore’s Inner Harbor, and in the Potomac, James and Shenandoah rivers.
- The articles note that nitrogen and phosphorus, which foster explosive algae, are considered the Bay’s most serious pollutants.
- The newspaper accounts state that over the past 25 years, summer has become the time of year when excessive nitrogen and phosphorus – from fertilizers, lawn chemicals, vehicle exhaust, farms, storm drains, development sites – have wreaked havoc on the Bay.

Accordingly, on top of the \$500 million already pledged by the Commonwealth for point source reductions, a group of organizations composed of the Farm Bureau, Virginia Agribusiness Council, Virginia Dairyman’s Association, Virginia Poultry Federation, Virginia Association of Soil and Water Conservation Districts, Chesapeake Bay Foundation, James River Association, Virginia*forever*, Potomac Conservancy, and the Friends of the Rappahannock, have sent a letter to the Governor urging his leadership in reaffirming the Commonwealth’s commitments to clean water, calling for an **annual** installment of \$100 million per year over the next ten years for agricultural best management practices and technical assistance to be funded by the dedication of 1/10th of 1 cent of the state’s sale tax.

However, the Commonwealth needs to employ all possible strategies in its tool box to address water quality improvements in both agricultural and urban settings, including making marked improvements in our stormwater regulations. We have already made major changes to the nutrient management regulations a few years back and we are ratcheting up Erosion and Sediment local program reviews. Improvements to these

regulations are also another key component of addressing the Commonwealth's needed water quality improvements. However, we recognize that these regulatory improvements also need to be balanced with achievability. In that regard, the regulations I present to you today, to the best of our ability and knowledge, do meet these goals

The key changes within this regulation include

- 1) Deletes not needed definitions, establishes abbreviations, updates definitions such as "channel", "development", "planning area", and "watershed" and adds needed definitions such as "Comprehensive stormwater management plan", "Hydrologic Unit Code", "Low Impact Development", and "Stormwater management standards" (lines 7 - 704); PART I [section 10].
- 2) Establishes that the purposes of the Chapter additionally include (lines 706 - 716); PART I [section 20]:
 - a. Board's procedures for the authorization of a qualifying local program,
 - b. Board and Department oversight authorities of an authorized qualifying local program,
 - c. Board's procedures for utilization by the Department in administering a local program in localities where no qualifying local program is authorized, and
 - d. The components of a stormwater management program including but not limited to stormwater management standards (Water Quality and Quantity criteria as well as local program criteria).
- 3) Specifies that the chapter also applies to the Department in its oversight of locally administered programs or in its administration of a local program (lines 718 - 726); PART I [section 30];
- 4) Clarifies that the Board is required to take actions ensuring the general health, safety and welfare of the citizens of the Commonwealth as well as protect the quality and quantity of state waters from the potential harm of unmanaged stormwater as well as is authorized to adopt regulations that:
 - a. Specify minimum technical criteria for stormwater management programs in Virginia;
 - b. Establish statewide standards for stormwater management from land disturbing activities;
 - c. Protect properties and the quality and quantity of state waters, the physical integrity of stream channels, and other natural resources.
- 5) Specifies that Part II establishes the minimum technical criteria and stormwater management standards that shall be employed by a local or state-administered stormwater management program or state agency to protect the quality and quantity of state waters from the potential harm of unmanaged stormwater runoff resulting from land disturbing activities (lines 730 - 746); PART II [section 40].

6) Stipulates that the physical, chemical, biological and hydrologic characteristics and the water quality and quantity of the receiving state waters shall be maintained, protected, or improved; . land disturbing activities shall comply with all applicable laws and regulations related to stormwater management; and that this regulation does not limit other federal agencies, state agencies, or local governments to impose more stringent technical criteria or other requirements as allowed by law (lines 750 - 764); PART II [sections 53 and 56].

7) Establishes that in order to protect the quality of state waters and to control nonpoint source pollution, a local program shall apply the minimum technical criteria and statewide standards established in Part II for stormwater management to land disturbing activities (lines 768 - 841); PART II [section 63].

In general, the current water quality technical criteria for construction activity in the state are as follows:

- Sites between 0 and 15% imperviousness for new development, all stormwater runoff goes virtually untreated.
- New development above the 16% imperviousness threshold requires a post development pollutant load of .45 lbs/acres/year Phosphorus. This is a P-based system.
- A 10% reduction in the predevelopment load is required on redevelopment sites.

These stormwater regulatory actions establish the following water quality technical criteria that have been developed to address necessary reductions associated with the Tributary Strategy goals and that have been built based on the best science available:

- For new development, this regulation establishes a 0.28 lbs/acre/year phosphorus standard below or equal to 40% imperviousness and a 2.68 lbs/acre/year nitrogen standard above 40% imperviousness.
- On redevelopment sites above 40% imperviousness, BMPs must be implemented to achieve a reduction in nitrogen of at least 28% below the post-development nitrogen load. (This may be more liberal than the previous approach but it removes the barrier to redevelopment which was a concern.)
- On redevelopment sites at or below 40% imperviousness the load will be reduced to 0.28 lbs/acre/year phosphorus.
- A LID crediting system has also been developed that allows for adjustment in the percent imperviousness of a site for calculation purposes through implementation of LID practices such as riparian buffers, rainwater harvesting, pervious pavement, etc.
- If a TMDL wasteload allocation for phosphorus or nitrogen has been established for a segment of a state water where a land disturbing activity is discharging, additional control measures shall be implemented consistent with the TMDL implementation plan.

We believe that many or most projects can achieve reductions on site. However, if the water quality technical criteria can not be met on-site, off-site controls in part or in whole will be allowed if the local program has adopted a comprehensive watershed stormwater management plan for the watershed within which the project is located and that the controls are located within the same Hydrologic Unit Code (HUC) or the adjacent downstream HUC or within HUCs approved by the board.

If no comprehensive watershed stormwater management plan exists, the local program may still go off-site if:

- The local program allows for off-site controls;
- The applicant demonstrates to the satisfaction of the local program that offsite reductions equal to or greater than those that would otherwise be required for the site are achieved, utilizing the performance-based approach;
- The development's runoff will not result in flooding or channel erosion impacts downstream of the site or any off-site treatment area;
- Off-site controls are located within the same Hydrologic Unit Code or the adjacent downstream Hydrologic Unit Code to the land disturbing site;
- Verification has been received as to the legal right to use property; and
- A maintenance agreement for the stormwater facilities is developed.

A local program may also choose to grant an exception in accordance to Part III.

8) Specifies that unless otherwise allowed, the technology-based criteria (BMP look up table) shall be utilized to achieve compliance with the water quality criteria requirements. Where performance-based approach is approved by the local program, off-site controls are approved, or a TMDL wasteload allocation for phosphorus or nitrogen has been established, the performance-based criteria (calculation method) shall be utilized (lines 842 - 882); PART II [section 65].

9) Establishes that in order to protect state waters from the potential harms of unmanaged quantities of stormwater runoff, properties and state waters receiving stormwater runoff from any land-disturbing activity shall be protected from sediment deposition, erosion and damage due to changes in runoff rate of flow and hydrologic characteristics, including but not limited to, changes in volume, velocity, frequency, duration, and peak flow rate of stormwater runoff in accordance with the minimum water quantity standards in the regulation.

Establishes that a local program shall require that land disturbing activities:

- Maintain post-development runoff rate of flow and runoff characteristics that replicate, as nearly as practicable, the existing predevelopment runoff characteristics and site hydrology.
- If stream channel erosion or localized flooding exists at the site prior to the proposed land disturbing activity, the project shall improve to the extent

practicable upon the contributing share of the existing predevelopment runoff characteristics and site hydrology (lines 883 - 882); PART II [section 66].

10) Establishes procedures and policies regarding design storms, linear development projects, stormwater management facilities construction, stormwater management plan development, and comprehensive watershed stormwater management plans (lines 936 - 1004); PART II [sections 73, 76, 85, 93, and 96].

11) Establishes within Part III a policy statement regarding the Board's authority to authorize a locality to administer a qualifying local program if the Board has deemed such program consistent with the Virginia Stormwater Management Act and these regulations and notes that this part sets forth the minimum criteria and ordinance requirements for the Board to make such a determination which include but are not limited to administration, plan review, issuance of coverage under the General Virginia Stormwater Management Program (VSMP) Permit for Discharges of Stormwater from Construction Activities, inspection, and enforcement (lines 1021 - 1032); PART IIIA [section 102].

12) Establishes that all qualifying local programs shall require compliance with the provisions of Part II unless an exception is granted and:

- Stipulates that when a locality operating a qualifying local program has adopted requirements more stringent than those imposed by this chapter or implemented a comprehensive stormwater management plan, the Department shall consider such requirements in its review of state projects within that locality.
- Clarifies that nothing in this part shall be construed as authorizing a locality to regulate, or to require prior approval by the locality for, a state project (lines 1034 - 1044); PART IIIA [section 104].

13) Specifies the key components of a qualifying local program, such as plan approval, inspections, or enforcement and requires an ordinance to embody those provisions (lines 1046 - 1068); PART IIIA [section 106]

14) Specifies the required components of a stormwater management plan and establishes review and approval/ disapproval timelines and processes. Also allows a qualifying local program to accept an initial stormwater management plan for review and approval when it is accompanied by an erosion and sediment control plan and preliminary stormwater design for the current and future site work. (lines 1070 - 1164); PART IIIA [section 108]

15) Establishes the requirements and processes through which a qualifying local program may authorize and issue coverage under the Construction general permit (lines 1166 - 1193); PART IIIA [section 112].

16) Sets out the requirements and processes associated with site inspections during the project by the qualifying local program, and of the stormwater management facilities after the project by the operator of the facilities and by the qualifying local program in order to ensure the long term effectiveness of the facilities.

- Establishes that the operator(s) of stormwater management facilities shall be required to conduct inspections in accordance with a recorded inspection schedule and maintenance agreement, or on an annual basis for stormwater management facilities without a recorded inspection schedule and maintenance agreement.
- Establishes that a qualifying local program shall inspect stormwater management facilities on an annual basis or as established by an alternative inspection program that may allow for a less frequent inspection but ensures that the stormwater management facilities are functioning as intended. Each stormwater management facility must be inspected by the qualifying local program or its designee, not to include the owner, at least every five years (lines 1195 - 1230); PART IIIA [section 114].

17) Establishes the basic components of a qualifying local program's enforcement program, requires the qualifying local program to develop policies and procedures that outline the steps to be taken regarding enforcement actions, and establishes a schedule of civil penalties as required by Code. Notes that the Board intends that the civil penalties generally be applied after other enforcement remedies have been unsuccessful, in egregious situations, or for repeat offenders and stipulates that all amounts recovered by a qualifying local program shall be used solely to carry out the qualifying local program's responsibilities pursuant to Part II and Part III of the regulations (lines 1232 - 1265); PART IIIA [section 116].

18) Establishes that in the absence of a qualifying local program, the Department shall administer the local stormwater management program in a locality. Part IIIB specifies the minimum technical criteria for a Department-administered local stormwater management program in accordance with the Virginia Stormwater Management Act, and the standards and criteria established in these regulations by the Board pursuant to its authority under that article. Sections 132 -154 essentially indicate that the Department shall administer a local program in accordance with the policies, procedures, and requirements that were established in Part IIIA for a qualifying local program. One distinction is that the Department will not accept initial stormwater management plans (lines 1342 - 1446); PART IIIB [sections 128, 132, 134, 136, 138, 142, and 154].

19) Establishes that Part IIIC specifies the criteria that the Department will utilize in reviewing a locality's administration of a qualifying local program pursuant to §10.1-603.12 following the Board's approval of such program in accordance with the Virginia Stormwater Management Act and these regulations. It also establishes the processes by which the Board shall periodically review the performance of an approved qualifying local program and address program deficiencies. It specifies that

the Department shall review each Board-approved qualifying local program once every five years on a review schedule approved by the Board. The Department may review a qualifying local program on a more frequent basis if deemed necessary (lines 1448 - 1485); PART IIIC [sections 156 and 157].

20) Specifies the timelines, requirements and procedures, including application components, that the Board will utilize to authorize a locality to administer a qualifying local program and establishes the conditions under which the Department would administer a local program. Stipulates that any locality seeking authorization to administer a qualifying local program must be administering an Erosion and Sediment Control program that has been found by the Board to be consistent or conditionally consistent with the Erosion and Sediment Control Law, § 10.1-560 et seq. necessary (lines 1487 - 1547); PART IIID [sections 158 and 159].

21) Specifies that the Code authorizes the establishment of a statewide fee schedule for stormwater management and state agency projects and notes that this part establishes the fee assessment and the collection and distribution systems for those fees; PART XIII (sections 700 through 830).

Fees were established based on project acreage and account for time and costs associated with plan review, inspections, travel, compliance/ enforcement, technical assistance, and administration/ permit issuance.

In most cases fees went up. In a few cases, such as in some of the MS4 fees they went down. We inherited the original fees from DEQ so we can not substantiate how they were developed. However, our process was based on DCR's true cost estimates that were corroborated by a number of localities. The fees represent on the construction side, 100% of the locality costs with DCR's overhead added on so that a 70%/ 30% split of the fees as authorized by the Code could be maintained without diminishing a locality's revenue. Let me remind you that fees are the only source of revenue for the state for the stormwater program.

- The following fees apply:
 - All persons seeking coverage of a MS4 system under a new permit shall pay the fee specified under 4VAC50-60-800.
 - All operators who request that an existing MS4 individual permit be modified shall pay the fee specified under 4VAC50-60-810.
 - All persons seeking coverage under the General Permit for Discharges of Stormwater From Construction Activities or a person seeking an Individual Permit for Discharges of Stormwater From Construction Activities shall pay the fee specified under 4VAC50-60-820.
 - All permittees who request modifications to or transfers of their existing registration statement for coverage under a General Permit for Discharges of Stormwater From Construction Activities or of an Individual Permit for Discharges of Stormwater From Construction Activities shall pay the fee specified under 4VAC50-60-825 in

addition to any additional fees necessary pursuant to 4VAC50-60-820 due to an increase in acreage.

- Stipulates that persons who are applicants for an individual VSMP Municipal Separate Storm Sewer System permit as a result of existing permit revocation shall be considered an applicant for a new permit. The fee due shall be as specified under 4VAC50-60-800.
- Stipulates that persons whose coverage under the General Permit for Discharges of Stormwater From Construction Activities has been revoked shall reapply for an Individual Permit for Discharges of Stormwater From Construction Activities. The fee due shall be as specified under 4VAC50-60-820.
- Specifies that permit and permit coverage maintenance fees may apply to each Virginia Stormwater Management Permit (VSMP) permit holder. The fee due shall be as specified under 4VAC50-60-830.

With that overview, let me turn it back to you for public comment Madame Chairman.

PUBLIC COMMENT

Ms. Campbell opened the floor for public comment.

Roy Mills
Virginia Department of Transportation

Good Morning, my name is Roy Mills; I am with the Virginia Department of Transportation and manage the stormwater program for the state transportation system.

I participated in the technical advisory committee and it didn't take long to realize that there were two basically distinct groups on that committee – regulatory and implementation. The regulatory side wanted to make regulations more stringent to enhance our chances of improving our waters and streams. The implementation side was concerned with those who design, contract and maintain these facilities. The initial concept was that we needed to bring the two sides somewhere close to the middle, try to come up with a consensus for a set of regulations that could be moved forward. I'm not sure we ever got that consensus. But at some point in time you have to say, "we've got to move forward with the best that we have." I think that is probably what we are doing here.

Certainly, if this moves forward into the public comment period and the administrative review period, VDOT will make some official comments regarding all the proposals but I wanted to bring up a couple of things this morning that are things we need to consider.

The costs of the fees are not my concern as much as the cost of the BMPs that are going to be required to implement the new requirements. Today's requirements typically see an enhanced retention pond put in as a BMP, something that is fairly easy to construct and

maintain. The new requirements are going to require more stringent BMPs that will require a lot on infiltration practices and if you've been in this business long enough you know that they are hard to maintain and costly to maintain. From VDOT's perspective, that's where I am coming from; there will be a great impact on transportation funds that VDOT has available, our resources, people and money, in order to try to implement these new types of BMPs on our particular projects. I know that for large project developments, such as Wal-Mart sites and 200-household residential developments that have massive land areas, there are opportunities to implement some of these things that are in the new BMP schedules. However, for linear development programs, which is typically the mainstay of VDOT's operations, where we are trying to build roadways on a very limited amount of right-of-way, just enough to get the roadway in and maintain it, I see very limited opportunity to implement these BMPs that are going to be required to meet the new nitrogen and phosphorus reduction requirements.

Again, I have made no formal calculations on what this cost will be but based on my forty-two years of experience in the transportation industry at VDOT I can visualize that it's going to be a major impact on those resources.

If you look at why we have to improve roadways, why we have to improve the transportation corridor – it is generally tied to development. If we didn't have development and if we didn't have people move through the roadways and transportation system we wouldn't have to improve the roadways. I would like to see water quality requirements for the highways that are tied to development. If a developer has to put in a BMP to take care of his development he also has to consider what transportation improvements are going to be needed in that area to also take care of that development and to incorporate those transportation improvements into the BMP that he develops for his particular site plan.

The other issue that I wanted to talk about is the fee schedule. As we have been told, this fee schedule has been established especially for the construction permit fees, to pay for the agency that is implementing the permit to review the plans in preliminary stages, to review in construction stage and to follow up and to make sure that maintenance is being done with maintenance inspections. VDOT is one of the State agencies that submits an annual plan to DCR for approval under the stormwater regulations. Then VDOT implements that program within the agency. We do our own design, reviews, inspections during construction and follow up inspections for maintenance. Much of this fee schedule that has been set forth in the program, which is designed to pay for those types of operations, we already do internally. There would be no additional fee to DCR to oversee the VDOT program. This was brought up at the technical advisory committee meeting and I was told that there would possibly be a separate fee schedule for those agencies that do submit an annual plan and implement their own construction, inspection and design review schedule. I did not see that this had been followed through on and would like this to see it explored as these regulations go forward.

Again, we will make formal written comments at the appropriate time. But again I do see two points that would be a major impact on the transportation infrastructure and I would

hate to be the one to explain to John Q. Public that those transportation funds that the General Assembly fought so hard for last year are now having to be used to implement new environmental requirements as opposed to improving congestion in those local urbanized areas. We would like to see the fee schedule revisited from the standpoint of what actual cost is involved with those agencies that do submit annual plans.

James Patteson
Fairfax County

Hi, I am James Patteson from Fairfax County. I am the Director of Land Development Services for Fairfax County and Deputy of the Department of Public Works and Environmental Services. I am here with Michelle Brickner who served on the technical advisory committee. Michelle is the Assistant Director for Land Development Services for Fairfax County.

The first thing that I want to do is say thank you. Thank you for giving us the opportunity to come here and speak before the Board and thank you very much for allowing Michelle to serve on the TAC.

The other important statement that I want to make is that we definitely have shared goals. Good stewards of our water resources are a value of DCR, of this Board and are a very important value for Fairfax County. We take a lot of pride in Fairfax County in that recently our E&S program was found fully compliant. Our Chesapeake Bay program was reviewed recently and it was stated in a letter from DCR that we had an exemplary program. We are now adopting the final regulations and amendments to our public facilities manual to make sure that the Chesapeake Bay program is fully compliant. We take a lot of pride in our relationship with DCR and take a lot of pride in doing the right thing for the citizens of Fairfax.

I'd like to talk a bit about the current state in Fairfax. You are looking at a community that is mostly built out. The issues we face are infill and redevelopment. They are either turning over older properties to create more developments or they are infilling properties that were currently passed over because of complications with the site (low lying areas, bad soil, etc.) A lot of the developments we look at are very complex and have a lot of stormwater issues associated with them.

Probably the number one issue associated with land development is stormwater runoff, adequate outfall and impacts to adjoining properties. The other thing that is big for Fairfax County is our role and values of environmental stewardship. Our Board has stated that they have developed a twenty-year environmental vision that's a mainstay of our political leadership and of big value within the community. It is interesting that when we do public hearings on our own amendments, the people that come up to testify usually say their name and then it takes them a couple of minutes to go through all their qualifications. So when we adopt regulations we are standing up there as simple civil engineers and we are talking with folks that have a lot of qualifications in hydrology, civil engineering and these types of matters, so they make sure what we do makes sense.

Our goal here is to make sure the stormwater regulations make sense for Fairfax County and that they result in outcomes we all want. We do have a number of concerns with the regulations as they are being developed and Michelle will follow up and talk in more detail what the possible outcomes are for Fairfax County.

One is the policy implications for Fairfax. We have a lot of concerns with wet ponds especially in residential areas. Because of the liabilities, accidents and other things we've had with wet ponds, we've really restricted them in residential areas. That's a possible outcome as we see the regulations playing out in Fairfax County. The other is the nature of infill development and putting a lot of practices on private development. How do we regulate, manage and make sure things are operating on these individual property developments and that they are taking care of them the way they need to?

The next concern is a technical concern. We want to make sure that the design practices and the methodologies make sense and that there is science behind what the requirements are and that they will actually result in the outcomes that we want. Tied to that are the other regulatory implications. If the county is going to be held accountable for certain outcomes through our MS4 permit we need to make sure the regulations we put in for land development services allow us to achieve those outcomes. How does what we are doing with the stormwater regulations tie into the MS4 permit?

Our concerns regarding costs and resources are similar to the comments from VDOT. Mr. Maitland expressed concern that the fees may be too high; we are worried that the fees may not be enough. When you look within Fairfax County, what the expectations the state is going to have when they come in and audit us and look at how we are running the program. We anticipate doing a little more review. What are the costs going to be for us and what are the resources that we are going to have in place to meet the State's expectations of running an effective program?

Timing is also an important factor. The eighteen months that we will have to get the program in place, get it approved by the state, adopt the regulations and go through the regulatory amendment process within Fairfax County; are we going to be able to accomplish this within the timeframe?

Michelle Brickner
Assistant Director for Land Services
Fairfax County

Good Morning. My name is Michelle Brickner. I am with Fairfax County's DPWES. Fairfax County is a member of the Virginia Municipal Stormwater Association, which was introduced to you yesterday by Chris Pomeroy during the MS4 General Permit discussions. I would also like to mention that I was an active member of the TAC for these regulations having attended just about every meeting.

I would like to add some specifics to the overview given by James Patteson this morning and yesterday by Chris Pomeroy in his testimony on behalf of VMSA.

But first I would like to thank the staff of DCR and acknowledge their efforts in tackling such a complex matter that generates very diverse viewpoints, and their willingness to address a number of the concerns expressed by the TAC. Concerns do remain, however.

As Chris Pomeroy pointed out yesterday, in our view the NOIRA did not address the extent to which the technical criteria were to be revised. The general understanding going into the TAC was that the regulations were going to be amended to address the administrative issues associated with the delegation of the permitting authority. However, the effort has turned into a major shift in approach to stormwater management, particularly with respect to water quality requirements. I believe that the composition of the TAC and the time allotted to the process have not provided sufficient scrutiny and consideration of the changes to the technical criteria. Examples of outstanding issues that I am concerned about include:

- The fact that the September 13th draft before you contains technical data that was not included in drafts deliberated on by the TAC. In addition, the latest draft relies on referenced spreadsheets for compliance calculations, but these spreadsheets have not been reviewed by the TAC. We had been told that we would have to trust that issues relating to the calculation of compliance with the water quality criteria would be dealt with in upcoming amendments to the VA Stormwater Handbook, which caused several TAC members, including me, a lot of concern. Now information regarding compliance verification, the very issue that we were concerned about, has been added to this latest draft without our review and input.
- Another concern is that the draft regulations include the establishment of specific phosphorous and nitrogen loading limitations, but both the methodology proposed to calculate compliance and the purported effectiveness of the facilities to be used are unproven. We are concerned about the lack of data to verify the consistent, long term effectiveness of the facilities being promoted and the ability of the proposed methodology to reliably predict achievement of the required loading limits is questionable. I believe it would be a mistake to adopt specific loading limitations and create the expectation of their achievement without a verified way to accurately and consistently judge compliance and without assurance that compliance is achievable with today's technology.
- The last concern I want to mention is that a major component of being able to achieve the loading requirements is to allow the effective imperviousness of a proposed development to be reduced if such practices as on-lot soil amendments and rain gardens, rain barrels, and disconnected impervious surfaces are utilized. The long-term effectiveness of these practices is unproven. In addition, there is a tremendous maintenance and enforcement burden associated with these types of facilities. Imagine trying to monitor homeowners and businesses to make sure they don't decide to connect their

down spouts to an inlet, that they discharge their rain barrels appropriately and maintain their rain gardens. As stated by Chris Pomeroy yesterday, we are concerned that we are transitioning too quickly from fledgling programs to advanced programs without addressing the many budgetary, enforcement and technical challenges being created.

For the reasons I have outlined, I would respectfully submit to the Board that the draft regulations are not ready to be published for public comment and that instead the amendments would benefit from additional work by the TAC and consensus building with stakeholders, including active engagement of engineering professionals in validating that the proposed loading requirements can be achieved and the reliability of the compliance methodology.

Thank you for this opportunity to present my concerns.

Jeff Perry
Environmental and Engineering Manager
Department of Public Works
Henrico County

Thank you for the opportunity to speak to you today. I was a member of the TAC as well.

Henrico, like Fairfax, at this time does not feel the proposed regulations should move forward. As a locality that ultimately has the responsibility for implementing these regulations we still have some concern.

Our first concern begins with the NOIRA itself. We believe the proposed regulations exceed the authority proposed in the NOIRA. The proposed language goes beyond housekeeping changes by creating new requirements and establishing new stormwater discharge standards. Only within this past week have the TAC members been e-mailed these latest regulations, and major changes have occurred since our last TAC meeting.

One of our concerns, first and foremost, is that the committee really didn't look at real development projects. Until you really take the criteria and sit down and look at development plans, only then can you really begin to realize the ramifications of those criteria. We did that. Application of proposed stormwater quality criteria were applied to several projects. Actually, they resulted in less stormwater treatment and that was a real concern. One of those concerns was the excessive credit that was given to for an LID, if you look at what's proposed in the regulations for LID credits and actually sit down and apply it to a development projects you actually had less water quality. We had a site where we had a BMP, a 65% wet pond, and when we applied LID credit to that site, and without changing the footprint, the wet pond went away. No longer did you have stormwater quality required on that site. On a site, that under the old standards would have required a large wet pond to achieve water quality. We think you are stepping back

quality not going forward. Until you actually apply the criteria to real life situations you are not going to know if they would work. I don't think the committee has had the time to do that and this is a major problem.

At the last TAC meeting, I pointed out that when we were going from 30% to 55% imperviousness; we have less of a removal requirement under this redevelopment. Changes were made and we are seeing them for the first time and although there was an attempt to change those regulations there is still a large loophole there. I don't think the regulations should go out with that loophole. I think development will walk right through the loophole. It is a concern for the environment; it is a concern what needs to be addressed.

In addition, specific BMP designs are referenced in the regulations and no designs are provided and any reference to the handbook has been removed since our last draft. Without this information, the impact of the proposed regulations cannot be determined.

Naturally, we have many of the concerns that Fairfax does. We have concerns about wet ponds in subdivisions. We have those same liability issues. We have real concern about rain gardens and some of the other LID and other small BMPs on individual lots. Just the magnitude of it, when you think of Henrico County with 2,000 building permits a year, how do you go out and inspect those?

Our concerns about fees are different than those expressed by Vice Chair Maitland. I will apologize to DCR upfront; our concern is with the 30 percent. I've mentioned this before. As a locality we estimate that we are going to take in \$600,000 of proposed fees per year. Basically, the locality is going to take in \$420,000 and DCR will take in \$180,000. We are going to review the plans, do all the inspections, do all the maintenance and we are going to send 30% of the money for administration to DCR. When you look at \$180,000, we are paying for two people to administer our program. I would rather have the money in the locality that needs to do the work.

Once again, thank you very much for your time, DCR did do a great job and I can't say enough. This is quite an undertaking, however, if you go back to my original comment, I'm not sure it was an undertaking that should have taken place. When you go back to the NOIRA, I don't think anyone thought we'd be going back and making wholesale changes to the entire stormwater regulations. I'm not sure we had the right committee for that.

Bill Street
James River Association

Thank you again for the opportunity to speak with you on what I consider very very important regulations. I spoke to you yesterday about the MS4 regulations. These are components of Virginia's overall stormwater management program and they all need to work together. We have heard some comments that certain parts aren't completed yet and there are additional parts that need to be worked on. It is important to keep that in mind that this is an overall puzzle and these are pieces and there are other pieces that also need to fall into place.

I think everyone recognizes that we need to do better and go beyond our current practices on stormwater management in protecting our streams, rivers and Chesapeake Bay. We've heard documentation that pollution levels are rising from developments and outpacing the cleanup efforts for the Chesapeake Bay and certainly the James River and Virginia's other rivers.

We need to go beyond where we are today. At the same time we are losing our local streams and creeks as well. This is a local issue as much it is a larger picture issue and I'd like to commend DCR and the work that they have done. I think the amount of time that the TAC has spent on these regulations and the amount of discussion we had was pretty remarkable relative to other processes I have been through. I think the open mindedness, the leadership that was demonstrated in helping a very innovative but I think practical approach, particularly with the work quality, we're very supportive of it. It sets performance measures and provides the methodology that allows flexibility in reaching those performance measures. And those performance measures are tied to the tributary strategy level and implementation. It doesn't prescribe a certain way to get there but says this is what our rivers and Chesapeake Bay need. This is what we are going for and here's the methodology to figure out what makes sense on your site to reach that. I think that makes a lot of sense and I think it is a huge step forward.

Now, there may be some tweaks needed, but through the involvement of the Center for Watershed Protection this process has incorporated the best available science, so much better than any other stormwater regulations that have been developed to date have done. It is really a very strong statement on DCR's and the State's commitment to addressing these issues. As I mentioned, provide the flexibility particularly with the low impact development techniques. Everyone has said we need to encourage these approaches and we need to provide the credit, we need to be able to quantify the benefits that we derive from these so that there an incentive for developers to use these types of techniques and this methodology incorporates the best available science to do that. Can that be improved? Of course, because we are learning more. This is still somewhat young science, although over the past ten to twenty years we have made some significant progress that's allowed us to have this science and technical foundation for this approach.

I would just voice our support and strong endorsement of this approach. We worked closely not only within the TAC but with conservation groups, The Chesapeake Bay Foundation, Southern Environmental Law Center, Friends of the Rappahannock, and The Nature Conservancy in deriving our comments here today.

We also look forward to continuing to work with DCR on the water quantity side. The key aspects of these regulations from the environment's standpoint and from that of our waters are both the water quality and quantity. Everyday, our streams are hit with the increased volume and velocity of runoff that comes from our developed areas and so we need to not only address the water quality and pollution load going with those but also the downstream erosion and flooding that occurs as a result of those. We need to make sure our streams are adequately protected. We look forward to clarifying the criteria that are

needed to achieve protections of our streams and our rivers. The requirements that are in existence today in the current regulations provide the same requirements that development replicate the hydrology to the best amount possible. If there are flooding and erosion problems, then that it actually improve upon those. We need to better define what that means to provide greater consistency across the state and how that is implemented. I think we've heard today where a number of jurisdictions actually have different opinions on how these regulations will influence water quality. Some think it unattainable and some think it doesn't go far enough. I think that shows that we need to get consistency across the state on how these are achieved and implemented so I think we need some additional clarification on this.

Thank you for your time and your efforts on these regulations. We will also be submitting written comments later as we continue to work on these and provide additional clarification.

Joe Lerch
Chesapeake Bay Foundation

Chairwoman Campbell, members of the Board. I am Joe Lerch, Virginia Senior Land Planner for the Chesapeake Bay Foundation and I also participated as a member of the technical advisory committee.

I want to say that CBF offers our strong support for this set of draft regulations, particularly the technical criteria that were outlined by DCR in the presentation. This approach represents an innovative and practical means for reducing polluted runoff by requiring limits on nutrient pollution through a design-based standard that provides incentives for developers to reduce impervious cover, infiltrate stormwater and harvest rainwater.

Impervious cover and all the things I just mentioned are more commonly known as LID. Maybe we should come up with another moniker such as environmental site design, which would more appropriately describe that.

These techniques represent an improved model for land planning and design that seeks to reduce the volume of polluted runoff entering out waterways. All members of the TAC played an integral part in developing these criteria, of course none of this would have been possible without the significant import of staff time, guidance, dedication and expertise of the DCR staff as well as the Center for Watershed Protection.

As these regulations move forward, we will support additional refinement that clarifies improvements in both quality and quantity of stormwater runoff. As a member of the TAC, I want to assure you that all of these issues were deliberated in a participatory process, a process that gave due consideration to the various stakeholders' concerns regarding implementation costs and feasibility. For example, the issue was brought before you earlier today about infill development. When we looked at this, concerns were brought forth about meeting this cost for standard phosphorus and nitrogen in the

infill area being developed. The answer was to apply a standard for these previously developed lands that still achieves the reduction in nitrogen pollution while accommodating the anticipated growth. In specific regards to cost, it was mentioned in comments yesterday that stormwater represents only 17% of the pollution entering the Bay and yet the tributary strategies attribute 70% of the costs for reducing pollutant loads to stormwater. Let me first point out as Mr. Dowling did earlier today, that the recently released EPA Inspector General Report showed that over the last twenty years we've actually seen a reduction in loading from municipal and agriculture while our loads from stormwater have actually increased. Secondly, any discussion of cost must also include an analysis of the economic benefits of clean water. For example, there is a December 2005 study that was put out by the Virginia Institute of Marine Science that found that Virginia saltwater and recreational fisheries combine for an annual revenue of nearly \$2 billion dollars. This includes sales, income and payroll taxes and they employ over 13,000 workers. CBF can make available other examples but as we move forward in this process I think it is important to note those economic benefits of clean water as well as the costs.

In closing, I want to say that CBF supported the landmark 2004 legislation that consolidated Virginia stormwater management under the Soil and Water Conservation Board authorizing you to establish these regulations that you are considering this morning. I will note that the legislation introduced by the Secretary of Natural Resources Preston Bryant, when he was a member of the House of Delegates, was well supported by the various stakeholders and did not receive a single negative vote on its way to being signed into law by Governor Warner. Therefore, CBF supports the final journey of these regulations as a means to our commitment to clear water and we will continue to be involved in the process as we move forward.

Chris Pomeroy
Virginia Municipal Stormwater Association

Madame Chair, members of the Board, Good Morning. Just a couple of brief remarks on behalf of the Municipal Stormwater Association.

Obviously, this is a far-reaching and very important regulation and it is important to get it right. The draft regulations I think were made available, the dates I heard mentioned this morning were September 13 and September 19, with major new pieces in the draft that was described this morning. That seems to me to present challenges, I suspect for everyone, in understanding the importance of these regulations.

You've heard this morning from Fairfax and Henrico County and I think that is very interesting. Here we have two localities known throughout the state; they've won national awards for effective management and first class public facilities of all kinds. Both are TAC participants, they want to see success and want to work with you. Mr. Dowling seemed to express some concerns with statutory limitations that impeded your ability to develop this regulation as well as you would have liked to. Perhaps with the General Assembly just a few months away that's something that can be fixed. I was just

struck and frankly shocked by the type of technical information that Mr. Perry from Henrico County presented today that when applied to real life situations, water quality benefits actually went down. Unless the Henrico calculations were just wrong that's a real serious situation. Does the Board really want to put out a regulation that would reduce water quality in these test cases or is that the kind of thing we should stop and get right before we move on?

Despite the comments of the last couple of folks that came before me, I don't think any one would really want to march on with a program that leads to less water quality protection. It would be a very awkward situation for the Board, for the Department and all those standing behind you trying to do the right thing and make improvements.

Just listening to the comments today, can we work this out as we move through the public comment period? Rather than making changes on this car that's going 60 miles an hour, in the last stage of the APA process, maybe you ought to take it for a short while, put it in a good garage with your expert mechanics, the experts from the TAC and others that you could bring in and get this thing right before it goes out so that when the public gets a draft they get the one you mean to adopt and their comments are meaningful and the changes aren't made several times as we go and people are commenting on a document that gets published in the register that's been changed in several ways. Their opportunity to see what you are really presenting and asking to adopt are eroded to some extent.

I will close there. Thank you very much for your consideration today. I look forward to working with you, whatever the opportunity is, as this regulation goes forward.

[End of Public Comment Period]

Ms. Campbell turned the meeting over to Mr. Dowling.

Department Recommendations to the Board on Regulatory Action (Presentation by Mr. Dowling)

The next part of this discussion is difficult for me. As I mentioned previously (and as you heard this morning), there are several procedural issues that have been brought into question. These include:

- 1) That our NOIRA may not have clearly expressed our intent to open up Part II and make revisions to the water quality and quantity criteria. I will return to this one.
- 2) That the handbook is not yet available. That is the reason that we have included in the regulation the LID crediting table and form, the EMCs, the BMP efficiency table, etc. since the last Board meeting. However, they still do not contain the BMP design standards that some are requesting before the regulations are released to the public.
- 3) There have been remaining questions whether these regulations are reasonable and achievable. Our preliminary plan reviews and analysis indicate "YES" the

regulations are reasonable, achievable, and protective of the environment, but we would like the opportunity to review more plans.

- 4) Questions about what are the costs. Again, while preliminary estimates seem to show the costs may not be significant, we have not conducted sufficient research to validate or quantify the impacts.

While items 2 through 4 (handbooks, achievability, and costs) can be worked on after the Board proposes the regulations and before they become public, we do have an issue to resolve with #1.

At the very beginning of the TAC, a question was raised regarding the construct of the NOIRA (and whether it authorized us to develop water quality and quantity criteria). At that time, not fully appreciating the true realm of where the regulations were heading, we determined upon discussions with Counsel in the Attorney General’s Office to stay the course. (It was determined that the NOIRA was sufficiently broad and the motion seemed appropriate.) That position was defensible then as it is now but perhaps not the proper decision. It is also our understanding that a challenge has never been made regarding a NOIRA and its construct.

Having said that, this regulatory process has become more controversial, and the issue of the NOIRA has been raised from time to time. These regulations are VERY IMPORTANT and we need to make sure they have a solid under pinning. Further reflection by the Department and discussions with the Attorney General’s Office have lead us to believe that it may be in the best interest of this action to resolve the NOIRA issue before we get further down the road.

Accordingly, as an option/ recommendation for the Board’s consideration and discussion is for the Board to authorize the withdrawal of the Part I, II, and III action and to resubmit a new NOIRA. Let me take a minute and share with you how that might affect the timeline for this regulation.

Regulatory Timelines for the Boards consideration

Timeline for Proposing the Regulation	Timeline for Withdrawing the Action and Resubmitting a new NOIRA	
September 21 st Board authorizes proposed regulation for filing for public comment	September 21 st Board authorizes withdrawal and re-submittal	
	14 days to draft NOIRA	14 days
	14 days DPB	28 days
	7 days SNR	35 days
	No deadline – Governor (14 days?)	49 days
	2 days file	51 days

	19-31 days for Registrar for publishing	70 – 82 days
	30 day (min) public comment	~ 4 months
	Feb. and March – limited activity – General Assembly	6 months
September 07 – May 08 – Work on fiscal analysis, handbook, supporting paperwork and file	April - May - TAC	8 months
	June – Complete TAC and proposed regulations	9 months
	July 08 Board meeting as proposed Concurrent to this process we would be working on the fiscal impacts, handbook and supporting paperwork,	10 months
PROPOSED		
45 days DPB fiscal analysis review		
14 days SNR		12 months
No deadline Governor		13 months
19-31 days for Registrar for publishing		14 months
60 days public comment		16 months
Make Regulation refinements???	EPA review	18 months
FINAL		
Bring final regulations to Board for approval		19 months
~ 3 months (DPB, SNR,		22 months
EPA final approval		24 months

- 1) In that 10 months we would extinguish any potential for a legal challenge of the original NOIRA.
- 2) Make substantial process on the handbook (which might allow for some of the information we added to the regulation to go to the handbook.
- 3) Be able to continue discussions on quantity issues.
- 4) Continue discussions with stakeholders on other potential issues of concern.
- 5) Work on the fiscal impacts of the regulations.

We have drawn motions for both going forward and proposing, as well as for withdrawing and resubmitting. It would be our recommendation for the latter (withdraw and resubmit). This would probably only result in a 2-month difference as we discussed.

As noted in the motion, we have added much more explicit and detailed information as to what the purpose of this new regulatory action is. This would translate into a new NOIRA that would clearly express the intent of the Board to develop water quality and quantity criteria as well as the local program criteria. We would not lose any progress made to date, just build on it.

Part XIII fees would wait in the wings until this action caught up.

However, before you take any action on the motions I will distribute, I want to get a sense from the Board if we are on the right track. For us to begin work on fiscal estimates and certain components of the handbook (if we do not propose a regulation), we want to make sure our approach seems reasonable to the Board.

That was the importance of still presenting the regulation to you today and hearing from the public.

We also need to make sure our motion for the new NOIRA, IF you choose to go that way, is appropriate as it has been drafted with the current proposed regulation in mind.

With that Madame Chairman I turn to you for a discussion on the regulation and how best to proceed.

Ms. Campbell asked if there were any comments from the Office of the Attorney General.

Ms. Andrews commented that the concept of withdrawing and refilling the NOIRA could potentially add a short amount of time to the process but it could add benefit in the way of public notice and more opportunity for input.

Mr. Altizer commented that the Board had heard enough doubts during the public comment period that additional work needs to be done and that he would feel comfortable postponing the decision for a short period of time.

Ms. Campbell opened the floor for a motion.

MOTION: Mr. Altizer

Motion to direct the withdrawal of a Regulatory Action and the associated Notice of Intended Regulation (NOIRA) related to Parts I, II, III of the Board's Virginia Stormwater Management Program (VSMP) Permit Regulations:

The Board authorized the development of a NOIRA related to the Board's Virginia Stormwater Management Program (VSMP) Permit Regulations on July 21, 2005. The Department filed a NOIRA on November 15, 2005, and the NOIRA was published on December 26, 2005. The public comment period on the NOIRA closed on February 24, 2006 during which time the Department held two public meetings. The Department formulated a Technical Advisory Committee (TAC) which held approximately 17 meetings and subcommittee meetings between May 4, 2006 and August 21, 2007. The Department also contracted with the Center for Watershed Protection to assist the Department with water quality recommendations and to determine acceptable nutrient removal requirements based on the best science available. The Department developed draft proposed regulations with the input of the TAC and other technical experts.

However, upon Department review and consideration and with advice from Agency Counsel within the Office of the Attorney General, the Board authorizes the Department to withdraw the existing action related to Parts I, II, and III of the Board's Virginia Stormwater Management Program (VSMP) Permit Regulations, with the intent of filing a revised NOIRA in order to ensure that the intent and scope of the intended regulatory action is clearly communicated to the public.

SECOND: Mr. Maitland

DISCUSSION: None

VOTE: Motion carried unanimously.

Ms. Hansen asked that DCR staff provide the Board with updates throughout the process.

MOTION: Ms. Packard

Motion to authorize and direct the filing of Notice of Intended Regulatory Action (NOIRA) related to Parts I, II, and III of the Board's Virginia Stormwater Management Program (VSMP) Permit Regulations and other associated actions including but not limited to forms revisions and development of incorporated documents:

Whereas, the Board previously authorized the development of a NOIRA on these issues on July 21, 2005, the Department filed a NOIRA on November 15, 2005, the NOIRA was published on December 26, 2005, and the public comment period on the NOIRA closed on February 24, 2006 during which time the Department held two public meetings; and

Whereas, the Department formulated a Technical Advisory Committee (TAC) which held approximately 17 meetings and subcommittee meetings between May 4, 2006 and August 21, 2007, the Department contracted with the Center for Watershed Protection to assist the Department with water quality recommendations and to determine acceptable nutrient removal requirements based on the best science available, and the Department developed draft proposed regulations with the input of the TAC and other technical experts; and

Whereas, the Board withdrew this regulatory action on September 21, 2007 with the intent of filing a revised NOIRA to ensure that the intent and scope of authority of this regulatory action is clearly communicated to the public;

Now therefore be it resolved that the Board authorizes the Director of the Department of Conservation and Recreation and the Departmental Regulatory Coordinator to prepare and submit a new NOIRA that clearly delineates the Board's intent to consider changes

and solicit recommendations related to the Board's Virginia Stormwater Management Program (VSMP) Permit Regulations including, but not limited to:

- 1) Amendments, deletions, or additions to Part I (Definitions, Purpose, and Applicability)
- 2) Amendments, deletions, or additions to Part II (Stormwater Management Program Technical Criteria) related to:
 - a. Development of water quality and quantity technical criteria, including but not limited to modifications to performance-based and technology-based standards;
 - b. Determination of acceptable BMPs for necessary pollutant removals to address water quality;
 - c. Establishment of phosphorus and nitrogen load limits based on Tributary Strategies or other scientifically-based reduction strategies;
 - d. Specification of low impact development crediting strategies;
 - e. Development of revised flow-weighted mean concentrations related to site imperviousness values;
 - f. Development of strategies for onsite and offsite controls including comprehensive watershed plans or other practices and controls generally recognized as controlling stormwater quantity and quality;
 - g. Allowance for off-site controls financed through the use of pro-rata fees by localities; and
 - h. Development of procedures to address TMDL wasteload allocations.
- 3) Amendments, deletions, or additions to Part III (Local Programs) related to local program criteria and Board processes and procedures for authorizing a locality or the Department to administer a local program, including but not limited to:
 - a. Establishment of technical criteria for a local program, administrative requirements, stormwater plan review and approval procedures including stormwater management facility right-of-access and maintenance agreement requirements, VSMP General Permit coverage requirements, inspection procedures and requirements, program enforcement authorities including a Schedule of Civil Penalties, hearing procedures, exceptions processes, stormwater management facility maintenance requirements, and reporting and record keeping requirements.
 - b. The modifications to Part III shall also include procedures for the review of local programs as well as procedures and requirements for local program authorization by the Board to administer a stormwater management program.
- 4) Other technical amendments, including those to forms, documents or other materials, necessary to clarify the regulations.

As part of the process, and recognizing the significant work that has already been done to advance these regulations, the Board authorizes the Department to proceed through the public comment period after publication of the NOIRA in the Virginia Register of Regulations without holding a public meeting unless the Director of the Department determines that such a meeting should be held. The Board further authorizes: (1) the Director to establish a Technical Advisory Committee to make recommendations to the

Director and the Board on potential regulatory changes; (2) the Department to hold other stakeholder meetings as it deems necessary; (3) the Department to prepare draft proposed regulations for the Board's review and consideration; and (4) the Department, in developing its draft proposed regulations, to fully consider all of the work and input that has already been undertaken relating to these regulations since the Department published the first NOIRA.

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 Public Participation Procedures, the Governor's Executive Order 36 (2006) on the "Development and Review of Regulations Proposed by State Agencies", and other technical rulemaking protocols.

This authorization extends to, but is not limited to, the drafting and filing of the NOIRA, the holding of public meetings at the discretion of the Director, and the development of the draft proposed regulations and other necessary documents and documentation as well as coordination necessary to gain approvals from the Department of Planning and Budget, the Secretary of Natural Resources, the Governor, the Attorney General, the Virginia Registrar of Regulations, and the U.S. Environmental Protection Agency.

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

SECOND: Mr. Maitland

DISCUSSION: None

VOTE: Motion carried unanimously.

Ms. Campbell, on behalf of the Board, thanked staff and everyone associated with the process for their work. Ms. Campbell noted that the process had been a challenging as well as a learning process.

Ms. Campbell turned the floor over to Mr. Ken Carter from NRCS to discuss with the Board the number of districts that had paid rent and how the rent will be calculated in the future. Mr. Carter addressed the issues and concerns of Board members related to the moving and closing of some district offices.

Adjourn

There being no further business, the meeting was adjourned.

Respectfully submitted,

Linda S. Campbell
Chair

Joseph H. Maroon
Director

Attachment #1

**Department of Conservation and Recreation
Report to the Virginia Soil & Water Conservation Board
September 20, 2007**

1. DCR/SWCD Operational Funding:

All 47 SWCDs were issued a grant agreement with DCR in late May, 2007 for Operational funding this fiscal year ('08). Each has returned a fully endorsed agreement to their CDC and all were issued an initial quarterly disbursement during late July and August. Second quarter disbursements will be issued during November. Third quarter disbursements may be expected to be issued during February. Final disbursements will be issued in late April and early May (2008).

This fiscal year (FY08), operational funding for all districts totals \$4,313,210. The total amount reflects an increase about FY07 operational funding and provides a slight overall increase above the previous peak funding level experienced by districts in FY01 (\$4,301,000).

2. Employee Development

The conservation partners continue to work through the "JED" -Joint Employee Development system which relies on 4 regional teams (coordinated through a separate state level JED team) to address training and development of SWCD and other partner agency field staff. The state level JED team has been meeting face to face, or through conference calls roughly every other month since last August. The group recently held a conference call on September 10th and has scheduled the next team meeting for January 16th, 2008 at the DOF state office in Charlottesville.

The short course "Conservation Selling Skills" was delivered by professional trainer and consultant Chuck Hitzemann on May 2nd and 3rd, 2007. Plans are underway to repeat the course this fall on November 7th and 8th at the Dorey Park facility east of Richmond. A registration announcement with further course details will be issued this month. Sufficient enrollment will be the determining factor for course delivery once registration ends. Broader training needs continue to be addressed regionally through the 4 regional JED teams.

3. SWCD Dams:

The SWCD dam owner work group continues to meet and work on specific dam issues among districts. The last meeting was held on August 30th, 2007. The group primarily focused on three topics: 1) expectations of USDA once the federal interest is fulfilled 2) The web based SWCD dam resource and training information posted on the DCR/SWC web site 3) Proposed changes to Virginia's Dam Safety regulations currently open for public comment. Attendance and participation by the group continues to be very good with 11 of the 12 SWCDs owning dams having one or more representatives present for the August 30th meeting. Now that most of the major training needs of the group have been addressed, a quarterly meeting frequency will continue. Of the roughly 4 meetings

per year, one will address Emergency Action Plans, another will address routine maintenance of district dams and the remaining two meetings will address priority topics identified by the group. The group will meet again on January 24, 2008.

4. Agricultural BMP Cost-Share Program:

This program year (2008) SWCDs have available eighteen and a half million dollars in funding statewide for implementation of agricultural BMPs. This amount is comprised of over twelve and a half million dollars for cost-share implementation of base, priority and contract agricultural BMPs, funding for targeted TMDL agricultural conservation practices, and the second year of contract funding for three year contracts.

DCR's Agricultural BMP Cost-Share Program Technical Advisory Committee (TAC) consists of stakeholder representatives from agricultural organizations throughout the state. The TAC met August 9th at the DOF headquarters building in Charlottesville. One agenda item included a discussion of the TACS decision-making process and methods to keep the committee from returning to consider the same item numerous times. This effort should assist the TAC in becoming more efficient and therefore be able to provide input on a larger number of items throughout the year. The TAC will meet again on October 18th.

With regards to the longer term approach to the collection and administration of program data, the needs of DCR and SWCDs will be assessed through an independent contractor/consultant to determine the most appropriate direction to take for the program in the years to follow. Closure on the selection of the independent contractor should be reached within the next two weeks. Work by the contractor should begin shortly thereafter. Based on the outcomes of the analysis and contractor recommendations, replacement or enhancement of the existing program will be pursued.

5. Conservation Reserve Enhancement Program (CREP):

CREP implementation data from the last program year (2007) indicates that statewide one hundred and ninety-six CREP participants restored over one thousand four hundred and eight acres of buffers that protected over one hundred and ninety seven miles of stream bank. Several new CREP perpetual conservation easements have been recorded bring the total CREP easement acreage to three hundred and fourteen acres with another four hundred and thirty-six acres in process to record.

6. Water Quality Improvement Fund (WQIF):

On August 27, 2007, DCR announced the intention to award 37 projects for a total of \$3,550,000 in funding as a result of the 2007 WQIP Request for Proposals. The WQIP funding is being matched by \$4,580,000 from other sources. These projects are estimated to result in annual nonpoint source reductions of 135,130 pounds of nitrogen, 8,580 pounds of phosphorus, 7,960 tons of sediment, and 1.56E +13 fecal colony forming units from Virginia's waterways. Seven (7) soil and water conservation districts submitted strong proposals that were selected for over \$500,000 in funding. These districts are Culpeper SWCD, Headwaters SWCD, Northern Virginia SWCD, Piedmont SWCD, Prince William SWCD, Thomas Jefferson SWCD, and Holston River SWCD. The

SWCD projects are primarily addressing stream restoration and stabilization, implementation of residential septic programs targeted to TMDL stream segments, and demonstrating BMPs for small acreage horse facilities. Descriptions for all projects selected for grant awards are posted to the DCR web site:

<http://www.dcr.virginia.gov/soil & water/wqia.shtml>.

7. Erosion and Sediment Control Program:

The Virginia Soil and Water Conservation Board (VSWCB) adopted revised local program review criteria effective July 1, 2004. Utilizing the revised review process, DCR staff has completed 86 local program reviews as of June 30, 2007. The remaining 79 local programs are scheduled for review in PY08 and PY09. As of July 2007, the VSWCB has recognized 57 local programs as being consistent with law and regulations. The VSWCB will recognize an additional 18 localities as being consistent with the law and regulations at the September 20-21 meeting. Local programs reviewed but not found consistent with the law and regulations are required to develop and implement corrective action agreements. These programs are then considered as being conditionally consistent with corrective action pending.

8. Stormwater Management Program:

DCR staff continues to receive and process registration statements for the General Permit for Discharges of Stormwater from Construction Activities. As of September 14, 2007, staff has reviewed and issued permit coverage to 450 projects. In PY07, permit coverage was issued to 2,707 projects.

The VA Soil and Water Conservation Board will be considering for approval the proposed draft regulations for the state's consolidated stormwater program at their September 20-21, 2007 meeting. The regulations include water quality and water quantity criteria, local program administration requirements and a statewide permit fee structure

9. Nutrient Management Program Activities:

Efforts are underway to revise the nutrient management plan (NMP) writing software to include a new "go-to-the-field" nutrient management report that is intended to be included at the front of all NMPs. The summary report will provide only what the farmer needs to apply during the year to fields regarding fertilizer and/or organic nutrients. The overall NMP will still contain the various details used to develop individual recommendations for nutrient application to each field for each individual crop, whereas the field report will contain only the application rates of the recommended nutrients, season of application and other key summarized information. This summary report should simplify use of the NMP.

Earlier this month a meeting was held in Chatham to bring 5 districts and 6 private sector nutrient management planners together to learn more about the plan writing needs of those districts and the capability of the private planners to meet those needs. After a brief outline of the cost-share practices that require NMPs and discussion of the current planning activity, each district was given an opportunity to host each planner and have a one-on-one meeting for each to get to know the other. Follow-up to this effort will be a

key point to continue this positive step towards adding conservation practices using nutrient management.

Attachment #2

NRCS REPORT
VA Soil & Water Conservation Board Meeting
September 20, 2007
Library of Virginia
Richmond, VA

WATERSHED OPERATIONS

Buena Vista Watershed – A construction contract has been awarded to DLB, Inc., from Hillsville, VA for the construction of two bridge upgrades in Buena Vista. The contractor will begin work in September and complete the project by December. The contract price was \$860,165 for this phase of the project.

Land Treatment Watersheds - NRCS has completed implementation of 76 long term contracts with landowners in targeted watersheds in Virginia during 2007. NRCS will continue to provide assistance to implement conservation practices for existing long term contracts in eight land treatment watersheds in Virginia. No new contracts or agreements will be signed due to the zeroing out of watershed funds for FY-07.

WATERSHED PLANNING AND SURVEYS

NRCS has developed a watershed plan for the North Fork Powell River Watershed in Lee County. The plan is awaiting a decision from NRCS Chief Lancaster regarding the number of sites to be completed by NRCS. The plan will be submitted for authorization when it is completed. The plan addresses water quality issues associated with abandoned mines and acid mine drainage. The project sponsors are the Daniel Boone SWCD, Lee County, and the Virginia Department of Mines, Minerals, and Energy.

Congress has restricted funding for initiating planning on new projects. Therefore, NRCS in Virginia will not submit any new planning requests in FY-08 for the following two planning applications: Town of Glasgow in Rockbridge County; Gross Creek in the Town of Farmville.

DAM REHABILITATION

South River Site 23 (Robinson Hollow) in Augusta County – Construction is almost complete on the rehabilitation of South River Site 23. The riser has been replaced, the two auxiliary spillways have been hardened with articulated

concrete blocks and a concrete parapet wall has been constructed in order to raise the dam about 4 feet. Construction will be completed by the end of September. Augusta County is administering the contract and NRCS staff is providing engineering and construction inspection services.

South River Site 26 (Inch Branch) in Augusta County – NRCS has awarded a contract for the rehabilitation of the Inch Branch Dam. The contract price was \$640,035. The auxiliary spillway will be widened by 50 feet, the riser will be replaced, a new access road built, and all disturbed areas will be seeded and mulched. A federal contract will be used to implement this construction project. It will be completed in 2008.

South River Site 25 (Toms Branch) in Augusta County – NRCS has initiated the final design process of Toms Branch dam rehabilitation. An outside consultant will be utilized. The design should be completed by the end of FY-08. Construction is scheduled for FY-09.

Marrowbone Creek Dam No. 1 in Henry County – NRCS has completed minor repairs to the Marrowbone Creek dam. Repairs were made on some cracks that developed in the roller compacted concrete work that was completed on this rehabilitation project. The total repair cost was \$27,000.

Pohick Creek Site 4 (Royal Lake) in Fairfax County – Fairfax County has hired an engineering firm to complete the design of this rehabilitation project. NRCS is doing the engineering review and consultation. The final design will be completed in September. A project agreement obligating the local and federal funds will be signed in September. The NRCS share of this project is \$2,033,000. A local contract will be administered by Fairfax County for the construction that will occur in FY-08.

Pohick Creek Site 3 (Woodglen Lake) and Pohick Creek Site 2 (Lake Barton) in Fairfax County – NRCS is working with Fairfax County to develop plans for rehabilitation of Woodglen Lake and Lake Barton. Two consulting firms hired by Fairfax County have completed the hydrology and hydraulics (H&H) reports for the dams. NRCS will utilize the H&H reports to complete the plans and environmental assessments for these dams. The final plans should be completed in FY-08.

New FY-08 Dam Rehabilitation Plans – Requests for planning funds have been submitted in our FY-08 budget requests for the following dams that need rehabilitation:

- Pohick Creek Site 8 in Fairfax County; Huntsman Lake
- Stony Creek Site 9 in Shenandoah County; Lake Laura

New Dam Rehabilitation Applications Received – NRCS now has 14 dam rehabilitation applications that are awaiting planning assistance. NRCS recently

received the following 4 new requests for planning assistance under the Dam Rehabilitation Program. These sites will be assessed and a risk analysis completed for each of them in FY-08.

South River Watershed in Augusta County Site 7; Lake Wilda

South River Watershed in Augusta County Site 19; Waynesboro Nursery Lake

Upper North River Watershed in Augusta County Site 10; Todd Lake

Johns Creek in Craig County; Site 3

OPERATION AND MAINTENANCE AGREEMENTS AND PLANS FOR DAMS

NRCS has contacted all local watershed sponsors to inform them of the NRCS policy to update existing O&M Agreements and O&M Plans every five years. Many of the old agreements have never been updated since they were developed many years ago. NRCS will work closely with the Sponsors to amend the O&M Agreements and bring them up to current criteria. Existing agreements will be amended to include the information needed to maintain, improve, or create mutual understanding of O&M responsibilities.

Several of our watershed dams have reached their evaluated economic life span and the O&M Agreements have expired. NRCS has notified the Sponsors of five dams that they have met their O&M responsibilities with NRCS and that the federal interest is complete. The Sponsors are free to operate and maintain the dams unencumbered by NRCS. However, Sponsors will still have to continue their O&M responsibilities in order to remain in compliance with applicable Federal, State, and local laws, regulations and ordinances. In addition, proper O&M is required in order to be eligible for the Dam Rehabilitation Program in future years.