TENTATIVE AGENDA AND MINIBOOK
STATE WATER CONTROL BOARD MEETING
THURSDAY, SEPTEMBER 22, 2011
AND FRIDAY, SEPTEMBER 23, 2011

House Room D
General Assembly Building
9th and Broad Streets
Richmond, VA 23219

CONVENE - 9:30 A.M. Both Days

			TAB
I.	**Minutes (**August 4, 2011)		A
II.	**Final Regulations**		
	Biosolids Program Regulations (9VAC25-20, 9VAC25-31 and 9VAC25-32)	Zahradka	
	Memorandum and List of TAC Members		B
	Public Comments and Response to Comments		C
	Changes Made Since Proposed Stage		D
	Project 1248 - Text of Amendments		E
	FULL TEXT OF THE BIOSOLIDS MATERIAL IS AVAILABLE AT: http://www.deq.virginia.gov/vpa/publicnotices.html		

[NOTE: BOARD CONSIDERATION OF THE BIOSOLIDS PROGRAM REGULATION ITEM IS EXPECTED TO TAKE THE MAJORITY OF THE FIRST DAY OF THE MEETING. THE REMAINDER OF THE AGENDA MAY BE DELAYED UNTIL THE SECOND DAY OF THE MEETING]

	General VPDES Watershed Permit Regulation for Total Nitrogen and Total Phosporus Discharges in the Chesapeake Bay Watershed (9VAC25-820)	Brockenbrough	F
	Water Quality Management Planning Regulation - FCWSA-Vint Hill WWTP Nitrogen Waste Load Allocation (9VAC25-720-50 C)	Kennedy	G
III.	**Proposed Regulations**		
	General VPDES Permit Regulation for Vehicle Wash Facilities and Laundry Facilities (9VAC25-194)	Daub	H
IV.	**Consent Special Orders (VPDES Permit Program)**	O'Connell	I
	Piedmont Regional Office		
	E.I. DuPont de Nemours and Company (Chesterfield Co.))		
	Omega Protein, Inc. (Northumberland Co.)		
	ROCKTENN CP, LLC (West Point)		
	Timothy D. Ogburn d/b/a/ Dinwiddie Car Wash (Dinwiddie Co.)		
	Tidewater Regional Office		
	Southampton Co. Town of Boykins WTP		
	Valley Regional Office		
	Fluvanna Co. School Board		
V.	**Consent Special Orders (VWP Permit Program/ Wetlands/Ground Water Permit Program)**	O'Connell	J
	Northern Regional Office		
	Four Seasons at Historic Virginia (Prince William Co.)		
	Valley Regional Office		

Charlottesville Albemarle Airport Authority

VI.	**Consent Special Orders (Oil)**	O'Connell	K
	Piedmont Regional Office		
	Kenan Transport (Henrico Co.)		
VII.	**Consent Special Orders (Other)**	O'Connell	L
	Piedmont Regional Office		
	W. Harold Talley II, LLC (Surry Co.)		
	Tidewater Regional Office		
	Duplin Marketing, LLC		
	Valley Regional Office		
	Route 240, LLC (Albemarle Co.)		
VIII.	**Public Forum**		
IX.	**Other Business**		
	Revolving Loan Fund - 2012 Loan Funding List	Gills	M
	Division Director's Report	Davenport	
	Future Meetings (Confirm October 21, December 8-9)		

ADJOURN

NOTE: The Board reserves the right to revise this agenda without notice unless prohibited by law. Revisions to the agenda include, but are not limited to, scheduling changes, additions or deletions. Questions arising as to the latest status of the agenda should be directed to the staff contact listed below.

PUBLIC COMMENTS AT STATE WATER CONTROL BOARD MEETINGS: The Board encourages public participation in the performance of its duties and responsibilities. To this end, the Board has adopted public participation procedures for regulatory action and for case decisions. These procedures establish the times for the public to provide appropriate comment to the Board for its consideration.

For REGULATORY ACTIONS (adoption, amendment or repeal of regulations), public participation is governed by the Administrative Process Act and the Board's Public Participation Guidelines. Public comment is accepted during the Notice of Intended Regulatory Action phase (minimum 30-day comment period) and during the Notice of Public Comment Period on Proposed Regulatory Action (minimum 60-day comment period). Notice of these comment periods is announced in the Virginia Register, by posting to the Department of Environmental Quality and Virginia Regulatory Town Hall web sites and by mail to those on the Regulatory Development Mailing List. The comments received during the announced public comment periods are summarized for the Board and considered by the Board when making a decision on the regulatory action.

For CASE DECISIONS (issuance and amendment of permits), the Board adopts public participation procedures in the individual regulations which establish the permit programs. As a general rule, public comment is accepted on a draft permit for a period of 30 days. If a public hearing is held, there is an additional comment period, usually 45 days, during which the public hearing is held.

In light of these established procedures, the Board accepts public comment on regulatory actions and case decisions, as well as general comments, at Board meetings in accordance with the following:

REGULATORY ACTIONS: Comments on regulatory actions are allowed only when the staff initially presents a regulatory action to the Board for final adoption. At that time, those persons who commented during the public comment period on the proposal are allowed up to 3 minutes to respond to the summary of the comments presented to the Board. Adoption of an emergency regulation is a final adoption for the purposes of this policy. Persons are allowed up to 3 minutes to address the Board on the emergency regulation under consideration.

CASE DECISIONS: Comments on pending case decisions at Board meetings are accepted only when the staff initially presents the pending case decision to the Board for final action. At that time the Board will allow up to 5 minutes for the applicant/owner to make his complete presentation on the pending decision, unless the applicant/owner objects to specific conditions of the decision. In that case, the applicant/owner will be allowed up to 15 minutes to make his complete presentation. The Board will then allow others who commented during the public comment period (i.e., those who commented at the public hearing or during the public comment period) up to 3 minutes to respond to the summary of the prior public comment period presented to the Board. No public comment is allowed on case decisions when a FORMAL HEARING is being held.

POOLING MINUTES: Those persons who commented during the public hearing or public comment period and attend the Board meeting may pool their minutes to allow for a single presentation to the Board that does not exceed the time limitation of 3 minutes times the number of persons pooling minutes, or 15 minutes, whichever is less.

NEW INFORMATION will not be accepted at the meeting. The Board expects comments and information on a regulatory action or pending case decision to be submitted during the established public comment periods. However, the Board recognizes that in rare instances, new information may become available after the close of the public comment period. To provide for consideration of and ensure the appropriate review of this new information, persons who commented during the prior public comment period shall submit the new information to the Department of Environmental Quality (Department) staff contact listed below at least 10 days prior to the Board meeting. The Board's decision will be based on the Department-developed official file and discussions at the Board meeting. In the case of a regulatory action, should the Board or Department decide that the new information was not reasonably available during the prior public comment period, is significant to the Board's decision and should be included in the official file, the Department may announce an additional public comment period in order for all interested persons to have an opportunity to participate.

PUBLIC FORUM: The Board schedules a public forum at each regular meeting to provide an opportunity for citizens to address the Board on matters other than those on the agenda, pending regulatory actions or pending case decisions. Those wishing to address the Board during this time should indicate their desire on the sign-in cards/sheet and limit their presentations to 3 minutes or less.

The Board reserves the right to alter the time limitations set forth in this policy without notice and to ensure comments presented at the meeting conform to this policy.

Department of Environmental Quality Staff Contact: Cindy M. Berndt, Director, Regulatory Affairs, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, Virginia 23218, phone (804) 698-4378; fax (804) 698-4346; e-mail: cindy.berndt@deq.virginia.gov.

Request to Adopt Final Amendments to the Regulations Pertaining to Biosolids: the Virginia Pollution Abatement (VPA) Permit Regulation (9 VAC 25-32-10 et seq.), the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (9VAC25-31-10 et seq.), and the Fees for Permits and Certificates (Fee) Regulation (9VAC25-20-10 et seq.) FULL TEXT OF THE BIOSOLIDS MATERIAL IS AVAILABLE AT: http://www.deq.virginia.gov/vpa/publicnotices.html: At the September 22, 2011 meeting, the staff intends to bring to the Board a request to accept as final, proposed amendments of regulations pertaining to biosolids. The regulatory action includes:

1) the Fees for Permits and Certificates (Fee) Regulation (9VAC25-20-10 et seq.)
2) the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (9VAC25-31-10 et seq.), and
3) the Virginia Pollution Abatement (VPA) Permit Regulation (9 VAC 25-32-10 et seq.)

When the Biosolids Use Regulations (12VAC5-585) were transferred from the State Board of Health to the State Water Control Board in a final exempt action on September 25, 2007, the pertinent sections of the Biosolids Use Regulations were incorporated into the Fee, VPDES and VPA regulations. Only non-substantive changes were made at that time in order to accommodate a transfer in administration only. The current regulatory action is being proposed to address further changes needed following the transfer.

Statutory Authority

The legal basis for the Fees for Permits and Certificates regulation (9 VAC 25-20-10 et seq.), the Virginia Pollutant Discharge Elimination System Permit Regulation (9 VAC 25-31-10 et seq.) and the Virginia Pollution Abatement Permit

Regulation (9 VAC 25-32-10 et seq.) is the State Water Control Law (Chapter 3.1 of Title 62.1 of the Code of Virginia). Virginia Code § 62.1-44.15 authorizes the State Water Control Board to promulgate regulations necessary to carry out its powers and duties. Specifically, §62.1-44.19:3 requires the State Water Control Board to include in regulation certain requirements pertaining to land application of sewage sludge.

Background

On January 1, 2008 the Virginia Department of Environmental Quality (DEQ) assumed regulatory oversight of all land application of treated sewage sludge, commonly referred to as biosolids. This change in oversight of the Biosolids Use Regulations from the Virginia Department of Health (VDH) to DEQ was at the direction of the 2007 General Assembly, which voted to consolidate the regulatory programs so that all persons land applying biosolids would be subject to uniform requirements, and to take advantage of the existing compliance and enforcement structure at DEQ. In addition to directing that DEQ manage the biosolids program, the General Assembly also added additional requirements regarding biosolids permitting and management.

At its September 25, 2007 meeting, the Board voted to adopt as a "final exempt" regulatory action the transfer of the existing substantive content of the VDH Biosolids Use Regulations into the VPA, VPDES, Fee, and Sewage Collection and Treatment (9VAC25-790) regulations. Following this action, DEQ initiated the full regulatory process to address a number of issues. These included outstanding VDH regulatory actions, questions regarding public notice processes, processes to establish appropriate buffers to address health concerns, permit issuance and modification procedures, sampling requirements, nutrient management requirements, animal health issues associated with grazing, and financial assurance procedures.

Also, an expert panel was convened by the Secretary of Health and Human Resources and the Secretary of Natural Resources, pursuant to House Joint Resolution 694 of the 2007 Acts of Assembly, to explore the health and environmental implications of biosolids use. The final report of the panel was published on December 22, 2008 as House Document No. 27. This regulatory action also considered the Panel's report and recommendations.

Notice of Intended Regulatory Action and Technical Advisory Committee

A Notice of Intended Regulatory Action (NOIRA) was published in the Virginia Register of Regulations on June 23, 2008. DEQ utilized the participatory approach by forming an ad hoc technical advisory committee (TAC) that held nine (9) public noticed meetings (October 3, 2008; November 3, 2008; January 9, 2009; February 13, 2009; March 20, 2009; April 24, 2009; May 22, 2009; August 20, 2009; and September 22, 2009); in addition, a financial assurance subcommittee held two (2) meetings on March 11, 2009 and April 21, 2009. A list of the members of the TAC is included as **Attachment A** to this memo.

Proposed Regulation and Public Comment

Based on the input of the TAC, DEQ prepared proposed amendments to the regulations. On December 14, 2009, the Board voted to proceed to public comment and hearing on these proposals. Following Board approval, the Department of Planning and Budget completed an economic impact review on February 19, 2010. The Secretary of Natural Resources granted approval of the proposed regulatory amendments on June 22, 2010, and the Governor approved the amendments on January 14, 2011.

DEQ published the proposed amendments in the Virginia Register on February 28, 2011. A 60 day public comment period followed, ending on April 29, 2011. During the comment period, DEQ hosted four (4) public hearings (Lynchburg on March 31, Henrico on April 5, Bridgewater on April 7, and Bealeton on April 12). Messrs. Shelton Miles and Robert Dunn served as hearing officers.

DEQ received 181 written comments and at the 4 public hearings, 107 oral statements. DEQ staff sorted those comments and extracted individual topics addressed by each commenter, resulting in over 1,100 individual comments. The predominant subject addressed in the comments was buffers (setback distances) from homes, property lines, surface waters and other features. Numerous comments were also received on public notice, sampling and testing, general support and opposition of land application, nutrient management, storage, landowner agreements, and health, among others. While the comments overall were generally split between opposition to and support of biosolids land application, the speakers at the public hearings were predominantly farmers in support of the practice and opposed to more stringent regulation. A complete summary of public comment and DEQ's response to those comments is included as **Attachment B** to this memo.

Final Amendments to the Regulation

In response to public comment, DEQ made additional changes to the proposed amendments. Although not required under public involvement procedures in the Administrative Process Act, DEQ reconvened the TAC after the proposed changes. All original TAC members were invited, although the three citizen members who resigned from the original TAC declined to participate. This TAC meeting was held on June 24, 2011. In response to TAC comments, DEQ made additional changes to the proposed regulation.

The Attorney General's office also reviewed the regulation and suggested other changes which DEQ incorporated into the regulation. The Attorney General is reviewing the final regulatory amendments and a letter of statutory authority is expected prior to the September 22 Board meeting.

The following is a synopsis of the final DEQ modifications regarding selected topics which received a high degree of interest from the public. A comprehensive summary of all changes made to the regulation since proposed is included as **Attachment C** to this memo.

Setback distances from homes and property lines

The topic most discussed by commenters was the buffer, or setback distance, from homes and property lines. In the proposed regulation, DEQ incorporated guidance established for setbacks from homes and property lines into the regulation. This guidance, developed in concert with VDH, established a procedure whereby the standard setback distance from an adjoining occupied dwelling home is 200 feet and 100 feet from a property line. An adjoining resident or landowner can request that the setbacks be doubled in distance to 400 feet from an occupied dwelling and 200 feet from a property line. This extension would be granted "upon request" by the owner or occupant, without a requirement to verify existence of any medical condition.

The primary focus of comments regarding residence and property line setbacks received from farmers, land appliers and wastewater treatment facilities stated that: 1) the length of the setbacks were not scientifically based; 2) the extended setback distance was only established for administrative convenience; 3) the setback procedure did not conform with the consensus of the TAC; 4) the additional setback request should be evaluated on the basis of the purpose of the request instead of being granted upon request; 5) the ability to request a setback extension on the same day as land application potentially presents a significant operational problem to land appliers and farmers; 6) the additional cost of fertilizing the area in the setback is potentially a hardship to farmers and could limit farm productivity; and 7) the increased distance could eliminate some smaller farms from being able to receive biosolids.

The primary focus of comments from citizens concerned about the use of biosolids stated that: 1) the length of the setbacks are not scientifically based; 2) there is no evidence the setback distances are protective of health, resulting in potentially not satisfying a statutory mandate; and 3) some selective studies have indicated odor from biosolids can travel approximately 1500 feet; thus, setbacks should be larger.

While the setback language in the regulation has been clarified, DEQ does not propose significant changes to the residence or property line setback distances. This is due to the fact that the distances and justification for extension to protect public health is based upon guidance from physicians at VDH with experience in evaluating biosolids setback extension requests. The distances proposed by VDH are based upon the science related to transmission of pathogens, with the addition of a safety factor intended to provide an abundance of caution for those persons whose immune systems have been compromised by illness or other medical conditions.

In its 2008 Report to the Governor and the General Assembly (House Document No. 27), the Governor's Expert Panel on Biosolids stated the following:

> *In early discussions, the Panel agreed that addressing the questions surrounding citizen-reported health symptoms should be its highest priority. In the past 18 months, the Panel uncovered no evidence or literature verifying a causal link between biosolids and illness, recognizing current gaps in the science and knowledge surrounding this issue. These gaps could be reduced through highly controlled epidemiological studies relating to health effects of land applied biosolids, and additional efforts to reduce the limitations in quantifying all the chemical and biological constituents in biosolids. While the current scientific evidence does not establish a specific chemical or biological agent cause-effect link between citizen health complaints and the land application of biosolids, the Panel does recognize that some individuals residing in close proximity to biosolids land application sites have reported varied adverse health impacts.*

Regarding odor and health impacts:

> *The Panel recognizes that odors from biosolids could potentially impact human health, well being and property values, but could not confirm such an impact or the extent of such an impact based on the current body of scientific literature and information presented directly to this Panel.*

Historically, VDH responded to reports of adverse health impacts by doubling the setback distances from residences or property lines. VDH did this in conformance with state law and regulations in place at the time. DEQ's proposal to continue the practice of doubling the setback distances, albeit in a different administrative fashion, represents conformity with previous VDH practice and a regulatory precedent that was demonstrated by VDH to be protective of human health and thus statutory requirements. Additionally, DEQ has proposed that odor control plans be required when biosolids are land applied in order to reduce the potential for odor to impact human health.

With respect to the administrative procedure proposed to grant setback extensions upon request, DEQ proposed this procedure based on TAC discussions. When the VDH representative on the TAC suggested all residence and publicly

accessible property line buffers be extended based on the difficulty in ensuring all persons with certain medical conditions were identified, the TAC discussed options to address the time lag necessary to evaluate a newly identified health complaint. The concept of granting a standard buffer extension "upon request" rather than a time consuming and unpredictable evaluation process that potentially affects land application operations was generally agreed upon as a reasonable compromise.

With respect to a buffer extension request received after biosolids has been delivered to the field, DEQ responded to a recommendation from the reconvened TAC and included a limitation on the buffer extension request specifying that any such request must occur to DEQ at least 48 hours prior to the commencement of land application. The request must then be communicated to the permittee at least 24 hours prior to land application, unless a request to extend the buffer is received from VDH. DEQ will add this requirement as a permit special condition that establishes this procedure at the time of permit issuance.

To address concerns voiced regarding setbacks from schools, hospitals and other such facilities DEQ added a minimum setback requirement from these "odor sensitive receptors" (defined in the regulation) to be a minimum of 400 feet. The setback from publicly accessible property lines is proposed to be 200 feet. These setbacks are also based on guidance from VDH.

Concerns were expressed about the cost of fertilizing farmland, the inability to fertilize setback areas and the need to substitute alternative fertilizers for these areas. Although there is a benefit to the use of currently "free" fertilizer, the inability to use biosolids in setback areas is potentially offset by the reduced cost of fertilizer in the areas that do receive biosolids as well as the administration of a standard and predictable setback extension procedure. In addition, some commenters expressed concern that some small fields may be ineligible for biosolids application due to setback distances. It is likely that some areas and farm configurations are not optimally situated to take full advantage of fertilization with biosolids.

Notification

Significant comments were received from the public that notification prior to application needs to be clarified and improved. DEQ made additional changes in response to these comments. Effective notification procedures, particularly at the time of permitting, will facilitate the implementation of the setback extension procedures.

Section 62.1-44.19:3.K. of the Code of Virginia specifies that "at least 100 days prior to commencing land application of sewage sludge at a permitted site, the permit holder shall deliver or cause to be delivered written notification to the chief executive officer or his designee for the local government where the site is located." The procedure for the 100 day notification prior to land application is clarified to be a one-time notification to the locality that may be accomplished when the permit application is received and DEQ notifies the locality of receipt of the permit application.

Section 62.1-44.19:3.K. of the Code of Virginia specifies that "the permit holder shall deliver or cause to be delivered written notification to the Department at least 14 days prior to commencing land application of sewage sludge at a permitted site." The regulatory requirements for this 14-day notification have been made identical to the statutory requirements. The list of other information required with the 14 day notice has been removed, as DEQ has found that in practice, permit holders do not have specific information about pending land application activities at this time. Alternatively, permit holders typically provide a significant amount of general information in order to satisfy the 14 day notice requirement, including a listing of all land application sites in a county, rather than only those where land application would definitely take place.

Because the land appliers will have more complete information nearer the time of land application, and in order to provide a more definitive notification process, DEQ has proposed that the permit holder provide written notification to DEQ and the locality when signs are placed 5 business days prior to land application. This notification will include specific identifying information for the subject sites, including that previously required in the 14 day notice.

DEQ also made changes to the proposed mandatory daily notice prior to land application. The daily notice requirement has been modified to occur no more than 24 hours prior to biosolids being delivered or land application commencing at a permitted site. The notice can only include sites where land application will occur or biosolids will be delivered in the following 24 hours and must also include identification of the biosolids source.

Signage

DEQ received comments that signs identifying a land application site are often inadequately placed. DEQ modified the requirements to state that a sign must always be posted at or near the intersection of the public right of way and the main site access road or driveway to a land application site. If a field is located adjacent to a public right of way, signs shall also be posted along each public road frontage beside the field to be land applied.

Signs must be posted at least 5 business days prior to land application and remain at the site for at least 5 business days following land application.

Most land application sites are private property for which public accessibility is limited. For sites where circumstances of increased public accessibility exist, the regulations specify that alternative posting options can be required. This could include a special condition specifying additional post-application signage requirements to educate the public regarding the access restrictions.

Environmental setback distances

DEQ received many comments voicing concern over the level of environmental protection for surface waters. The setback from surface waters has been modified to be consistent with the state and federal Concentrated Animal Feeding Operations (CAFO) regulations, whereby a 100 ft setback is required unless a 35 ft vegetated buffer is present. A definition for "vegetated buffer" has been added to both the VPA and VPDES regulations that is also consistent with the CAFO regulations. This requirement encourages the establishment of vegetated buffers adjacent to surface waters, which also promotes nutrient reduction goals established by the Chesapeake Bay Watershed Implementation Plan and other Total Maximum Daily Load (TMDL) implementation plans.

In response to comment regarding setbacks from other environmental features, DEQ increased the setback from open sinkholes to 100 ft (consistent with a well). A note has been added that specifies the 50 ft setback from a closed sinkhole can be reduced or waived by DEQ following evaluation by a professional soil scientist.

Other environmental setback language was revised for clarity based on comments related to the use of commonly used terms to identify surface water pathways. The provision for DEQ to increase any setback based on site-specific conditions remains.

Slope restrictions

DEQ received numerous comments that biosolids could effectively be used to help stabilize slopes in excess of 15%. In response, DEQ added a provision specifying that DEQ may waive the restriction on land application of biosolids to slopes exceeding 15% if the biosolids are being used for the purposes of establishment and maintenance of perennial vegetation. Such a waiver may also be based on other site specific criteria and BMPs that offer adequate environmental protection.

Sampling and Analysis

Significant comment was received expressing concern that the proposed regulations should require sampling and analysis of additional analytical parameters. Comment was also received that DEQ should remove any broad sampling and analysis requirements that included parameters not required by federal regulation, or that did not have specified regulatory limits.

In response to these comments, DEQ retained the regulatory provision that additional sampling and analysis may be required for site-specific or unusual circumstances, but did not add any additional analysis requirements. The regulation maintains broad site-specific authority to request additional information in cases where additional scrutiny is warranted. If evidence that elevated levels of a problematic constituent exist, sampling may be required by DEQ.

With respect to constituents found in the most recent EPA Targeted National Sewage Sludge Survey (TNSSS), EPA does not have information at this time indicating a necessity to restrict application rates or modify the current acceptable limits for land applied biosolids. EPA states that "the results presented in the TNSSS Technical Report do not imply that the concentrations for any analyte are of particular concern to EPA. EPA will use these results to assess potential exposure to these contaminants from sewage sludge." Although presence of certain targeted analytes was detected, EPA states that "it is not appropriate to speculate on the significance of the results until a proper evaluation has been completed and reviewed." DEQ will continue to monitor EPA technical surveys to determine if any program changes are appropriate for the Virginia biosolids program.

Molybdenum

The proposed regulation contained a land application limitation for biosolids with molybdenum (Mo) levels greater than 40 ppm. Such material was restricted from application on land used for grazing. EPA research has shown that biosolids with levels greater than this are at a higher risk to cause a copper (Cu) deficiency in grazing animals.

DEQ received comment that a lower ceiling limit for molybdenum was premature, as EPA has not yet changed the value in the federal regulation. DEQ has delayed action pending EPA adoption of a molybdenum standard.

DEQ retained the 75 ppm ceiling concentration for Mo, but replaced the 40 ppm restriction for biosolids applied to grazed lands with a footnote describing EPA's research and the potential risk of application of biosolids with Mo levels greater than 40 ppm. This information will be included in the fact sheet provided to the landowner.

Nutrient Management Requirements

DEQ received comments indicating that the standards for nutrient management were addressed in regulations promulgated by the Virginia Department of Conservation and Recreation (DCR), and were thus applied uniformly in nutrient management plans (NMPs) prepared by DCR certified planners.

In response to these comments, DEQ removed plant available nitrogen application rates and timing limitations for soybeans, tallgrass hay, warm season grasses and alfalfa in order to provide a uniform basis within the DCR nutrient management standards and criteria.

Comments were also received requesting that specifications for application of lime and potassium be removed for the same reason, that DCR regulations specified recommendations for these nutrients. DEQ retained the requirement for lime and potassium supplementation, as these practices are not related to nutrient rate or time of year, but rather to unique operational characteristics associated with permitted biosolids land application activity.

Soil pH and Potassium

A number of comments were received from farmers that the requirement to have soil pH and potassium levels at a minimum level in the soil prior to application was not practical. Establishment of newly cleared ground was given as an example.

DEQ modified these requirements to specify that the land must be supplemented with the recommended agronomic rate of lime or potassium prior to or during biosolids land application.

Storage

DEQ received comments that the requirements for staging of biosolids at a site prior to land application were unclear. Staging has been defined as "the placement of biosolids on a permitted land application field, within the land application area, in preparation for commencing land application or during an ongoing application, at the field or an adjacent permitted field." Staging is not defined as storage. Comments were also received that the time period whereby biosolids could be delivered to a site and not immediately land applied was too long.

DEQ modified the proposed regulation to clarify that the "staging period" was to be no longer than 7 days, and the biosolids must be covered if conditions do not allow land application by the 7th day. DEQ also proposes adding a requirement specifying that biosolids shall not be staged within 400 feet of an occupied dwelling and 200 feet of a property line unless waived through written consent of the occupant and landowner.

In response to comments, DEQ also clarified that on-site storage requirements only apply to sites not located at a wastewater treatment plant. Additionally, biosolids stored at a permit holder's site may be land applied to any permitted site, not just those permitted by the holder of the permit for the on-site storage facility.

The proposed regulations specify that facilities designed to store dewatered biosolids must be covered. The reconvened TAC had questioned whether or not these proposed requirements would apply to existing structures, or only those constructed after the effective date of the permit. In response, DEQ added a clarifying statement that all on-site and routine storage facilities must meet the requirements specified in the regulation within 12 months of the effective date of the final regulation. DEQ also clarified that existing facilities designed to hold liquid or dewatered biosolids (and thus designed to hold runoff) could continue to be used to store dewatered biosolids, within permitted parameters.

Landowner Agreements

Public concern regarding landowners' knowledge of biosolids applications to their property was evident in a number of comments. In response, DEQ added a requirement specifying that the most recently approved version of the landowner agreement form must be used for each permit application submitted, and that the form clearly identify the land application sites for which permission is being granted. In addition, a requirement has also been added that the landowner acknowledge receipt of a biosolids fact sheet approved by DEQ.

Some commenters expressed concern about education of those persons purchasing land on which biosolids had been applied, and suggested that DEQ require that notification be established in the deed to the property. State Water Control Law does not specify that DEQ has the authority to require deed notifications or restrictions. DEQ added requirements that the permit holder obtain a landowner agreement that requires the existing landowner to convey any applicable site restrictions related to land applied biosolids to the new landowner.

Financial Assurance

DEQ received public comment regarding the adequacy of the verification of financial assurance. A statement has been added clarifying that for financial assurance demonstrated through liability insurance, a pollution policy as well as a general liability policy is required that covers storage, transport, and land application of biosolids. Additionally, a measure of the financial stability of the insurance carrier is required in that the carrier must meet specified AM Best, Standard & Poor, or Moody ratings.

Comments were also received requesting that local government entities land applying biosolids under a VPDES permit be exempt from the requirements to demonstrate financial assurance. The Code of Virginia explicitly mandates that all permit holders authorized to land apply biosolids must demonstrate financial assurance, and the procedures prescribed in the regulation are consistent with other Department programs.

Permit application materials

DEQ received comments that land application sites were not properly identified in some past permit applications. In response to this concern, DEQ added a requirement for tax maps and associated tax parcel identification numbers, an aerial photograph of the proposed land application site, and a map identifying occupied dwellings and publicly accessible properties within 400 feet of the proposed land application site. These additional materials will help ensure all parcels are accurately identified in the permit application, as well as serving as a cross reference to landowner agreements which are required to include tax parcel identification numbers.

The requirement for additional soil characterization information for frequent applications of biosolids has been removed. Biosolids applications at greater than 50% of the agronomic rate more often than once every three years will require a DCR approved NMP, and the soils information will be evaluated in that process. Additionally, groundwater monitoring is not expected to be required for land application conducted in accordance with an NMP.

The requirement for a Land Application Plan (LAP) submittal at the time of permitting has been removed. All additions of land will necessarily be required to follow the notification procedures outlined in statute. Therefore, the information in the LAP is irrelevant at the time of permit application.

Fees

DEQ received comment that the fee structure proposed in the regulation for biosolids permits was not consistent with statutory requirements.

In response, DEQ adjusted the requirements to align as closely as possible with the statutory requirements in §§ 62.1-44.19:3.F. and 62.1-44.15:6. of the Code of Virginia. For

VPDES permits, the initial permit fee will include an additional $5000 for processing of the biosolids portion of the permit. Annual maintenance fees will not increase over that prescribed in 62.1-44.15:6. Any addition of land will be subject to a $1000 modification fee, whether added during the term of the permit or at reissuance. This includes additions of less than 50% of the originally permitted acreage.

For VPA permits, the initial permit fee remains at $5000 for a 10 year term. Annual maintenance fees will be reduced to $100 per year ($1000 maximum reissuance fee prescribed in § 62.1-44.19:3.F. divided by permit term of 10). Any addition of land will be subject to a $1000 modification fee, whether added during the term of the permit or at reissuance. This includes additions of less than 50% of the originally permitted acreage.

Biosolids application tonnage fees have not changed from those prescribed in the proposed regulation. Land application of Class B biosolids will incur a fee of $7.50 per dry ton and exceptional quality biosolids are exempt from a fee.

Exceptional Quality (EQ) Biosolids

DEQ received comment that distribution and marketing is not land application, and that it should follow that no NMP should be required for EQ material. The proposed requirement stated that biosolids meeting EQ standards may be distributed and marketed under a VPA or VPDES permit, and that nutrient management plans must be developed unless the EQ material: 1) is >90% solids (i.e. pelletized); or 2) is greater than 40% solids and has a C:N ratio greater than 25:1. DEQ also received comment that some biosolids compost and soil blends used for landscaping purposes would not meet the 25:1 C:N ratio and thus be subject to NMP requirements.

In response to these concerns, DEQ modified the NMP exemption to include material that is not used for the purpose of fertilizing agricultural operations.

If bulk EQ biosolids are land applied as a cake, a NMP is required and the distribution and marketing permit may include additional restrictions.

After making a presentation on the above issues and answering any questions the Board may have, staff will be asking the Board for final approval of the proposed changes to the Fee, VPDES, and VPA regulations.

General VPDES Watershed Permit Regulation for Total Nitrogen and Total Phosphorus Discharges and Nutrient Trading in the Chesapeake Bay Watershed in Virginia (9 VAC 25-820): This is a final regulation. The staff will ask the board to approve the regulation reissuing the General VPDES Watershed Permit for Total Nitrogen and Total Phosphorous Discharges and Nutrient Trading in the Chesapeake Bay Watershed in Virginia. A public comment period was held from May, 23 through July 22, 2011. A public hearing was held on July 6, 2011 at DEQ's Piedmont Regional Office in Glen Allen. No comments were received during the public hearing. Fifteen comment letters were received in addition to comments provided by EPA. The current general permit expires on December 31, 2011.

Issues

The significant changes to the general permit regulation made prior to the public comment period are as follows:

1. Implementation of EPA's TMDL for Chesapeake Bay to include the addition of reduced TN and TP wasteload allocations for the HRSD facilities on the James River and reduced TP allocations for all facilities in the York Basin along with appropriate schedules of compliance.

2. Modification of the sections dealing with initial compliance plans and schedules of compliance to address only those facilities with reduced wasteload allocations as a result of EPA's Chesapeake Bay TMDL.
3. The addition of aggregate, Chlorophyll a-based TN and TP wasteload allocations for the significant James River dischargers with a compliance deadline of January 1, 2023. This change was also required by EPA's TMDL for Chesapeake Bay.
4. Miscellaneous changes meant to correct inaccuracies introduced by previous requirements to calculate loads based on flows expressed to the nearest 0.01 MGD and to round nutrient loads to the nearest whole pound on a daily basis. These two procedures introduced errors into calculations provided by smaller facilities.
5. A change to the definition of "expansion" to recognize that production changes or the use of treatment additives at industrial facilities could result in increased nutrient loads to be addressed under the watershed general permit.
6. Inclusion of a new definition of "local water quality based limitations", a term used in the existing permit.
7. A new definition of "quantification level" to match that used by the Division of Consolidated Laboratory Services.
8. Provisions to implement a number of bills addressing nutrient trading that have become effective since the original regulation was adopted. These provisions include:
    a. Allowance for VPA treatment systems in existence as of July 1, 2005 that need to replace their system with a discharging system to petition the Board for a wasteload allocation for coverage under the watershed general permit.
    b. A requirement that new municipal treatment systems with a design flow between 1,000 and 40,000 gpd that are not discharging as of 1/1/2011 must offset all nutrient loads and register for coverage.
    c. Allowance for permitted facilities on the Eastern Shore to acquire compliance credits from the Potomac and Rappahannock basins.
9. Clarification of analytical and reporting requirements.
10. A requirement that offsets required for the full 5-year term of the permit be provided at the time of registration.
11. Updated prices of TN and TP credit purchases from the Water Quality Improvement Fund
12. Establishing a baseline condition for offsets generated by new storm water BMPs.
13. Deletion of the Ortho Phosphorus monitoring requirement as enough data was generated in the first permit cycle to characterize the discharges for modeling purposes.
14. Establishing a registration deadline of November 1, 2011.
15. The addition of provisions allowing for coverage under the general permit to be administratively continued, if necessary.

Numerous changes were made following the public comment period in response to the comments received. Most of these changes served to clarify existing permit conditions and did not include any substantial changes. These modifications include:

16. Deletion of the definition of "biological nutrient removal technology". This definition was an artifact from a previous draft version of the regulation and the term does not appear in the regulation.
17. Modified the definition of "Eastern Shore trading ratio" to clarify the intent.
18. Modified the definition of "expansion" or "expands" to make it clear that industrial facilities that have an increase in the annual mass load of nutrients as a result of the use of a new chemical additive are not considered to have expanded unless the increase causes the facility to exceed their wasteload allocation.
19. Corrected a grammatical error in the definition of "point source nitrogen credit".
20. Modified the definition of "waste load allocation" to clarify that the most limiting of the waste load allocations included in the Water Quality Management Planning Regulation (9 VAC 25-720 et seq.) and the Chesapeake Bay TMDL is applicable in the general permit.
21. Replaced the delivered aggregate waste load allocations for the 39 significant dischargers in the James River Basin with discharged wasteload allocations for consistency with the TMDL (Part I.C.3.).
22. Modified the required contents of the annual compliance plan update to reflect the shift in compliance planning from new WWTP upgrades to broader usage of now upgraded facilities and other load management strategies (Part I.D.)
23. Added a provision to allow approval of an alternative sample type on a case-by-case basis for facilities that demonstrate <10 variability in their effluent flow (Part I.E.1.).

24. Clarified the calculation procedures for monthly load to apply only to those days on which a discharge occurred (Part I.E.4.).
25. Added a provision to allow a case-by-case approval of a chemical usage report in lieu of effluent monitoring where the only source of nutrients in a discharge is the nutrients in the surface water intake and chemical additives typically used as anti corrosive agents or biocides to condition cooling water (Part I.E.5.).
26. Modified the condition establishing a baseline requirement for storm water retention projects generating nutrient reductions to offset new point source loads. The condition was modified to apply to all urban source reduction controls (as opposed to retention ponds only) and deleted the exception to allow projects included in previously approved trading programs after it was determined that there were no previously approved programs by the Department of Conservation and Recreation (Part II.B.1.b.(6)).
27. Deleted references to the specific version (2006) of 40 CFR Part 136 requiring use of EPA approved monitoring methods (Parts III.J.4. and III.L.4.). Registrants are required to use the version of 40 CFR Part 136 in place at the time this regulation is adopted.
28. Added waste load allocations reduced to the Chesapeake Bay TMDL to 9 VAC 25-820-80 to clarify the goals of the schedule of compliance included in 9 VAC 25-820-40. 9 VAC 25-820-80 was also modified to clarify what facilities are included in the aggregate registrations subject to the schedule of compliance in 9 VAC 25-820-40.
29. Updated the corporate name of Smurfit Stone to RockTenn CP LLC (9 VAC 25-820).
30. Additional changes have been made to supporting documents that are not a part of the regulation itself. Extensive changes have been made to the general permit Fact Sheet to clarify how the general permit implements the Chesapeake Bay TMDL, specifically Appendix X to the TMDL which establishes a staged implementation approach for wastewater treatment facilities in the James River Basin. Changes were also made to the permit Registration List to update two corporate names and to update the current waste load allocations for the Frederick-Winchester Service Authority Opequon WRF.

Approximately 161 facilities are currently registered under the watershed general permit. This number is expected to grow as most new or expanding facilities are also required to register under the permit and offset any increase in nutrient loading. The ability to trade under the watershed general permit provides additional compliance assurance and allows new and expanding facilities to offset any new nutrient loads under the TMDL load cap.

Public Comment and Response

Commenter	**Comment**	**Agency Response**
Robert Wichser Rivanna Water and Sewer Authority	Suggest DEQ consider waiving load limits for E3/E4 facilities as is done for concentration based limits in individual permits	Purchasing of compliance credits under the watershed general permit already provides an alternative method of complying with the load limits.
William H. Street Adrienne F. Kotula James River Association	Support permit as proposed and suggest permit would be strengthened with further clarification of the studies as part of the James River Strategy.	Additional information on implementation of Appendix X to the Chesapeake Bay TMDL (Staged Implementation Approach for Wastewater Treatment Facilities in the Virginia James River Basin) has been added to the Fact Sheet for clarity.
David E. Evans McGuireWoods LLP on behalf of J. H. Miles, Inc.	Supports provision allowing alternative monthly load calculations and elimination of Ortho-P monitoring. Included reporting procedure for approval.	Proposed monitoring and reporting procedures for the J. H. Miles facility are acceptable under the proposed alternative reporting provision of the general permit.
Dave E. Evans McGuireWoods LLP on behalf of Alexandria Sanitation Authority	Requested ASA wasteload allocations to be footnoted to apply to dry weather flow only (54 MGD) as with other CSO communities.	Of the three CSO communities in VA, two have a footnote in the Water Quality Management Planning Regulation (9VAC25-720) indicating that their nutrient allocations only apply to flows less than the plant design flow. Until such time as the footnote is added to 9VAC25-720 for ASA, it cannot be added to the registration list
Lalit K. Sharma	Requested ASA wasteload	Of the three CSO communities in VA, two

Commenter	Comment	Agency Response
City of Alexandria	allocations to be footnoted to apply to dry weather flow only (54 MGD) as with other CSO communities.	have a footnote in the Water Quality Management Planning Regulation (9VAC25-720) indicating that their nutrient allocations only apply to flows less than the plant design flow. Until such time as the footnote is added to 9VAC25-720 for ASA, it cannot be added to the registration list
Cheryl St. Amant Fauquier County Water and Sanitation Authority	Requested that Vint Hill WWTP Total Nitrogen allocation be amended consistent with recent court settlement	The court settlement directs DEQ to amend the Water Quality Management Planning Regulation (9VAC25-720) to include a higher wasteload allocation for Total Nitrogen. Until 9VAC25-720 is amended, the wasteload allocation in the current regulation must be included on the registration list. DEQ is planning to initiate this regulatory action in September.
Tarah Heinzen Environmental Integrity Project Ed Merrifield Potomac Riverkeeper, Inc.	Virginia's trading program is unlawful as the Clean Water Act (CWA) does not permit nutrient trading under any circumstances	Issuance of watershed general permit with provisions for trading is required under Title 62.1, Chapter 3.1, Article 4.02 of the Code of Virginia.
	Proposed rule violates CWA by allowing for the addition of new point source loads to an impaired segment without ensuring that all sources (point and nonpoint) are subject to compliance schedules designed to bring the segment into compliance with water quality standards.	Provision for offsetting new and expanded discharges is required under Title 62.1, Chapter 3.1, Article 4.02 of the Code of Virginia.
	Proposed rule includes no safeguards to ensure that trades do not impact local water quality, especially the provision allowing Eastern Shore facilities to acquire credits from the Potomac and Rappahannock basins.	Prohibition of local water quality impacts is included in 9VAC25-820-30.B as well as in Part I.B.2.d, Part I.J.2.c, Part I.J.3.c, and Part II.B.2.c of the proposed general permit. Eastern Shore facilities share no common river basin that could suffer a local water quality impact as a result of trading with other basins.
	Proposed rule adopts inadequate trading baselines for both point sources and nonpoint sources.	Proposed rule is consistent with the provisions in the trading provisions in Appendix X to the Chesapeake Bay TMDL. In order to generate credits, significant point sources and any nonpoint sources must first meet the applicable wasteload allocation or load allocation in the TMDL. Nonsignificant point sources cannot generate credits. Five baseline BMPs consistent with the agriculture sector load allocations are required by agency guidance before additional BMPs can be put in place to generate marketable nonpoint source offsets.

Commenter	Comment	Agency Response
	Trading ratios in the proposed rule will not protect water quality. Higher point source-to-point source trading ratios would help restore water quality. Higher point source-to-nonpoint source trading ratios are necessary to make up for nonpoint source reductions that are claimed, but not realized.	Proposed trading ratios ensure that all wasteload allocations are maintained. The Nonpoint Source-to-Point Source trading ratio (2:1) is conservative and set at a level which accounts for uncertainty in load reductions from individual BMPs. Nonpoint Source Reductions approved by DEQ require yearly documentation.
	Proposed rule's nonpoint source credit provisions lack accountability and should require that new sources first seek offsets from point sources.	Implementation guidance for acquiring wasteload allocations from nonpoint source offsets has been in effect since 2008. The guidance includes nutrient reductions provided by agricultural BMPs as established by the Chesapeake Bay Watershed Model. The guidance further requires accountability in the form of financial assurance and deed restrictions where appropriate. Allowance for wasteload allocations generated by nonpoint source BMPs is required by Title 62.1, Chapter 3.1, Article 4.02 of the Code of Virginia.
Sharon Nicklas Hampton Roads Sanitation District	Amendments to the Water Quality Management Regulations (9VAC25-720-10 et seq) should have been posted concurrently to provide clarity. Recommend that the 12/29/2010 Chesapeake Bay TMDL reduced wasteload allocations be included in the general permit compliance schedule to add clarity.	Amendments to the Water Quality Management Planning Regulation will be made in a subsequent rulemaking. Reduced wasteload allocations have been added to Section 80 of the general permit for clarity.
	Part I.C.3 includes a compliance schedule that exceeds the term of the general permit regulation in conflict with DEQ regulations. Paragraph also establishes wasteload allocations without benefit of the impending Chlorophyll-a study.	DEQ is required to implement the current Chesapeake Bay TMDL including wasteload allocations based on the existing water quality criteria for Chlorophyll-a. § 62.1-44.19:14 of the Code of Virginia supersedes DEQ regulations and allows for the schedule of compliance which is consistent with Appendix X to the TMDL.
	Parts 1.E.3. and 1.E.4. contain conflicting statements on rounding (may vs. shall). Recommend deleting language on different reporting procedures. Calculated daily load should not be rounded - only the monthly load reported on the DMR.	The comment compares requirements for reporting monthly and yearly loads with provisions for calculation of average daily loads that are not reported under the general permit. The two provisions are not in conflict.
Pamela F. Faggert Dominion Resources	Definition of "ML" should be clarified to include the number of discharge days in the calendar	Discharge days has been added to the definition of "ML" (monthly load)

Commenter	Comment	Agency Response
	month.	
	Propose language allowing DEQ to approve alternative samples on a case-by-case basis.	New provision with language allowing for alternative sampling methods at facilities with less than10% variability in diurnal flow has been added to Part I.E.1.
	Propose language authorizing DEQ to approve a chemical usage evaluation in lieu of effluent monitoring on a case-by-case basis for some industrial effluents.	New provision with language allowing for a chemical usage evaluation in lieu of effluent sampling has been added to Part I.E.5. The new requirement is limited to outfalls where the only source of nutrients is those found in the surface water intake and chemical additives used by the facility.
	"Equivalent load" definition - last sentence should be 0.5 million gallons	Typo corrected
	Part I.E.2. and Parts III.J.4 and L.4.b - should include "(2006)" in all references to 40 CFR Part 136 or strike from all for consistency and clarity	"2006" has been stricken from all references to 40 CFR Part 136.
Mike Gerel Chesapeake Bay Foundation	Add provision requiring HRSD James River Aggregate to reduce an additional 1,000,000 lbs/yr TN by 1/1/21 to meet dissolved oxygen criteria in accordance with the Phase I Watershed Implementation Plan (WIP)	Appendix X to the TMDL requires that individual wasteload allocations sufficient to provide this reduction be established in the Phase 3 Watershed Implementation Plan developed in 2017 and included in the subsequent general permit cycle. Clarification of this process has been added to the Fact Sheet.
	Add provision that the 39 significant dischargers in the James River basin reduce an additional 250,000 lbs/yr TP by 1/1/21 to meet dissolved oxygen criteria in accordance with the Phase I WIP.	Appendix X to the TMDL requires that individual wasteload allocations sufficient to provide this reduction be established in the Phase 3 Watershed Implementation Plan developed in 2017 and included in the subsequent general permit cycle. Clarification of this process has been added to the Fact Sheet.
	Modify Part I.C.3. to make it clear that the aggregate wasteload allocations on the James River will be disaggregated in the future.	The process for disaggregating the James River wasteload allocations is adequately addressed in new Fact Sheet language.
	Add definitions of "HRSD James River Aggregate" and "HRSD York River Aggregate" including specific facility names.	Specific facility names added to 9VAC25-820-80
	Provide additional permit and fact sheet language explaining how the permit implements the Phase I WIP.	Additional information on implementation of the Phase 1 Watershed Implementation Plan has been added to the Fact Sheet for clarity.
Brent Fults Chesapeake Bay Nutrient Land Trust, LLC	2:1 ratio for point source-to-nonpoint source trades should be replace with a ratio of 1:1	A 2:1 trading ratio for nonpoint source-to-point source trades appropriately addresses the uncertainty of nonpoint source reductions when compared to measured point source loads.

Commenter	Comment	Agency Response
	Part II, Section B.1.b(6) The term "stormwater retention" is too narrow and should be expanded to include "detention" projects.	"Stormwater retention projects" replaced with "urban source reduction controls (BMPs) per discussions with DCR.
	Part II, Section B.1.b(6) - Supports a "look back period" of 5 years for example rather than the current static baseline date of July 1, 2005. The statute does not include a justification for the 2005 date.	The July 1, 2005 baseline is consistent with the July 1, 2005 effective date of the initial nutrient trading legislation and has previously been included in agency guidance for generating offsets from land conversion activities. Discussions of this proposal with DCR staff indicate that the July 1, 2005 baseline is appropriate because it also excludes those controls in place and included in the calibration of the Chesapeake Bay water quality model.
	Part II, Section B.1.b(6) Delete subparagraph (6) and begin dialogue with affected parties to determine appropriate criteria for which "stormwater trading program" projects may be eligible to trade. The phrase concerning existing projects is too vague and should address (1) that the project was in the ground and reducing nutrients prior to 7/1/2005, (2) define "stormwater trading program", (3) be limited to projects specifically designed for Chesapeake Bay nutrient trading and (4) require the same nutrient capture calculations currently in use.	Discussions with DCR indicated that the proposed 7/1/2005 baseline requirement is appropriate. The requirement that these projects "...represent controls beyond those in place as of July 1, 2005..." indicates that the project was in the ground and reducing nutrients prior to 7/1/2005. In accordance with discussions with DCR, the provision for grandfathering projects "...specifically designed for and approved for use in a stormwater trading program prior to 7/1/2005" has been deleted as DCR did not approve any such programs and any projects in place as of 2005 are already included in the Chesapeake Bay watershed model calibration. The proposed regulation has not been modified to require the same nutrient capture calculations currently in use since guidance for generation of offsets from urban BMPs has yet to be developed.
Robert C. Steidel Virginia Association of Municipal Wastewater Agencies, Inc.	Recommend removing the James River aggregate delivered wasteload allocations (WLAs). The compliance date extends beyond the term of the permit; the WLA is legally flawed in that it is more stringent than necessary to protect the James River; and the WLAs do not reflect the planned Chlorophill-a study for the James River. If the aggregate WLA is included, VAMWA requests (a) clearer discussion in the Fact Sheet and 4 attachments to the Fact Sheet, (b) changing the permit language	DEQ is required to implement the current Chesapeake Bay TMDL including the aggregate wasteload allocations based on the existing water quality criteria for Chlorophyll-a. The "delivered" aggregate wasteload allocation included in the proposed regulation has been replaced by a "discharged" or "edge of stream" allocation consistent with the TMDL. § 62.1-44.19:14 of the Code of Virginia supersedes DEQ regulations and allows for the schedule of compliance which is consistent with Appendix X to the TMDL. In response to specific suggestions by VAMWA: (a) Additional discussion of implementation of Appendix X to the

Commenter	Comment	Agency Response
	so that the annual compliance plan update does not apply to the aggregate James River wasteload allocation and (c) use the term "effective date" in Part I.C.3. as is used in the table in Part I.C.1.a. for clarity.	TMDL has been added to the Fact Sheet as requested. One of the three suggested attachments has been added to the Fact Sheet along with Appendix X.(b) The annual compliance plan update language dealing with the aggregate James River wasteload allocation remains in the permit. This provision is required so that DEQ can obtain the information necessary to establish individual, Chlorophyll-a based wasteload allocations in the Phase 3 Watershed Implementation Plan as required by Appendix X to the TMDL. This process is further discussed in the Fact Sheet. (c) The use of "by January 1, 2023' rather than "effective date" in Part I.C.3 is consistent with the provisions of the TMDL which do not establish an effective date for the aggregate limit. Once DEQ has established individual wasteload allocations as part of the Phase 3 WIP, those allocations will be placed into the watershed general permit and effective dates requiring compliance as soon as possible will be established in accordance with 40 CFR 122.47.
	Replace "used to compensate for excessive loads from" with "acquired and applied by" in the definition of "Eastern Shore Trading Ratio"	Change made.
	Suggest changing compliance plan language (Part I.D.) as follows: "the compliance plans shall contain sufficient information to document a plan for the facility to achieve and maintain compliance with applicable, at a minimum, any capital projects and implementation schedules needed to achieve total nitrogen and phosphorus waste load allocation reductions sufficient to comply...."	Suggested change has been accepted.
	Change "July 1, 2005" to "January 1, 2006" in Part II.B.1.b(6)	No change made. The baseline is intended to coincide with the effective date of the initial legislation establishing a nutrient trading program and is consistent with the baseline for land conversions in agency guidance.
	Supports revisions to 9VAC25-820-40 which limit applicability to facilities listed in 9VAC25-820-80.	N/A

Commenter	Comment	Agency Response
	Supports continuation of permit coverage (Part I.A.3.)	N/A
	Supports flexibility in timing of sample collection and analysis	N/A
	Opposes using <QL as half of the QL other than in this watershed general permit permit cycle.	N/A
Andrea W. Wortzel Hunton & Williams on behalf of the Virginia Manufacturers Association	Changes to delivery factors have been made on the Registration Lists but are not addressed in the regulation. New delivery factors should not be implemented until they have been made available for notice and comment and the basis of the changes has been provided.	In order to allow trading on a watershed basis, DEQ must rely on delivery factors included in the TMDL. Proposal to update delivery factors was included in the public notice for this regulation.
	Clarify that the definition of "state-of-the-art nutrient removal technology" does not apply to industrial dischargers	"State-of-the-art" is only used in Part II.B.1.d(4) of the general permit in the context of a facility land applying domestic sewage so there is no need to clarify the definition. The term "Biological nutrient removal technology" was found to be an artifact that does not occur in the regulation and has therefore been removed from the definitions section.
	Definition of "expansion" should make clear that it only applies to construction or process changes that result in a net increase in annual load that exceeds the wasteload allocation for the facility.	Definition modified so that the suggested "exceeds the WLA" provision only applies to process changes at industrial facilities. Any construction of additional capacity is considered an expansion under the requirements of the regulation.
	"Credit" definitions should make it clear that a credit is one delivered pound of TN or TP. Add definition of nonpoint source load allocation.	Present definitions and regulation wording reviewed and believed adequate.
	Clarify definition of "offset"	Present definitions and regulation wording reviewed and believed adequate.
	Use of the Terms "offset", "credit" and "waste load allocation" is confusing and should be clarified.	Present definitions and regulation wording reviewed and believed adequate.
	9VAC25-820-70 Part I.B.A. should be clarified to more clearly state that only facilities with assigned waste load allocations can generate credits.	Present wording reviewed and believed adequate.
	Modify Part I.C.3 to state that the aggregate wasteload allocation for 39 significant discharges in the James River basin shall be met by 1/1/2023 unless the chlorophyll-a standard is amend prior to 2017.	No changes made to Part I.C.3. Any change to the aggregate WLA for the James River will have to be made in accordance with Appendix X to the TMDL. Any such change is not expected until after completion of the Phase III WIP and beyond the term of the current permit.

Commenter	Comment	Agency Response
		Permittees will have the opportunity to comment on any individual Chlorophyll-a based WLAs during development of the Phase III WIP, any subsequent amendment to the TMDL and in the next cycle of the watershed general permit.
	Additional detail is needed about how offsets will be quantified, the mechanics of acquiring a wasteload allocation, and how DEQ will document the new wasteload allocation on the registration list. Facilities my rely on compliance credits during the short term and implement expansions while still relying on compliance credits This section should be carefully vetted to make it clear when the offset requirement is triggered as opposed to purchase of a credit..	DEQ believes the requirements to offset new or increased nutrient loads is clear as proposed. A facility that expands and increases their nutrient load beyond their wasteload allocation must acquire additional wasteload allocation to offset the increase. A facility cannot rely on the acquisition of nutrient credits to offset the increase.
	Smurfit-Stone Container should be listed as RockTenn Corp. BWX Technologies should be listed as Babcock & Wilcox. The name change should be reflected in the regulation and the registration lists.	Changes made to registration lists and regulation. RockTenn Corp. listed as "RockTenn CP LLC - West Point", consistent with DEQ records.
	Typo in the "equivalent load" definition. Should be 0.5 MGD rather than 0.05 MGD.	Typo corrected
	Typo in definition of "point source nitrogen credit" - "that" at the start of the 5th line should be "where".	Typo corrected
Jesse Moffett Frederick-Winchester Service Authority	Opequon WRF waste load allocation should reflect the proposed regulations for both TN (115,122 lbs/yr) and TP (11,512 lbs/yr) at a design flow of 12.6 MGD.	Correction made to Potomac Basin registration list.
David McGuigan EPA Region III Office of NPDES Permits and Enforcement	EPA comments that no new loads would be allowed to be added to the registration list while it is administratively continued.	EPA interpretation is correct.
	EPA requests further clarification of how Appendix X to the Chesapeake Bay TMDL is incorporated into the general permit and requests further clarification in the Fact Sheet. The TMDL includes discharged aggregate loads for the James	Additional information on implementation of Appendix X to the Chesapeake Bay TMDL (Staged Implementation Approach for Wastewater Treatment Facilities in the Virginia James River Basin) has been added to the Fact Sheet for clarity. Additionally, the aggregate wasteload allocations for the 39 significant James River dischargers

Commenter	Comment	Agency Response
	River and the regulation includes delivered loads. Suggest including delivered loads to be consistent with TMDL.	included in Part I.C.3. of the general permit have been converted to discharged loads to ensure consistency with the TMDL.
	Request additional discussion in the Fact Sheet to explain how waste load allocations for sediment are addressed in the VPDES program.	Under Title 62.1, Chapter 3.1, Article 4.02 of the Code of Virginia, the watershed general permit is issued for the control of Total Nitrogen and Total Phosphorus. Compliance with sediment wasteload allocations will be ensured through individual VPDES permits as outlined in Virginia's Watershed Implementation Plan.
	Approach for addressing CSO loads in the individual VPDES as well as the nutrient trading general permit should be spelled out more clearly in the fact sheets for both permits.	Additional language addressing permitting of CSO systems has been developed with EPA and added to the Fact Sheet for clarification. No additional language has been added to the general permit.
	Typo in the "equivalent load" definition. Should be 0.5 MGD rather than 0.05 MGD.	Typo corrected
	Need further discussion of Eastern Shore trading ratios	See discussion under J.2. on p. 4 of Fact Sheet
	Definition of "waste load allocation" - (iii) should be replaced with "approved TMDL point source allocations" and the definition should be modified to indicate that the more limiting of (i) and (iii) should apply.	Definition modified to indicate that the most limiting of (i), (ii) or (iii) is applicable. Language in (iii) left as originally drafted to avoid confusion as to definition of "approved".
	Request deletion of the intake credit provision.	Only one discharger currently has "net" wasteload allocations recognized in the Water Quality Management Planning Regulation (9VAC25-720) however additional facilities could be identified in the future. This provision is particularly applicable a facilities that use large amounts of cooling water without contributing significant additional loads of nutrients to the discharge.
	Request deletion of the bioavailability provision as not appropriate bioassay establishing bioavailability of nutrients in the Chesapeake Bay is available.	Although the provision allowing for adjustments to wasteload allocations to account for bioavailability cannot be used until acceptable bioassays are established, it is an important provision to dischargers whose effluent is dominated by Organic Nitrogen. DEQ proposes to continue to include the provision in the event that appropriate bioassay procedures become available in the future.
	Request increase sampling frequency for all flow tiers to obtain more representative loads.	Although the more frequent sampling proposed by EPA would provide more precise determination of annual loads, the

Commenter	Comment	Agency Response
	The following frequencies are requested: >20 MGD.....1/Day 1 MGD - 20 MGD.....3/Week 0.04 MGD - 0.999 MGD.....1/Week	existing sampling frequencies provide an adequate representation that is not biased high or low. For the flow categories referenced by EPA, existing frequencies result in 24 to 156 samples/year which is adequate for establishing yearly loads.
Steven Herzog Hanover County Dept. of Public Utilties	Supports the watershed general permit	N/A
	Supports implementation of new delivery factors in the last year of the general permit (2016)	N/A
	Expressed concern for the long term viability of trading nutrients if delivery factors are constantly changing.	DEQ is required to implement the delivery factors included in the TMDL. EPA is considering establishing permanent delivery factors in the future.
	Some changes to the previous delivery factors do not seem to make sense. An explanation of the science/logic behind individual delivery factors has not been provided.	Delivery factors are pulled from EPA's Chesapeake Bay TMDL and represent EPA's latest Chesapeake Bay modeling effort. EPA is evaluating further refinement of delivery factors.
	Hanover County endorses VAMWA comments	N/A

Consideration of an Exempt Final Action to Amend the Water Quality Management Planning Regulation (9VAC25-720-50.C.) to Revise the Nitrogen Waste Load Allocation for FCWSA-Vint Hill WWTP: Staff will ask the Board at their September 22-23, 2011 meeting for approval of an Exempt Final Action to amend the Water Quality Management Planning Regulation, increasing the total nitrogen waste load allocation for Fauquier Co. Water & Sewer Authority -Vint Hill WWTP (VPDES VA0020460) from 8,680 to 11,573 lbs/yr. The higher allocation is consistent with the Chesapeake Bay TMDL established by EPA in December 2010. This proposal is based on a section of the Administrative Process Act (VA Code §2.2-4006.A.4.c.) exempting actions "*necessary to meet the requirements of federal law or regulations, provided such regulations do not differ materially from those required by federal law or regulation*". In November 2005, the Fauquier Co. Water & Sewer Authority (FCW&SA) submitted a Petition of Appeal to the court, contesting adoption of amendments to the Water Quality Management Planning Regulation (WQMP; 9 VAC 25-720) by the Board at their September 27, 2005 meeting. FCW&SA requested that the regulation be declared invalid and remanded to the Board for further proceedings, with the contention that the nutrient waste load allocations approved for their Vint Hill WWTP were too low. The original basis for the Board-approved FCW&SA-Vint Hill WWTP nutrient waste load allocations and the Authority's requested revisions were:

	Design Flow (MGD)	**Annual Avg. TN (mg/L)**	**TN WLA (lbs/yr)**	**Annual Avg. TP (mg/L)**	**TP WLA (lbs/yr)**
SWCB-Approved	0.95	3.0	8,680	0.3	868
Requested Allocations	0.95	8.0	23,146	0.3	868
Difference	No change	**+ 5.0**	**+ 14,466**	No change	No change

Subsequently, negotiations were held between DEQ and FCW&SA which lead to a Settlement Agreement between the parties that became effective May 26, 2009. The principal provision of the Agreement was that DEQ would initiate a rulemaking, to propose amending the WQMP Regulation by increasing Vint Hill's total nitrogen (TN) waste load allocation, based on a TN concentration of 4 rather than 3 mg/l. That process was started, but then suspended when work

began to finalize EPA's Chesapeake Bay TMDL and Virginia's Watershed Implementation Plan (WIP). The WIP included the higher TN waste load allocation for Vint Hill (11,573 lbs/yr), and the Bay TMDL was approved by EPA on December 29, 2010, thus superseding the rulemaking process. Further, the Fauquier Circuit Court issued a Final Order on April 4, 2011, dismissing FCW&SA's appeal and noting that the Board's implementation of the revised waste load allocation in the Agreement was now compelled by law. For FCW&SA-Vint Hill WWTP the total nitrogen waste load allocation included in the Chesapeake Bay TMDL, and now required to be placed in the WQMP Regulation, is:

	Design Flow (MGD)	Annual Avg. TN (mg/L)	**TN WLA (lbs/yr)**	Annual Avg. TP (mg/L)	TP WLA (lbs/yr)
EPA-Approved for Bay TMDL	0.95	4.0	**11,573**	0.3	868

The Department recommends that the Board adopt the amendment to the Water Quality Management Planning Regulation, 9VAC25-720-50. C., increasing the total nitrogen waste load allocation for the Fauquier Co. Water & Sewer Authority – Vint Hill WWTP from 8,680 lbs/yr to 11,573 lbs/yr. In addition, authorize publication of this amendment, and affirm that the Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

General VPDES Permit Regulation for Vehicle Wash Facilities and Laundry Facilities, VAG75 (formerly the Car Wash General Permit) - Amendments to 9VAC25-194 and Reissuance of General Permit and General VPDES Permit Regulation for Coin-Operated Laundries, VAG72 - Repeal of Existing Regulation: The current VPDES Car Wash General Permit will expire on October 16, 2012, and the regulation establishing this general permit is being amended to reissue another five-year permit. The staff is bringing this proposed regulation amendment before the Board to request authorization to hold a public comment period and a public hearing. Draft amendments showing proposed changes to the current regulation and a summary of the changes are attached. The most significant change is that the scope of the proposal has been widened to include many types of vehicle wash facilities and has combined the coin-operated laundry general permit into this permit. Vehicle wash and coin-operated laundry effluents are of similar quality and quantity and the public and staff requested a wider scope of coverage. The draft regulation takes into consideration the recommendations of a technical advisory committee formed for this regulatory action. A secondary action associated with this rulemaking is the repeal of the VPDES coin-operated laundry general permit since the requirements of that permit (VAG72) are being incorporated into VAG75.

SUMMARY OF 9VAC25-194 PROPOSED REVISIONS FOR 2012 REISSUANCE VEHICLE WASH AND LAUNDRY FACILITIES GENERAL PERMIT AND REPEAL OF 9VAC25-810 COIN-OPERATED LAUNDRY GENERAL PERMIT

Section 10 – Definitions. Added a definition for department, laundry, total maximum daily load, vehicle maintenance and vehicle wash because this terminology is used in the regulation.

Section 20 – Purpose. Added the statement the general permit regulation covers vehicle wash facilities and laundry facilities. Previously the permit covered only car wash facilities. The staff and the public requested wider coverage for similar washing facilities as defined in section 10.

Section 40 – Effective dates changed for reissuance throughout regulation.

Section 50 A and B – Authorization – Reformatted to match structure of other general permits being issued at this time. Added three additional reasons authorization to discharge cannot be granted per EPA comments on other general permits issued recently and per technical advisory committee recommendations. Therefore, an owner will be denied authorization when the discharge would violate the antidegradation policy, if additional requirements are needed to meet a TMDL or if central wastewater treatment facilities are reasonably available.

Section 50 C – Added statement that mobile car washes may apply for coverage under this permit provided each discharge location is permitted separately for clarification.

Section 50 D– Added the statement *"Compliance with this general permit constitutes compliance with the Clean Water Act, the State Water Control Law, and applicable regulations under either, with the exceptions stated in 9VAC25-31-60 of the VPDES Permit Regulation."* This was added in response to AGO comments on other general permits recently to recognize there are some exceptions to compliance with the CWA as stated in the permit regulation.

Section 50 E – Added language to allow for administrative continuances of coverage under the old expired general permit until the new permit is issued and coverage is granted or coverage is denied; if the permittee has submitted a

timely registration and is in compliance. This language is being added to all recently reissued general permits so permittees can discharge legally and safely if the permit reissuance process is delayed.
Section 60 A – Registration – Reformatted to match structure of other recent general permits. Revised deadline for existing facilities currently holding an individual VPDES permit to say they must notify us 210 days prior to give individual permit holders the required 180 days to submit an individual permit application if their request for coverage under the general permit is denied. Revised existing facilities covered under to submit registration prior to September 16, 2012 (which is 30 days prior to expiration).
Section 60 B – Added statement *"Late registration statements will be accepted, but authorization to discharge will not be retroactive."* for clarification.
Section 60 C – Added the question *"Does the facility discharge to a Municipal Separate Storm Sewer System (MS4)? If "yes," the facility owner must notify the owner of the municipal separate storm sewer system of the existence of the discharge within 30 days of coverage under the general permit and provide the following information: the name of the facility, a contact person and phone number, the location of the discharge, the nature of the discharge and the facility's VPDES general permit number."* This notification is a permit requirement and the TAC thought it should be repeated as a reminder in the registration process.
Added the question *"Does your locality require connection to central wastewater facilities?"* and *"Are central wastewater treatment facilities available to serve the site? If "yes," the option of discharging to the central wastewater facility must be evaluated and the result of that evaluation reported here."* This is a requirement carried over from the coin-operated laundry permit.
Added the question *"Will detergent used for washing vehicles contain more than 0.5 percent phosphorus by weight?"* to gather information about the use of phosphate detergents in the vehicle wash industry.
Added email address, allowance for computer maps to registration statement and a few other minor clarifications.
Section 70 Part I A 1 and 2 – General Permit - Reformatted footnotes and clarified that TSS limit is two significant digits to match current agency guidance for use of significant digits.
Section 70 Part I A 3 – Added a limits page for laundry facilities since the coin operated laundry permit conditions are proposed for inclusion in this permit. Additional parameters for bacteria (enterococci and fecal coliform in addition to the E. coli limit) were added to ensure that laundry facilities to salt water could be included.
Section 70 Part I A 4 – Added a new limits page for combined laundry and car wash facilities.
Section 70 Part I B 2 – Special Conditions – Added the statement *"There shall be no discharge of floating solids or visible foam in other than trace amounts."* This was moved from the permits limits page. This is a standard special condition in most general permits.
Section 70 Part I B 8 – Added *"If the facility has a vehicle wash discharge with a monthly average flow rate of less than 5,000 gallons per day, and the flow rate increases above a monthly average flow rate of 5,000 gallons per day, an amended registration statement shall be filed within 30 days of the increased flow."* This deadline is part of the registration statement requirements in the regulation but the technical advisory committee felt it should be repeated in the permit to remind the permittee of the deadline.
Section 70 Part I B 10 – Added *"Approval for coverage under this general permit does not relieve any owner of the responsibility to comply with any other federal, state or local statute, ordinance or regulation."* This requirement is part of the regulation but the technical advisory committee felt it should be repeated in the permit to remind the permittee of the responsibility.
Section 70 Part I B 12 – Added an operations and maintenance requirement because the current coin-operated laundry permit contained this requirement and since the coin-operated laundry permit is being combined with the car wash permit, the operations and maintenance manual should be included for both types of facilities.
Section 70 Part I B 13 – Compliance Reporting Special Condition to match similar language going into other recent general permits and individual permits. The condition defines quantification levels, how to treat results < QL and rounding rules. This helps to ensure more consistent compliance reporting.
Section 70 Part IB 14 – Added *"Samples taken as required by this permit shall be analyzed in accordance with 1VAC30-45: Certification for Noncommercial Environmental Laboratories, or 1VAC30-46: Accreditation for Commercial Environmental Laboratories."* This is a new regulatory requirement effective January 1, 2012.
Section 70 Part I B 15 – Added *"The discharges authorized by this permit shall be controlled as necessary to meet applicable water quality standards."* This is a general requirement to meet water quality standards and matches similar language going into other recent general permits.
Section 70 Part I B 16 – Added procedures for termination notices so permittees are aware of their responsibilities when they need to terminate a permit.

Section 70 Part II Y – Transfer of permits – Revised to say automatic transfers can occur within 30 days of transfer rather than 30 days in advance of transfer. We have been told by staff that notification of an ownership transfer cannot occur in advance. Our regional office staff has also stated this advance transfer notification is unnecessary and we should be able to accept a transfer notification at any time.
9VAC25-810 All Sections - Deleted as this is the existing (VAG72) coin-operated laundry general permit regulation and these requirements have been incorporated into the vehicle wash and laundry wash general permit 9VAC25-194 (VAG75). Note that this document is not attached but all existing requirements will be stricken and will expire upon the effective date of the vehicle wash and laundry wash general permit.

Fluvanna County School Board ("FCSB") - Consent Special Order with a civil charge: FCSB owns and operates the Fluvanna County High School sewage treatment plant ("Facility"), which serves the Fluvanna County High School with 1143 students in Fluvanna County, Virginia. The Permit authorizes FCSB to discharge treated sewage from the Facility, to an unnamed tributary to Raccoon Creek, in strict compliance with the terms and conditions of the Permit. The design flow of the Facility has been rated and approved as 0.025 MGD, measured as a monthly average flow. Historically (since 2007), FCSA has had problems consistently meeting certain permit effluent limitations, primarily $CBOD_5$ and ammonia. FCSB has taken and continues to take multiple steps to correct the problems associated with the violations experienced at the STP, including:

a. Reviewed all cleaners and chemicals used at the school;
b. Influent tested to identify abnormal wastewater strengths;
c. Installed new fine bubble diffusers and chemical feed pump for pH adjustment;
d. Pumped out and cleaned all the treatment units and made repairs;
e. Re-seeded the Plant;
f. Installed insulation over aeration tanks;
g. Adjusting aeration blower timers; and,
h. Developing daily wasting rates.

FCSB has reported that it exceeded ammonia, $CBOD_5$ and TSS effluent limitations contained in the Permit during the periods January, February, April, May, August, September, October, November and December 2010. FCSB has attributed the violations to various episodic problems including insufficient dissolved oxygen in the aeration basin, breakage of a sludge return pump which caused a washout of the Facility, high strength influent flows that contained a substance that caused a shock to the treatment efficiency, insufficient pH control to foster proper nitrification and influent flows that exceed the design capacity. DEQ issued NOVs on March 10, 2010, April 9, June 10, August 12, October 14, November 9, December 9, 2010, and January 12, 2011 for the effluent limitations violations noted above. By letter date February 18, 2011, FCSB submitted a plan and schedule of corrective actions to return the Facility to consistent compliance with the Permit. Portions of this plan and schedule are incorporated into Appendix A of the proposed Order. The proposed Order contains a plan and schedule of corrective actions to address the effluent violations and return the Facility to compliance. The corrective actions include providing a plan and schedule to address the Plant's problems, retaining an operator holding a minimum of a Class III license, developing standard operation procedures for the Plant operations and installing a new power source capable of providing sufficient power to operate the Facility. The school has decided to upgrade the Plant to ensure compliance with the Permit effluent limitations and provided a plan and schedule on June 29, 2011, in accordance with the requirements of the proposed Order. Civil Charge: $3,381.

Omega Protein, Inc., - Consent Special Order w/ Civil Charges: During the morning of October 27, 2009, Omega personnel discovered a sheen upon Cockrell Creek caused by a failed seal on a diesel pump fueling an Omega fishing vessel causing a discharge of approximately 50 gallons of oil, in the form of diesel fuel, into Cockrell Creek. During a compliance inspection conducted on November 5, 2009, DEQ staff observed a newly installed dissolved air flotation unit in operation in the treatment train discharging to permitted Outfall 002. Omega also had purchased an ultraviolet disinfection unit which was on site but not installed. Omega notified DEQ of the planned installation of this equipment in February 2009, but did not provide a Conceptual Engineering Report (CER), as required by Va. Code § 62.1-44.16 and failed to provide Department notification as required by Permit Part II.J.1.a. In addition, discharge logs obtained by DEQ indicate that Omega vessels discharged refrigeration water from several fishing vessels into the Chesapeake Bay on November 5, 6, 9, 10, 11, 13, 14, 15, 16, and 19, 2009. Omega did not conduct water quality monitoring during any refrigeration water discharges during November 2009 as required by 9VAC 25-31-50.A and Part I.B.3.d. of the Permit. On December 2, 2009, a fish oil discharge occurred and a rainstorm on December 2 and 3, 2009, washed approximately 30 gallons of the oil across the ground and into Cockrell Creek. Facility personnel observed a sheen upon or discoloration of Cockrell Creek on the morning of December 3, 2009, at which time the event was verbally reported to DEQ. On

January 22, 2010, DEQ issued a Notice of Violation for the unauthorized discharges of oil in two forms, diesel fuel and fish oil, failure to give notice prior to installing new equipment, and Omega's failure to conduct water quality monitoring during a month of vessel refrigeration water discharges. Department staff met with Omega staff on July 7, 2011, to discuss the Consent Order and the compliance issues at the Facility. Adverse weather conditions during the month of November made Bay sampling dangerous. The newly issued VPDES Permit changes the sampling point for fishing vessel discharges from the Bay after discharge to inside the vessel prior to discharge. Omega collected two additional refrigeration water samples in December to replace data from the missed sampling event. After the diesel fuel discharge on October 27, 2009, Omega cleaned the spill and installed a new pumping system to prevent future occurrences. The U.S. Coast Guard commended Omega on their cleanup efforts. Regarding the fish oil discharge on December 2, 2009, Omega stated that a hired contractor was specifically instructed not to touch the above-ground storage tank containing the fish oil at the Facility. One of the contractor's staff members cut the tank in half and caused the discharge. The discharged oil was removed from Cockrell Creek, and the ground on which oil was spilled was remediated at a cost of $285,000. Civil Charge: $4,050.

Mr. Timothy D. Ogburn d/b/a Dinwiddie Car Wash - Consent Special Order w/ Civil Charges: Mr. Ogburn owns and operates the Dinwiddie Car Wash (Facility) located in Dinwiddie County, Virginia. DEQ issued coverage under General VPDES Permit No. VAG75 (Permit) to Mr. Ogburn for the Facility, as evidenced by Registration Number VAG750043, on October 16, 2007. The Permit and it's coverage will expire on October 16, 2012. The Permit governs the discharge of car wash wastewater from the Facility through Outfall 001, to surface waters, an UT to Little Cattail Creek. The Permit requires that Mr. Ogburn comply with the conditions and requirements of the Permit. In violation of the Permit, Mr. Ogburn failed to collect samples and submit test results for the annual pH, TSS and Oil and Grease parameters for the three monitoring periods of: (1) October 16, 2007 through June 30, 2008; (2) July 1, 2008 through June 30, 2009; and (3) for July 1, 2009 through June 30, 2010. The Permit requires that the samples be collected by June 30 of each year and the test results reported on the Facility's DMRs to DEQ-PRO by July 10 of each year. DEQ-PRO did not receive the annual DMRs for the 2008, 2009 and 2010 monitoring periods. In order for Mr. Ogburn to maintain compliance with the Permit, DEQ staff and Mr. Ogburn have agreed to the Schedule of Compliance which is incorporated in Appendix A of the Order. Mr. Ogburn, agreed to the Consent Special Order with DEQ to address the above described violations. The Order requires that Mr. Ogburn submit the Facility's annual DMR for the monitoring period of July 1, 2011 through June 30, 2012. The DMR shall reflect the estimated flow, and test results for the pH, TSS and Oil and Grease samples collected. In addition, Mr. Ogburn is required to submit a copy from the operational log showing the three preceeding months activities regarding inspections of the Facility, and operation and maintenance of the wastewater treatment system. The Order also requires the payment of a civil charge. DEQ staff estimated the cost of injunctive relief to be approximately $150. Civil Charge: $1,275.

ROCKTENN CP, LLC RockTenn CP, LLC West Point Mill - Consent Special Order w/ Civil Charges: VPDES Permit No. VA0003115 (Permit), was issued to Smurfit-Stone Container Corporation, now RockTenn CP, LLC, (Company) for the West Point Mill (Facility) on July 28, 2005. The Permit was administratively continued July 26, 2010. This is a major, Industrial permit issued to address certain discharges associated with the operation of the West Point integrated pulp and paper mill. The Permit authorizes the discharge of pulping process condensates, landfill leachate, secondary fiber plant effluent, bleach plant effluent, pulp mill effluent, causticizing area effluent, lime kiln effluent, paper mill effluent, veneer plant effluent, and other process wastewater. The Company has recently experience several unrelated unpermitted discharges to state waters as follows: (1) On August 1, 2010, the Company discharged to stormwater Outfall 008, an estimated 500-1000 gallons of reclaimed process water with a reported neutral pH, low biological oxygen demand (BOD) and total suspended solids (TSS) content due to a control valve seal failure; (2) between September 30, 2010 and October 1, 2010, the Company discharged to stormwater Outfall 004, an estimated 100,000–300,000 gallons of treated effluent that bypassed the discharge point, Outfall 001, due to heavy rainfall that caused a backup in the wastewater treatment plant; (3) on December 15, 2010, the Company discharged to stormwater Outfall 008, an estimated 500 gallons or less of untreated paper machine effluent consisting of an overflow of foam, and the resulting liquid condensate; (4) on January 3, 2011, the Company reported that there was an unpermitted discharge of an unknown amount of "black liquor" (a byproduct from the digestion of wood chips during the pulping process") to a ditch on C Street, which drained down the ditch, through a culvert, to a wetland and then to the river; and (5) On January 15-16, 2011, the Company discharged to stormwater Outfall 004, an estimated 5,000 gallons of "black liquor" due to a contract carrier trailer-tractor accident at the Facility. In addition to the above listed violations, RockTenn reported that on March 11, 2011, the wastewater treatment plant discharge exceeded the Permit effluent limit for BOD at Outfall 001 as the result of an upset condition that occurred when one of the three secondary clarifiers was out of service for emergency repairs.

Based on DEQ inspection reports and correspondence submitted by RockTenn, the Board concludes that RockTenn (formerly Smurfit-Stone Container Corporation) has violated the Permit, Va. Code § 62.-44.5.A and 9 VAC 25-31-50, by discharging reclaimed process water effluent, treated effluent, partially treated effluent, untreated paper machine effluent, and "black liquor" from the Facility while concurrently failing to comply with the conditions of the Permit. RockTenn has taken steps to minimize impacts and prevent an occurrence of a similar unpermitted discharge, by: (1) repairing the valve on the tank that overflowed and including this valve in a regular maintenance schedule for inspection; (2) cleaning the submerged pipe and diffusers on the pipe to allow the flow to move through the pipe more quickly to prevent overflows at the flume; (3) enhancing the storm water pollution training of personnel to know how to quickly activate the spill gates located on the storm water conveyance systems, and to include the monitoring of the spill gates on a regular preventive maintenance schedule; (4) immediately vacuuming the "black liquor", excavating the area and repairing the damaged section of the underground pipe, inspecting an additional 40 foot section of the pipe to ensure its integrity, and increased monitoring of the pipe by Company personnel; and (5) containing the spilled "black liquor", having the spilled material cleaned up by a licensed hazardous material responder and constructing a barrier at the corner of the building where the collision occurred to prevent trucks from getting close to the building and attached piping. To address the BOD exceedence, RockTenn repaired the clarifier and placed it back into service the day of the exceedence. On the next day, March 12, 2011, RockTenn reported that the BOD loading was below the permitted effluent limit. By letter dated March 17, 2011, RockTenn reported that all immediate corrective actions have been completed. The monitoring and training of Facility personnel will be an on-going activity. RockTenn CP, LLC, agreed to the Consent Special Order with DEQ to address the above described violations. The Order requires the payment of a civil charge. The estimated cost of injunctive relief was reported to be approximately $120,000. Civil Charge: $33,033.

Southampton County Town of Boykins Wastewater Treatment Plant - Consent Special Order with a civil charge: Southampton County ("County") owns and operates a wastewater treatment plant in the Town of Boykins ("Facility"), which is subject to the Permit. Among other things, the Permit authorizes the County to discharge treated domestic wastewater with industrial contribution into the Meherrin River from Outfall 001 within limits for pH, biochemical oxygen demand ("BOD"), total suspended solids ("TSS"), total residual chlorine ("TRC"), dissolved oxygen, ammonia-nitrogen, total recoverable copper ("TR copper"), and whole effluent toxicity ("WET"). The Facility accepts treated industrial wastewater from one significant industrial user, Narricot Industries L.L.C. ("Narricot"), a textile manufacturer. The County regulates industrial discharges from Narricot through a Pretreatment Permit, which authorizes Narricot to discharge treated process wastewater to the Facility within limits for a number of parameters including BOD, ammonia, TR copper and WET. Narricot reportedly accounts for 29 percent of the average daily flow through the Facility. On December 1, 2008, Narricot entered into a Special Order by Consent with the County ("County Order") to address a number of violations of the effluent limits established in the Pretreatment Permit during the period April to August 2008. The County Order required payment of a $20,000 civil charge (payable directly to the County or to be used by Narricot for engineering studies and/or pretreatment process improvements) in the event Narricot was unable to "perfect compliance" with the effluent limits contained in the Pretreatment Permit by December 1, 2010. The County submitted DMRs to DEQ documenting the effluent characteristics for the September 2009 through April 2011 monitoring periods indicating the following exceedances of Permit limits: ammonia (10 months) and TR copper (5 months). The County also had improperly analyzed BOD in the Facility's effluent for 3 monthly monitoring periods and had failed to note on one DMR the monthly monitoring period to which it applied. The County was advised of its VPDES non-compliance issues in Notices of Violation ("NOVs") dated September 2, 2010; October 1, 2010; November 10, 2010; March 1, 2011; April 1, 2011; and May 18, 2011. DEQ staff visited the Facility on September 24, 2010, and the County responded to NOVs in writing on October 1, 2010, November 12, 2010, March 11, 2011, and May 5, 2011. The County attributed the TR copper exceedances to one or more possible causes: a high level of copper that occurs naturally in the ground water that is the source of water for the Facility's domestic and industrial dischargers; copper that leaches from older domestic water lines; and a polymer in Narricot's industrial discharge that inhibits the ability of the sludge used in the Facility's biological treatment process to properly absorb copper. The degraded sludge was also suggested as a possible cause for the ammonia exceedances. The County also stated that it was considering corrective measures including removing the sludge from the Facility's aeration basin, making the discharge limits in Narricot's Pretreatment Permit more stringent when it is renewed on October 1, 2011, and, eventually, upgrading the Facility. The County has developed a scope of work to upgrade the Facility and to remove, dewater and dispose of the sludge. Bid documents for prospective contractors to complete the Facility upgrade and sludge removal were advertised during the week of August 7, 2011. The Facility upgrade and sludge removal is estimated to cost $800,000. The County is exploring various options for funding the project. Narricot reported four violations of the effluent limits contained in the Pretreatment Permit during calendar year 2010 (twice for toxicity and once each for color and TR copper). Consequently, the County enforced the $20,000 civil

charge required by the County Order, which Narricot invested in pretreatment process improvements rather than pay directly to the County. The County Order remains open; the County is continuing to work with Narricot to resolve the toxicity violations and to optimize the performance of Narricot's pretreatment process. Process improvements will be addressed in the Pretreatment Permit when it is renewed effective October 1, 2011**.** The Consent Special Order ("Order") would require the County to pay a civil charge within 30 days of the effective date of the Order. The Order would also require the County to comply with the Permit. The Order will require the County to submit a Corrective Action Plan ("Plan") and Schedule to reduce the levels of ammonia and TR copper in the effluent to below Permit limits, which will include, at a minimum, physically upgrading the Facility and its waste water collection system; modifying the procedures by which the Facility is operated and maintained; and placing more stringent discharge limits or operational requirements in Narricot's Pretreatment Permit. All work under the Plan and Schedule must be completed by January 1, 2013. However, in recognition of the County's efforts to improve the quality of the effluent that discharges from the Facility, the Order will establish interim limits for ammonia and TR copper effective September 1, 2011, until completion of all work under the Plan and Schedule. The proposed Order would also require the County to provide quarterly reports on the status of the upgrades to the Facility and the waste water collection system; all maintenance performed on the Facility during the preceding three-month period; changes in Facility operations, if any; training of Facility operators, if any; and a summary of Narricot's compliance with the standards and requirements of its Pretreatment Permit. Civil Charge: $4,340.

E.I. Du Pont de Nemours and Company James River Plant - Consent Special Order w/ Civil Charges: E. I. Du Pont de Nemours and Company (DuPont) owns and operates a sulfuric acid and gypsum production plant (Facility) located in Chesterfield County on the James River. In a discharge monitoring report (DMR) submitted by DuPont on April 10, 2011, Facility staff reported an effluent pH of 3.5, which occurred on March 8, 2011 as a result of an acid cooler leak. The permit contains an instantaneous grab sample requirement for pH with a range limitation between 6.0 and 9.0. The Permit also requires immediate 24 hour reporting of noncompliant or unusual discharges with a detailed follow-up letter in 5 days. DuPont failed to meet both reporting requirements. On May 6, 2011, the Department issued a Notice of Violation (NOV) to DuPont for the pH discharge, for failure to report the pH discharge in a timely manner, and for using an unapproved method in sampling for acute toxicity. Department staff met with DuPont staff on May 5, 2011, to discuss the NOV and the compliance issues at the Facility. DuPont staff stated during the meeting that an acid cooler leak occurred and caused a pH excursion which lasted for 21 minutes. Facility staff neutralized the discharge with soda ash and immediately shut down the Plant for three days as the leak was found and repaired. The repair included plugging the leaking tube on both ends and performing eddy current testing to ensure none of the remaining tubes were experiencing mechanical integrity issues. DuPont measures pH for Permit compliance by conducting grab samples once per week. In addition, the Facility has pH probes measuring pH continuously at Outfall 001 as well as in other parts of the system for process control. Most organic chemical facilities have a permit requirement to monitor pH continuously with the stipulation that pH will remain between 6.0 and 9.0 for all but 60 minutes per month (40 CFR part 401). While continuous pH analysis was not a requirement of the Permit, the presence of continuous monitoring enabled DuPont staff to discover the violation immediately rather than hours or possibly 7 days later. DuPont staff also stated that they discussed reporting the discharge to DEQ immediately, but decided to report it on the DMR since the discharge was short in duration and the staff believed that it did not result in negative impacts to state waters. DuPont staff further explained that the toxicity samples were collected properly; however, sampling staff completed the forms incorrectly. Civil Charge: $1,820.

Route 240, LLC ("R240") - Consent Special Order with a civil charge: Route 240, LLC owns the Starr Hill Brewery building and Starr Hill Brewing Company owns and operates the brewery business within the building in the Town of Crozet, Virginia. The brewery produced approximately 15,300 barrels of a variety of craft beers in 2010 and expects to brew approximately 19,500 barrels in 2011. On March 29, 2011, DEQ was contacted by Albemarle County Service Authority ("ACSA") staff to relay a report made by a resident of the Western Ridge development in Crozet, VA. The citizen reported "dead frogs" and a "sewage smell" coming from the creek running to the south of the housing development. On March 29, 2011, DEQ investigated the pollution complaint and noted an unpermitted discharge to an unnamed tributary to Lickinghole Creek. During the investigation, DEQ staff determined that R240 had an unpermitted discharge of a clear, reddish brown liquid overflowing from a 12 inch pipe, with environmental impact, to an unnamed tributary of Lickinghole Creek. The 12 inch pipe ordinarily discharges to the ACSA sewer system, but it was determined that a blockage in the pipe caused a backup and overflow of effluent from an open portion of the pipe to which a flow meter apparently had previously been connected. On March 30, 2011, during DEQ's continuing investigation, staff observed significant deposits of solids along the stream banks, visible bacterial colonies, strong brew odor and dead aquatic organisms as a result of the unpermitted discharge. During the March 30, 2011 inspection, DEQ observed that the

opening in the pipe was repaired/patched by R240. On April 7, 2011, VRO issued a Notice of Violation to R240 for the unpermitted discharge to State waters in March 2011. On April 26, 2011, Department staff met with representatives of R240 to discuss the unpermitted discharge, what led to the discharge and the corrective actions R240 had taken and planned to take to address the unpermitted discharge. DEQ requested R240 submit a plan and schedule of corrective actions to address the unpermitted discharge and the effects on the receiving stream. By letter dated May 27, 2010, R240 submitted to DEQ a summary of completed and in-progress corrective actions, and a plan and schedule of corrective actions to address the effects of the unpermitted discharge. Portions of this plan and schedule are incorporated into Appendix A of this proposed Order. The proposed Order contains a plan and schedule of corrective actions to mitigate the impacts on the receiving stream. In accordance with the proposed Order's requirements, Rt. 240 completed the stream remediation by July 15, 2011 and submitted a report dated July 28, 2011. Civil Charge: $9,100.

W. Harold Talley II, LLC - Consent Special Order - Issuance: W. Harold Talley II, LLC (Talley) is the owner and operator of a wastewater treatment plant located at 101 Marina Drive, Surry, Virginia (Facility). On May 6, 2010, DEQ staff conducted a compliance inspection of the Facility. The following violations were noted as a result: (1) Talley did not apply for a VPDES permit; and (2) Talley discharged wastewater to state waters without a permit. The Department issued a Notice of Violation (NOV) to Talley on January 26, 2011 for these apparent violations. The consent order requires Talley to cease the discharge of wastewater from the Plant and to pump and haul the wastewater until a VPDES permit is issued, a Virginia Department of Health permit is issued, or the Plant ceases operations. The cost of the injunctive relief that Talley will incur as a result of the violations was estimated to be approximately $40,000.

Charlottesville Albemarle Airport Authority (CAAA) - Consent Special Order with a civil charge: On May 21, 2008, DEQ issued Virginia Water Protection Permit No. WP4-08-0094 (Permit) to CAAA for the Facility with an expiration date of May 20, 2015. The Permit authorized permanent impacts to approximately 0.08 acres of palustrine, emergent wetlands and 937 linear feet of stream channel associated with an unnamed tributary to Jacobs Run, each of which are considered State waters. In addition, on May 29, 2009, CAAA was provided coverage under NWP 13 to upgrade an existing, damaged stream crossing by replacing the crushed culvert with two 36-inch culverts to address expected high flows, to install a trash barrier, and to implement approximately 400 linear feet of bioengineered bank stabilization downstream of the crossing. On February 4, 2011, DEQ staff conducted an inspection to verify compliance with the Permit. During the inspection, staff observed the following in an unnamed tributary to Jacobs Run (different from that referenced in the Permit) ("the Stream Segment") immediately offsite from the permitted project area to Crickenberger Lane:

a. Construction of multiple temporary rock check-dam structures in the Stream Segment;
b. Discharge of an unknown quantity of sediment in the Stream Segment; and
c. A total impacted Stream Segment of approximately 300 linear feet in length.

CAAA did not have a Permit for the discharge of fill material into the referenced unnamed tributary to Jacobs Run. On February 18, 2011, DEQ issued a Notice of Violation to CAAA for the violation of Va. Code § 62.1-44.15.20 and 9 VAC 25-210-50 observed during the February 4, 2011 inspection. On March 18, 2011, DEQ staff met with representatives of CAAA to discuss the alleged violations and corrective actions necessary for CAAA to return to compliance. CAAA indicated that the additional unauthorized impacts were a result of not realizing that the Stream Segment impacted was not part of the Permit. During the March 18, 2011 meeting, DEQ requested that CAAA submit a plan and schedule of corrective actions to address the outstanding non-compliance issues. CAAA apparently had all the appropriate E&S controls in place. However, there was runoff of sediment from the site to an unnamed tributary to Jacobs Run that was not part of its Permit. This runoff of sediment occurred because of the extensive exposed disturbed land, and the grass, planted late in the season to stabilize the site, did not grow. CAAA installed the check-dams in an attempt to capture the sediment leaving the site and prevent it from moving further downstream. On March 31 and May 2, 2011, CAAA submitted a written draft Corrective Action Plan (CAP) for incorporation into this proposed Consent Special Order. The proposed Consent Special Order contains a plan and schedule of corrective actions to mitigate the impacts on the receiving stream. Civil Charge - $12,480.

Duplin Marketing, LLC - Consent Special Order with a civil charge: Duplin Marketing, LLC ("Duplin") operates a hog transfer operation at the J.L. Rose hog transfer facility ("Facility") located at 21360 Plank Road in Courtland, Virginia. On April 8, 2010, DEQ compliance staff conducted an inspection of the Facility that revealed an unpermitted discharge from a pipe coming from the Facility flowing into an unnamed tributary of the Nottaway River. Duplin does not have a permit to discharge industrial wastewater into state waters and failed to notify DEQ of the unpermitted discharge. On September 7, 2010, DEQ issued a Notice of Violation ("NOV") to Duplin for an unpermitted discharge to

state waters. The Order requires Duplin to pay a civil charge within 30 days of the effective date of the Order. Following the issuance of the NOV, Duplin capped the discharge pipe, began pumping and hauling the waste water to the Murphy Brown Dory Farm (VPA Permit #VPA010175) for disposal, and was issued a Certificate to Construct for a pump station/force main to connect Duplin waste water to the Courtland Wastewater Treatment plant; a permitted Publicly Owned Treatment Works (VPDES Individual Permit #VA0061859). Connection is anticipated within the next thirty days. Civil Charge: $14,365.

Four Seasons at Historic Virginia - Consent Special Order w/ Civil Charges: K. Hovnanian Four Seasons at Historic Virginia, LLC (K. Hovnanian) was issued a VWP Individual Permit No. 00-0236 (Permit) on July 9, 2001 in order to develop a residential community consisting of single family homes, roadways, utility infrastructure, and storm water management/best practice facilities. The Permit authorized total permanent impacts of 3.33 acres of surface waters, consisting of 0.79 acre of palustrine forested (PFO) wetlands, 0.51 acre of palustrine emergent (PEM) wetlands, and 2.03 (7,600 linear feet) of intermittent stream channels. On April 23, 2009, DEQ staff conducted an inspection of the site and found modifications and unpermitted impacts. DEQ did not receive notifications from K. Hovnanian for these project modifications or additional impacts, nor were these modifications or additional impacts identified on construction monitoring reports submitted on behalf of K. Hovnanian. DEQ issued a Notice of Violation to K. Hovnanian on July 13, 2009 for these unpermitted impacts. DEQ met with K. Hovnanian and its consultant Williamsburg Environmental Group, Inc. (WEG) on August 25, 2009, and again on April 19, 2010, to discuss the cause and resolution of the impacts. K. Hovnanian attributed the unauthorized impacts to a discrepancy between the original plans submitted as part of the permitting process and those approved by Prince William County government agencies. No modification to the permit was submitted when the site design was revised from the plan submitted with the Join Permit Application. K. Hovnanian had the understanding that the original consultant was communicating with the engineer and would therefore catch any differences between the plans and submit the appropriate paperwork. On June 25, 2010, K. Hovnanian submitted a response that provided the final unauthorized impacts as 0.73 acre of PFO wetland and 1,995 linear feet of stream channel. Additionally, on December 10, 2010, DEQ received a compensation proposal for the unauthorized impacts that consisted of purchasing stream credits from the Northern Virginia Stream Restoration Bank equal to 1,995 lf of stream credits for the stream impacts and purchasing 1.46 wetland credits needed for the wetland impacts. DEQ staff reviewed this proposal and determined that the 1:1 mitigation to loss ratio was appropriate and therefore, this compensation proposal was sufficient to fulfill that burden. The Order requires K. Hovnanian to submit proof of purchase of the stream compensation credits necessary to fulfill the compensation burden of 1,995 lf stream compensation requirements and proof of purchase of the 1.46 wetland credits to compensate for the 0.73 acre of PFO wetlands. In the event that K. Hovnanian is unable to purchase the credits as described in the Order, it will be required to submit an approvable Corrective Action Plan providing an alternative compensation proposal. According to K. Hovnanian, the cost of complying with the injunctive relief portion of the Order is approximately $875,000. Civil Charge: $60,000.

Kenan Transport, LLC - Consent Special Order w/ Civil Charge: Kenan Transport, LLC (Kenan) is a company that transports petroleum products to customers by way of tractor trailer tankers. On November 17, 2009, DEQ received a report from Kenan that a truck carrying 8,000 gallons of jet fuel was involved in an accident at Richmond International Airport. The truck ran off South Airport Drive discharging approximately 4,000 gallons of jet fuel onto the ground and into Gillies Creek. The driver was cited by the police for failure to maintain proper control of the vehicle. On January 4, 2010, the Department issued Notice of Violation No. 2009-12-P-201 to Kenan for a discharge of oil to the environment. On January 12, 2010, Kenan called DEQ to discuss the NOV. On the night of the accident, Marshall Miller & Associates (MM&A), consultants hired by Kenan pumped 3,350 gallons of the fuel load from the tanker truck into another tanker owned by Kenan. On November 17th and 18th a vacuum tanker removed 7,000 gallons of a water/jet fuel mixture and transported them to Reco Biotechnology of Richmond (Reco) for treatment and disposal. On November 19th and 20th a 0.3 acre area with 65 truckloads (1,380.62 tons) of contaminated soil was excavated and transported to Reco for treatment and disposal. Confirmation samples were collected and analytical results of the samples indicate no significant amount of contaminated soil remained. Clean backfill was brought in and the excavated area was graded to the original contours and seeded. On December 16, 2009, MM&A submitted a final report on the clean-up and estimated that 4,650 gallons of oil was released during the discharge. The injunctive relief is now completed at a total cost of $185,000. The Order requires payment of a civil charge. Civil Charge: $37,200.

Development of Virginia's FY 2012 Clean Water Revolving Loan Funding List: Title VI of the Clean Water Act requires the yearly submission of a Project Priority List and an Intended Use Plan in conjunction with Virginia's Clean Water Revolving Loan Fund (VCWRLF) Federal Capitalization Grant application. Section 62.1-229 of Chapter 22, Code

of Virginia, authorizes the Board to establish to whom loans are made, loan amounts, and repayment terms. In order to begin the process, the Board needs to consider its FY 2012 loan requests, tentatively adopt a FY 2012 Project Priority List based on anticipated funding, and authorize the staff to receive public comments. On May 26, 2011 the staff solicited applications from the Commonwealth's localities and wastewater authorities as well as potential land conservation applicants and Brownfield remediation clientele. July 15, 2011 was established as the deadline for receiving applications. Based on this solicitation, DEQ received twenty-five (25) wastewater improvement applications requesting $157,112,405 and two (2) Brownfield remediation applications for an additional $651,250.

The federal appropriation for the nation's Clean Water State Revolving Funds for FY 2012 has not been approved yet, but Virginia's share is expected to be in the range of $20-30 million. State matching funds, along with the accumulation of monies through loan repayments, interest earnings, and de-allocations from leverage accounts should make an additional $70+ million available for funding new projects. These funds will result in approximately $100 million becoming available during the FY 2012 funding cycle. The Fund could also be leveraged in the bond market should there be a significant shortfall from any of the anticipated revenue sources. In anticipation of the continued high demand for VCWRLF funding, we have met many times with the Virginia Resources Authority and their financial advisors regarding the funding capacity of the program and the ability of the Fund to meet this anticipated demand. From these detailed discussions, a capacity model of the Fund was developed and has been updated and evaluated each year based on market conditions. Recent results of this analysis indicate that the VCWRLF could provide funding in the range of $100 million this year and still be sustainable to meet anticipated demand into the future. The staff believes it is prudent to move forward with the initial targeting of Virginia's proposed FY 2012 clean water revolving loan funding list for public review based on the anticipated federal appropriation, results of this capacity evaluation, and the maximum utilization of the Fund. Final Board approval of the list will not be requested until the December meeting.

All 25 wastewater applications were evaluated in accordance with the program's "Funding Distribution Criteria" and the Board's "Bypass Procedures". In keeping with the program objectives and funding prioritization criteria, the staff reviewed project type and impact on state waters, the locality's compliance history and fiscal stress, and the project's readiness-to-proceed. The list of wastewater applications in Attachment A is shown in priority funding order based on the Board's prioritization criteria. The two Brownfield remediation applications were reviewed and discussed with other DEQ staff involved with the associated projects. Based on this review and input, the staff believes that both projects would provide for improvements to or protection of water quality and should be funded. In the interest of assisting the maximum number of applicants with Fund resources, we looked closely at the projects' readiness to proceed to construction as well as other variables. The Buchanan County and Rivanna Water and Sewer Authority projects are not expected to get underway until 2013 and are therefore being recommended for deferral to resubmit their applications during next year's funding solicitation. In addition, the amount being recommended for the Eastern Shore of Virginia Public Service Authority has been reduced to the maximum amount they stated they could receive as loan funds.

The recommended project funding list shown below and in Attachment B provides funding for all the applications that are eligible and ready to proceed. It is based on the best information and assumptions currently available to staff from the applications received, federal budget projections, and discussions between DEQ and the Virginia Resources Authority. Several activities will be occurring over the next few months to help clarify these factors and provide additional input to the process including the following: (1) DEQ will hold individual meetings with targeted recipients to verify the information in the applications, especially schedules; (2) finalization of the federal budget for 2012 will determine the federal appropriation for the Clean Water SRF, and (3) staff will provide public notification of the proposed project list and hold a public meeting. The staff is recommending that the list be tentatively adopted, subject to the verification of information in the loan applications (especially schedules), the availability of funds from the federal appropriation, and public review and comment. The final list will be brought back to the Board in December.

The VCWRLF program solicited applications for FY 2012 funding assistance and evaluated 27 requests totaling $157,763, 655. After a preliminary evaluation of funding availability, priority consideration, review of anticipated construction schedules, and projected cash flow needs, Virginia's FY 2012 Project Priority List includes 25 projects totaling $99,308,468. Based on current and projected cash resources, the Board should have sufficient funds available to honor these requests at the amounts shown.

The staff recommends that the Board target the following localities and organizations for loan assistance, subject to the verification of the information in the loan applications (especially schedules) and the availability of funds, and authorize the staff to present the Board's proposed FY 2012 loan funding list for public comment.

1	City of Lynchburg	7,000,000
2	City of Richmond	2,600,000
3	City of Norfolk	10,000,000
4	Alexandria Sanitation Auth.	5,174,000
5	Western VA Water Authority	9,828,000
6	Town of Coeburn	2,094,346
7	Town of Blackstone	3,713,241
8	Botetourt County	910,000
9	Southampton County	926,450
10	Bland County PSA	5,947,035
11	Town of Tazewell	2,847,806
12	Town of Strasburg	22,770,835
13	Fauquier County	7,102,800
14	Eastern Shore of VA PSA	4,000,000
15	Smyth County	472,930
16	Lee County PSA	712,000
17	Blacksburg-VA PISA	3,082,000
18	Louisa Co. Water Authority	1,595,000
19	Town of Rocky Mount	278,600
20	Town of Chilhowie	1,061,500
21	Town of Boydton	1,471,000
22	Alexandria Sanitation Auth.	2,600,000
23	CNW Wastewater Authority	2,469,675
24	Avon Holdings, LLC	531,250
25	Sembilan Enterprises, LLC	120,000
		99,308,468