TENTATIVE AGENDA
STATE WATER CONTROL BOARD MEETING
THURSDAY, JULY 23, 2009
AND
FRIDAY, JULY 24, 2009 (cancelled)

House Room C
General Assembly Building
9th & Broad Streets
Richmond, Virginia

Convene – 9:30 a.m.

			TAB
I.	**Minutes (**April 27, 2009)		A
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X.	**Other Business**		

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Division Director's Report	Gilinsky	
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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 Cindy M. Berndt at (804) 698-4378.

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 exercise their rights 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.

Final Exempt Action: Amendments to the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (9VAC25-31) and to the Virginia Pollution Abatement (VPA) Permit Regulation (9VAC25-32): These are final amendments to the existing regulation. Staff intends to ask the Board for adoption of the amendments to the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (9VAC25-31-100 P 8 e & 9VAC25-31-290 F 2) and to the Virginia Pollution Abatement (VPA) Permit Regulation (9VAC25-32-140 E 2 & 9VAC25-32-240 C). These amendments are the result of passage of HB 2558; Chapter 42 of the Acts of Assembly during the 2009 General Assembly session. The statutory changes included in HB 2558 are detailed as follows with deleted language shown as a strikethrough and additional language underlined:

1) Changes to § 62.1-44.19:3 Section C.10 of the Code of Virginia: "Procedures for receiving and responding to public comments on applications for permits and for permit amendments authorizing land application at additional sites. Such procedures shall provide that an application for ~~a permit amendment~~ any permit amendments to increase the acreage authorized by the initial permit by 50 percent or more shall be treated as a new application for purposes of public notice and public hearings.

2) Changes to § 62.1-44.19:3.4 Section A of the Code of Virginia: "The Board shall not ~~consider the application~~ issue the permit for land disposal ~~to be complete~~ until the public meeting has been held and comment has been received from the local governing body, or until 30 days have lapsed from the date of the public meeting."

The language changes in § 62.1-44.19:3 Section C.10 of the Code of Virginia clarify that the 50 percent criteria is to be based on the acreage that was permitted in the initial permit. An alternative interpretation could have been that the percentage would be based on the acreage currently permitted at the time of the

permit modification request. Permitted acreage changes throughout the life of the permit as land is added or removed. Further, the change from "a permit amendment" to "any permit amendments" clarifies when the procedures for public comment and public hearings will be identical to the procedures followed for new permits. The original language would have allowed for multiple permit amendments adding 49 percent of the permitted acreage each time without following the public notice and public hearing procedures used for a new permit.
The language changes in § 62.1-44.19:3.4 Section A of the Code of Virginia remove the requirement that the public meeting be held and the 30 day comment period elapse prior to considering the permit application complete. This change provides more flexibility in when the Department can consider the permit application complete and begin drafting a permit.

City of Waynesboro STP - Petition for Nutrient Waste Load Allocation Amendments, in 9 VAC 25-720-50.C. (Water Quality Management Planning Regulation, Shenandoah-Potomac River Basin):
By letter dated 3/9/09, the City of Waynesboro Department of Public Works petitioned for increased nutrient waste load allocations (WLAs) for their wastewater treatment plant, located in the Shenandoah-Potomac River Basin, which is currently under construction for upgrade and expansion. The existing facility has a design flow of 4.0 million gallons per day (MGD); the upgrade/expansion project will raise the capacity to 6.0 MGD and install state-of-the-art nutrient reduction technology, capable of annual average concentrations of 3.0 mg/l total nitrogen (TN) and 0.30 mg/l total phosphorus (TP). The project schedule shows completion on or before December 31, 2010.
PETITION:
Waynesboro's existing nutrient WLAs, petition values, and requested increases are as follows:

	Design Flow (MGD)	TN Conc. (mg/l)	Total Nitrogen WLA (lbs/yr)	TP Conc. (mg/l)	Total Phosphorus WLA (lbs/yr)
Existing	4.0	4.0	48,729	0.30	3,655
Petition	6.0	4.0	73,058	0.30	5,479
Difference	+ 2.0	No Change	+ 24,329	No Change	+ 1,824

CURRENT STATUS
- Agency Response to Petition for Rulemaking published in the Virginia Register on 4/13/09.
- Public Comment Period closed 5/4/09; four comments received.

SUMMARY OF COMMENTS
- Cecelia Ferguson: WLA increase (+50%) not proportional to flow increase (+30%). [*Staff note: flow increase from 4.0 to 6.0 MGD (+2.0 MGD = 50% of 4.0) is proportional to WLA increase request.]*
- Chesapeake Bay Foundation, Mike Gerel/Staff Scientist: City did not pursue increased WLAs during development of original WQMP allocations in 2005; Shenandoah-Potomac already over-allocated for TN and doesn't attain water quality standards; increased point source discharges to impaired waters must not be permitted; based on rationale Board used to deny a similar request for Opequon STP, this request should also be denied.
- Donna McGrath: Imperative that you not let an increase in the pollution that the Waynesboro Sewerage plant is proposing to expel into our waterways. There is such a delicate balance in Nature and any increase could do significant damage to a fragile ecosystem.
- Leon Szeptycki, Dir. of UVA Env. Law & Conservation Clinic, on behalf of Shenandoah Riverkeeper: Opposes the petition because increasing the WLA would be inconsistent with applicable regulations, delay restoration of local water quality and Chesapeake Bay, and would frustrate the basic mechanism of the nutrient credit trading system; basin already over-allocated for total nitrogen and proposed increase would only exacerbate this exceedance; any adjustment to an individual WLA considered by the Board must ensure water quality standards are maintained and this hasn't been demonstrated.

STAFF RECOMMENDATIONS
1. Staff recommends that the Board not initiate a rulemaking to increase nutrient WLAs, since Waynesboro did not pursue the increased WLAs due to a plant expansion under the original rulemaking adopted by the Board in 2005 and the Shenandoah-Potomac is already estimated to be

"over-allocated" for nitrogen. Further increases should be avoided when possible to aid in meeting and maintaining water quality standards. In addition, the City has the capability to meet its TN WLA by operating the upgraded nutrient reduction technology, now being installed, at its design intent up to a flow of 5.33 MGD; beyond that point TN credits would need to be secured under the Nutrient Credit Exchange Program. The TP WLA can be achieved at 6.0 MGD design flow through operation at 0.20 mg/l annual average, which is possible using available technology.

2. Direct staff to inform Waynesboro of the option to try and secure allocation from other dischargers, and if they do so, can petition the Board to amend the WQMP Regulation to exchange the WLAs.

Consideration of Petition to Designate a Portion of the Dan River as Public Water Supply: Staff intends to ask the Board at their July 27, 2009 meeting to initiate a rulemaking to consider amending the Water Quality Standards regulation to designate an approximately one mile segment of the Dan River as a Public Water Supply (PWS). Due to concerns prompted by the extreme drought of 2002 and the Homeland Security Act which encourages localities to develop alternative water supply sources and inter-local connections for emergency use, a raw water intake to provide drinking water for the city of Roxboro, NC is proposed for the Dan River near the town of Milton, NC approximately 13 miles downriver from Danville, VA and approximately 25 miles upriver from South Boston. The intake was originally planned for 30 million gallons/day (MGD) but in 2002 Danville expressed concern to the NC Department of Environment and Natural Resources and Roxboro that 30 MGD was excessive. The proposed withdrawal was reduced to 10 MGD. Discharge water would be returned to a tributary of the Dan River several miles below the intake. This tributary flows into the Dan River at a point about 30 miles below the proposed intake. At the Board's April 27, 2009 meeting, staff presented to the Board a petition from the City of Roxboro, North Carolina to designate the Dan River from the VA/NC line upriver for approximately one mile as a public water supply. A petition notice was published in the Virginia Register on May 25, 2009 and the comment period ended June 15. Comment was received from the City of Danville, the Town of Halifax, Halifax County, and the Town of South Boston. North Carolina water quality standards require PWS protections to extend 10 miles upriver from the intake. The one mile segment of the Dan River in Virginia being petitioned for PWS designation is necessary to meet that requirement. Roxboro is requesting PWS protection in accordance with Virginia's water quality standards regulation and not North Carolina's. Although comment received did not directly address the need for a PWS designation on the Dan River, several Virginia localities have expressed concern regarding the necessity of the raw water intake.

> Concerns as stated by Danville: (1) close proximity to their wastewater treatment facility discharge; (2) taking water out from one location and putting it back at another downstream; (3) possibility of more stringent limits for the WWTF discharge; (4) need for the water has not been documented; and (5) possible selling of the water to other localities in NC.
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> Joint resolution provided by Halifax County Board of Supervisors, Town Council of Halifax, Town Council of South Boston: They oppose the manner/location in which the water is returned to the Dan River. The proposed intake is near Milton, NC and the existing waste water treatment facility discharge that would accommodate the removed water returns it to a tributary to the Dan River approximately 30 miles downriver. This effectively bypasses the above named localities. They are concerned the bypass will reduce water supplies that serve existing and future residential, commercial, industrial, agricultural, and recreational uses. They state mitigation can be achieved by returning treated waste water from the withdrawal back to the river in the vicinity of Milton.

The petition received from the City of Roxboro requests a PWS designation for a one mile segment of the Dan River. Opposing comment received from localities is directed towards the necessity of the proposed intake, additional restrictions for upstream WWTF discharges, the proposed amount of water to be withdrawn, and/or the location of the waters return. Staff believes the rulemaking process, including the two comment periods for the notice of intended regulatory action (NOIRA) and notice of public comment (NOPC), will provide sufficient opportunity to determine if a PWS designation is warranted. Staff

recommends the Board direct staff to initiate a rulemaking to consider designation of a one mile segment of the Dan River as a public water supply.

REPORT ON SIGNIFICANT NONCOMPLIANCE: One permittee was reported to EPA on the Quarterly Noncompliance Report (QNCR) as being in significant noncompliance (SNC) for the quarter October 1st through December 31, 2008. The permittee, its facility and the instances of noncompliance as follows:

Permittee/Facility: Town of Elkton, Elkton Sewage Treatment Plant
Type of Noncompliance: Failure to Meet Permit Effluent Limits (Total Suspended Solids)
City/County: Elkton, Virginia
Receiving Water: South Fork of the Shenandoah River
Impaired Water: The South Fork is listed as impaired for fecal coliform and benthics. The source of the fecal coliform is believed to be non-point sources. The source of the benthic impairment is unknown.
River Basin: Potomac-Shenandoah River Basin
Dates of Noncompliance: November and December 2008
Requirements Contained In: VPDES Permit
DEQ Region: Valley Regional Office

The Town is the subject of a Consent Special Order issued on October 20, 2008 which required, among other things, that the Town hire a licensed plant operator and improve the sludge handling capabilities of the plant. Staff of the Valley Office have determined that the new plant operator, anticipating that the plant would be without sludge handling processes during a period of construction, "overwasted" solids, which resulted in the referenced violations. The operational issue has been addressed, violations ceased in January of this year and staff do not anticipated taking enforcement action in this matter.

Contractors Paving Company, Inc., Norfolk - Consent Special Order with a civil charge:
Contractors Paving Company, Inc. ("CPC") operates a Facility in the City of Norfolk, Virginia, at which it manufactures asphalt paving material. Storm water discharges from the Facility are subject to the Permit through Registration No. VAR051467, which was effective July 1, 2004, and expired June 30, 2009, and which was reissued July 1, 2009, and expires June 30, 2014. The Permit authorizes CPC to discharge to surface waters storm water associated with industrial activity under conditions outlined in the Permit. As part of the Permit, CPC is required to provide and comply with a Storm Water Pollution Prevention Plan ("SWP3") for the Facility. On January 14, 2009, DEQ compliance staff conducted an inspection of the Facility that revealed the following: poor housekeeping practices in the main manufacturing area; failure to perform quarterly visual examinations of storm water quality and annual benchmark monitoring of storm water discharges; failure to properly document routine monthly inspections and an annual comprehensive site compliance evaluation ("CSCE"); and failure to comply with SWP3 requirements by not identifying in the SWP3 and the accompanying site map all the points from which storm water discharges from the Facility. On March 5, 2009, DEQ issued a Notice of Violation ("NOV") advising CPC of the deficiencies revealed during the Facility inspection conducted on January 14, 2009. CPC responded to the NOV in writing on March 12 and March 30, 2009. Additionally, CPC invited DEQ enforcement staff to visit the Facility on May 6, 2009, to observe improvements in storm water management practices. To remedy the deficiencies noted in the NOV, CPC has done the following: revised the forms used to record routine Facility inspections; remedied the housekeeping deficiencies noted in the NOV; revised the SWP3 to include the two newly identified storm water discharge points as permitted outfalls; provided copies of all routine Facility inspections and quarterly visual examinations of storm water quality performed since January 2009; performed benchmark monitoring at all outfalls for the 2008-2009 annual monitoring period (including the two newly designated outfalls); and made physical changes to the Facility to reduce the levels of suspended solids discharging from the Facility. The Order requires CPC to pay a civil charge within 30 days of the effective date of the Order. As noted above, CPC has addressed all Permit deficiencies. To ensure compliance with the Permit and the SWP3, and to improve the quality of storm water discharges from the

Facility, the Order also requires CPC to submit documentation of routine inspections and visual examinations of storm water quality; to submit results of benchmark monitoring of storm water discharges for the next two benchmark monitoring periods; and to submit a corrective action plan and schedule in the event that the benchmark value of any pollutant of concern listed in the Permit is exceeded. The Order was executed on May 11, 2009. Civil charge: $9,619

O'Malley's UAP & UC, Inc., Suffolk - Consent Special Order with a civil charge: O'Malley's UAP & UC, Inc. ("O'Malley's") operates O'Malley's Used Auto Parts, an automobile salvage yard ("Facility") in the City of Suffolk, Virginia, at which used motor vehicles are dismantled for the purpose of selling and recycling used automobile parts and/or scrap metal. Storm water discharges from the Facility are subject to the Permit through Registration No. VAR051273, which was effective July 1, 2004, and expired June 30, 2009, and which was reissued July 1, 2009, and expires June 30, 2014. The Permit authorizes O'Malley's to discharge to surface waters storm water associated with industrial activity under conditions outlined in the Permit. As part of the Permit, O'Malley's is required to provide and comply with a Storm Water Pollution Prevention Plan ("SWP3") for the Facility. On November 24, 2008, DEQ compliance staff conducted an inspection of the Facility that revealed the following: overall poor housekeeping practices; failure to properly perform quarterly visual examinations of storm water quality, annual benchmark monitoring of storm water discharges, routine quarterly inspections and annual comprehensive site compliance evaluations ("CSCEs"); failure to train facility employees in storm water management; and failure to comply with SWP3 requirements, i.e. not properly identifying storm water discharge points in the SWP3 and the accompanying site map, not establishing in the SWP3 periodic dates for training employees, failure to provide a non-storm water certification, and failing to sign and certify the SWP3. On December 9, 2008, DEQ issued a Notice of Violation ("NOV") advising O'Malley's of the deficiencies revealed during the Facility inspection conducted on November 24, 2008. O'Malley's responded to the NOV in writing on December 18, 2008, and stated that training in storm water management had been conducted on December 16, 2008; routine quarterly facility inspections, CSCE's and quarterly visual examinations of storm water quality would now be conducted and properly documented; dismantling equipment was being repaired to eliminate fluid leaks; and fluid spills in the dismantling area were being cleaned up. The letter enclosed an updated SWP3 that included a non-storm water certification and a site map identifying an additional storm water outfall; the updated SWP3 was signed and certified. The updated SWP3 did not include a schedule for training employees and the updated SWP3 and site map included only one of the two storm water discharge points noted during the November 24, 2008, DEQ compliance inspection. The Order requires O'Malley's to pay a civil charge within 30 days of the effective date of the Order. O'Malley's has addressed all Permit deficiencies, except the the SWP3 deficiencies noted above. To ensure compliance with the Permit and the SWP3, and to improve the quality of storm water discharges from the facility, the Order also requires O'Malley's to submit an updated SWP3; to submit documentation of routine inspections and visual examinations of storm water quality and a certification that all housekeeping deficiencies noted during the Facility inspection have been corrected; and to perform benchmark monitoring of storm water discharges by December 31, 2009, and to submit a corrective action plan and schedule in the event that any pollutant of concern listed in the Permit is exceeded. The Order was executed on May 1, 2009. Civil charge: $12,000.

Tascon Group, Inc., Chesterfield County - Consent Special Order w/ Civil Charges: On June 20, 2006, DEQ issued Tascon Group, Inc. ("Tascon") VWP permit number 05-1526. The Permit authorized impacts to 0.88 acres of forested wetlands and 1.57 acres of open water associated with the Harvest Glen subdivision in Chesterfield County. Part I.J.1 of the Permit required that Tascon purchase 1.76 acres of mitigation bank credits from the James River Mitigation Landbank in Goochland County, Virginia, prior to beginning impacts to surface waters. Impacts to surface waters associated with the construction of Harvest Glen commenced in September 2006. A file review indicated that Tascon Group failed to purchase the mitigation bank credits required by Part I.J.1 of the Permit. Va. Code §62.1-44.15:20(A) and 9 VAC 25-210-90(A) require compliance with the Permit. Notice of Violation number 08-04-PRO-701

was issued to Tascon on January 20, 2009 for the company's failure to comply with the conditions of its Permit. Tascon submitted documentation to DEQ on February 5, 2009, indicating it would purchase the required bank credits from the James River Mitigation Landbank. The Consent Order requires that Tascon purchase the required 1.76 wetland mitigation credits. The cost of the injunctive relief required by the Order is approximately $96,800. Civil charge: $23,790.

HOPSON, LLC , Powhatan County - Consent Special Order - w/ Civil Charges: In June 2007, HOPSON, LLC attended a pre-application meeting at DEQ to apply for a VWP permit for the proposed Walnut Creek subdivision in western Powhatan County. At the meeting, it was discovered that in 2001, HOPSON, LLC had initiated the construction of an impoundment on an unnamed tributary to Deep Creek. The impoundment is located on the property of the proposed Walnut Creek subdivision. At the meeting, DEQ staff indicated that in order to proceed with the VWP permit application, the history of the construction of the impoundment with all prior and proposed impacts for the Walnut Creek subdivision to surface waters and wetlands would need to be provided. A VWP permit would have been required in 2001 for the impacts to wetlands and streams due to the construction of the impoundment, but the Army Corps of Engineers, DEQ, and HOPSON, LLC could not find any records that a permit had been issued for the impacts associated with the construction of the impoundment and resultant backflooding of those areas. Since there was no evidence of a permit being issued, DEQ requested that HOPSON, LLC provide the impacts to the stream and wetlands from the 2001-2002 impoundment construction and submit for review and approval a compensatory wetland mitigation plan to address the impacts. A Notice of Violation (NOV) was issued to HOPSON, LLC on February 8, 2008 for the unauthorized impacts to approximately 4000 linear feet of stream channel and 3 acres of wetlands that were filled and flooded during the construction of the impoundment. In October 2008, DEQ received a response from the consultants working for HOPSON, LLC. The consultants estimated that impacts from the construction totaled 3,700 linear feet of stream and 1.08 acres of wetlands. Due to lack of primary evidence, DEQ did not contest this estimate. HOPSON, LLC agreed to a Consent Special Order with the Department to address the above described violations. The Order requires that HOPSON, LLC mitigate for the impacts as follows: 1) Purchase 1.08 wetland credits from an approved wetland mitigation bank; 2) Submit to DEQ documentation that the U.S. Army Corps of Engineers has debited the required 1.08 credits from an approved mitigation bank; and 3) Submit to DEQ proof of completion and recordation of a Declaration of Restriction for parcels with a Preservation Area. The Preservation Area shall include the preservation of 19,585 linear feet of stream with minimum 50' buffers on each side of the stream and the preservation of 13.88 acres of wetlands with buffers. The Order also requires the payment of a civil charge. DEQ staff estimated the cost of injunctive relief to be approximately $60,000. Civil charge: $31,568.

Liberty University, Inc., Lynchburg - Consent Special Order w/ Civil Charge: The responsible party was cited for violations of the Va. Code and VWP Permit requirements as the result of a site inspection conducted by Blue Ridge Regional Office (BRRO) in March of 2007. Liberty University, Inc. is an institute of higher learning located in Lynchburg, Virginia that is registered under, and is subject to the requirements of, the VWP Program for various construction activities on campus. A site inspection conducted at the campus on March 28, 2007, revealed that the University had impacted an intermittent stream and wetland and exceeded the area authorized by their VWP Permit. By impacting an additional 65 linear feet of intermittent stream and impacting 0.01 acres of palustrine forested Wetland beyond the authorization of a VWP Permit, the University altered the physical and biological integrity of State waters. Civil charge: $8,850.00

Foster Fuels, Inc., Giles County - Consent Special Order with a Civil Charge: Foster Fuels, Inc. is a Virginia corporation incorporated in 1960. The company transports petroleum products to customers via tractor trailer tankers. On February 14, 2008, the DEQ BRRO received notification of a discharge of dyed diesel fuel and kerosene in the White Gate community of Giles County. Diesel fuel and kerosene are petroleum products, which are included in the definition of "oil" under Va. Code § 62.1-44.34:14. A Foster Fuels tanker truck laden with approximately 7,500 gallons of dyed diesel fuel and kerosene

overturned on a sharp curve, slid along the roadway and came to rest against several trees at the roadside, near a small spring. The force of the slide tore a large hole in the side of the tanker allowing most of the fuel load to drain quickly onto the ground, into the spring, and Walker Creek. Foster Fuels' contractor was able to recover approximately 4,513 gallons of the discharged dyed diesel fuel and kerosene. On March 21, 2008, the Department issued Notice of Violation No. 08-03-WCRO-008 to Foster Fuels, Inc. for a discharge of oil to the environment. The Order before the Board assesses a civil charge to Foster Fuels, Inc. for the unauthorized discharge of oil to Walker Creek, which resulted in Foster Fuels, Inc. violating Article 11 of the State Water Control Law addressing Discharge of Oil Into Waters. The Order specifically orders Foster Fuels to monitor groundwater at the discharge and accumulation site, sample wells and springs within 500 feet of the discharge site, sample the well at the nearby Taylor property, and sample Walker Creek downstream of the discharge site. The Order requires Foster Fuels, Inc. to sample quarterly for a period not less than the time required to complete four quarterly sampling events. Foster Fuels, Inc. will be required to establish a corrective action plan for analytical results exceeding action levels. Civil charge: $20,420.40

LSF5 Cavalier, LLC., Charlottesville - Consent Special Order w/Civil Charges: LSF5 Cavalier, LLC owns an underground storage tank (UST) facility located at 240 Rolkin Road, Charlottesville, Virginia. The owner stores petroleum in these USTs under the requirements of 9 VAC 25-580-10 et seq. Underground Storage Tanks: Technical Standards and Corrective Action Requirements and 9 VAC 25-590-10 et seq. Petroleum Underground Storage Tank Financial Responsibility Requirements (collectively, the UST Regulations). The UST Regulations require that owners of UST facilities protect USTs from corrosion, perform release detection, properly register the USTs, properly close non-compliant USTs, and maintain both compliance records and financial responsibility for the USTs. A June 4, 2008 inspection of the facility revealed a number of alleged violations. Alleged violations noted relevant to this Consent Special Order are failure to: 1) perform release detection on UST numbers 1 and 2 every 30 days; 2) maintain release detection compliance records for at least one year; and 3) install the piping associated with UST number 1 in compliance with the manufacturer's installation and operating specifications. DEQ issued a Notice of Violation (NOV) to the owner on July 10, 2008. A representative from the owner contacted DEQ staff on July 18, 2008 to discuss possible remedies to the situation and the settlement of past violations. The owner stated that they would resolve the noted violations as soon as possible. On July 31, 2008, DEQ staff received documentation that the piping installation problem had been repaired. During March and April 2009, the owner and DEQ staff negotiated conditions of a Consent Special Order, and DEQ staff received copies of release detection records for each UST at the facility for December 2008 and January, February and March 2009. The owner signed a Consent Special Order on April 16, 2009. The owner corrected errors in the programming for the release detection system for the USTs and verified that the correct programming is in place at all of its other facilities. The costs incurred by the owner to cure the alleged violations were negligible. Civil charge: $3,583.

Sunoco, Inc., Rockbridge County - Consent Special Order w/Civil Charges: Sunoco, Inc. owns an underground storage tank (UST) facility located at 2468 Raphine Road, Raphine, Virginia. The owner stores petroleum in this UST under the requirements of 9 VAC 25-580-10 et seq. Underground Storage Tanks: Technical Standards and Corrective Action Requirements and 9 VAC 25-590-10 et seq. Petroleum Underground Storage Tank Financial Responsibility Requirements (collectively, the UST Regulations). The UST Regulations require that owners of UST facilities protect USTs from corrosion, perform release detection, properly register the USTs, properly close non-compliant USTs, and maintain both compliance records and financial responsibility for the USTs. An April 30, 2008 inspection of the facility revealed a number of alleged violations. Alleged violations noted relevant to this Consent Special Order are failure to: 1) perform release detection on UST numbers 5, 6, 7 and 11 every 30 days; and 2) maintain release detection compliance records for at least one year. DEQ issued a Notice of Violation (NOV) to the owner on September 16, 2008. A representative from the owner contacted DEQ staff on September 26, 2008 to discuss possible remedies to the situation and the settlement of past violations. The owner stated that they have had difficulty maintaining operators at the facility and that the facility was probably not in operation

during the time period for which they are missing release detection records. On November 13, 2008, DEQ staff conducted a second inspection of the facility, which revealed the same violations noted during the April 2008 inspection. During March and April 2009, the owner and DEQ staff negotiated conditions of a Consent Special Order, and DEQ staff received copies of release detection records for the UST for January, February, and March 2009. The owner signed a Consent Special Order on April 6, 2009. The owner has ceased relying on operators of the facility for the collection and submittal of release detection data to the Statistical Inventory Reconciliation (SIR) vendor and is directly involved with the collection and submittal of this data. The costs incurred by the owner to cure the alleged violations were negligible. Civil charge: $8,750.

City of Harrisonburg, Consent Special Order with a civil charge: Harrisonburg owns and operates the sewage collection system serving Harrisonburg, which conveys sewage to the Harrisonburg-Rockingham Regional Service Authority – North River STP for treatment. On November 18, 2008, Harrisonburg reported to DEQ a sewage overflow that occurred on November 17, 2008, in Harrisonburg's Purcell Park. Harrisonburg reported that the overflow occurred at a manhole next to Interstate I-81 and entered a dry ditch tributary to Blacks Run (dry ditch before entering Seiberts Run and finally Blacks Run). Although, Harrisonburg reported the overflow, it did not note that a significant amount of sewage had entered Seiberts Run. The overflow occurred as a result of a sewer backup in the collection system. The sewer backup apparently occurred due to a manhole cover being knocked off during mowing on VDOT's I-81 right-of-way. On November 19, 2008, DEQ investigated the sewage spill to Seiberts Run during which staff observed significant sewage solids deposits in a stream reach of approximately 720 feet. The sewage overflow initially entered a dry ditch and flowed about 180 meters through the ditch before entering Seiberts Run. Seiberts Run was blanketed with sewage solids from the entry point of the dry ditch downstream to a low-water bridge. During the investigation, staff observed a kill of five dead fish in Seiberts Run in the area immediately above the confluence with Blacks Run. DEQ conducted E. coli sampling in Seiberts Run above and below the spill location. The November 19, 2008 E. coli sampling results were as follows:

Station	Location	E. coli (col/100ml)
Site A	Control site in Seiberts Run above confluence with the dry ditch	180
Site B	Downstream of dry ditch in Seiberts Run	650
Site C	Seiberts Run - Above confluence with Blacks Run	1000

DEQ has never issued a permit to Harrisonburg for the discharge of sewage. Harrisonburg violated the Code by discharging sewage without a permit issued by the Board. DEQ issued a NOV on December 8, 2008 to Harrisonburg for the unpermitted discharge of sewage on November 17, 2008, which resulted in adverse impacts to State waters in violation of Virginia Code § 62.1-44.5. and 9 VAC25-31-50.A. On December 18, 2008, DEQ met with representatives of Harrisonburg to discuss the violations cited in the NOV and the circumstances that led up to the unpermitted discharge. Although not cited in an enforcement document, Harrisonburg experienced an unpermitted discharge from its collection system on August 25, 2008. This discharge occurred due to a line blockage which was immediately and completely addressed. There are no further corrective actions necessary to resolve the violations cited in this Order. The proposed Order, signed by the City of Harrisonburg on April 21, 2009, requires Harrisonburg to submit a Standard Operating Procedure for ensuring the consistent and proper reporting of all overflows from its collection system and to pay a civil charge to resolve the violations. Civil charge: $14,300. The SEP to be performed by Harrisonburg will be the identification and elimination of privately owned septic systems adjacent to Blacks Run and within Harrisonburg. The project would first include identification of any privately owned septic systems in the area of Blacks Run. Harrisonburg would then encourage the owners of these systems to abandon their systems and connect to the public sewer system by allowing the

connection without payment of the usual connection fee of $4,500. Should there be insufficient interest in this offer expressed by system owners in the Blacks Run area, Harrisonburg will expand the offer to all septic system owners within Harrisonburg's limits. Additionally, as part of the project, Harrisonburg will offer to replace, at its sole cost, any compromised private sewer lateral within 100 feet of Blacks Run.
DEQ received one public comment letter containing the following comments, with DEQ's responses:
Public Notice Comment

1-3. Non-storm related overflow isn't that unusual for a city of 45,000 that has experienced large growth…and has added many sanitary sewer extensions onto various "old" infrastructures.For the subject case, it seems that the "root cause" of the unpermitted discharge was poor practices by persons who maintain and mow the I-81 right of way. If the root cause (2) is the final conclusion, then the VDOT local Resident Engineer should be advised officially by DEQ that this happened.

DEQ Response:

DEQ agrees that non-storm-related overflows are not that unusual. Where they occur they are generally attributed to maintenance problems that go undetected for some period of time before becoming evident.

DEQ understands that a VDOT subcontractor hit the manhole while mowing in the area along I-81. It is the sewerage system owner's responsibility to inspect, maintain and repair their manholes. This was a rather unusual incident, and for that reason is not expected to be a recurring problem. Harrisonburg is in conversation with VDOT to address the situation.

Public Notice Comment

4-5. Several sanitary sewer blockages and overflows have multiple causes. It would be good to know the probable time of the day the overflow occurred, if precipitation occurred, and if there are any internal issues with the line.

DEQ Response:

DEQ definitely agrees that it is important to understand the root cause of collection system problems. DEQ routinely conducts meetings with parties after the issuance of a Notice of Violation. These meetings are utilized to discuss the cause(s) of violations and potential mechanisms to address those problems. DEQ routinely encourages and where necessary requires the systematic evaluation of collection system problems when they become repetitive. From DEQ's perspective, the City of Harrisonburg generally has a good systematic sewer system evaluation protocol in place, and it utilizes a range of mechanisms to inspect and study the system, from smoke testing to TVing problem areas to find specific defects in the lines. Harrisonburg's protocol also addresses sewer overflows due to grease buildup and root blockage. Following its established protocol, Harrisonburg is the process of evaluating that sewer system subbasin to ensure that there are no capacity issues.

The incident addressed in the Order was not weather related. The time period that the overflow occurred is not known. In this case, since the source of the problem was attributed to blockage in the line, Harrisonburg only needed to jet out the line to remove the blockage.

DEQ investigates unpermitted discharges to State Waters as is evident by this proposed Order. As part of DEQ's investigations, it routinely examines the situation to determine if there are significant underlying problems that need further corrective actions and, where appropriate, take formal enforcement actions. These corrective actions would then be required via a Consent Special Order. This Order does not have requirements for further corrective actions, since Harrisonburg already has in place an appropriate sewer system evaluation protocol, and this problem was attributed to a one-time event. In cases where municipalities have significant collection system problems, DEQ routinely takes enforcement actions to require the identification and correction of those problems.

Public Notice Comment

6-7. If SEP efforts by Harrisonburg need to be expanded here, recommend considering application by Harrisonburg of internal TV inspections at locations like this one and at "older" infrastructure that are near Blacks Run, Cooks Creek, etc.

DEQ Response:

As discussed above, Harrisonburg already does utilize TVing to examine and detect defects in the collection systems lines. These evaluations are then used for planning corrective actions to those areas needing repairs. A SEP project proposed by a respondent has to meet a number of statutory requirements in the Virginia Code § 10.1-1186.2 before it can be approved; Harrisonburg's proposal conforms to these requirements. Harrisonburg's plan to identify homes on septic systems and commence their connection to the city sewer will help protect water quality by eliminating potential sources of pollution to Blacks Run.

Leesville Development Discharge Study Plan: The Office of Surface and Groundwater Supply Planning and Virginia Water Protection Permit Program staff have reviewed the February 2009 Draft Leesville Development Discharge Plan submitted by Appalachian Power Company as required by the Smith Mountain Lake VWP Permit Number 08-0572 (FERC No. 2210). Preliminary comments regarding proposed operations, streamflows, and water quality that were made by staff during the study development period have been addressed in the submitted draft plan. Therefore, Special Condition D.3 in the above-referenced permit, which is reproduced below, appears to be satisfied. Staff do not have further comments or recommendations at this time.

> Part I.D.3: The permittee shall conduct a study to determine the relative impact of providing streamflows through hourly auto-cycling compared to continuous releases. The study plan shall be developed in consultation with the Department of Game and Inland Fisheries, the Department of Environmental Quality, the Citizens for the Preservation of the River, and the Tri-County Re-licensing Committee. This study plan shall be submitted to the Board no later than March 1, 2009 for approval. The study shall be conducted in the reach of the Staunton River beginning at the base of the Leesville Dam and extending to the confluence with Goose Creek. The study shall be conducted for no less than one year with the final study schedule to be approved by the Board. The study plan shall designed to investigate the potential effects of hourly auto-cycling releases on bank erosion, water quality, and fishery and benthic habitat, recreation, public safety, or other factors determined by the Board. The results of this study shall be submitted to the Board for making a final determination on the method of downstream releases. Should the determination of the Board, after it reviews the study, be that the permittee shall implement continuous flow releases that will be deemed as mitigation. Should the determination of the Board, after it reviews the study, be that hourly auto-cycling continue by the permittee, the Board may require the permittee to implement other forms of mitigation, including stream restoration for those portions of the reach studied. If any of these mitigation actions are required, such actions shall be implemented by the permittee in accordance with a schedule approved by the Board.