

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

House Room C  
General Assembly Building  
9<sup>th</sup> & Broad Streets  
Richmond, Virginia

Convene – 9:30 a.m. (Both Days)

|              |                                                                                                                                                                                                                                                                 |                             |                 |
|--------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------|-----------------|
| <b>I.</b>    | <b>Minutes</b> (April 27, 2009)                                                                                                                                                                                                                                 |                             | <b>TAB</b><br>A |
| <b>II.</b>   | <b>Permits</b><br>Middlesex Courthouse WWTP (Middlesex Co.)                                                                                                                                                                                                     | Weeks                       | B               |
| <b>III.</b>  | <b>Final Regulations</b><br>VPDES and VPA Regulations Amendments Implementing HB 2558                                                                                                                                                                           | Zahradka                    | C               |
| <b>IV.</b>   | <b>Petition for Rulemaking</b><br>City of Waynesboro Sewage Treatment Plant<br>Dan River Public Water Supply<br>Eastern Shore Water Quality                                                                                                                     | Kennedy<br>Pollock<br>Weeks | D<br>E<br>F     |
| <b>V.</b>    | <b>Significant Noncompliance Report</b>                                                                                                                                                                                                                         | O'Connell                   | G               |
| <b>VI.</b>   | <b>Consent Special Orders (VPDES Permit Program)</b><br>Tidewater Regional Office<br>Contractors Paving Co., Inc. (Norfolk)<br>O'Malley's UAP & UC, Inc. (Suffolk)                                                                                              | O'Connell                   | H               |
| <b>VII.</b>  | <b>Consent Special Orders (VWP Permit Program)</b><br>Piedmont Regional Office<br>Tascon Group, Inc. (Chesterfield Co.)<br>Hopson, LLC (Powhatan Co.)<br>Blue Ridge Regional Office<br>Liberty University, Inc. (Lynchburg)                                     | O'Connell                   | I               |
| <b>VIII.</b> | <b>Consent Special Orders (Other Programs Areas)</b><br>Blue Ridge Regional Office Regional Office<br>Foster Fuels, Inc. (Giles Co.)<br>Valley Regional Office<br>LSF5 Cavalier, LLC (Charlottesville)<br>Sunoco, Inc. (Rockbridge Co.)<br>City of Harrisonburg | O'Connell                   | J               |
| <b>IX.</b>   | <b>Public Forum</b>                                                                                                                                                                                                                                             |                             |                 |
| <b>X.</b>    | <b>Other Business</b>                                                                                                                                                                                                                                           |                             |                 |

## 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.

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**Summary of Comments Received During Public Hearing/Comment Period VPDES Permit No. VA0091316, Middlesex Courthouse WWTP, Middlesex County:**

**PURPOSE:** To request that the State Water Control Board make a decision to re-issue, modify, or deny the VPDES discharge permit for the Middlesex Courthouse (VA0091316).

**BACKGROUND:** On June 6, 2008, DEQ received an application from Middlesex County for re-issuance of VPDES permit number VA0091316 for the Middlesex Courthouse Wastewater Treatment Plant (WWTP). This permit was originally issued for the first time on December 11, 2003 and expired on December 10, 2008. During the original 2003 issuance process, notification was made to 18 riparian land owners downstream of the project, and no public comments were received during the public notice phase of the original permit. The 2003 permit authorized the permittee to discharge treated municipal wastewater from a treatment facility with a design capacity of 39,900 gallons per day (gpd) into an unnamed tributary of Urbanna Creek, in the Rappahannock River basin. At the outfall point, the receiving water body is a free-flowing intermittent stream. The outfall location is 0.85 miles upstream of the unnamed tributary's confluence with tidal Urbanna Creek; however, 0.1 mile downstream of the outfall point, ambient stream flows within the channel disappear into a swallow hole.

A Certificate to Construct (CTC) the facility was issued in December 2003 and on August 29, 2005, but as of today, the treatment facility has not been built. The proposed treatment facility will serve Middlesex County's recently built Courthouse complex, the County's High School, and an undetermined number of local businesses in the Saluda area. Since 2003, sewerage generated at the Courthouse complex has been handled through a pump-and-haul arrangement. The High School is currently served by a failing drain field located on its athletic fields.

The application for re-issuance of this VPDES discharge permit requested that the current permitted design capacity of 39,900 gallons per day be carried forward to the re-issued permit cycle. A notable difference between the application for the 2003 permit and the application for the 2008 re-issuance is that the location of the proposed treatment plant was changed by the permittee due to the purchase of a larger lot to build the treatment works. The new location is east of Saluda, off State Route 33. However, the County plans to pump the treated wastewater approximately 0.8 mile back to the proposed 2003 outfall site (off SR 618) in Saluda to avoid shellfish issues. Consequently, the outfall location will remain the same as the current permit.

The proposed draft permit for re-issuance contains most of the same limitations and conditions of the existing permit, with minor exceptions added or removed to address new agency requirements and procedures promulgated since the initial issuance of this permit. These include additional significant digits requirements, additional bacterial limitations and monitoring requirements, additional compliance reporting requirements, and the removal of total residual chlorine limits and monitoring due to the planned design change from chlorination/de-chlorination to ultraviolet disinfection methods.

Although the Water Quality Standards require that only E.coli bacteria be limited for discharges to freshwater streams, a limitation for Fecal Coliform was carried over to the draft permit re-issuance from the existing permit to account for any effluent that may reach Urbanna Creek (shellfish waters).

The Middlesex Courthouse treatment facility is not currently considered to be a significant discharger under the Code of Virginia § 62.1-44.19:19:14.C.5, and consequently is not subject to coverage under the 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). If in the future the County requests and receives approval of an expansion of the facility to or above 40,000 GPD, the County will be required to formally register for General Permit coverage. The facility was issued a CTC in December 2003, and therefore, if the facility expands, may be granted a “permitted design capacity” load equivalent to 18.7 mg/L Total Nitrogen and 2.5 mg/L Total Phosphorus times the current design capacity volume.

The proposed outfall point is not directly in designated shellfish waters. Nonetheless, DEQ staff coordinated with the Virginia Department of Health, Division of Shellfish Sanitation in preparing the proposed permit. Downstream, in the tidal portion of Urbanna Creek, the VDH has identified areas of both condemned and prohibited shellfish growing waters. On July 2, 2008, VDH responded that the proposed permit would not cause an increase in the size or type of currently designated restricted shellfish growing areas, and offered no further comments on the proposed permit.

Effluent limits were developed to maintain water quality criteria under “critical” low flow drought conditions. Due to the intermittent nature of the receiving stream, the discharge was evaluated without the benefit of dilution. Consequently, the proposed permit limits reflect the need for the treated effluent to maintain water quality standards by itself, or at the “end-of-pipe.”

The draft permit proposes to limit the following parameters:

|                                                                 |                                             |
|-----------------------------------------------------------------|---------------------------------------------|
| <u>Carbonaceous Biological Oxygen Demand (cBOD<sub>5</sub>)</u> | <u>10 mg/l (1500 g/day) monthly average</u> |
| <u>Total Suspended Solids (TSS)</u>                             | <u>10 mg/l (1500 g/day) monthly average</u> |
| <u>Total Kjeldahl Nitrogen (TKN)</u>                            | <u>3.0 mg/l (450 g/day) monthly average</u> |
| <u>Dissolved Oxygen</u>                                         | <u>5.0 mg/l minimum</u>                     |
| <u>E.coli bacteria</u>                                          | <u>126 N/100 mL monthly geometric mean</u>  |
| <u>Fecal Coliform bacteria</u>                                  | <u>200 N/100 mL monthly average, and</u>    |
| <u>pH</u>                                                       | <u>6.0 S.U. min. and 9.0 S.U. max.</u>      |

The draft permit was public noticed in the Southside Sentinel on 9/11/2008 and on 9/18/2008. A total of 179 comments were received by email, fax, written letter, or form letter during the 30-day public comment period. Of these comments, 147 requested a public hearing, and were submitted in full compliance with the information requirements outlined in 9VAC 25-230-40 of Procedural Rule No. 1. Based on the comments received, DEQ concluded there was significant public interest, and substantial, disputed issues relevant to the re-issuance of VPDES permit VA0091316. The DEQ Chief Deputy Director concurred, and approved the holding of a public hearing on November 3, 2008.

Members of the State Water Control Board were notified, and no comments were received requesting a meeting of the Board to review the Director's decision to grant a hearing or to delegate the permit to the Director for his decision. Consequently, the Department proceeded with scheduling this hearing and notifying interested parties. Public notice of this hearing was published in the December 18 and December 25, 2008 editions of the Southside Sentinel newspaper. The comment period closed at 4:00 p.m. on February 6, 2009.

A Public Hearing was held at the Saint Clare Walker Middle School in Locust Hill, VA in Middlesex County on January 21, 2009 at 7:00 pm. Mr. Robert Wayland served as the Hearing Officer, and DEQ staff present included Richard Weeks, Kyle Winter, Curt Linderman, Jeremy Kazio, Jaime Bauer, and Emilee Carpenter. Public attendance included 105 citizens, of whom 17 presented oral comments opposing the proposed permit re-issuance. Approximately 33 letters and emails were received during the comment period between December 18, 2008 and February 6, 2009.

A formal decision regarding the re-issuance, modification, or denial of the proposed Middlesex Courthouse permit was scheduled to be made by the State Water Control Board at their April 27, 2009 scheduled meeting. On April 23, 2009, the permittee made a request of DEQ to remove this item from the SWCB Meeting Agenda in order to postpone the decision until the next SWCB Meeting. This request was made by the permittee in lieu of new information regarding a potential land application study to be conducted by the Hampton Roads Sanitation District (HRSD) focusing on the land application of treated wastewater effluent from the proposed Middlesex Courthouse and existing Urbanna Wastewater Treatment Facilities. Subsequently, the item was removed and public commenters were notified via various media outlets. Correspondence with HRSD on June 3, 2009 indicated that they have contracted with an outside consulting firm to conduct the land application study. This firm has performed preliminary field visits to ascertain several areas' viability for land application within Middlesex County. The draft report of their findings may be available by the end of June 2009, with the possibility of a final report available by mid- to late July 2009.

Summary of Comments Received at the January 21, 2009 Public Hearing for the Proposed Middlesex Courthouse Wastewater Treatment Plant Permit Reissuance (VA0091316) and in written form between December 18, 2008 and February 6, 2009

1) Issue: Should other alternatives to the point source discharge of wastewater at the proposed outfall location be evaluated/pursued?

Comment: The permittee should be forced by the State to withdraw their application to discharge and instead apply for a treatment system which utilizes applying wastewater to land. Although the proposed permit does not incorporate nutrient limits, there is sufficient evidence that the permittee plans to expand, which will require that nutrient limits be applied to the facility. Nutrient removal technology is ungainly and expensive, and cannot be afforded by the permittee. Land application is a better alternative because the nutrients can be used on agricultural fields in the area, which will help support the local economy and prevent pollution of local waterways.

Commenters: Marian Agnew, Mike Floyd, Dan Gill, Robert Calves

Comment: Generally, Virginia's state government operates with too narrow of a focus and not enough practicality. Specifically, the State should require that all localities take a regional approach to wastewater disposal, and that long term plans be required instead of allowing multiple small wastewater treatment plants to be constructed within relatively diminutive areas.

Commenters: Roger Martin, Robert Calves

Comment: The DEQ should be required to ask for the Hampton Roads Sanitation District's input on the proposed wastewater treatment facility because they are a "government entity" which specializes in municipal wastewater disposal.

Commenters: Sean Kemple

Comment: The Middlesex County government (the permittee) has not considered a long term solution to the existing or future sewage disposal needs of the county. Construction of the proposed plant will serve very few people, and will not promote growth within the county, and it will cause the county government to delay it's obligation to address the rest of the county's sewage needs.

Commenters: Stan Coloff, Urbanna Town Council/Janet Smith, Peter Mansfield, H.Deiter & Mary E. Hoinkes, Ingrid Roper, James Knupp

Comment: The County's sewage should be piped to the HRSD-owned York River WWTP via the proposed pipeline that will serve Mathews, VA. This will prevent the pollution of Urbanna Creek and promote the cleanup of the Chesapeake Bay.

Commenters: Urbanna Town Council/Janet Smith, Sean Kemple, H.Deiter & Mary E. Hoinkes, Stan Coloff

Comment: In general, there are other alternatives that exist which will channel wastewater out of Middlesex County. These should be considered.

Commenters: Urbanna Town Council/Janet Smith, Don Richwine, Helen & Roger Hopper, Elizabeth Pritchard, Kerry Robusto, Robert Montague, Margaret Gerdts, James Knupp, James Pitts

Comment: The wastewater from the proposed facility should be piped to the Rappahannock River instead of Urbanna Creek. The Rappahannock River provides more dilution and is tidally flushed.

Commenters: James Pitts

Comment: The discharge from the proposed wastewater treatment plant should be directed to Dragon Run (headwaters of the Piankatank River) instead.

Commenters: Aubrey Hall

Continued . . . ↓

Comment: The Middlesex County government (permittee) has claimed that they are being forced to halt their current pump and haul method for disposal of sewage from the new courthouse complex. Some citizens have questioned whether this is true, and state that the County government should continue pumping and hauling because it is cheaper.

Commenters: Sean Kemple, Peter Mansfield, H.Deiter & Mary E. Hoinkes

Comment: Demographically, there's nothing within the county that warrants the construction of a wastewater treatment plant in the Saluda area. The existing private subsurface sewage disposal systems are adequately addressing citizens' sewage needs. In addition, the proposed wastewater treatment plant does not address issues regarding sewage disposal in other areas of the county which are in need of it, such as Hartfield and Deltaville.

Commenters: Urbanna Town Council/Janet Smith, Sara Chaves Beam, James Knupp, Peter Mansfield

Comment: Middlesex County's own comprehensive plan states that all measures will be taken to discourage the construction of any source of discharge to waters within the county. The proposed treatment plant does not follow this part of the plan.

Commenters: Roger Martin

Comment: The Middlesex County government (permittee) should be required by DEQ to request to be part of HRSD's "Regional Plan" for addressing sewage. This plan's goal is to incorporate the sewage disposal needs of multiple small localities into fewer large wastewater treatment facilities.

Commenters: Sean Kemple,

Comment: The Virginia State Government has an obligation to encourage cost effective and sustainable approaches to wastewater treatment, rather than promoting costly treatment practices that are "Neanderthal" and "self serving".

Commenters: Dan Gill

Comment: Royster Malcolm Pirnie, the engineering consultant to Middlesex County (the permittee), disagreed with verbal comments made at the public hearing. The disagreement was in regard to the statement made by a representative of the Urbanna Town Council that the consultant was instructed by the Board of Supervisors to place the discharge from the proposed wastewater treatment facility into Urbanna Creek. The consultant stated that the Board of Supervisors never instructed them where to place the outfall; rather, they instructed them to look at all alternatives that were available for discharge of the effluent. In a 1995 study of wastewater alternatives for the Saluda Area, the consultant stated, "In the Saluda area the closest water way suitable for discharge of treated effluent from a wastewater plant is Urbanna Creek." Following through on the County's requirements, the consultant investigated a discharge to both Dragon Run and the Rappahannock River, and was advised by DEQ that a discharge permit would not likely be granted for either one of these tributaries. Land application was investigated in the aforementioned 1995 report as an alternative, but proved to be not economically feasible. The consultant met with HRSD on several occasions to try and pump the wastewater to their Mathews Courthouse force main. This alternative, also, proved to be not economically feasible. The consultant studied "re-use" as an alternative and, as a result, designed the plant to meet the "re-use" effluent requirements. The consultant submitted that the Urbanna Town Council was misinformed concerning the facts surrounding the alternatives analyzed for the discharge point of the plant.

Commenters: Roger O. Hart, P.E., Royster Malcolm Pirnie

Staff Response: The Department of Environmental Quality does not have the authority to require specific wastewater treatment alternatives to an applicant or permittee. It is DEQ's obligation to evaluate permit applications it receives to determine the impact to State waters in accordance with the Water Quality Standards, and to assign effluent limitations to a facility in order to maintain these Standards. Nevertheless, the permittee has indicated that the design of the proposed treatment facility will incorporate the ability to meet Level 1 water quality requirements defined in 9 VAC 25-740-90 (Water Reclamation and Reuse Regulation) should a future customer emerge seeking beneficial use of reclaimed wastewater. Also, the permittee has considered other discharge locations such as the Rappahannock River and Dragon Run Swamp, but these alternatives would cause a change in shellfish closure areas by the VDH Department of Shellfish Sanitation that may render them ineligible for VPDES coverage. The permittee has also considered joining into the proposed sewage line that will serve the Mathews area, which will be directed to the HRSD York River WWTP. It was determined, through a study conducted by HRSD and paid for by the permittee, that the construction of a sewage trunk line of this length would not be as cost effective (upwards of 3-4 times more) as building a wastewater treatment facility within the county.

DEQ staff recommends that no change to the proposed permit is necessary in response to these comments.

2) Issue: Does the proposed permit adequately address and protect Urbanna Creek Water Quality / Beneficial Uses / Nutrient Pollution?

Comment: The water in Urbanna Creek is stagnant, especially in the upper portions of the creek below the proposed discharge location. The proposed effluent would not be flushed out of the creek by tidal flux, and will become concentrated to a point that it inhibits the creek's current recreational uses.

Commenters: John Amos, Mrs. Marshall, Richard Marshall, Margaret Gerds, Ingrid Roper, Robert Calves, Kerry Robusto, George Guhse, James Knupp

Staff Response: It has previously been recognized that Urbanna Creek has modest tidal flushing capability or dilution capacity in water models conducted for the Urbanna Wastewater Treatment Plant. However, the proposed facility will discharge to an intermittent stream greater than 0.8 miles from its confluence with Urbanna Creek. The effluent from the proposed facility is required to meet current Water Quality Standards at the "end of pipe" due to the lack of any dilution by the intermittent stream. It is not expected

that the proposed discharge will reach Urbanna Creek under permitted design drought flow conditions. However, (due to the presence of storm water runoff or other base flows), the resulting mixed water quality would contain a more dilute pollutant load that would be expected to further reinforce the ability to meet or enhance Water Quality Standard criterion.

DEQ staff recommends that no change to the proposed permit is necessary in response to these comments.

Comment: Section §62.1-44.2 of the Code of Virginia requires that the State take measures to prevent any increase in the pollution of State waterways, and to reduce existing pollution within its waterways. The proposed wastewater treatment plant will add pollution to Urbanna Creek, which has existing VDH/DSS condemnations on shellfish harvesting from the creek.

Commenters: Roger Martin

Staff Response: The draft permit has been developed to require that the effluent from the facility meet Water Quality Standards before reaching State Waters. Therefore, the proposed facility is not expected to cause or contribute to an impairment of State waterways. During the proposed permit re-issuance's development, the VDH/DSS was contacted to determine if the proposed discharge would have an impact on the existing shellfish closure for Urbanna Creek. VDH/DSS responded stating that it would not increase the size or type of closure, and that they had no comments on the proposed permit reissuance.

DEQ staff recommends that no change to the proposed permit is necessary in response to these comments.

Comment: The fresh water from the proposed facility's effluent will cause salinity levels in Urbanna Creek to lower, which may disrupt the ecosystem for aquatic life living there.

Commenters: Clyde Roper

Staff Response: It is not expected that the proposed discharge at the proposed design capacity will cause salinity levels within Urbanna Creek to decrease. The Total Maximum Daily Load (TMDL) Report for Shellfish Areas Listed Due to Bacterial Contamination, Urbanna Creek (February 2005) was developed to address fecal coliform bacteria within a portion of Urbanna Creek. This TMDL focused on roughly half of the creek and used a "tidal prism" model to approximate the volume within that half of the creek based on area and field depth readings. It was calculated that this portion of the creek contained approximately 113,741,900 gallons of water that is exchanged every 0.7 days. If this volume is doubled to approximate the remaining half of the creek that was not modeled, it would place the volume of the creek at 227,483,800 gallons of water exchanged approximately every 0.7 days. Although the effluent from the proposed facility is not expected to reach Urbanna Creek, if it were assumed that the plant operated at design capacity and 100% of the effluent reached Urbanna Creek, this would mean that the effluent would constitute <0.02% of the creek's volume between tidal flux. This calculated ratio is an overly conservative hypothetical assumption, and is not expected to cause substantial changes to Urbanna Creek's salinity levels.

DEQ staff recommends that no change to the proposed permit is necessary in response to these comments.

Comment: There is a very general concern regarding nutrient loading and particulate matter levels within Urbanna Creek. It has been observed during the summer that Urbanna Creek is very cloudy and green colored, which many people attribute to algal growth. Nutrient loads will cause further algal growth.

Commenters: Urbanna Town Council/Janet Smith, Mike Floyd, James Knupp, Clyde Roper, Phil Mullins, Stan Coloff, George Guhse



Comment: The government is not doing enough to clean up the Chesapeake Bay, which is why the Chesapeake Bay Foundation and the Waterman's Association is suing EPA for not cleaning up the Bay by the agency's goal of 2010. Allowing the proposed discharge would only prove this point further.

Commenters: Alana Courtney

Staff Response: The proposed treatment plant will be designed to meet the nutrient removal standards for an "existing discharger" that is not considered a significant discharger under §62.1-44.19:14.C.5 (Code of Virginia) and 9 VAC 820-10 (Chesapeake Bay Watershed General Permit Regulation). In addition, Total Kjeldahl Nitrogen is limited to a concentration of 3.0 mg/L monthly average in the draft permit re-issuance.

DEQ staff recommends that no change to the proposed permit is necessary in response to these comments.

Comment: Urbanna Creek has been declared a "dead creek". Instead of adding further pollution, it should be cleaned up.

Commenters: Alana Courtney, Robert Straw, Robin Starbird, Roger Martin

Comment: If the proposed treatment plant is built, a plan for growing oysters within Urbanna Creek to help in reducing or eliminating pollution cannot be implemented because the Department of Shellfish Sanitation will condemn the creek for shellfish harvest for an indefinite period of time.

Commenters: Phil Mullins

Comment: The Department of Shellfish condemnation of the creek will not be lifted if the proposed wastewater treatment plant begins discharging. The discharge may also expand the current condemnation of shellfish harvest within the creek.

Commenters: Urbanna Town Council/Janet Smith, John Zuegner, Margaret Gerdt, Roger Martin, Phil Mullins

Staff Response: Commenters made reference to Urbanna Creek being declared a "dead" creek because a portion of it is restricted for shellfish harvest due to the VDH/DSS condemned designation. This does not mean that Urbanna Creek is "dead", but only that a portion of the creek has the potential to contain high enough concentrations of fecal coliform that harvesting shellfish from the creek with intent to consume them could cause illness due to filter-feeding by the shellfish. This does not mean that the shellfish are harmed by these high bacterial levels, nor does it mean that any other natural life within or around Urbanna Creek is affected.

Shellfish harvesting is prohibited in portions of Urbanna Creek due to the presence of the HRSD-owned Urbanna Wastewater Treatment Plant and the discharge from the Middle Peninsula Regional Security Center Wastewater Treatment Facility. VDH/DSS has certified that the proposed discharge will not adversely affect shellfish use. While not required, the proposed permit includes a fecal coliform bacteria effluent limit to provide further reliable protection of shellfish. The permit will not cause or contribute to the impairment of Urbanna Creek.

The VDH/DSS cannot lift a shellfish closure, as a safety precaution, when there is a known point source discharge directly to tidal waters that has the potential to contribute fecal coliform to a water body, such as a municipal sewage treatment plant like the HRSD-Urbanna Wastewater Treatment Facility. The proposed Middlesex Courthouse WWTP will not be a direct discharge to tidal waters and has been certified by VDH/DSS to not adversely affect shellfish use. This closure does not prevent citizens from growing oysters in order to clean up the creek; however, it does prevent the consumption or sale of those oysters and other shellfish.

DEQ staff recommends that no change to the proposed permit is necessary in response to these comments.

Comment: The cumulative impact of the proposed discharge and existing discharges on Urbanna Creek should be studied. Also, there should be a better characterization of the intermittent stream to which the proposed treatment facility will discharge.

Commenters: Sara Chaves Beam, H.Deiter & Mary E. Hoinkes, Stan Coloff

Comment: The existing wildlife in Urbanna Creek will disappear if the proposed treatment facility is allowed to discharge.

Commenters: Bernice Chewning, Francis Hall, Kerry Robusto

Comment: Urbanna Creek provides swimming and recreational opportunities which will be eliminated if the proposed wastewater treatment plant is allowed to discharge.

Commenters: Roger Martin, Richard Marshall, Francis Hall, Betty Coulson

Comment: There is insufficient evidence indicating that the proposed wastewater treatment plant will not have a comprehensive impact on Urbanna Creek's wildlife or recreational uses.

Commenters: Roger Martin, Sara Chaves Beam,

Comment: Sub-aquatic vegetation is low, and turbidity, heavy algae, suspended solids, and siltation are currently severe problems within Urbanna Creek. There have been no assurances made that the proposed discharge will not collapse Urbanna Creek's remaining ecosystem.

Commenters: John Zuegner

Staff Response: As stated above, the Water Quality Standards define what is needed to maintain ambient water quality for fish and wildlife habitat, and primary and secondary contact recreational uses. The receiving stream has been characterized as both intermittent and, due to the downstream swallow hole, unmodelable, and therefore cannot be characterized further by DEQ water modeling methods. In these cases, the most conservative approach is taken and very stringent conventional pollutant limitations are assigned. Effluent limitation calculations are not given the benefit of dilution, and therefore are limited to meet Water Quality Standards prior to discharge.

Further characterization of the stream is not warranted, as "end-of-pipe" effluent limits represent the most conservative permitting approach. By the time the effluent travels the >0.8 mile distance to Urbanna Creek, it will have been treated further by natural attenuation and will meet the requirements determined by the Water Quality Standards for maintaining current wildlife and human uses.

DEQ staff recommends that no change to the proposed permit is necessary in response to these comments.

Comment: Urbanna Creek is recognized statewide as a historical and recreational water body. Treated wastewater should not be allowed to discharge to a historical creek.

Commenters: Urbanna Town Council/Janet Smith, Roger Martin

Staff Response: Only the designation of Urbanna Creek as a Tier III would prohibit point source discharges. The water body will be protected for its current natural and human resources by compliance with the Water Quality Standards, which will be achieved by compliance with the proposed permit re-issuance.

DEQ staff recommends that no change to the proposed permit is necessary in response to this comment.

Comment: Independent testing for fecal coliform in Urbanna Creek has revealed “smoking hot” levels due to the existing two wastewater treatment plant discharges as well as dumping from boats within the creek. Extensive aquaculture activities outside of Urbanna Creek will most likely be affected by the proposed discharge because of additional bacteria and nutrients introduced to and carried by Urbanna Creek to the Rappahannock River.

Commenters: Sarah Chaves Beam

Staff Response: During the draft permit re-issuance’s development, the VDH Department of Shellfish Sanitation was contacted in order to determine if, by their modeling methods, the proposed discharge would have any affect on the existing shellfish condemnation, or would cause further condemnations or closures downstream. The VDH/DSS responded that they did not object to the permit’s re-issuance and that it would not cause an increase in size or type of shellfish condemnation. A TMDL for Urbanna Creek addressing fecal coliform bacteria levels was conducted in 2004-2005. It was determined that sources of fecal coliform consisted of the following percentages listed below:

|               |      |
|---------------|------|
| Livestock     | 17%  |
| Wildlife      | 36%  |
| Human         | 23%  |
| Pets          | 24%  |
| Point Sources | <<1% |

The category of “Human” sources has been noted in the TMDL as being from failed septic systems and from boating activity. As stated above, the VDH/DSS has determined that any aquaculture activities located downstream of the proposed discharge will not be affected.

DEQ staff recommends that no change to the proposed permit is necessary in response to these comments.

Comment: Non-point sources are contributing to a large portion of the pollution problems of Urbanna Creek. The proposed wastewater treatment plant will promote growth within in the county and cause further non-point source pollution due to housing construction. The discharge should not be allowed, and in addition, a plan should be implemented to reduce the impacts of population growth that includes stipulations to: a) enforce better land use practices, b) adopt new DCR sedimentation control and storm water regulations, c) encourage better agricultural practices, and d) educate citizens of what they can do to reduce or eliminate pollution to Urbanna Creek.

Commenters: John Zuegner,

Staff Response: Land use and zoning issues are the prerogative of local, rather than State, government and therefore are not within our authority to use as a basis to re-issue, modify, or deny the proposed permit.

DEQ staff recommends that no change to the proposed permit is necessary in response to this comment.

Comment: The modeling effort conducted on the receiving stream for the proposed wastewater treatment plant only addresses the actual receiving stream, not the water bodies to which the receiving stream flows, like Urbanna Creek. The model assumes that the noted “swallow hole” will prevent the discharge from reaching Urbanna Creek, and does not evaluate the impact of the effluent on Urbanna Creek once it has traveled via subsurface conductance and leached into Urbanna Creek. Also, no evaluation has been conducted on the impact that the proposed discharge will have on the brown algae noted in stream model.

Commenters: Clifford Randall, Stan Coloff

Staff Response: DEQ staff performed a field site visit of the receiving waters in May 2003 to determine the viability of using established DEQ mathematical water quality modeling tools. During their site visit investigation, DEQ staff observed the accumulation of brown filamentous algae along the bottom of the stream channel (as compared to green algae floating along the top). The brown algae are believed to be a

diatom population, which are commonly found in stream with sandy bottoms, small flows, and good water quality. Diatoms are general indicators where there is not an excessive nutrient problem. DEQ staff also observed that stream flow (about 1.5 feet wide and approximately 1-inch deep at the time of the site visit) completely disappeared into a hole on the west side of the channel bank, approximately 500 downstream of the proposed outfall point. A subsequent field visit conducted in April 2009 indicated that the stream is intermittent, but does not “disappear” into a swallow hole. Rather, it subsides and reemerges several times before forming an incised channel approximately 0.4 miles downstream. DEQ “desktop” surface water quality modeling tools are not designed to analyze sub-surface and/or intermittent stream flows. In situations where standard DEQ models are not applicable due to complex or site-specific situations, long-established DEQ protocols provide for effluent limitations to be established based on conservative, best professional judgment. 1987 DEQ guidance establishes  $\text{cBOD}_5=10 \text{ mg/L}$ ,  $\text{TSS}=10\text{mg/L}$ , and  $\text{TKN}=3 \text{ mg/L}$  to be representative of “self sustaining” effluent limits, or those capable of maintaining the Water Quality Standards if the stream were to consist of 100% effluent. These effluent limitations have been incorporated into the proposed permit. Effluent that achieves Water Quality Standards prior to entering the “swallow hole” should benefit from further biological treatment as it travels via subsurface conductance. It can only be assumed that the exchange capacity caused by subsurface travel will enable pollutant levels to be further reduced before reaching Urbanna Creek. Further downstream analysis of effluent that is already required to achieve Water Quality Standards at “end-of-pipe” is not warranted.

DEQ staff recommends that no change to the proposed permit is necessary in response to these comments.

Comment: This permit reissuance is prohibited by SWCB regulation 9 VAC 25-31-50 C.1 and CWA regulation 40 CFR 122.4(a) which states that a permit may not be issued if the conditions of the permit do not provide for compliance with the requirements of the CWA, or any regulations promulgated under the CWA. SWCB regulation 9 VAC 25-31-220 and CWA regulation 40 CFR 122.44 require that all permits include conditions necessary to achieve and maintain applicable WQS. The proposed wastewater treatment plant’s discharge will eventually reach the Chesapeake Bay, and in 2004 the Commonwealth of Virginia established water quality standards for the designated uses of the tidal portions of the Rappahannock River and the Chesapeake Bay. The draft permit does not address these pollutants of concern, including total nitrogen or total phosphorus, and therefore violates SWCB regulation 9 VAC 25-31-220 and CWA regulation 40 CFR 122.44, and in doing so, violates 9 VAC 25-31-50 C.1 and 40 CFR 122.4(a).

Commenters: Chesapeake Bay Foundation/Joseph Tannery

Staff Response: DEQ staff disagrees with the interpretation that the permit fails to address water quality standards for the tidal Rappahannock River and Chesapeake Bay and, therefore, violates 9 VAC 25-31-220 and 40 CFR 122.44. 9VAC 25-40-10 of the “Regulation for Nutrient Enriched Waters and Dischargers Within the Chesapeake Bay Watershed” regulation states, “The provision of this regulation [9VAC 25-40-10 et. seq.] and the Water Quality Management Planning Regulation (9VAC 25-720) constitute the nutrient reductions requirements for point source dischargers in the Chesapeake Bay Watershed to protect the Chesapeake Bay and its tidal rivers.” The regulations establish no requirements to include total nitrogen or total phosphorus effluent limitations for municipal facilities within the Bay watershed with a design flow of less than 40,000 gallons per day. Consequently, the proposed permit is in full compliance with all applicable legislation and water quality regulations. DEQ staff recommends that no change to the proposed permit is necessary in response to these comments.

3) Issue: Are the design flows reflected by the permittee accurate?

Comment: The Middlesex County government is not truthfully telling the public or DEQ what the real design capacity of the wastewater treatment plant will be.

Commenters: Urbanna Town Council/Janet Smith, Peter Mansfield, James Knupp

Comment: Once the wastewater treatment plant is built, the County will ask DEQ to expand and DEQ will not impose stricter limitations on the permittee because it would cause economic hardship. This will cause higher pollution of Urbanna Creek.

Commenters: Roger Martin, Peter Mansfield,

Comment: The Middlesex County government's (permittee's) consulting engineer has misled the public and DEQ as to the size and ultimate design capacity of the proposed wastewater treatment plant.

Commenters: Peter Mansfield, Sean Kemply

Comment: If the proposed treatment plant is built, and they decide to expand, there will be a period of time in which DEQ is developing the modified permit for the expansion. During that period, or any time the permit is reopened, the flow from the treatment plant will go unchecked and the permittee will be able to discharge freely without limits.

Commenters: Clyde Roper

Staff Response: The application for the proposed permit re-issuance requested a design flow of 39,900 gallons per day, and is the same as the original 2003 permit issuance. The flow from the facility must be monitored on a daily basis and reported monthly to DEQ via DMR's (data monitoring reports). If the permittee discharges at a rate that is within 95% of the permitted design capacity for three consecutive months, the proposed permit requires the development and implementation of a plan to address the high influent flows (for example, controls to prevent infiltration/inflows, etc.) Exceedances of permitted pollutant loads (resulting from the excessive flows) will be handled as permit violations. If it is determined that the permittee cannot reduce the discharge rate, a modification of the permit will be required for increasing the design flow, which will incorporate reevaluating effluent limitations to meet a larger design flow. Modification of the permit would require downstream riparian owner notification and an opportunity for public participation in response to publication of another public comment period.

The design of a wastewater treatment plant must meet the requirements of DEQ's Sewage Collection and Treatment (SCAT) regulations (9VAC 25-790). These regulations include requirements pertaining to the sizing of treatment plant components to handle anticipated peak (as compared to average) effluent flows. These requirements are necessary to avoid overflow or treatment bypass conditions during peak events. The consulting engineer for Middlesex County has further enhanced the sizing and design of the treatment plant components to improve the performance and reliability of its operations. However, while the treatment plant may be capable of treating to higher peak flows, the proposed permit authorizes no greater than an average design flow of 39,900 gallons per day.

It has been made public by the permittee that the long-term plan for the proposed treatment facility will be to expand and potentially accept sewage currently being treated by antiquated and/or outdated treatment facilities within neighboring areas (Christchurch School, Urbanna WWTP, and the Regional Jail). At the time that the permittee plans to expand this facility, modifications will be made to the permit that will require compliance with all limitations, monitoring, and conditions mandated by any applicable legislation and/or regulations that exist at the time.

Any potential modification of a permit cannot be acted upon by the permittee until the permit modification is issued by DEQ. During the time that a permit is being modified, the permittee must comply with the existing permit. DEQ staff recommends that no change to the proposed permit is necessary in response to these comments.

4) Issue: Should nutrient controls be added even though the design flow is less than the regulated threshold?

Comment: The permittee is utilizing a “loophole” within State regulations to avoid nutrient limitations by requesting a permit for a design flow of 39,900 gallons per day rather than 40,000 gallons per day. If the proposed discharge is allowed, nutrient limitations should be applied.

Commenters: John Zuegner, Peter Mansfield, H.Deiter & Mary E. Hoinkes, Stan Coloff, James Knupp

Comment: Nutrients added by the proposed wastewater treatment plant will only add to the two existing discharges on Urbanna Creek. One has a design flow under 40,000 gpd and the other is considered a significant discharger, but cannot meet its nutrient allocations. The one that is a significant discharger cannot meet the nutrient allocations given in the Chesapeake Bay Watershed Nutrient General Permit, and therefore purchases nutrient credits. So essentially, there will be three dischargers to Urbanna Creek which do not have nutrient limitations.

Commenters: Mike Floyd, H.Deiter & Mary E. Hoinkes

Comment: Flow from the proposed wastewater treatment plant should be limited in the permit. Otherwise, nutrient offsets should be required of the permittee.

Commenters: John Zuegner, Robert Burnley

Staff Response: The proposed treatment plant will be designed to meet nutrient removal standards for an “existing discharger” that is not considered a significant discharger under §62.1-44.19:14.C.5 (Code of Virginia) and 9 VAC 820-10 (Chesapeake Bay Watershed General Permit Regulation). In addition, Total Kjeldahl Nitrogen is limited to a concentration of 3.0 mg/L monthly average in the draft permit re-issuance. It should be noted that the original permit was issued in December 2003 with the same design flow criteria. This 2003 issuance existed prior to the promulgation of the above regulations regarding the definition of a significant discharger for the purposes of determining coverage under the Chesapeake Bay Watershed General Permit.

Monitoring and testing requirements for established pollutant limits in permits are divided into categories depending on the design flow of the permitted facility. With each increasing flow category, the monitoring and testing requirements, and costs, can increase significantly, causing economic strain on small dischargers. The first monitoring and testing category for municipal facilities stops with a design flow of 40,000 gallons per day.

The design flow capability of a treatment facility is not the rate at which the permittee discharges. Nevertheless, it is used as a basis for limitation development in order that conservative calculations and assumptions may be made. The permittee is required to notify DEQ if the facility discharges at a rate within 95% of the design flow, at which point DEQ takes appropriate actions. Part I.B.1 of the draft permit addresses this. DEQ staff recommends that no change to the proposed permit is necessary in response to these comments.

Comment: The Middlesex County government has claimed that the local high school’s existing drainfield is failing and that the high school will need to be served by the proposed wastewater treatment plant. A few concerned citizens do not believe that this is true.

Commenters: H.Deiter, Mary E. Hoinkes, Sean Kemple

Staff Response: The reasoning provided by a permittee for requesting a discharge permit is not a part of DEQ’s evaluation of whether or not the discharge is permissible by applicable law. DEQ staff recommends that no change to the proposed permit is necessary in response to these comments.

5) Issue: Will the proposed wastewater treatment plant be reliable?

Comment: Concern exists over the permittee's ability to afford and construct a high quality treatment plant that will not fail during power outages and severe weather conditions.

Commenters: H.Deiter & Mary E. Hoinkes, Urbanna Town Council/Janet Smith, Peter Mansfield, Alana Courtney

Staff Response: As part of the conditions and limitations set forth in the draft permit, the permittee is mandated to comply with the requirements set forth in 9 VAC 25-790-390 of the Sewage Collection and Treatment Regulations to meet a Reliability Class of One (1). This requires that the permittee take all precautions to be able to operate at peak flows for a minimum of 24 hours without power.

DEQ staff recommends that no change to the proposed permit is necessary in response to these comments.

6) Issue: Has groundwater quality been considered with respect to the existing "swallow hole" located downstream of the proposed discharge?

Comment: Groundwater contamination may occur due to the "swallow hole" that the intermittent stream flows into. This is cited in the Stream Sanitation Memorandum used for permit development.

Commenters: Clifford Randall

Staff Response: It is not expected that groundwater resources will be affected. In addition, the effluent from the proposed treatment facility will be treated to much higher levels than the surrounding septic systems, which rely on soil as a medium for bacterial growth and treatment of raw sewage. DEQ staff recommends that no change to the proposed permit is necessary in response to these comments.

7) Issue: How does the existing bacterial TMDL for Urbanna Creek have a bearing on this permit's re-issuance?

Comment: The current TMDL for Urbanna Creek addressing Fecal Coliform bacteria states that "... measures must be taken to reduce pollutant levels in the water body." The proposed wastewater treatment plant will go against this statement.

Commenters: Sean Kemple,

Comment: This permit re-issuance is prohibited by SWCB regulation 9 VAC 25-31-50 C.9 and CWA regulation 40 CFR 122.4(i) which states that no new discharges will be allowed to water bodies if it will contribute or cause the water segment to violate WQS. These regulations do provide for an exception in that if a TMDL has been established for that water body, then a new discharge to that water body is only allowed if it was given an allocation in the TMDL and existing discharges have been given a compliance schedule with conditions that will bring the water body into compliance with the WQS. Since a TMDL has been established for Fecal Coliform on Urbanna Creek, and existing dischargers do not have a wasteload allocations or a compliance schedule to meet them, and the proposed discharger has not been given a wasteload allocation, the permit is prohibited. It has also been established that the Chesapeake Bay watershed is "impaired" by nutrient pollution. Since a TMDL has not been implemented for the Chesapeake Bay for nutrients, the proposed discharge will contribute additional nutrients to the water body that is already violating WQS.

Commenters: Chesapeake Bay Foundation/Joseph Tannery

Staff Response: The proposed discharge is to an intermittent tributary of Urbanna Creek 0.8 miles upstream of tidal waters. The Virginia Department of Health/Department of Shellfish Sanitation (VDH/DSS) has assigned two different types of shellfish closures to Urbanna Creek. The upper portion of tidal Urbanna Creek (area 42B) has been designated by the VDH/DSS as a "prohibited" shellfish growing area due to the presence of the HRSD Urbanna Sewage Wastewater Treatment Plant, which

discharges directly to the tidal portion of Urbanna Creek. In prohibited areas, shellfish are not allowed to be harvested for market. Prohibited shellfish areas are not considered impaired for fecal coliform (and thus do not require a TMDL) because this administrative closure by the VDH removes shellfish harvest as a beneficial use of these waters.

The lower portion of tidal Urbanna Creek (area 42A) has been designated as a “condemned” shellfish growing area, where harvested shellfish must first be transported for depuration in other non-condemned waters for 30 days prior to consumption or sale. The TMDL addressing fecal coliform bacteria that is referenced by the commenter only applies to the portion of Urbanna Creek corresponding to shellfish area 42A. The proposed discharge (in addition to the Middle Peninsula Regional Security Center, VA0073318) would flow to area 42B (if either effluent were to reach tidal Urbanna Creek). Since these existing dischargers will not expand to the current shellfish harvest prohibited zones, they are not addressed or subject to the TMDL. PRO Planning and Assessments staff have certified that the proposed permit will not be in conflict with the Urbanna Creek fecal coliform TMDL.

Regarding the nutrient impairment of the Chesapeake Bay, as previously cited, 9VAC 25-40 and 9VAC 25-720 constitute the nutrient reduction requirements for point source dischargers in the Chesapeake Bay Watershed to protect the Chesapeake Bay and its tidal rivers. These regulations establish no additional permitting requirements for municipal facilities within the Bay watershed with a design flow of less than 40,000 gallons per day. Consequently, the proposed permit is in full compliance with all applicable legislation and water quality regulations.

DEQ staff recommends that no change to the proposed permit is necessary in response to these comments.

#### 8) Miscellaneous Comments

Comment: The Middlesex County government (the permittee) does not sufficiently consider the wishes of its citizens because the Town of Urbanna is represented by an elected district supervisor who covers a much larger area than the Town. If the Town were independently represented in the county government, there would be more political pull and the decision to construct a wastewater treatment plant would not have come to fruition.

Commenters: Robert Straw, Roger Martin

Comment: The location of the venue (outside of Urbanna), time of year, and the temperature discouraged people from attending the public hearing held on January 21, 2009 at 7:00 pm. Also, the question and answer session held prior to the hearing was too short.

Commenters: Sean Kemple

Comment: The Town of Urbanna’s jurisdictional boundary extends to the middle of Urbanna Creek. The citizens of the Town do not want to allow the proposed discharge to occur, but do not have independent representation in the Middlesex County government in order to oppose it.  
Urbanna Town Council/Janet Smith

Staff Response: These comments are not relevant to DEQ’s determination of applicable State environmental regulations.

#### LEGAL BASIS/RECOMMENDATION:

The VPDES discharge permit for the Middlesex Courthouse (VA0091316) has been prepared in accordance with all applicable statutes, regulations and agency practices; the effluent limits and conditions in the permit have been established to protect instream beneficial uses and fish and wildlife resources and to maintain all applicable water quality standards; and all public comments relevant to the



permit have been considered and therefore, staff recommends that the Board approve re-issuance of the permit.

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<br>(MGD) | TN Conc.<br>(mg/l) | Total Nitrogen<br>WLA (lbs/yr) | TP Conc.<br>(mg/l) | Total<br>Phosphorus<br>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

- o 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.]
- o 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.
- o 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.
- o 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.

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 1<sup>st</sup> 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 be 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.