TENTATIVE AGENDA
STATE WATER CONTROL BOARD MEETING
MONDAY, DECEMBER 14, 2009
AND
TUESDAY, DECEMBER 15, 2009 (if necessary)

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

Convene – 9:30 a.m. (Both Days)

			TAB
I.	**Minutes (**October 14-15, 2009)		A
II.	**Final Regulations**		
	CAFO Program - Amendment of VPDES Permit Program Regulation	Bowles	B
III.	**Proposed Regulations**		
	Biosolids Program - Amendment of VPDES and VPA Program Regulations	Zahradka	C
IV.	**TMDL Implementation Plan - Straight Creek**	Pollock	D
V.	**Large-Scale Agricultural Operations Petition**	Davenport	E
VI.	**Significant Noncompliance Report**	O'Connell	F
VII.	**Consent Special Orders (VPDES Permit Program)**	O'Connell	G
	Blue Ridge Regional Office		
	City of Bedford		
	Town of Farmville		
	Hurricane Ridge Dairy Farm, Inc. (Patrick Co.)		
	Lakewood Partners, LLC (Halifax Co.)		
	Northern Regional Office		
	One Stop Trailer Park STP (Loudoun Co.)		
	Tidewater Regional Office		
	Vitex Packaging, Inc. (Suffolk)		
VIII.	**Consent Special Orders (VWP Permit Program)**	O'Connell	H
	Blue Ridge Regional Office		
	A1M. Cooper Construction , Inc. (Roanoke Co.)		
	J. W. Holdings, Inc. & Craddock Oaks Dev., Inc. (Bedford Co.)		
	West Crossing LLC (Bedford Co.)		
	Piedmont Regional Office		
	HHHunt Corp. (Hanover Co.)		
	Mountain Run Golf, Inc. (Hanover Co.)		
	Tidewater Regional Office		
	Galberry Corp. (Chesapeake)		
IX.	**Consent Special Orders (Others)**	O'Connell	I
	Piedmont Regional Office		

Zota Petroleums, LLC (Richmond and Chester)

X. Public Forum

XI. Other Business

Revolving Loan Fund - Final Funding List	Gills	J
Division Director's Report	Gilinsky	
Future Meetings		

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 respond to the summary of the prior public comment period presented to the Board. No public comment is allowed on case decisions when a FORMAL HEARING is being held.

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

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

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

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

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

Final Amendments to the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (9 VAC 25-31) and Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (9 VAC 25-191): At the December 14, 2009 meeting, staff intends to bring to the Board a request to adopt final amendments to the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (9 VAC 25-31) and Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation (9 VAC 25-191) to comply with the provisions of 40 CFR parts 9, 122 and 412 as published in Federal Register on November 20, 2008. Section 62.1-44.17:1 A1 of the Code of Virginia states that "the Board shall promulgate regulations requiring Virginia Pollutant Discharge Elimination System permits for confined animal feeding operations to the extent necessary to comply with § 402 of the federal Clean Water Act (33 U.S.C. §1342), as amended." As the amendments to the VPDES permit regulations are being sought only pursuant to those changes necessary to maintain statutory conformance with those provisions upheld in the federal CAFO rule, it is exempt from the requirements for public comment.

After EPA issued the revised CAFO rule in 2003, a lawsuit was filed by the Waterkeeper's Alliance, the American Farm Bureau, and others challenging the changes made to 40 CFR parts 9, 122, 123 and 412.

On February 28, 2005, the United States Court of Appeals for the Second Circuit ruled that the EPA must revisit several provisions in the federal rule. On November 20, 2008, EPA published changes to the rule and these changes became effective on December 22, 2008.

Key proposed changes to the VPDES permit regulations are as follows:

1. Discharge criteria have been changed regarding the duty to apply for CAFO operations:
    a. The reference to CAFO permit requirements for "potential discharges" has been struck.
    b. Language was added regarding the duty to apply for CAFO operations which "propose to discharge".
    A CAFO that discharges or proposes to discharge has a duty to apply for a VPDES permit. A CAFO proposes to discharge if it is designed, constructed, operated, or maintained such that a discharge will occur. EPA interprets that any operation that has open, uncovered storage that is designed to discharge in any storm event "proposes to discharge".
2. "No Discharge" language was changed:
    a. The No Potential to Discharge Determination procedures and criteria have been struck.
    b. The No Discharge Certification Option procedures and criteria have been added.
    A voluntary no discharge certification provision was added to the regulation which allows a CAFO to submit documentation that the operation will not discharge based on rigorous criteria determined by the EPA.
3. Criteria regarding public comment and modifications have been added. A public notice and comment period is required for the permit application and the site-specific nutrient management plan.

Request to Proceed to Notice of Public Comment and Hearing on Proposed Regulatory Amendments Related to Biosolids: the Virginia Pollution Abatement (VPA) Permit Regulation (9 VAC 25-32-10 et seq.), the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (9VAC25-31-10 et seq.), and the Fees for Permits and Certificates (Fee) Regulation (9VAC25-20-10 et seq.): The staff intends to bring to the Board, at the December 14, 2009 meeting, a request to proceed to notice of public comment and hearing on proposed Amendment of Regulations Pertaining to Biosolids After Transfer from the Department of Health. The regulatory action includes:

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

These changes are being proposed to address needed changes after transfer of the Biosolids Use Regulations (12VAC5-585) from the State Board of Health to the State Water Control Board in a final exempt action on September 25, 2007.

The legal basis for the Fees for Permits and Certificates regulation (9 VAC 25-20-10 et seq.), the Virginia Pollutant Discharge Elimination System Permit Regulation (9 VAC 25-31-10 et seq.) and the Virginia Pollution Abatement Permit Regulation (9 VAC 25-32-10 et seq.) is the State Water Control Law (Chapter 3.1 of Title 62.1 of the Code of Virginia). Virginia Code § 62.1-44.15 authorizes the State Water Control Board to promulgate regulations necessary to carry out its powers and duties. Specifically, §62.1-44.19:3 requires the State Water Control Board to include in regulation certain requirements pertaining to land application of sewage sludge.

On January 1, 2008 the Virginia Department of Environmental Quality (DEQ) assumed regulatory oversight of all land application of treated sewage sludge, commonly referred to as biosolids. This change in oversight of the Biosolids Use Regulations from the Virginia Department of Health to DEQ was at the

direction of the 2007 General Assembly, which voted to consolidate the regulatory programs so that all persons land applying biosolids would be subject to uniform requirements, and to take advantage of the existing compliance and enforcement structure at DEQ. In addition to directing that DEQ manage the biosolids program, the General Assembly also added additional requirements regarding biosolids permitting and management.

At its September 25, 2007 meeting, the Board voted to adopt as a "final exempt" regulatory action the transfer the substantive content of Biosolids Use Regulations to the VPA, VPDES, Fee, and Sewage Collection and Treatment (9VAC25-790) regulations. Following this action, DEQ initiated the full regulatory process to consider additional changes to the regulations affecting biosolids.

The full regulatory process was necessary to address outstanding VDH regulatory actions, as well as questions regarding public notice processes, processes to establish appropriate buffers to address health concerns, permit issuance and modification procedures, sampling requirements, nutrient management requirements, animal health issues associated with grazing, and financial assurance procedures.

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

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

It should be noted that on May 18, 2009, DEQ received a resignation letter from the three citizen representatives on the TAC. These members expressed concern that their interests would not be addressed in the regulatory action. At the time this letter of resignation was presented to DEQ, much productive discussion had occurred in the six meetings in which these members were involved, with the citizen members providing valuable input for consideration as the regulatory amendments were to be drafted. However, the resignations came before DEQ staff had actually started to develop draft language for the TAC's consideration and comment; therefore those members resigned before it could be determined if their interests were addressed in the draft changes. The remaining TAC members discussed the draft regulatory changes during the last two TAC meetings.

While the TAC was unanimous in agreeing that certain regulatory changes were needed, committee members did not reach consensus on the most appropriate regulatory mechanisms to implement these changes. This memorandum summarizes the key issues discussed, the varying opinions on the TAC, and how the issue was resolved in the draft regulation before you.

Key Issues Addressed by the Proposed Regulatory Changes

A. Consideration of Outstanding State Board of Health Amendments:

The State Board of Health had three regulatory actions underway to amend the Biosolids Use Regulations (12VAC5-585), which were not completed prior to the transfer of the regulations to the State Water Control Board on January 1, 2008. These amendments pertained to: 1) field storage of biosolids, 2) permit fees, and 3) site access control.

1) There was general consensus within the committee that changes needed to be made to the field storage requirements to: make the implementation more practical, address potential odor issues, and specify requirements for on-farm storage of biosolids for less than 45 days for sites that would not be regulated by local conditional use permits.

A category newly defined as "staging" has been introduced to address the short term placement of biosolids on any field that is ready to be land applied. Staging may be used as a standard operational procedure or to address inclement weather or equipment breakdowns to stockpile only the biosolids that will be applied to that field or a permitted adjacent field. Biosolids which have been staged for greater than 7 days would be required to be spread as soon as field conditions become favorable for land application or removed from the field, and biosolids staged greater than 14 days are required to be covered. [Refer to 9VAC25-32-545, beginning on page 176].

Provisions for "on-site storage" were added to address storage up to 45 days on an engineered impermeable surface to serve all sites under control of the operator of the farm where the site is located. All biosolids must be removed by the 45th day after the first day of storage. If malodors related to the stored biosolids are verified by DEQ at any occupied dwelling on surrounding property, the problem must be corrected within 48 hours. If the problem is not corrected within 48 hours, the biosolids must be removed from the storage site. [Refer to 9VAC25-32-550, beginning on page 177].

Existing requirements for "routine", or long-term storage, were modified to include requirements for an engineered surface and covers to prevent dewatered biosolids from contacting precipitation. [Refer to 9VAC25-32-550, with details beginning on page 178].

The TAC members had varying opinions on several issues related to storage, most notably the appropriate length of time to allow for different categories of storage, whether or not to allow staging or on-site storage to be used for non-adjacent fields, and how to address malodor. The proposal represents a compromise on these issues and the TAC members were in general agreement with the proposed storage requirements.

2) The TAC discussed permit fee requirements for VPA and VPDES permit holders in order to clarify application of the specific requirements located in §§62.1-44.19:3 and 62.1-44.15:6 of the Code of Virginia. Specific requirements for biosolids fees were added in the 2007 Acts of Assembly that took precedence over existing VPA and VPDES permit fees. DEQ is proposing changes to the regulatory fee structure that better reflect the level of staff resources necessary to process a permit.

For VPDES permits, a $5000 new permit fee, $1000 permit modification fee and $1000 annual maintenance fees for biosolids land application are proposed to be charged in addition to the existing VPDES permit fees, which for an initial permit range from $2000 to $24,000, and for a major modification range from $1000 to $12,000. Annual permit fees for VPDES permits are equivalent to the new permit fee divided by the term of the permit in years. These increased fees will help the agency address the additional time associated with the new requirements for public meetings and adjacent property owner notification. Recognizing that smaller VPDES facilities may not generate a large amount of biosolids, a provision is included that exempts minor facilities from paying the additional $1000 maintenance fee, as well as an exemption to the annual maintenance fee for any VPDES facility if land application was not utilized that year. Further, the modification fee for VPDES permits would only be charged for additions of land application area when a public meeting must be held.

Proposed changes to the fees for VPA permits include a similar provision as VPDES in that the modification fee would only be charged for additions of land application area when a public meeting must be held. Also, it is proposed that the annual maintenance fee for VPA permits be reduced from $750 to

$500 annually, which again represents the new permit fee ($5000) divided by the term of the permit in years (10). [Refer to Sections 9VAC25-20-110, 120, and 142 beginning on page 4 for VPA and VPDES permit fee changes].

The TAC discussed the proposed language, and while some members of the TAC were not in favor of additional fees, this proposal best represents the statutory requirements balanced with the additional agency resources necessary to process permits that include biosolids land application.

3) The 2005 Joint Legislative Audit and Review Commission Report (House Document No. 89) entitled "Review of Land Application of Biosolids in Virginia" contained recommendations on site access control. There was general consensus within the committee to extend the timeframe during which notification signage was to be present at a site after land application from 48 hours to five (5) business days, but the TAC did not feel that signage was warranted during the entire exclusionary period, ranging from 30 days to one year, as the property owner is made aware of the restriction through the landowner agreement.[Refer to Sections 9VAC25-31-485, page 75; 9VAC25-32-515, page 171; and 9VAC25-32-530, page 174].

B. Consistency between VPA and VPDES permit requirements:

There are several areas of inconsistency between biosolids land application requirements in the VPA and VPDES regulations that were examined by the TAC. VPDES language regarding monitoring, recordkeeping, reporting, pathogen reduction and vector attraction reduction, which is based on the EPA 503 Rule, was added to the VPA regulation as new language or to replace existing language. Language was added to the VPDES regulation that refers to the requirements of the VPA Biosolids Use Standards and Practices. Language was added to each of the permit application sections to make VPA and VPDES permit application information consistent. [Refer to 9VAC25-31-100, beginning on page 29 for VPDES permit applications and 9VAC25-32-60, beginning on page 121 for VPA permit applications].

The proposed requirements for permitting do retain an inconsistency related to the location of land application sites. The VPA regulation requires that a separate permit be obtained for each county or municipality where biosolids land application is proposed [Refer to 9VAC25-32-305, beginning on page 137]. Staff did not propose a similar requirement in the VPDES regulation, as most of the land application authorized by a single VPDES permit would occur in close proximity to the facility. All affected localities would be included in the notification process if a VPDES permit spanned multiple counties. Also, VPDES facilities retain the option of authorizing land application through their VPDES permit or by obtaining a separate VPA permit.

C. Public Notice Processes and Permit Modification Procedures:

The VPDES and VPA regulations were reviewed for requirements concerning public notice during the initial issuance and during permit modifications so that all requirements are consistent. In addition, the public notice process was examined to ensure that adequate provisions are in place to notify neighbors potentially affected by biosolids land application. Modifications have been proposed to clarify new statutory requirements, including public notice and public informational meetings upon receipt of an application for a new permit or a reissuance that will add greater than 50% of the acreage included in the original permit. Also, language was added to treat a request to add greater than 50% of the acreage included in the original permit as a major modification requiring a fee due to the resources necessary to notify adjacent residents and hold the public meeting.

The statute requires a public meeting and opportunity to request a hearing when the addition of acreage is greater than 50% of the acreage in the original permit, but adjacent resident notification only for additions of less than 50% of the acreage in the original permit. However, the TAC came to consensus that DEQ

should notify adjacent residents whenever acreage is added to a permit, no matter what the percentage of the acreage addition. Some members of the TAC felt that the land area used to calculate the 50% criterion should be based solely on the land area included in a single modification request. However, based on the language in the statute the proposed regulation includes a requirement that the 50% criterion be calculated based on the cumulative amount of land added since the last public meeting. DEQ staff believes this proposal best represents the statutory requirement, and will prevent small incremental additions of land being used to avoid the need for a public meeting. [Refer to 9VAC25-31-290, with details beginning on page 71 and 9VAC25-32-140 with details beginning on page 133].

The notification requirements at the time biosolids are land applied was modified, including 14 day notice to DEQ and the locality, sign posting along each right-of-way adjacent to the land application field, and a requirement to give daily notification to DEQ and the county. The TAC was in general agreement with the proposed revised language. [Refer to 9VAC25-31-485, with details beginning on page 76 and 9VAC25-32-515 beginning on page 171].

D. Establishing Appropriate Buffers to Address Health Concerns:

The technical requirements and the timing of establishing additional buffers to address health concerns were discussed at length by the TAC. This is an important consideration due to the fact that not all health concerns may be identified during the permitting process, and some health issues that may not have been present prior to application may arise after land application has occurred.

The Virginia Department of Health provided considerable input on the topic of health protection and buffers, and the recommendations of the Biosolids Expert Panel were considered as well. Based on these discussions, the proposed changes allow DEQ to extend a residence buffer from the standard 200 feet to 400 feet upon request of the occupant, without medical documentation. An extension beyond 400 feet would require evaluation by a VDH panel. Modifications were also added to clarify the ability of DEQ to extend buffers or waive buffers around an occupied dwelling upon request of the occupant, not simply the landowner. Also, setbacks for water supply reservoirs, streams and tributaries with public water supply designation were added. [Refer to 9VAC25-32-560, with details beginning on page 187].

In response to the Biosolids Expert Panel recommendation that odor control plans be considered, the proposed language includes requirements for odor control plans from all wastewater treatment facilities where biosolids are produced, as well from the land applier that address control of malodor if problems arise at the land application site. [Refer to 9VAC25-31-100, with details beginning on page 54, and 9VAC25-32-60 with details on pages 123 and 127].

The TAC reached consensus regarding these revisions.

E. Sampling Requirements:

The TAC examined the sampling requirements for biosolids as well as soils in light of the current science, and also considered the input of the Biosolids Expert Panel. Few changes to the regulatory requirements are proposed, primarily based on the lack of a scientific basis for the inclusion of additional parameters. The ability of DEQ to request analyses for additional parameters in soils or biosolids on a case-by-case basis has been clarified in order to account for situations that may warrant additional scrutiny. An example might be a proposed land application site that has a history of use as an orchard that may have received repeated applications of arsenic compounds. The sampling requirements for exceptional quality biosolids retains, from the VDH Biosolids Use Regulations, a list of potential organic compounds that might be analyzed. Some members of the TAC suggested removal of this list because they found it confusing as to when they might be required. In effect, the ability to sample for additional parameters is a placeholder available to address new research being conducted by EPA, should those parameters be found

to be of concern. [For biosolids sampling, refer to 9VAC25-31-540, beginning on page 88 and 9VAC25-32-356, beginning on page 144. For soil sampling, refer to 9VAC25-31-543 beginning on page 92 and 9VAC25-32-460 beginning on page 160].

A requirement for PCB sampling at the time of initial permit application has also been added along with the analysis method (EPA 1668) to be used. Current procedures call for the submittal of this analysis on the application form, but the requirement was not included within the regulation. [Refer to 9VAC25-31-100, with details on page 55 and 9VAC25-32-60, with details beginning on page 124].

Further, the existing sampling protocol for land applied biosolids was "recommended" but not mandatory. The proposed regulatory revisions clarifies that these protocols are required.

The TAC was in general agreement regarding the changes to the sampling requirements.

F. Nutrient Management Requirements:

The current language in the regulations addressing nutrient management requirements was originally drafted when nutrient management plans (NMPs) were not required for every biosolids land application site. As statute now makes NMPs mandatory for all sites, there is existing language that is duplicative or inconsistent with Department of Conservation and Recreation (DCR) Nutrient Management Standards and Criteria. The proposed changes to these requirements better align the DEQ regulations with the DCR regulations. Primarily, language from the DEQ regulations that was also found in DCR Nutrient Management Standards and Criteria has been removed, and a reference to those regulations inserted to maintain consistency. Certain practices pertaining to nutrient management that are unique to the way biosolids are managed have been added to the DEQ regulations, specifically a requirement to assure that pH and potassium levels in the soil are in appropriate ranges prior to biosolids land application.

The Biosolids Expert Panel recommended that the TAC examine the methods available to determine the phosphorus application rate, and whether the DEQ regulations should be more restrictive than the DCR criteria. The TAC agreed that the methods included in the DCR Nutrient Management Standards and Criteria were all adequately protective of water quality for biosolids land application, and there was no need to make the biosolids regulations more restrictive.

Several changes suggested by DCR representatives to the TAC were thoroughly discussed, but because there was not agreement among the other TAC members, the changes were not made. In particular, DCR suggested that additional requirements be added to address particular soils that may be slowly or rapidly permeable; however, the existing biosolids regulatory provisions already allow for site-specific requirements to address cases where actual problems exist. As these soil conditions are problematic for all nutrient management, the TAC noted that such specific requirements are best applied in the DCR Nutrient Management Standards and Criteria.
DCR had also suggested that sites with high soil test phosphorus be required to have a NMP approved by DCR prior to permit issuance. The TAC noted that this issue is more appropriately addressed just prior to biosolids land application, in order to obtain more timely soil samples and develop NMPs that will be truly representative of the crop and conditions at the time of land application. Therefore, as a compromise the draft changes include a requirement for NMP approval prior to land application where the soil test phosphorus level is above 35% saturation (135-162 ppm depending on regional differences).

[Refer to 9VAC25-32-560, beginning on page 180, for these changes].

G. Animal Health Issues Associated with Grazing:

Concerns had been raised by the public regarding whether grazing restrictions adequately address equine species and whether there are micronutrient issues that may affect grazers. The TAC heard from veterinary staff at the Virginia Department of Agriculture and Consumer Services, and discussed the issue of grazing restrictions and biosolids constituents that might be of concern. From this discussion, the TAC was in general agreement that the timelines for grazing restrictions were adequately protective for all grazers.

However, existing data was referenced by some TAC members that supported the theory that if biosolids molybdenum (Mb) concentrations were elevated, nutritional problems could occur in livestock. Therefore, a footnote was added to the ceiling limits for biosolids requiring that biosolids with a molybdenum concentration greater than 40 mg/kg shall not be applied to land used for livestock grazing. Based on a preliminary review of land applied biosolids analyses in Virginia, it does not appear that this restriction will affect many applications, as the Mb levels are typically far below 40 mg/kg. Some TAC members disagreed with the additional restriction, as the EPA has not yet adopted a lower Mb limit in the federal regulation. DEQ believes the proposed restriction is a reasonable approach to address a condition that would have no effect on the majority of permit holders, but would offer protection for livestock where the conditions do exist. [Refer to 9VAC25-31-540, with details on page 89 and 9VAC25-32-356, with details on page 145].

H. Financial Assurance Procedures:

Persons holding or applying for permits to land apply biosolids are required to provide written evidence of financial responsibility, which shall be available to pay for cleanup costs, personal injury and property damage related to transportation, storage or land application of biosolids. The TAC discussed mechanisms for meeting the financial responsibility requirements, and convened a subcommittee to address the issue. The proposed regulations require a minimum of $2 million in liability coverage, and allow various means to meet the financial test, including the corporate financial test, the local government financial test, letter of credit for liability coverage or trust fund for liability coverage. The proposal recognizes that a municipality will likely need to use different means to meet the financial assurance requirements than a private contractor.

While the majority of the TAC agreed with the $2 million liability requirement, there were concerns from some TAC members regarding impact on small localities that land apply. Other TAC members felt that the responsibility should always rest on the wastewater facility providing the biosolids; however, the statute applies to “all persons holding or applying for a permit.” The proposal being presented offers flexibility in meeting the requirements, and is consistent with other financial assurance procedures used by the agency. [Refer to 9VAC25-32-770 through 850 beginning on page 225].

I. Permitting Procedures:

The TAC discussed problems associated with the possibility of land application sites being permitted for land application by multiple contractors. As the NMP requirements will govern land application rates, and would require consideration be given to previous applications, over-application is not as much of a concern as is the confusion and/or competition between land appliers. The proposed regulation addresses this concern in two ways: the land application agreement between the farmer and contractor must include certification that there are no concurrent landowner agreements with other companies, and the assignment of a unique control number to each field by DEQ to ensure clear tracking of land application sites. While the TAC proposed various methods to address this issue, there was general agreement with the proposed requirement. [Refer to 9VAC25-31-485 page 75 and 9VAC25-32-530 page 174].

The proposed regulation includes language that establishes a final expiration date for all BUR permits of December 31, 2012. This will address existing permits that were administratively continued with no

expiration date. This language was presented to the TAC with no disagreement. [Refer to 9VAC25-32-300 page 136].

The TAC discussed changes to the existing permitting procedures, to include the development of general permits for specific types of applications such as distribution and marketing of exceptional quality biosolids and the land application of biosolids for research and development projects. We agree that these changes merit consideration once these first regulatory changes are put in place.

J. Miscellaneous Issues:

Other proposed changes to the regulations in response to the NOIRA, the discussions of the Biosolids Expert Panel and the discussions of the Biosolids Technical Advisory Committee include the following:

1) Requirements for distribution and marketing of exceptional quality biosolids:

Exceptional quality (EQ) biosolids are biosolids materials that contain lower pollutant levels, and have been treated to achieve non-detectable levels of pathogens and reduced vector attraction. This material may be distributed to the end-user either in unpackaged (bulk) or packaged (bags, trucks < 1 ton). All marketing and distribution of fertilizer materials requires a permit and registration with the Virginia Department of Agriculture (VDACS). DEQ supports production of this more highly treated biosolids product, and proposes retaining the exemption from the land application fee.

As it is impracticable to require a NMP for packaged material and even some bulk quantities, the TAC discussed at what threshold a NMP would be required as opposed to relying on VDACS labeling requirements. While DCR recommended that the threshold for the NMP requirement be based on quantity of unpackaged material applied, the rest of the TAC felt strongly that all material registered with VDACS should have equivalent nutrient management requirements as other commercial fertilizers sold to the public.

The proposed changes reach a compromise by allowing for an exemption to the NMP requirement for EQ biosolids material that is greater than 90% solids, or is blended with other materials and is greater than 40% solids. This proposal strikes a balance between requiring NMPs for all materials and encouraging facilities to incur the additional cost of further processing the EQ material, by focusing on NMP requirements for EQ biosolids that are handled most like Class B biosolids material. Recordkeeping and reporting requirements are limited to what is required in the EPA 503 regulations coupled with that required by VDACS regulations. [Refer to 9VAC25-32-570, beginning on page 191].

2) Reclamation of mined and disturbed lands:

The Biosolids Expert Panel recommended that the TAC examine the regulations related to biosolids use in reclaiming mined and disturbed lands. The TAC had lengthy discussions on this topic, mainly focused on the nutrient management practices that would be required for such sites. Based on research at Virginia Tech, biosolids application rates in excess of agronomic rates (as specified in the DCR Nutrient Management Standards and Criteria) are necessary for successful land reclamation at these sites. While some additional nutrient leaching is expected with the higher rates, nutrient loss must be weighed against the environmental benefit of abating other problems such as acid mine drainage or acidic soil erosion. The TAC discussed the practicality of reducing leaching potential by adding carbon material to the biosolids in order to increase the C:N ratio, but no conclusions were reached. The proposed regulations include a requirement that an NMP be required for all reclamation sites receiving biosolids, and that the plan be approved by DCR prior to permit issuance. [Refer to 9VAC25-32-560, with details beginning on page 190].

3) Local Monitoring Reimbursement:

Language was added to the Fee regulation to clarify when local monitoring costs may be reimbursed above $2.50 per dry ton, up to $4.00 per dry ton biosolids applied in the county. The proposal requires prior approval from DEQ to exceed the $2.50 reimbursement rate. Additionally, the reimbursement procedures were modified such that charges for monitoring not associated with determining compliance with state or federal law would be ineligible for reimbursement. This language was presented to the TAC with no disagreement. [Refer to 9VAC25-20-149, page 11].

After making a presentation on the above issues, and answering any questions the Board may have, staff will be asking the Board for approval to proceed to notice of public comment and hearing on the draft regulatory changes proposed for the Fee, VPDES, and VPA regulations.

Approval of TMDL Implementation Plan for Straight Creek, Lee County: Staff plans to present to the Board the Straight Creek TMDL Implementation Plan for approval and a status report of the draft UAA Study Plan for Straight Creek. Straight Creek was first listed as impaired in 1998 for its benthic community and excessive bacteria. Early in 2006 the Virginia Department of Mines, Minerals, and Energy ["DMME"] and DEQ completed TMDLs for both of the Straight Creek impairments. For the biological impairment, the primary pollutants identified by the TMDL were excessive total dissolved solids and sediment coming from extensive disturbed areas in the watershed resulting from surface mining, straight pipes from domestic dwellings, and unstable stream banks. The Board approved submittal of these TMDLs to EPA in March 2006, and EPA approved them in June 2006. In 2006, the General Assembly amended §62.1-44.19:7 of the Code of Virginia to allow an aggrieved party to present to the Board reasonable grounds indicating that attainment of the designated use for a water is not feasible, then the Board, after public notice and at least 30 days provided for public comment, may allow the aggrieved party to conduct a use attainability analysis ["UAA"] according to criteria established pursuant to the Clean Water Act and a schedule established by the Board. Subsequently, the Virginia Coalfields TMDL Group [currently known as the Virginia Mining Interests Group ["VMIG"]] submitted a document asserting that attainment of the designated use for aquatic life in Straight Creek is not feasible because many of the impacts on the watershed are irremediable. The document also stated that the Group anticipated taking the lead role in TMDL Implementation Plan development. At its March 8-9, 2007 meeting, the Board granted approval, subject to certain conditions, to VMIG to conduct a use UAA for aquatic life in Straight Creek according to criteria established pursuant to the Clean Water Act and in conformance with 9 VAC 25-260-10 of the Virginia Water Quality Standards. One of the conditions was submission to DEQ by December 31, 2007 of a TMDL Implementation Plan to address the aquatic life use impairment and approval by the Board. The Plan is to identify the reasonable and cost-effective remediation steps required for use attainment under 9 VAC 25-260-10 subsections E and I. The UAA Study Plan is to be approved by DEQ before initiation of the UAA study.

The Straight Creek Implementation Plan ["IP"] was developed by the VMIG with input from various state agencies and local stakeholders. The initial draft of the IP was submitted in December 2007, with four subsequent revisions. Two public meetings were held during the development process, with the second public meeting on the final TMDL IP held May 26, 2009.

DEQ staff and the Straight Creek Technical Advisory Committee believe the final draft TMDL IP is comprehensive and addresses the provisions of the TMDL. Implementation actions that are identified address both the bacterial and benthic impairments. The targets for remediation/restoration include:

Recreation Use/Bacterial Impairment

- 100% Elimination of straight pipes
- 100% Elimination of failing systems
- Reductions of bacterial contributions by livestock (Phase II, if necessary)

- Reduction of bacterial contributions by pets (Phase II, if necessary)

Aquatic Life/Benthic Impairment

- Restoration/reclamation of abandoned mine lands (AML). High priority targets will be identified for restoration.
- Reclamation/revegetation of disturbed forest lands
- Restoration/stabilization of eroding stream banks
- Greater enforcement for nonpoint source (NPS) contributors
- Elimination of straight pipes and failing systems
  Mandatory implementation of BMPs for sediment control/reduction and indirectly, total dissolved solids:
  o Forest management BMPs
  o Mining BMPs
  o Construction

Implementation of the IP is divided into two phases, scheduled over a 20 year period. To address excessive bacteria levels, the IP recommends elimination of straight pipes and failing septic systems in Phase I. If necessary, reduction of livestock related sources, and additional residential and urban sources, such as pets, would take place during Phase II.

To address the benthic impairment, the IP recommends addressing three sources of TSS/TDS during Phase I: 1. abandoned mine lands (AML), 2. disturbed forest lands, and 3. channel erosion. Elimination of straight pipes will also result in benefits to the benthic aquatic life community. Phase II continues work in these areas, using adaptive management to address additional AML sites, disturbed forest areas, including Oil and Gas .

Cost estimates are presented in the IP report for each Phase.

DMME and the U.S. Army Corps of Engineers have taken some remediation efforts on Abandoned Mine Land using less expensive passive treatment systems in several impaired tributaries to Straight Creek. The mining industry and the Virginia Department of Health have taken steps to install two sewer line extensions to several communities; construction is completed for one. In addition, efforts have been taken on stream-bank stabilization at an active coal mining preparation plant site.

The first draft of the UAA Study Plan was submitted in September 2007. Comments on the draft study plan were provided by EPA, US Fish & Wildlife Service, Chesapeake Bay Foundation, and the Southern Environmental Law Center. A revised UAA study plan was received in November 2008. At that time DEQ staff informed the VMIG that further action on the UAA Study Plan would wait until the Board approved the TMDL IP.

The current timeline in the study plan has work beginning 90 days after DEQ approval of the study plan, 2 years until predictive tool development, and a final report with recommendations is scheduled 3 years after initiation of the study.

DEQ staff recently received a October 2009 report by EPA that evaluates the existing and designated uses of Straight Creek. The report found several sites in the Straight Creek watershed that are currently attaining or nearly attaining designated use status for aquatic life and other sites are expected to improve after the various actions called for in the TMDL Implementation Plan are put in place and become effective. According to EPA these planned activities are expected to improve water quality and habitat for aquatic life and could potentially result in full attainment of the aquatic life use in the reaches of Straight Creek that are currently impaired. EPA's report

concludes with the recommendation that "the UAA study should be delayed until the TMDL is implemented in Straight Creek".

Staff considers the Straight Creek IP one of the most comprehensive IPs that has been developed to date. The IP does not specifically identify among the practices listed which are the reasonable and cost-effective remediation steps required for use attainment under 9 VAC 25-260-10 subsections E and I. However, staff believes it would also be suitable for that information to be included in the UAA Study Plan since it is directly related to evaluation of the UAA Study results. DEQ plans to address this, along with other outstanding issues, when taking action on the UAA Study Plan. At that time staff will also communicate to the VMIG the views of EPA about the conduct of the UAA study.

Upon completion of the UAA study, staff will report back to the Board whether the results of the UAA study are deemed consistent with federal and state regulations and warrant initiating a rulemaking to establish subcategories of the designated use for aquatic life in all, or portions of, Straight Creek.

Report On Significant Noncompliance: Two permittees were reported to EPA on the Quarterly Noncompliance Report (QNCR) as being in significant noncompliance (SNC) for the quarter April 1 through June 30, 2009. The permittees, their facilities and the instances of noncompliance are as follows:

1. Permittee/Facility: **Arlington County, Arlington County Water Pollution Control Facility**
   Type of Noncompliance: **Failure to Meet Permit Effluent Limit (Ammonia Nitrogen)**
   City/County: Arlington, Virginia
   Receiving Water: Four Mile Run
   Impaired Water: A portion of Four Mile Run is listed as impaired for PCBs in the 2008 303(d) report. The source of the impairment is unknown. Four Mile Run is also considered impaired for E. coli. The sources of the impairment are listed variously as unpermitted sewage discharges, pet wastes, wastes from water fowl and other unknown sources.
   River Basin: Potomac-Shenandoah River Basin
   Dates of Noncompliance: April and June 2009
   Requirements Contained In: VPDES Permit
   DEQ Region: Northern Virginia Regional Office

Staff from the Northern Virginia Regional office are processing an enforcement action addressing the referenced violations which they anticipate bringing to the March 2010 Board meeting for approval.

2. Permittee/Facility: **Town of Farmville, Farmville Wastewater Treatment Plant**
   Type of Noncompliance: **Failure to Meet Permit Effluent Limit (Copper)**
   City/County: Farmville, Virginia
   Receiving Water: Appomattox River
   Impaired Water: The Appomattox River is listed as impaired for Copper in the 2008 303(d) report. The source of the impairment has been identified as the Town of Farmville wastewater treatment plant.
   River Basin: James River Basin
   Dates of Noncompliance: March, May and June 2009
   Requirements Contained In: VPDES Permit
   DEQ Region: Blue Ridge Regional Office

An order addressing the referenced violations has been executed by the Town and will be presented to the Board for its approval at its December 2009 quarterly meeting.

City of Bedford - Consent Special Order – Issuance: The City of Bedford ("the City") owns and operates a wastewater treatment plant ("Plant") in Bedford, Virginia. The City reported a total of fifteen unpermitted discharges from the sewage collection system that serves the Plant. All but one of the

unpermitted discharges was explained by the City as being related to inflow and infiltration ("I&I") associated with heavy rainfall. The remaining overflow was cause by a grease blockage. The Order before the Board includes a requirement that the City submit for review and approval a plan and schedule of corrective action ("Plan") for the unauthorized discharges. The Order identifies specific set of projects for the City to complete through the year 2011 and requires ongoing investigation of I&I sources. The initial submittal of the Plan will set out a schedule for completion of those projects for the fiscal years 2009/2010 and 2010/2011. By June 1, 2011, the City is required to submit a revised Plan that will include a schedule for additional I&I corrective action projects to be completed during the fiscal years 2012/2013 and 2013/2014. The Order also requires the City to appropriate at least $100,000 in each operating budget specifically dedicated to the reduction of I&I for the fiscal years 2010/2011 through 2013/2014. Civil charge: There is no civil charge.

Town of Farmville, Farmville STP - Consent Special Order - Issuance: The Town's VPDES Permit was re-issued on February 1, 2005, containing a 4-year schedule of compliance in Part I.C. of the Permit to achieve final compliance with both average and maximum copper concentration limitations of 23µg/l. The Town submitted a Plan for Achievement of Compliance to the Department on May 10, 2005, in accordance with the deadline contained in the subject Permit. The Plan described the results of the Town's copper monitoring efforts for February through April 2005. The Town stated that it had not exceeded or come close to the proposed Permit effluent limitations for copper, and that its plan of action was to continue monitoring in order to track copper effluent levels to determine if additional controls were needed. The Town submitted the first quarterly Progress Report for copper compliance as required by the subject Permit on August 11, 2005, with the last submittal received by the Department on December 17, 2008. All copper effluent monitoring results reported by the Town were below the proposed limit. The final effluent limitation for copper became effective on February 1, 2009, with a revised DMR transmitted to the Town by letter on January 6, 2009. The Town was required to begin reporting copper on its DMR due on or before March 10, 2009. For the March 2009 compliance period, the Town reported Permit limit violations for ammonia, BOD_5, copper, and TSS. The Town was cited for a reporting violation during this period as well. For the May and June 2009 compliance periods, the Town incurred both average and maximum copper effluent limit violations based on data supplied with its DMR. The violations met the criteria for significant noncompliance (SNC) due to the fact that they were more than 1.2 times the Permit limit. In July 2009, the Town also incurred both average and maximum copper effluent limit violations, but they did not meet the criteria for SNC. The proposed enforcement action contains a Schedule of Compliance which gives the Town the opportunity to conduct additional monitoring and surveys in order to fully characterize the nature and extent of the copper noncompliance. It also requires the Town to expand upon current source control measures, and gives the Town a compliance deadline to meet in order to return it to compliance with the copper effluent limits. The proposed Order contains an interim copper limit based on the 95th percentile of DMR data submitted to the Department. Civil Charge: There is no civil charge.

Hurricane Ridge Dairy Farm, Inc, Patrick Co. - Consent Special Order w/ Civil Charges: On Monday April 13, 2009, at approximately 10:25am the operator of the dairy farm (Facility) discovered that the waste air valve of the off load pipe for the Facility's manure pit was open and discharging approximately 2000 gallons per minute of waste. The operator, in a written report to DEQ, states that the loading system was operating properly, but apparently the air valve controlling the flow of waste from the system had been activated by contact with the side of a departing loading truck and the driver drove off not aware that a discharge was occurring. Upon discovery of the unpermitted discharge the operator of the Facility cut the air line to the system which caused the waste valve to close and stop the discharge which was reaching State waters. The operator after closing the valve took action to mitigate and stop additional impacts to State waters by digging a trench between the pit and the UT of Mayberry Creek to capture what he could of the released waste. The estimated amount of unauthorized discharge from the manure pit is 30,000 gallons of which 5,000 gallons were recovered from the trench. The amount of unauthorized discharge reaching Mayberry Creek is estimated to be 25,000 gallons. The Blue Ridge Regional Office

(BRRO) biology staff performed a fish kill investigation on April 15, 2009. The reach of Mayberry Creek that was used to extrapolate the total fish kill estimate was the upstream most reach, extending from above the pool where the initial dead fish were observed to Latitude 36.71056, Longitude -80.44756 (2,046 feet). They estimate the fish kill for this reach and this incident to be 32 fish. The inspector and one of the investigating regional biologists confirm for enforcement staff that no corrective action or clean-up is required with regard to the UT of Mayberry Creek or Mayberry Creek. The order requires Hurricane Ridge to pay $15.92 fish replacement costs, $1,881.66 reimbursement of costs of investigation and a civil charge for the violation. No corrective or remedial action is required. Civil Charge: $6,500.

Mr. Charles B. Anderson, Mr. Henry Martin and Lakewood Partners, LLC, Lakewood Mobile Court STP; Halifax Co. - Consent Special Order w/ Civil Charge - Issuance: Lakewood Partners, LLC ("Lakewood") owns and operates a wastewater treatment facility ("Facility") which serves the Lakewood Mobile Home Court located in Halifax County. The Facility is the subject of VPDES Permit No. VA0063282 ("Permit"), which authorizes Lakewood to discharge treated wastewater into an unnamed tributary of the Lower Banister River. Mr. Anderson and Mr. Martin are the principals of the LLC. Lakewood violated the following Permit parameters: Ammonia, May 2006; Ammonia, June 2006; DO and E. coli, December 2006; TSS, January 2007; Ammonia, March 2007; Ammonia, June 2007; BOD5, July 2007; and DO, August 2007. In addition, DEQ staff noted the following failures to comply with the reporting requirements of Part II.C. of the subject Permit: late DMR, July 2006; improper reporting on DMR, January 2007; improper reporting on DMR, August 2007; submission of incomplete DMRs for the months of January, February, April, and October 2008, failure to report an unauthorized discharge within 24 hours and follow-up with a five-day letter as required by Part II.G. of the subject Permit, December 2007. Discharges from the Facility reportedly ceased in October, 2007, when Lakewood began pumping and hauling wastewater from the lagoon. BRRO PReP staff received a complaint on December 4, 2007 from one of the tenants of Lakewood, reporting a sewage overflow and a sewage back-up into her bathtub. Staff made a site visit on December 5, and confirmed there was a sewage overflow that ran into the adjacent farm pond beside the Facility's treatment lagoon. DEQ notified Lakewood of the overflow and requested that it be addressed immediately. Repairs were made and the overflow was abated. Reconnaissance inspections conducted by BRRO staff on April 1 and 2, 2008, revealed a violation of the Permit's requirement to maintain a minimum of one foot of freeboard in the Facility's treatment lagoon. The 2nd Annual Financial Assurance Review/Adjustment, which was due on or before July 17, 2006, and required by Part I.C.2. of the Permit, was received on July 31, 2006. The 3rd Annual Financial Assurance Review/Adjustment, which was due on or before July 17, 2007, was not received until October 11, 2007. The 4th Annual Financial Assurance Review/Adjustment, which was due on or before July 17, 2008, was not received and deemed complete until October 11, 2008. In addition, DEQ staff have noted that the 5th Annual Groundwater Monitoring Report, required by Part I.A.3. of the Permit to be submitted by Lakewood Partners, LLC on or before January 10, 2009, was received by the Department on May 8, 2009. The proposed Consent Special Order contains a Schedule of Compliance to address closing the Facility in a timely manner and in compliance with 9 VAC 25-790-120 (SCAT Regulations), and a civil charge addressing chronic noncompliance with Permit conditions, improper O & M, and the unpermitted discharge. Civil Charge: $18,292.50

Gurcharan S. Lail- owner of One Stop Trailer Park STP; Loudoun Co. - Consent Special Order-Issuance: One Stop Trailer Park (One Stop) is a Trailer Park located in Loudoun County, Virginia. The One Stop Trailer Park Sewage Treatment Plant serves the trailer park which is composed of 17 trailer homes and a gas station store and kitchen. One Stop was referred to enforcement on August 20, 2007, for exceeding permit effluent limits for Biochemical Oxygen Demand (BOD_5), Total Suspended Solids (TSS), and Ammonia; for not meeting the minimum limit for Dissolved Oxygen (DO); for the late submittal of the permit renewal application; and the late submittal of the March 2007 and May 2007 Discharge Monitoring Reports (DMRs). During the negotiation process, several other violations occurred, including failure to submit an updated Operations and Maintenance Manual, failure to furnish to the Department within a reasonable time, requested information regarding laboratory documentation and

a written progress report addressing items discussed in a June 24, 2008 inspection report, the late submittal of DMRs for the months of June, July, August, September, and October 2008, January, February, and March 2009, and the late submittal of financial responsibility information. In addition, the facility failed to monitor for Influent BOD_5, Influent Oil and Grease, Effluent Oil and Grease and Ammonia as Nitrogen for the October 2008 monitoring period, and failed to report the result for Ammonia as Nitrogen for the November 2008 monitoring period. The permit effluent violations addressed within the current Consent Order are reflected in One Stop's monthly DMRs from the period of March 2007 through September 2007. Due to the chronic nature of the violations, and in order to prevent a discharge from the STP, on May 15, 2009, DEQ requested that Gurcharan Lail pump and haul One Stop's wastewater to an off-site sewage treatment plant until upgrades have been completed at the STP. Pump and haul operations were initiated at the STP on May 16, 2009, and Gurcharan Lail has worked with the local health department to obtain the required documentation to remain on pump and haul until upgrades are completed. The Consent Order requires Gurcharan Lail to perform the repairs and upgrades recommended by their consultant in accordance with a professional engineering evaluation and schedule of completion that was submitted to DEQ on behalf of Gurcharan Lail on July 17, 2009. The evaluation calls for these upgrades to be completed by March of 2010. In addition, the Order requires that no discharge occur from the STP, and that the STP's wastewater be pump and hauled to an off-site sewage treatment plant until all items noted in the professional engineering evaluation are completed. Prior to the commencement of discharge from the STP, the upgrade design engineer shall submit to DEQ a statement that the upgrades at the STP have been made and completed in accordance with the engineering evaluation, and are sufficient to meet Permit limits. The Order also requires that Gurcharan Lail ensure that DEQ is able to inspect the STP any day from 8am to 8pm. The Order also requires Gurcharan Lail to provide DEQ with proof of a contracted operator. Additionally, the Order requires Gurcharan Lail to submit a complete Operations and Maintenance Manual that reflects the upgrades completed and any changes in practices and procedures at the STP within 90 days of completion of the upgrades at the STP. Finally, the Order requires increased monitoring for Effluent TSS, Effluent BOD, Ammonia, and E. Coli, upon commencement of discharge at the STP and lasting for 6 consecutive months. The repair and upgrade contract for the STP is estimated to cost $38,200.00, and Gurcharan Lail is incurring approximately $10,000.00 per week in pump and haul fees. Civil Charge: $29,419.

Vitex Packaging, Inc., Suffolk - Consent Special Order with a civil charge: Vitex Packaging, Inc. ("Vitex") operates a Facility in the City of Suffolk, Virginia, at which it manufactures a variety of packaging components for the food and medical industries. Storm water discharges from the Facility are subject to the Permit through Registration No. VAR050764, 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 Vitex to discharge to surface waters storm water associated with industrial activity under conditions outlined in the Permit. As part of the Permit, Vitex is required to provide and comply with a Storm Water Pollution Prevention Plan ("SWP3") for the Facility. On April 29, 2009, DEQ compliance staff conducted an inspection of the Facility that revealed the following: poor housekeeping practices; failure to perform quarterly visual examinations of storm water quality, monthly facility inspections, an annual comprehensive site compliance evaluation ("CSCE"), and annual training in storm water management; failure to properly document a previous quarterly visual examination of storm water quality and a previous annual CSCE; and failure to comply with SWP3 requirements by not identifying in the SWP3 and the accompanying site map the location of the permitted storm water outfall and by not including a non-storm water certification with the SWP3. On June 29, 2009, DEQ issued a Notice of Violation ("NOV") advising Vitex of the deficiencies revealed during the Facility inspection conducted on April 29, 2009. Vitex responded to the NOV by electronic mail on July 6, 2009. Additionally, upon Vitex's invitation, DEQ enforcement staff visited the Facility on July 20, 2009, to observe improvements in storm water management practices. To remedy the deficiencies noted in the NOV, Vitex has done the following: remedied the housekeeping deficiencies noted in the NOV; revised the SWP3 to include two storm water discharge points as permitted outfalls and a non-storm water certification; and provided copies of all routine Facility inspections and quarterly visual examinations of storm water quality

performed since April 2009, an annual CSCE and a certificate of training in storm water management The Order requires Vitex to pay a civil charge within 30 days of the effective date of the Order. As noted above, Vitex has addressed all Permit deficiencies. To ensure continued compliance with the Permit and the SWP3 the Order also requires Vitex to submit documentation of routine inspections and visual examinations of storm water quality for four calendar quarters with the first submittal due by January 10, 2010. Civil Charge: $12,348.

Al M. Cooper Construction, Incorporated, Roanoke Co. - Consent Special Order w/ Civil Charges: Al M. Cooper Construction, Incorporated (Cooper) is preparing property (Tax Parcel ID: 087.20-01-09.00-0000) located north of Buck Mountain Road in Roanoke County for a subdivision. Site plans identify the site as "Berkeley Manor & Bellview Garden," a residential subdivision of a single land parcel. Staff observed the following during the September 11th inspection:

- A 125.5 linear foot long reinforced concrete culvert pipe described in the JPA as permanent Impact #1 had been installed by the time of re-inspection; no DEQ or Corps permit had been issued for the impact. Outlet and inlet protection grading was underway, this impact was not identified in the JPA. The length of this impact was estimated as 10 feet on the inlet end and 15 feet on the outlet end of the culvert with total impact of 150 linear feet.

This impact was initiated after the Warning Letter was issued. A NOV (07-09-WCRO-002) was issued on September 18, 2007 for failure to obtain VWP Permit and for quality alterations of state waters without a permit. On October 18, 2007, Cooper obtained a "Virginia Water Protection General Permit for Impacts from Development and Certain Mining Activities (WP4)" and a U.S. Army Corps of Engineers "State Programmatic General Permit" (07-SPGP-01) (Permit). The impact authorization includes 280 linear feet of permanent stream bed, and no wetlands, to construct two road crossings over an intermittent stream bed (an unnamed tributary of Back Creek). No temporary stream impacts were authorized by the Permit. On September 15, 2008, the site was inspected to evaluate the status of construction and compliance with Permit conditions. Staff informed Cooper that approximately 175 linear feet of non-impact stream bed had been significantly altered by site clearing, grubbing, and grading activities. The Permit requires that any changes to temporary impacts to surface water associated with the project shall require prior written notification to DEQ. Subsequent to the Permit authorization on October 18, 2007, Cooper did not submit any written notification to DEQ of its intent to fill approximately 175 linear feet of stream channel on a temporary basis. A discharge of dredged or fill material to State waters occurred when approximately 175 linear feet of a non-impact stream bed was filled with soil. This discharge is subject to the requirements of the Clean Water Act, Section 404 and 401, the State Water Control Law, Section 62.1-44.15:20; the Virginia Water Protection (VWP) Permit Regulation, 9 VAC 25-210-10 *et seq.* and the VWP General Permit, WP4-07-2019. Based upon the inspection, Cooper was not in compliance with the requirements of the Clean Water Act, the State Water Control Law, the VWP Permit Regulation, and the VWP General Permit authorizing the project. On September 23, 2008, a second NOV was issued for the violations observed during the September 15th inspection. Revision of the original CSO requiring a corrective action plan became necessary to ensure environmental impacts associated with construction activities are minimized and mitigated, including restoring the impacted stream channel upstream of Crossing 2. Civil Charge: $50,750.

J. W. Holdings, Inc. and Craddock Oaks Developers, Inc., Bedford Co. - Consent Special Order – Issuance: J.W. Holdings, Inc. ("JW") submitted Joint Permit Application ("JPA") No. 08-0474 on March 10, 2008 for stream and wetlands impacts associated with constructing the Craddock Oaks Subdivision and Golf Course in Bedford County, including a water intake to irrigate the golf course. This application was withdrawn by JW on April 25, 2008. JW filed a second permit application, JPA No. 08-1860, for Phase I residential development activities at Craddock Oaks on August 11, 2008. The affected tracts of land are owned by JW and Craddock Oaks Developers, Inc. ("CODI"). John A. White is the President of both JW and CODI. On August 6, 2008, DEQ was notified by a consultant for JW, Russ Orrison (of the engineering firm Perkins and Orrison), that an intermittent stream channel (Stream 3F) had been filled on the Craddock Oaks site. Mr. Orrison reported that the channel was dry at the time grading occurred and

the contractor, Bays Engineering, did not recognize the drainage feature as a jurisdictional state water. During a compliance inspection on August 19, 2008, a DEQ inspector observed that part of the stream bed of Stream 3F had been filled and the stream had been relocated. The inspector verified that Stream 3F was shown on the confirmed stream and wetland delineation and was shown on the erosion and sediment plan prepared by JW as an area to be left undisturbed. An e-mail dated September 3, 2008 from Perkins & Orrison stated that the total impact to Stream 3F was 342 linear feet. On August 25, 2008, DEQ issued Notice of Violation ("NOV") No. 08-08-WCRO-002 to JW citing the unpermitted impact to Stream 3F. In response to the NOV, JW submitted a Corrective Action Plan ("CAP") for stabilizing the relocated stream bed on August 28, 2008. DEQ approved the CAP in a letter dated September 16, 2008. On September 16, 2008, DEQ staff met with various representatives and consultants for JW, including John White, the President of JW, and Mr. Orrison. Participants in the meeting discussed proposed water withdrawals under the JPA and the impacts cited in the NOV. JW representatives explained that part of Stream 3F was prematurely filled by a subcontractor contrary to JW's grading schedule. JW submitted a mitigation plan for compensating 342 linear feet of stream impact in Stream 3F on September 24, 2008. A revision of JPA 08-1860 was received by DEQ on October 1, 2008, also reporting a permanent impact to Stream 3F of 342 linear feet. DEQ staff commented on the mitigation plan and JPA by letter dated October 14, 2008. The original JPAs called for construction of a culvert with 257 linear feet of impact to Stream 3F. JW's contractor filled the stream instead of installing the culvert shown on the plans. The approximately 85 feet of additional impact (making a total of 342 feet) occurred because the rest of the stream (downstream from the fill area) dried up when its source was covered. On January 22, 2009, Mr. Roberts re-inspected the JW site. This inspection verified that stabilization efforts implemented on Stream 3F were successful. Inspection observations also resulted in the discovery that a total of 0.14 acres of wetlands (consisting of mixed forest, shrub, and emergent vegetative canopy) had been cleared to the ground surface, but stumps had not been removed. Areas cleared were designated as Wetland 6 (0.06 acres) and 7 (0.08 acres) in the wetland delineation report. Because a permit had not been issued as of the date of the inspection, these impacts were not authorized by a permit. Inspection results also indicated that a small quantity of riprap used to construct the outlet weir of a sediment trap had encroached into a stream bed and that two temporary stream crossings had accumulated debris, leading to a minor backup of sediment in the stream. On February 13, 2009, DEQ issued a NOV to JW alleging the violations enumerated above. On February 26, 2009 at the JW construction site, DEQ staff met with Mr. White, Mr. Orrison, other representatives of JW, a representative of the U.S. Army Corps of Engineers, and a representative of Bedford County. The riprap that encroached from the sediment trap into the stream bed has been removed. In a letter dated March 6, 2009, Craddock Oaks formally withdrew JPA No. 08-1860. In a separate letter dated March 6, 2009, the consultant for JW explained that the clearing of Wetland Areas 6 & 7 happened because the logger who was clearing in that area missed the wetlands flagging previously placed there by JW, probably because the flagging had been done a long period of time before the clearing took place. That letter also stated that in the future when clearing is to be done, JW will verify that any wetlands flagging in the area is still visible and intact before authorizing its contractors to proceed with the work. The Order before the Board includes a civil charge of $15,600 for the violations listed above. The order also includes a requirement that JW and CODI submit for review and approval a Corrective Action Plan ("CAP") for the unauthorized impacts and comply with the approved CAP. At this point, JW and CODI intend to restore Stream 3F instead of performing mitigation. Because Stream 3F was an intermittent stream channel, restoration will lead to recovery of functional loss almost immediately. Based on cost figures from the *Virginia Stream Restoration and Stabilization Best Management Practices Guide*, restoration of Stream 3F is estimated to cost approximately $25,000 to $35,000. Civil Charge: $15,600.

West Crossing LLC (Farmington Subdivision), Bedford Co. - Consent Special Order – Issuance: Farmington Subdivision Phase II (the Property), located off Perrowville Road in Bedford County**,** Virginia, is being developed by West Crossing LLC (West) as a residential subdivision. On December 7, 2007, DEQ issued VWP General Permit No. WP4-07-1964 authorizing specified impacts (including not more than 2,000 cumulative linear feet of stream impact) under Va. Code § 62.1-44.15:20 to streams and

wetlands at the Property. There is a single stream system on the Property consisting of Stream A and its tributaries. On February 19, 2008, a DEQ inspector observed that there was an unpermitted sediment discharge, apparently caused by failure of erosion and sediment control measures, into two sections of Stream A and into Wetland F. Wetland F closest to the stream had some sediment deposited in an area of approximately 0.003 acres. The cumulative sediment impact in Stream A was 261 linear feet. On March 26, 2008, DEQ issued NOV No. NOV-08-02-WCRO-003 for the unpermitted impacts in violation of Va. Code § 62.1-44.15:20 and 9 VAC 25-210-50 observed during the February 19, 2008 inspection. West subsequently removed the sediment from the stream. On July 24, 2009, a DEQ inspector observed a cumulative 2,110 linear foot unpermitted sediment discharge into Stream A and its tributaries. These impacts all appeared to have been caused by inadequate erosion and sediment controls. On August 4, 2009, DEQ issued NOV No. NOV-09-08-BRRO-R-006 for the unpermitted impacts in violation of Va. Code § 62.1-44.15:20 and 9 VAC 25-210-50 observed during the July 24, 2009 inspection. DEQ staff met with West representatives on September 10, 2009. During the meeting, West representatives agreed to restore Stream A and its tributaries. Follow-up site visits by DEQ staff confirmed that West had completed the required stream restoration as of October 13, 2009. The Order before the Board includes a civil charge of $11,500 for the violations listed above. Because West has already successfully restored the stream, no injunctive relief is necessary. Civil Charge: $11,500.

HHHunt Corporation, Hanover Co. - Consent Special Order - Amendment: On June 7, 2007, DEQ issued HHHunt Corporation VWP Permit number 05-1612, authorizing wetland and stream impacts associated with the Rutland residential development. As part of the compensatory mitigation for these impacts, HHHunt was required to restore 3,355 linear feet of stream channel downstream of the development site. HHHunt did not complete the mitigation in accordance with the schedule specified by the Permit, and, on December 11, 2008, entered into a Consent Order with DEQ. The Order required that all stream restoration be completed by February 1, 2010. To date, approximately 600 linear feet of the required stream restoration has been partially completed (vegetation planting remains outstanding due to growing season restrictions). In April 2009, HHHunt requested that DEQ extend the required completion date to July 2011. As part of its request, HHHunt offered to perform an additional 94 linear feet of stream restoration and 0.129 acre of wetland restoration on the development site. DEQ did not agree to HHHunt's originally requested extension date. DEQ did agree to extend the completion deadline to December 31, 2010. As a condition of the extension, the Order requires that the bond amount be increased from 50% to 75% of the total remaining project cost. HHHunt will also provide the additional 94 linear feet of stream restoration and 0.129 acre of wetland restoration on the development site as proposed. Other project deadlines in the order that were originally tied to issuance of the Hanover County land disturbance permit were also revised to specific dates. The cost of the remaining restoration work is approximately $462,000, and the cost to increase the bond amount from 50% to 75% of the remaining project cost was approximately $2,000. Civil Charge: There is no civil charge.

Mountain Run Golf, Inc. and Mountain Run, LLC, Hanover Co. - Consent Special Order - Issuance: On July 18, 2001, DEQ issued VWP Permit No. 00-0194 ("the Permit") to Mountain Run, LLC, for the construction of a golf course and surrounding residential development. Mountain Run Golf, Inc. owns the property on which the golf course is located. Mountain Run, LLC was the company which developed the property. The permit required the on-site creation of 1.52 acres of forested wetlands as mitigation for the wetland impacts. On August 26, 2008, DEQ Piedmont Regional Office staff conducted an inspection of the Site. Staff observed a portable pump with an 8 inch diameter intake structure withdrawing water from the South Anna River; the withdrawn water was used for irrigation. The Permit did not authorize a water withdrawal from the impoundment or the South Anna River. A review of records provided by the pump rental company indicated that Mountain Run had rented the pump during 8 separate time periods totaling 307 days from 2005 through 2008. The maximum withdrawal rate was approximately 1,250 gallons per minute (1.8 mgd). A review of DEQ files indicated that in 2005, Mountain Run Golf, Inc. applied for a VWP permit for a water withdrawal from the South Anna River; however, Mountain Run Golf, Inc. did not complete the application by paying the $20,000 permit fee. A VWP permit was never issued for the

withdrawal. DEQ staff also inspected the forested wetland creation area required as mitigation. Construction of the area was completed in 2006, but no monitoring reports have been submitted as required by the Permit. The wetland creation area did not appear successful. On October 14, 2008, DEQ issued Notice of Violation No. 08-09-PRO-700 to Mountain Run for failing to submit monitoring reports for the wetland creation area and for the unauthorized water withdrawal. Mountain Run will be required by the Consent Order to submit a corrective action plan for the forested wetland creation area. Mountain Run has submitted a Joint Permit Application for continuation of the water withdrawal, which is currently under review. The Appendix of the Consent Order allowed an interim withdrawal of up to 5% of the instantaneous flow of the South Anna River up to 500,000 gallons per day for a period of 6 weeks during August and September, to allow Mountain Run to maintain its turf during the dry season. The Appendix set strict limits on intake screen size and intake velocity based on comments from the Department of Game and Inland Fisheries. The interim withdrawal period is now finished and the withdrawals were conducted in compliance with the Appendix requirements. The cost of injunctive relief is estimated at $30,000. Civil Charge: There is no civil charge.

Galberry Corporation, Chesapeake - Consent Special Order with Civil Charge: Galberry Corporation (Galberry) owns the Jolliff Woods Section V- Willow Lakes Subdivision property (Property). On February 1, 2008 DEQ staff inspected the Property. DEQ staff observed unpermitted impacts to forested wetlands on the Property including three forested wetland areas totaling 0.29 acres cleared of vegetation, grubbed of stumps and graded, located in an area that was to be preserved under a previous USACE enforcement action effective March 18, 2007, and four forested wetland areas totaling 0.05 acres cleared of vegetation and partially filled and graded for road construction and stormwater outfalls. On August 26, 2008, DEQ received correspondence from Galberry confirming the location and quantity of the seven unpermitted impact areas. DEQ issued Notice of Violation No. W2008-09-T-003 dated September 25, 2008 to Galberry Corporation for the unauthorized filling of wetlands, discharge of pollutants, and the significant alteration and degradation of existing wetland acreage and functions on the Property. On September 30, 2008 DEQ enforcement staff visited the Property and observed the seven impact areas. DEQ staff observed an additional eighth unpermitted forested wetland impact area of approximately 390 sq. ft. (0.01 acres) as a result of fill material and the discharge of pollutants. DEQ enforcement staff met with Galberry and consultants at the Property on October 10, 2008 to observe the seven unpermitted impact areas and the additional eighth unpermitted impact area observed by DEQ staff on the September 30, 2008 site visit. DEQ staff confirmed the additional unauthorized impact area. A draft Restoration Plan dated October 8, 2008 had been provided to DEQ for the original seven unpermitted impact areas. On October 21, 2008 Galberry consultants provided an updated site map with revised impact area acreages and including the additional impact area observed on the September 30, 2008 and October 10, 2008 site visits. The revised map showed that 0.35 acres of forested wetland were impacted by the unauthorized discharge of pollutants and fill material. On January 23, 2009 DEQ issued VWP Individual Permit No. 07-1998 to Galberry for the development on the Property. The Permit authorized the approximately 0.05 acres of impacts as outfalls associated with road construction. The Permit did not address the approximately 0.29 acres of unauthorized wetland impacts, or the additional unauthorized impact area (approximately 0.01 acres) observed on the September 30, 2008 site visit. The Order requires payment of a civil charge, submittal of a complete and approvable Corrective Action Plan (CAP) and implementation schedule for the restoration of 0.30 acres of unauthorized wetland impact areas including 1:1 compensation for functional losses, and implementation of the CAP. Civil Charge: $23,400.

Zota Petroleums L.L.C., Chester and Richmond - Consent Special Order w/Civil Charges: Zota owns 34 USTs, which are installed at eight locations in Richmond, Virginia and are subject to this Order. Based on review of the current documentation, financial responsibility had not been demonstrated at any of the stores. On May 21, 2008, Department staff inspected Store #611 and found there were discrepancies between the registered facility information and operational status on the 7530 Notification Form, including the method of corrosion protection for the piping and the method of release detection. Records showing the proper operation of the cathodic protection equipment and

recent compliance with release detection requirements were not available. DEQ staff also observed that the spill prevention buckets were filled with liquid and debris. Department staff inspected Store #650 on June 30, 2008, and found there were discrepancies between the registered facility information and operational status on the 7530 Notification Form, including the method of corrosion protection for the piping and the method of release detection. Records showing the proper operation of the cathodic protection equipment and recent compliance with release detection requirements were not available. Department staff inspected Store #659 on June 5, 2008, and observed that the spill prevention buckets were filled with liquid and debris. The sumps were filled with an unidentified liquid and the liquid sensor alarms were triggered, yet there was no report to DEQ of a suspected release. Records of recent compliance with release detection requirements were not available. Department staff inspected Store #660 on February 29, 2008, and observed that records of recent compliance with release detection requirements were not available. Department staff inspected Store #661 on May 29, 2008, and observed that the spill prevention buckets were filled with liquid and debris. Records of recent compliance with release detection requirements were not available. Department staff inspected Store #662 on May 19, 2008, and observed that there were discrepancies between the registered facility information and operational status on the 7530 Notification Form, including the method of release detection and the type of overflow equipment. The spill prevention buckets were filled with liquid and debris. Records of recent compliance with release detection requirements were not available. Tank observation wells were not secured and steel piping was in contact with the ground and was not protected from corrosion. Department staff inspected Store #663 on May 7, 2008, and observed that records of recent compliance with release detection requirements were not available. Department staff inspected Store #668 on May 29, 2008, and observed that there were discrepancies between the registered facility information and operational status on the 7530 Notification Form, including the method of overfill prevention and documentation of the form of corrosion protection. Records of the proper operation of the cathodic protection equipment were not available. Mandatory records regarding corrosion protection were not available. The submersible turbine pumps were filled with liquid and debris with all grades of piping submerged and not protected from corrosion. Records of recent compliance with release detection requirements were not available. The spill prevention buckets were filled with liquid and debris and the sumps were filled with an unidentified liquid and the liquid sensor alarms were triggered, yet there was no report to DEQ of a suspected release. After each of the inspections listed above, the Department issued a Request for Corrective Action ("RCA") to each Store, allowing Zota an additional 30 days to bring the Stores into compliance and provide the Department with the required documentation. Zota failed to meet each of the RCA response deadlines. On January 5, 2009, the Department issued Notice of Violation No. 08-09-PRO-572 to Zota for violations listed above. The Department met with Zota on March 4, 2009 to review and discuss the NOV. Appendix A of the Order requires all violations be corrected no later than January 30, 2010, including financial assurance, release detection, corrosion protection, spill buckets, and outdated registration documents. The approximate cost of the injunctive relief is $15,000. Civil Charge: $53,100.