

**Virginia Soil and Water Conservation Board
Thursday, May 15, 2008 – 9:30 a.m.
Virginia Department of Forestry, 1st Floor Training Room
Charlottesville, Virginia**

Virginia Soil and Water Conservation Board Members Present

Linda S. Campbell, Chair	Michael Altizer
Darlene Dalbec	Granville M. Maitland, Vice Chair
Joseph H. Maroon, Director, DCR	Richard E. McNear
Jean R. Packard	Raymond L. Simms
Ray Dorsett, NRCS, Ex Officio	

Virginia Soil and Water Conservation Board Members Not Present

Susan Taylor Hansen	Michael J. Russell
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DCR Staff Present

Russell W. Baxter	Ryan J. Brown
William G. Browning	Eric R. Capps
Nissa Dean	David C. Dowling
Michael R. Fletcher	J. Michael Foreman
Doug Fritz	Dean Gall
Lee Hill	Noah Hill
Mark B. Meador	Kelly Miller
Jim Robinson	Christine Watlington
Elizabeth Andrews, Office of the Attorney General	

Others Present

Larry Land, Virginia Association of Counties
Chris Pomeroy, Aqualaw
Kate Bennett, Fairfax County
Dick McElfish, Chesterfield County
Paul Stockwell, Town of Rocky Mount
Bill Street, James River Association
Mike Gerel, Chesapeake Bay Foundation
Rick Parrish, Southern Environmental Law Center
Leon Szeptycki, University of Virginia
Anne Jennings, Chesapeake Bay Foundation
John Carlock, Hampton Roads PDC
Mike Flagg, Hanover County
Lucy Phillips, Washington County
Robert Baker, Washington County

Michelle Virts, Timmons Group
Ted Wessel, Lake of the Woods Association
Lisa Cahill, Watershed Services
J.C. Berger, VASWCD
Alyson Sappington, Thomas Jefferson Soil and Water Conservation District
Leslie Sullivan, Brunswick County
Andy Morris, Alleghany County
Mark Bassett, Dinwiddie
Mark Reeder, Washington County Administrator
Darren Coffey, Louisa County

Christian Green, Dinwiddie

??? Collins, ???

??? Albemarle

Call to Order and Introductions

Chair Linda Campbell called the meeting to order and declared a quorum present. She thanked Mr. Maitland for chairing the previous two meetings.

Ms. Campbell reminded attendees that those wishing to provide public comment during the meeting should sign in.

Approval of Minutes from March 20, 2008

MOTION: Ms. Packard moved that the minutes from the March 20, 2008 meeting of the Virginia Soil and Water Conservation Board be approved as submitted.

SECOND: Mr. Maitland

DISCUSSION: None

VOTE: Motion carried unanimously

Director's Report

Mr. Maroon gave the Director's report. He noted that the Board had a full agenda for the day.

Regarding the recent General Assembly session, Mr. Maroon briefly reviewed the budget highlights. He noted that the funding for nonpoint source pollution for the upcoming year is set at \$20 million. He noted that the Board would discuss later in the agenda the five percent of this amount that will be directed to Soil and Water Conservation Districts. He noted that

the money was in a sub-account that is dedicated to agricultural best practices management. There is no money allocated for the following fiscal year. However, there are hopes that funds will be available and that action will be taken in the next session of the General Assembly. Mr. Maroon thanked the coalition of the Chesapeake Bay Foundation, the James River Association, the Farm Bureau, the Agribusiness Council, Soil and Water Conservation Districts and several others that helped to draw attention to the need for nonpoint source funding.

Mr. Maroon said that the initial \$20 million approved for repairs to DCR and SWCD-owned dams was increased to \$30 million. This money will allow DCR to move forward with repairs to priority dams. About \$6-7 million will go to State Park dams and the remainder will go to District dams.

Mr. Maroon said that he did not have the details, but was excited to read about the congressional action on the Farm Bill. He said that he believed an additional \$440 million over the next five years was set aside for the Chesapeake Bay. This will be a great benefit as the state is trying to build the program.

Mr. Maroon said that one of the dam safety efforts by the agency was to provide dam owner workshops. DCR is working with the Virginia Lakes and Watershed Association. Mr. Maroon passed around a draft brochure promoting the first workshop on June 17 in Warrenton.

Overview of Regulatory Actions

Mr. Dowling gave the following overview of the status of Regulatory Actions as of May 15, 2008.

Regulation Status as of May 15, 2008

Dam Safety Regulations

- Virginia Soil and Water Conservation Board approved final regulations on February 1, 2008.
- The regulations were submitted for Administrative review on the TownHall on April 7, 2008.
- Department staff met with DPB to discuss the regulations and our analysis on April 17, 2008.
- Recommended by DPB on April 21, 2008.
- Department staff met with the Secretary to discuss the regulations on April 28, 2008.
- Approved by the Secretary on April 28, 2008.
- Review by the Governor's office is in progress. [No timetable]
 - DCR's target for completion of review is May 20, 2008.
 - File with the Registrar by May 21, 2008. (assuming Governor's approval is received by May 20)

- Printed in the Virginia Register of Regulations on June 9, 2008. (assuming Governor's approval is received by May 20)
- Public comment period ends and regulations are final on July 9, 2008. (assuming Governor's approval is received by May 20)

SW – MS4 General Permit

- Regulatory briefing for the Secretary of Natural Resources was held on March 12, 2008.
- Draft final regulation was sent to EPA for unofficial review and comment on March 24, 2008.
- EPA issued to DCR its unofficial comments on the final regulations on April 21, 2008.
- Draft final regulation was sent to EPA for official review and concurrence on May 7, 2008.
- A letter was issued by Counsel in the Attorney General's Office on May 8, 2008.
- DCR received EPA verbal concurrence with the final regulations on May 14, 2008. The official letter may be received as early as today.
- Take final regulation to the Board at May 15, 2008 meeting.
 - File on the TownHall and with Registrar by May 21, 2008.
 - Printed in the Virginia Register of Regulations on June 9, 2008.
 - Public comment period ends and regulations are final on July 9, 2008.

SW – local program and Water Quality and Water Quantity Criteria

- 60-day public comment period opened on the TownHall on February 18, 2008.
- NOIRA published in Register March 17, 2008 (previous NOIRA stage withdrawn).
- 60-day public comment period closed April 16, 2008.
- 21 comments were received although 11 were requests to be on the TAC; 29 member TAC has been appointed.
- Hold TAC meetings during June - August 2008 [6/10, 7/16, 8/14, and 8/26].
- Take proposed regulation to the Board at the September 18, 2008 meeting.
- Take final regulation to the Board at the September 2009 meeting.

SW – Permit Fees

- Take proposed regulation to the Board at the September 18, 2008 meeting.
- Take final regulation to the Board at the September 2009 meeting.

SW – Construction General Permit [Schedule may be modified if we can get GP extension approval]

- Filed NOIRA with Registrar on March 24, 2008.
- NOIRA published in Register April 14, 2008.
- 30-day public comment period closed May 14, 2008.
- Hold TAC meetings July – September 2008 [7/22, 8/19, 9/10, and 9/24].
- Take proposed regulations to the Board at a special OCTOBER meeting.

- Take final regulation to Board at March 2009 meeting.
- Permit must be effective by July 1, 2009.

SW – MS4 Individual Permits (Group 1) [HRPDC permits]

- Send Norfolk draft permit and fact sheet to EPA for comment by June 15, 2008.
- Send remaining 5 permits and associated fact sheets to EPA for comment by October 1, 2008.
- Revise permits per EPA input and put in final form.
- Permittees Public Notice final permits in Newspapers.
- Revise permits based on public comment if necessary.
- Send back to EPA.
- Begin taking final permits to the Board at November 18, 2008 meeting.

SW – MS4 Individual Permits (Group 2) [Northern Virginia permits]

- Begin taking draft permits to Board at July 17, 2008 meeting.

SW – MS4 Individual Permits (Group 3) [Central Virginia permits]

- Begin taking draft permits to Board at September 18, 2008 meeting (and any remaining Group 2).

Erosion and Sediment Control Program

Mr. Hill addressed the update and actions for the Erosion and Sediment Control Program.

2008 Annual Standards and Specifications for Utility Companies

MOTION: Ms. Packard moved the following:

The Virginia Soil and Water Conservation Board (Board) receives the staff update concerning the review of the 2008 annual standards and specifications for electric, natural gas, telecommunications and railroad companies. The Board concurs with staff recommendations for conditional approvals of the 2008 specifications and the request for variances for the utility companies listed below in accordance with the Erosion and Sediment Control Law. The Board requests the Director to have staff notify said companies of the status of the review and the conditional approval of the annual standards and specifications and the request for variances.

The four items for conditional approval are:

1. A revised list of all proposed projects planned for construction in 2008 must be submitted by June 13, 2008. The following information must be submitted for each project:

- Project name (or number)
 - Project location (including nearest major intersection)
 - On-site project manager name and contact information
 - Project description
 - Acreage of disturbed area for project
 - Project start and finish dates
2. Project information unknown prior to June 13, 2008 must be provided to DCR two (2) weeks in advance of land disturbing activities by e-mail at the following address LinearProjects@dcr.virginia.gov.
 3. Notify DCR of the Responsible Land Disturber (RLD) at least two (2) weeks in advance of land disturbing activities by e-mail at the following address LinearProjects@dcr.virginia.gov. The information to be provided is name, contact information and certification number.
 4. Install and maintain all erosion and sediment control practices in accordance with the 1992 Virginia Erosion and Sediment Control Handbook.

Variations were requested for Minimum Standard 16.a and Minimum Standard 16.b. The responses to the requests for the variations are as follows:

1. Minimum Standard 16.a: The project may have more than 500 linear feet of trench length open at one time provided that all trenches in excess of 500 feet in length are adequately backfilled, seeded and mulched at the end of each work day and adjacent property and the environment are protected from erosion and sediment damage associated with the regulated land disturbing activity.
2. Minimum Standard 16.b: The variance to this criteria is not necessary due to Minimum Standard 16.f which allows applicable safety regulations to supersede the Virginia Erosion and Sediment Control Regulations.

The company recommended for conditional approval with the 4 conditions is:

Electric: Allegheny Power

The company recommended for conditional approval with the 4 conditions and the variance requests for Minimum Standard 16.a and 16.b is:

Telecommunications: Virginia Cable Telecommunications Association

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

Approval of Alternative Inspection Program – Buckingham County

Mr. Hill noted that the Board accepted the Buckingham County proposed Alternative Inspection Program for review at the March 20, 2008 meeting.

MOTION: Mr. Maitland moved the following:

The Virginia Soil and Water Conservation Board approves the proposed Alternative Inspection Program for Buckingham County as being consistent with the requirements of the Erosion and Sediment Control Law and Regulations. The Board requests the DCR staff to monitor the implementation of the alternative inspection program by the County to ensure compliance.

SECOND: Ms. Packard
DISCUSSION: None
VOTE: Motion carried unanimously

Initial acceptance of Alternate Inspection Program – Town of Wytheville

MOTION: Ms. Packard moved the following:

The Virginia Soil and Water Conservation Board receives the staff update and recommendation regarding the proposed Alternative Inspection Program for the Town of Wytheville. The Board concurs with the staff recommendation and accepts the Town of Wytheville's proposed Alternative Inspect Program for review and future action at the next Board meeting.

SECOND: Altizer

DISCUSSION: None

VOTE: Motion carried unanimously

Local Programs recommended to be found consistent based on Initial Review

Alleghany County

Mr. Hill gave the background for Alleghany County.

DCR staff completed the initial program review for Alleghany County's Erosion and Sediment Control Program and the scores for the individual program components were as follows: Administration - 93, Plan Review - 80, Inspection - 90, Enforcement - 100. As all program components received a score of 70 or better, staff recommends that the Virginia Soil and Water Conservation Board find the County's Erosion and Sediment Control Program consistent with the Virginia Erosion and Sediment Control Law and Regulations.

Grayson County

Mr. Hill gave the background for Grayson County.

DCR staff completed the initial program review for Grayson County's Erosion and Sediment Control Program and the scores for the individual program components were as follows: Administration - 100, Plan Review - 95, Inspection - 85, Enforcement - 95. As all program components received a score of 70 or better, staff recommends that the Virginia Soil and Water Conservation Board find the County's Erosion and Sediment Control Program consistent with the Virginia Erosion and Sediment Control Law and Regulations.

MOTION: Ms. Packard moved the following motions.

The Virginia Soil and Water Conservation Board commends Alleghany County for successfully implementing the County's Erosion and Sediment Control Program to be fully consistent with the requirements of the Virginia Erosion and Sediment Control Law and Regulations, thereby providing better protection for Virginia's soil and water resources.

The Virginia Soil and Water Conservation Board commends Grayson County for successfully implementing the County's Erosion and Sediment Control Program to be fully consistent with the requirements of the Virginia Erosion and Sediment Control Law and Regulations, thereby providing better protection for Virginia's soil and water resources.

SECOND: Ms. Dalbec

DISCUSSION: Mr. Andy Morris was present from Alleghany County, but had no additional comments.

VOTE: Motion carried unanimously

Local Programs recommended to be found consistent following completion of Corrective Action Agreement (CAA)

Mr. Hill provided the background updates for the Cities of Chesapeake and Radford, the Counties of Louisa, Mecklenburg and Powhatan and the Town of Pearisburg.

MOTION: Ms. Packard moved the following motions:

The Virginia Soil and Water Conservation Board commends the City of Chesapeake for successfully improving the City's Erosion and Sediment Control Program to become fully consistent with the requirements of the Virginia Erosion and Sediment Control Law and Regulations, thereby providing better protection for Virginia's soil and water resources.

The Virginia Soil and Water Conservation Board commends the City of Radford for successfully improving the City's Erosion and Sediment Control Program to become fully consistent with the requirements of the Virginia Erosion and Sediment Control Law and Regulations, thereby providing better protection for Virginia's soil and water resources.

The Virginia Soil and Water Conservation Board commends Louisa County for successfully improving the County's Erosion and Sediment Control Program to become fully consistent with the requirements of the Virginia Erosion and Sediment Control Law and Regulations, thereby providing better protection for Virginia's soil and water resources.

The Virginia Soil and Water Conservation Board commends Mecklenburg County for successfully improving the County's Erosion and Sediment Control Program to become fully consistent with the requirements of the Virginia Erosion and Sediment Control Law and Regulations, thereby providing better protection for Virginia's soil and water resources.

The Virginia Soil and Water Conservation Board commends Powhatan County for successfully improving the County's Erosion and Sediment Control Program to become fully consistent with the requirements of the Virginia Erosion and Sediment Control Law and Regulations,

thereby providing better protection for Virginia's soil and water resources.

The Virginia Soil and Water Conservation Board commends the Town of Pearisburg for successfully improving the Town's Erosion and Sediment Control Program to become fully consistent with the requirements of the Virginia Erosion and Sediment Control Law and Regulations, thereby providing better protection for Virginia's soil and water resources.

SECOND: Mr. Maitland

DISCUSSION: None

VOTE: Motion carried unanimously.

Mr. Coffey from Louisa County said that he would like to express appreciation for Ms. Alyson Sappington and the staff of the Thomas Jefferson Soil and Water Conservation District. He noted that the County had appeared before the Board in February and promised to make every effort to come into compliance. He said he was pleased the County was able to do so. However, he said he has concerns about the process. He said that he commended the Board and DCR for their renewed commitment in enforcing these guidelines as they were meant to be enforced all along. But he said the evaluation tool has room for improvement. He said that the programs were being implemented swiftly, but not consistently. He said that in the 2001 evaluation the County received an F. But since that time the County has made significant progress. He said that all Louisa inspectors have taken the classes to be certified. While the ordinance was out of date, the County was happy to take the necessary steps to revise the ordinance. He said that he did not believe counties should be slammed for having an out of date ordinance.

Ms. Campbell thanked Mr. Coffey for his comments and noted that the Board and DCR are always looking for areas that can be improved.

Mr. Hill said that with regard to the evaluation tool, the process was implemented July 1, 2004. He said that as soon as staff completes the current fiscal year, which will complete the five year review cycle, staff would begin reviewing the information to see what modifications should be made to the evaluation checklist for the next review cycle. The present checklist will be used through the end of FY09.

Mr. Maroon said that it was also important to note that the checklist was revised. Previous versions of the checklist required that localities receive a score of 100% in each of the areas. This has been reduced to a more reasonable 70%.

Mr. Maroon said that it was important to recognize that the Erosion and Sediment Control program is a major pollution reduction program that for years had been unevenly

administered across the Commonwealth. While the current review methodology may not be perfect, it has certainly been utilized as a way to improve the program statewide.

Mr. Hill said that with the 8 programs at this meeting, 72% of local programs reviewed have been determined consistent. Approximately 80 out of 111 programs have been reviewed. The remaining programs are under review or will be completed next year. By the end of FY09, 164 program reviews should have been completed.

Ms. Campbell said that the improvements in the Erosion and Sediment Control program have been a significant portion of comments she has received from constituents. She said the reaction in the field has been very positive.

Local Programs recommended to be found inconsistent based on Initial Review and request for Board approval of Corrective Action Agreement (CAA)

Mr. Hill gave the report for Chesterfield County.

The Department of Conservation and Recreation (DCR) staff reviewed Chesterfield County's Erosion and Sediment Control Program and the scores for the individual program components were as follows: Administration - 95, Plan Review - 40, Inspection - 50, Enforcement - 90. As all program components did not receive a score of 70 or better, staff recommends that the Virginia Soil and Water Conservation Board find the County's Erosion and Sediment Control Program inconsistent with the Virginia Erosion and Sediment Control Law and Regulations and approve the draft CAA for the County.

Mr. McElfish, Director of Environmental Engineering for Chesterfield County

I'm Dick McElfish, Director of Environmental Engineering for Chesterfield County. Like you said we knew and we were told the way it was going to be. We think we've been a leader in this because we've been doing things over the years. We have two issues with this. One is not for the plans for subdivisions or sites but for the single family building permits. Apparently what we require as a plan does not meet the state's criteria for a plan.

In 1974 our program came into place. In 1978 we started requiring a sketch plat for drainage, just for drainage. We adopted a flood plain ordinance in 1983. The plan we used for single-family homes has evolved. Since 1991 we see every building permit. We have an approved plan that shows the limits of disturbances. If the limits aren't met we do not approve the plan. If the limits are met we notify the builder and say we approve the plan as submitted. We also check to make sure it is proper before we sign off on the building permit. We were downgraded on the plan side, but we feel we have something better than a plan.

Regarding inspection, we have at any given time over 450 land disturbance permits that we must resolve. Most of our construction is for subdivisions. But the documentation is extremely hard. We would appreciate your taking that into consideration.

We have an extremely hard time meeting the 45-day turn-around. From 1977 through 1991 we were able to meet that turn-around. When the Chesapeake Bay Act provisions were included that became more difficult. Our staff is simply overwhelmed with some of our projects.

We enjoy working with DCR staff and we generally like what you are doing. But we think it needs to be tweaked.

MOTION: Ms. Packard moved the following:

The Virginia Soil and Water Conservation Board accepts staff recommendations and finds Chesterfield County's Erosion and Sediment Control Program inconsistent with the Erosion and Sediment Control Law and Regulations and approves the County's CAA. The Board directs DCR staff to monitor the implementation of the CAA by the County to ensure compliance.

SECOND: Ms. Dalbec

DISCUSSION: Mr. Maitland asked if an Alternative Inspection Program would address some of the issues for the County.

Mr. Hill said that the inspection process as in the regulations should be looked at. Once an Alternative Inspection Program is approved by the Board, the County can implement the new plan. That would address the concerns over the issue of inspections.

VOTE: Motion carried unanimously

Mr. Hill gave the report for Dinwiddie County.

The Department of Conservation and Recreation (DCR) staff reviewed Dinwiddie County's Erosion and Sediment Control Program and the scores for the individual program components were as follows: Administration - 66, Plan Review - 5, Inspection - 0, Enforcement - 5. As all program components did not receive a score of 70 or better, staff recommends that the Virginia Soil and Water Conservation Board find the County's Erosion and Sediment Control Program inconsistent with the Virginia Erosion and Sediment Control Law and Regulations and approve the draft CAA for the County.

Mr. Bassett thanked the Board for the opportunity to speak. He said one concern the County had was the timing of the inspection and he noted that the County did have two certified inspectors, but now has one. He also said that the County was not sure why that was not recognized. He said the County does have a certified program administrator.

Mr. Bassett said that the County recognizes there are deficiencies in the program. He noted that the former inspector has resigned. He said that the Board of Supervisors is set to adopt the new ordinance at their next meeting. He noted that the County has employed check lists for every inspection.

Mr. Bassett said that the County is trying to meet the inspection cycle. The County has reviewed the civil penalty fee schedule. Also the County is developing an Erosion and Sediment Control database.

Mr. Bassett said the County looked forward to working with DCR staff to improve the program.

Ms. Campbell said those steps would help bring the County toward compliance. She asked for Board comment or questions.

Mr. Maitland noted that one person on staff was now certified and asked if someone else was being trained.

Mr. Bassett said that the administrator is currently certified and that the individual the County will be hiring will be certified or the County will assist that person in obtaining certification.

MOTION: Mr. Altizer moved the following:

The Virginia Soil and Water Conservation Board accepts staff recommendations and finds Dinwiddie County's Erosion and Sediment Control Program inconsistent with the Erosion and Sediment Control Law and Regulations and approves the County's CAA. The Board directs DCR staff to monitor the implementation of the CAA by the County to ensure compliance.

SECOND: Ms. Packard

DISCUSSION: None

VOTE: Motion carried unanimously

Mr. Hill gave the report for Greensville County.

The Department of Conservation and Recreation (DCR) staff reviewed Greensville County's Erosion and Sediment Control Program and the scores for the individual program components were as follows: Administration - 91, Plan Review - 45, Inspection - 40, Enforcement - 50. As all program components did not receive a score of 70 or better, staff recommends that the Virginia Soil and Water Conservation Board find the County's Erosion

and Sediment Control Program inconsistent with the Virginia Erosion and Sediment Control Law and Regulations and approve the draft CAA for the County.

Mr. Hill said that while this item was put on the agenda, the letter to the locality was late in being issued. The signature page of the final report had been damaged. However, he noted it was not a fault of staff or of the program. He said the dates would be changed as necessary. The County is aware of the schedule and does not object.

No one was present from the County.

MOTION: Ms. Packard moved the following with the provision that the dates be adjusted per discussion.

The Virginia Soil and Water Conservation Board accepts staff recommendations and finds Greensville County's Erosion and Sediment Control Program inconsistent with the Erosion and Sediment Control Law and Regulations and approves the County's CAA. The Board directs DCR staff to monitor the implementation of the CAA by the County to ensure compliance.

SECOND: Ms. Dalbec

DISCUSSION: None

VOTE: Motion carried unanimously

Mr. Hill gave the report for Washington County.

The Department of Conservation and Recreation (DCR) staff reviewed Washington County's Erosion and Sediment Control Program and the scores for the individual program components were as follows: Administration - 49, Plan Review - 55, Inspection - 40, Enforcement - 35. As all program components did not receive a score of 70 or better, staff recommends that the Virginia Soil and Water Conservation Board find the County's Erosion and Sediment Control Program inconsistent with the Virginia Erosion and Sediment Control Law and Regulations and approve the draft CAA for the County.

Lucy Phillips, Attorney for Washington County addressed the Board. She expressed appreciation for the opportunity to speak. She also expressed thanks to Mr. Coffey from Louisa County. She said that Washington County echoes many of those comments.

She introduced County Administrator Mark Reeder and County Engineer Robert Baker. She noted that they represented more than 50% of the executive officers in Washington County.

Ms. Phillips said part of the difficulty in reaching compliance was that Washington County is the 11th largest county in the state in terms of land area. The County covers 566 square miles. She said that the County is very interested in coming into compliance. She noted that

it was significant that in the Southwest part of the state counties with large land area have a very difficult time with the inspection requirements. To go from one inspection site in Washington County to another could take an entire day.

Ms. Phillips noted that the County has recently hired an engineer who began in January, 2008. He is focusing on the Erosion and Sediment Control program for the County. She said that the County acknowledged the need for improvements and noted that the County needs to update the ordinance, improve record keeping and improve communication with developers. She said the County appreciated the work from the local DCR office.

MOTION: Mr. Simms moved the following.

The Virginia Soil and Water Conservation Board accepts staff recommendations and finds Washington County's Erosion and Sediment Control Program inconsistent with the Erosion and Sediment Control Law and Regulations and approves the County's CAA. The Board directs DCR staff to monitor the implementation of the CAA by the County to ensure compliance.

SECOND: Mr. Maitland

DISCUSSION: None

VOTE: Motion carried unanimously

Mr. Hill gave the report for the Town of Rocky Mount.

The Department of Conservation and Recreation (DCR) staff reviewed the Town of Rocky Mount's Erosion and Sediment Control Program and the scores for the individual program components were as follows: Administration - 96, Plan Review - 60, Inspection - 75 Enforcement - 60 As all program components did not receive a score of 70 or better, staff recommends that the Virginia Soil and Water Conservation Board find the Town's Erosion and Sediment Control Program inconsistent with the Virginia Erosion and Sediment Control Law and Regulations and approve the draft CAA for the Town.

Paul Stockwell, Planning and Zoning Administrator for the Town of Rocky Mount said that the Town has gone through a staff turnover within the program. He said that it was a pleasure working with DCR staff and noted that the plan reviewer said that Rocky Mount was one of the localities to score the highest without actually passing. He said the issue that was most problematic was documenting an adequate channel under MS19. The Town ordinance says that if the pre and post runoff is balanced, it satisfies the stormwater runoff criteria. He said if that had been taken into consideration the program would have passed, at least in plan review. He noted that there are only two individuals on staff and that the plan reviewer had only been at work two days when the DCR review was done. He noted that the violations were usually corrected after two notices, but that the documentation was lacking. He said the Town is working to correct the documentation issue. He said that had those

items been considered, the Town might have received a score of 70 in those areas and might have avoided the CAA process.

MOTION: Ms. Packard moved the following:

The Virginia Soil and Water Conservation Board accepts staff recommendations and finds the Town of Rocky Mount's Erosion and Sediment Control Program inconsistent with the Erosion and Sediment Control Law and Regulations and approves the Town's CAA. The Board directs DCR staff to monitor the implementation of the CAA by the Town to ensure compliance.

SECOND: Mr. Simms

DISCUSSION: None

VOTE: Motion carried unanimously

Local Programs continued to be found inconsistent and request for Board to extend Corrective Action Agreement (CAA)

Mr. Hill gave the report for Brunswick County.

The Virginia Soil and Water Conservation Board (Board) approved Brunswick County's Corrective Action Agreement (CAA) to February 15, 2008. At the direction provided by the Board, Department of Conservation and Recreation (DCR) staff reviewed Brunswick County's progress on implementing the CAA. Based on the results of the review, the staff has determined that the County has not achieved compliance with the CAA. Therefore, DCR staff recommends that the Virginia Soil and Water Conservation Board find Brunswick County's Erosion and Sediment Control Program to be inconsistent with the Virginia Erosion and Sediment Control Law and Regulations. Furthermore, DCR staff recommends that the County be given until November 11, 2008 to comply with the outstanding CAA.

Ms. Sullivan from Brunswick County thanked the Board for the opportunity to speak. She said she regretted having to speak because of the County program being noncompliant. She said that three staff members missed the filing deadline to take the exam for certification, but would be taking that exam in November.

Ms. Sullivan said that the County works closely with the local Soil and Water Conservation District to do inspections and to review plans. She said that at the next Board of Supervisors meeting the Board was scheduled to approve a Memorandum of Understanding with the Soil and Water Conservation District. The revised ordinance has been delayed because of staff illness but will be on the agenda for a future Board of Supervisors meeting. The County is also planning to develop an Alternative Inspection Program.

MOTION: Mr. Maitland moved the following:

The Virginia Soil and Water Conservation Board accepts the staff recommendations and finds Brunswick County's Erosion and Sediment Control Program to be inconsistent with the Erosion and Sediment Control Law and Regulations. In addition, the Board hereby grants the County an extension until November 11, 2008 to fully comply with the outstanding CAA. The Board further requests that the Director of DCR and his staff evaluate the County's compliance with the outstanding CAA and provide a report at the January 2009 Board meeting.

SECOND: Ms. Packard
DISCUSSION: None
VOTE: Motion carried unanimously

Update on locality actions regarding their E&S programs

Mr. Hill said that, based on staff review and Board actions, three localities had scheduled public hearings with the intention of rescinding their program and returning the responsibility back to DCR. Mr. Maroon wrote each of the localities outlining the reasons for keeping their programs.

Mr. Hill said that a common misunderstanding was that localities could rescind their programs and have DCR assume the responsibility. Localities do have the right to rescind, however the law specifies that the responsibility for the program would go to the local Soil and Water Conservation District. The District would have to charge fees to cover the cost of administering the program.

DCR staff attended each of the hearings. Lancaster and Essex Counties agreed to sign the CAA and to move forward.

Prior to the hearing in Northumberland County, staff reviewed the process with the Board of Supervisors and County planning and zoning staff. The County cancelled the public hearing and signed the CAA.

Mr. Hill noted that with 164 local programs, only one program is currently being run by the Soil and Water Conservation District. That is the Big Sandy SWCD in Buchanan County.

District Director Resignations and Appointments

Mr. Meador presented the District Director resignations and appointments.

Piedmont

Recommendation of Robyn Whittington, Amelia County, to fill unexpired appointed Extension Agenda term of Robert Long (term of office to begin on or before 6/14/08 - 1/1/09).

Note: Ron Duvall was appointed by the Board on 2/1/08 to fill this position, but did not take oath due to his relocation out of state.

MOTION: Mr. Altizer moved that the Virginia Soil and Water Conservation Board approve the recommendation as presented.

SECOND: Ms. Packard

DISCUSSION: None

VOTE: Motion carried unanimously.

Mr. Meador noted at the at the March meeting the Board had requested that staff provide brief biographical information regarding each appointment. He said that for each appointment there is a nominating form or additional information and a summary provided by the District. However, he noted that information is not collected with regard to Extension Agents.

Approval of FY09 Policy for Financial Assistance for SWCDs

Mr. Meador reviewed the FY09 Board Policy for Financial Assistance to Soil and Water Conservation Districts. A copy of the policy as amended by May 17, 2007 Board Action is attached as Attachment # 1

MOTION: Mr. Simms moved that the Board approve the FY09 Policy for Financial Assistance for SWCDs as presented with no amendments.

SECOND: Mr. Altizer

DISCUSSION: None

VOTE: Motion carried unanimously

Approval of FY09 Performance Deliverables for SWCD Operational Funding Issued by DCR.

Mr. Meador addressed the FY09 Performance Deliverables for SWCD Operational Funding. A copy of the Performance Deliverables is included as Attachment #2. He noted that at the last meeting he had walked the Board through staff recommended changes.

Ms. Packard asked by the Chesapeake Bay Agreement goals were removed under the second bullet.

Mr. Meador said that the Chesapeake Bay as well as the Tributary Strategies are incorporated into the Code provision.

Ms. Campbell said that the statement that began with “support and foster partnerships” was awkward to read.

MOTION: Mr. Altizer moved that the FY09 Performance Deliverables be approved as amended.

SECOND: Mr. Maitland

DISCUSSION: Mr. J.C. Berger, representing the Association of Soil and Water Conservation Districts asked why bullet 3 was being deleted.

Mr. Meador said that the language and intent was incorporated into the next bullet.

Mr. Berger said that his concern was that the statement was added as a qualifier in terms of evaluating District Performance.

Mr. Baxter suggested an editing of the phrase to further address Mr. Berger’s concern.

Mr. Altizer accepted the amendments to his motion. Mr. Maitland agreed.

VOTE: Motion carried unanimously

SWCD Operating Funds for FY09-10

Mr. Meador reviewed the SWCD Operating Funds for FY09-10.

Appropriation FY 09 and FY10 (50320 subprogram)	\$5,347,940
Special dam rehabilitation funding	- \$616,000
Annual SWCD dam maintenance and repair	- \$658,000
VSWCB set aside for actions performed by DCR	- \$130,000
Available for SWCD Operational Funding	= \$3,943,940
SWCD Director Travel/Training	- \$166,500

“Additional Funding” to address NPS projected loads	- \$221,740
Available for “Essential” SWCD Funding	= \$3,555,700
Divided by 47 Districts	/47 Districts
Equals amount available per SWCD	= \$75,653/SWCD
Funding level recommended for FY09 and FY10	\$75,650
Impact per SWCD from FY08 and FY09 (from \$83,510 to \$75,650)	“cut” per SWCD = \$7,860

Mr. Meador said that DCR was requesting that the Board approve this funding and authorize DCR to manage \$130,000 as set aside. He said that the larger expenses for DCR come around every three or four years, with elections, surety bonds and audits. He noted that in 2011 a surety bond payment would be due.

Mr. Altizer asked if the system allowed DCR to retain the funds at the end of the fiscal year. Mr. Meador said that it does.

Mr. Meador reviewed the planned use of funds retained by DCR for FY09.

MOTION: Mr. Altizer moved that the Virginia Soil and Water Conservation Board approve the SWCD Operational Funding for FY09 and FY10 as submitted by staff.

SECOND: Mr. Simms

DISCUSSION: Mr. McNear stated his concern that multi-jurisdictional Districts do not receive enough of the share, but indicated he would accept the vote of the Board.

Mr. Berger said that with respect to the cost for public notices for District Director elections that there had been discussion in 2007 regarding an attempt to remove that requirement. He asked the outcome of that discussion.

Mr. Maroon said that DCR approached the State Board of Elections regarding the assumption of that responsibility but that they were not willing to accept the responsibility. He said there have some attempts to change the requirement in the Code but none have yet been

successful. He said that DCR intends to again pursue this closer to the date of the elections.

Mr. Berger said that his concern was that publishing the notices in newspapers was not the most expedient way of disseminating the information.

Mr. Brown said that the Code of Virginia requires the posting of the notices in the newspaper.

Mr. Dowling said that legislation had been drafted but was not advanced during the last session. He said the intent was to reconsider the legislation for the next session.

Mr. Berger said that the Association would like to work with DCR in that regard.

Mr. Berger said that his second comment was with regard to Association support. He said that while he did not have a written proposal for the Board that he has discussed this with the Association President and that the Association would be coming before the Board with a proposal for additional funding.

Ms. Campbell said that the only consideration for additional funding would have to come from the multi-year expenses.

Mr. Maroon said that this was considered. However, he noted that the Districts had just received a 5% reduction in funding. He said that if the Board wanted to consider that, it would have to consider that each District would need to take a reduction. He said that he would not be in favor of that action and thought it would be better addressed in a future year.

Ms. Campbell said that unless there was a proposed amendment, the motion before the Board would be the one considered. There was no amendment and Ms. Campbell called for the vote.

VOTE: Motion carried unanimously

At this time the Board recessed for lunch. During the lunch hour, the Board honored Delegate Beverly Sherwood for her work in advancing efforts to assist with keeping homes and businesses surrounding Virginia's dams safe. In the 2008 General Assembly session, Delegate Sherwood championed legislation drafted by DCR concerning development around and below the state's dams. Her work led to the passage of this landmark legislation.

Following lunch the Agenda was revised to move forward with the Board's regulatory considerations.

Presentation of General Permit for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems Regulations and request for Board adoption of final regulation

Mr. Dowling presented the recommended regulatory action concerning the General Virginia Stormwater Management Program (VSMP) Permit for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems (small MS4s). He noted that the following items were in member packets (these items are available from DCR upon request):

- The proposed amended regulations and forms
- A summary of public comment received
- A letter from seven environmental groups to Governor Kaine requesting that the approval of the regulations be postponed
- A letter from the Hampton Roads Planning District Commission supporting the regulations as amended
- A memorandum from the Office of the Attorney General stating that the Board has the necessary authority to move forward with the adoption of the regulations
- A response to the seven environmental groups from Secretary of Natural Resources L. Preston Bryant, Jr. on behalf of Governor Kaine
- Copies of two news articles discussing the regulations

Mr. Dowling presented the following update:

- DCR staff and the Board have been working on these regulations since September of 2006.
- This General Permit will only be the 2nd permit that the regulated community has been under since the inception of the federal program and the first developed by the Virginia Soil and Water Conservation Board and DCR since DCR assumed the administration of the consolidated NPDES stormwater program in January of 2005.
- This permit if adopted by the Board would advance the MS4 program statewide, would collectively move the regulated community significantly forward, and will markedly improve water quality. It is the first step in advancing a comprehensive upgrade to the Commonwealth's stormwater management program designed to address Virginia's increasing urban stormwater challenges.
- The proposed General Permit appropriately advances much needed improvements in the program while balancing these advances with recognition of what can be reasonably achieved by the regulated community during the upcoming five-year permit cycle.
- This permit will be a valuable part of one of the most progressive stormwater management programs within the region and perhaps the nation and may serve as a model for other states to consider as they reissue their MS4 General Permits.
- MS4 dischargers covered by the General Permit range in size from individual state and local agencies and institutions (e.g. schools, hospitals, community colleges, VDOT), to

small towns (such as Bridgewater, Herndon and Ashland) to counties (including Albemarle, York and Stafford) to large cities (including Richmond, Alexandria, Charlottesville, Lynchburg, Suffolk and Harrisonburg).

- This action is authorized under the federal Clean Water Act (33 USC § 1251 et seq.) and the Virginia Stormwater Management Act (§10.1-603.1 et seq.). It is necessary at least every five years to update and reissue the General Permit. As the current permit expired on December 9, 2007, coverage under the current permit has been administratively continued until this final permit becomes effective for those coverage holders who submitted a registration statement by December 7, 2007.
- The MS4 Program amended through this regulatory action will reduce the discharge of pollutants from the MS4 to the Maximum Extent Practicable using an iterative best management practices (BMP) approach over multiple permit cycles, to protect water quality, to ensure compliance by the operator with water quality standards, and to satisfy the appropriate water quality requirements of the Clean Water Act and the Virginia Stormwater Management Act.
- These amendments will also advance water quality improvements where a wasteload allocation from a TMDL has been assigned to a MS4, provide greater clarity to MS4 operators on how to administer and improve/advance their MS4 programs, and specify sampling protocols where applicable and necessary reporting requirements.
- MS4 Program plans developed by the operator and approved by DCR involve the implementation of the six Minimum Control Measures:
 - Public Education and Outreach on Stormwater Impacts
 - Public Involvement/Participation
 - Illicit Discharge Detection and Elimination
 - Construction Site Stormwater Runoff Control
 - Post-Construction Stormwater Management in New Development and Redevelopment
 - Pollution Prevention/Good Housekeeping for Municipal Operations
- The permit that has been developed, and that is before you today, is consistent with both state law and the Federal Clean Water Act standards and does fulfill the legal obligations of both.

Mr. Dowling reviewed the Modified Administrative Process Act Procedures.

- The regulatory process by which this General Permit is amended is outlined in §2.2-4006 of the Code of Virginia.
- Some will refer to this as an expedited process as it is exempt from the APA. However, that is not to say that it does not allow for due diligence and public comment. Public comment opportunities are generally the same as they are for any other regulatory action taken under the Administrative Process Act or APA process. The process utilizes a technical advisory committee to develop the proposed regulation. It is the Administrative review that is not required by the process (DPB, Secretary and Governor). Discussions with the Administration on this permit have occurred.

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

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

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

Mr. Dowling addressed the Environmental Protection Agency's (EPA) review of the recommended permit. He said that it was the staff's understanding that DCR would be receiving an official letter of concurrence from EPA, but verbal communications have indicated that the EPA is in concurrence with this General Permit.

Mr. Dowling addressed the Office of the Attorney General's review of the recommended permit. On May 9, 2008, the Department received the following statement from Counsel in the Attorney General's Office regarding the Final Municipal Separate Storm Sewer System (MS4) General Permit Regulations, 4 VAC 50-60-10 and 4 VAC 50-60-1200 *et seq.*:

“I have reviewed the above-referenced final regulations regarding amending and reissuing the General Virginia Stormwater Management Program (VSMP) Permit for Discharges of Stormwater from Small MS4 Systems. Based upon your agency's representations, it is my opinion that the Soil and Water Conservation Board has authority to adopt these amendments as final regulations based upon applicable law, including Article 1.1 of Chapter 6 of Title 10.1 of the CODE of Virginia. Based upon your agency's representations, it is also my view that these regulations are exempt as a General Permit under Article 2 of the Administrative Process Act, Virginia CODE § 2.2-4006.A.9(c).”

Mr. Dowling reviewed the actions taken with respect to this permit regulation to date and outlined the opportunities provided for public participation and comment:

- Board Motion: September 28th, 2006
- Filed NOIRA: February 13th, 2007

- The 30-day public comment period opened on March 5th with the publishing of the NOIRA in the Virginia Register and closed on April 4th.
- We mailed out approximately 340 notices of the NOIRA and the regulatory Town Hall sent notices to 738 individuals.
- We received 8 comments and 16 requests to be placed on the TAC.
- We finalized TAC composition May 29, 2007; The MS4 TAC was well balanced and composed of 26 members including local governments (12); environmental groups (3); state agencies (5 - representing 4 agencies); federal agencies (3 members - representing 2 agencies); colleges and universities (2); planning district commission (1).
- The TAC was facilitated by Dr. Frank Dukes at the Institute for Environmental Negotiation.
- Three TAC meetings were held:
 - The 1st meeting of the TAC: June 19, 2007
 - The 2nd meeting of the TAC: July 26, 2007
 - The 3rd meeting of the TAC: August 22, 2007
 - Approximately 12 internal discussions and drafting meetings throughout the process.

[Coming out of the TAC, it was our understanding that there was general consensus by the members.]
- Board approved and authorized the filing of the proposed regulations on September 20, 2007.
- The regulations were submitted to the Virginia Register of Regulations on September 25, 2007 and published on October 15, 2007 (Volume 24, Issue 3).
- The proposed regulation with fact sheet was received by EPA on October 14, 2007, thus initiating a formal 90-day review process (deadline January 12, 2008).
- A 60-day public comment period on the proposed regulations was held from October 15, 2007 through December 14, 2007 and two public hearings were held during the comment period.
- As required by federal procedures, on October 15, 2007, DCR mailed copies of the draft permit, a public notice document describing commenting procedures and hearings, a cover letter reiterating commenting procedures, and a fact sheet to:
 1. Members of the TAC
 2. All current general permit coverage holders
 3. Neighboring states

4. State and federal agencies (incl. DEQ, VDH, DHR, VIMS, DGIF, Corps, USFWS)
 5. All individuals and entities requesting to be placed on a list to be notified
 6. All localities that contain an MS4
- Published a public notice twice (federal requirement) in 10 newspapers (giving us statewide coverage) more than 30 days in advance of the close of the public comment period (November 1 and 8, 2007).
 - DCR received EPA comments on the proposed regulations and fact sheet on December 21, 2007.
 - In response to public comments received and those from the EPA, the Department made improvements to the regulations.
 - Regulatory briefing for the Secretary of Natural Resources was held on March 12, 2008.
 - Draft final regulation was sent to EPA for unofficial review and comment on March 24, 2008.
 - DCR honored a request to meet with environmental organizations to discuss the regulatory changes on April 21, 2008.
 - EPA issued to DCR its unofficial comments on the final regulations on April 21, 2008.
 - Draft final regulation was sent to EPA for official review and concurrence on May 7, 2008.
 - Environmental groups issued a letter on May 8, 2008 to the Governor requesting a hold be placed on the regulations until such time as they are revised to address the concerns outlined in their letter.
 - A letter was issued by Counsel in the Attorney General's Office on May 8, 2008 substantiating the Board's authority to adopt these amendments as final regulations.
 - A letter from the Secretary of Natural Resources on behalf of the Governor was issued on May 14, 2008 in support of the regulation advancing to the Board for consideration.
 - DCR received EPA verbal concurrence with the final regulations on May 14, 2008. The official letter may be received as early as today.

- The final regulation will be presented to the Virginia Soil and Water Conservation Board for their consideration on May 15, 2008.
- If the Board approves the General Permit today, we plan to submit the final regulation to the TownHall and Register by May 21, 2008, it will be printed in Virginia Register June 9, 2008, and it will be effective July 9, 2008.

Mr. Dowling reviewed the comments received since the beginning of the process:

- Two public hearings were held on the following dates and at the following locations:

Date	Location	# Spoke	# Present (minus staff)
December 4, 2007	Roanoke, VA	1	1
December 6, 2007	Richmond, VA	1	7

- In total, 8 people (minus staff) attended the public hearings and two comments were received, one at each meeting.

Mr. Dowling presented a summary of comments received:

- During the 60-day public comment period, 311 written comments were received through e-mails, letters, faxes, or through the Virginia TownHall. Of these, 297 originated from a Chesapeake Bay Foundation Action Alert write in campaign. When the input received from the written comments and those from the two hearings are combined, the Department heard from 312 different sources during the process.
- Comments during the public comment period were received from the following groups:

Local Government-Related: Hampton Roads Planning District Commission, Northern Virginia Regional Commission, City of Alexandria, City of Charlottesville, City of Roanoke, Hanover County, James City County, York County, Virginia Municipal Stormwater Association (VAMSA)

Environmental-Related: Chesapeake Bay Foundation, James River Association, Friends of the Rappahannock, Southern Environmental Law Center, University of Virginia (Law)

Other Regulated Facilities: U.S. Navy

Additional separate, comments were also received from the U.S. EPA

- In brief, the comments we received from the regulated community and the environmental groups somewhat differed. The regulated community suggested that the requirements of the general permit, including the TMDL requirements,

represented a substantial ramping up of program requirements and a major increase in work effort for the program.

On the opposite end, the environmental groups while complementing DCR for our “Herculean efforts to upgrade the Commonwealth’s stormwater management program since assuming additional permitting authority” and while “applaud[ing] steps DCR has taken to strengthen the small MS4 permit”, still requested that we take additional steps to further strengthen the permit.

- While weighing the comments received from both sides of the discussion, I can assure you that DCR’s goal was to develop a General Permit that was consistent with both state law and the Federal Clean Water Act standards and that would achieve water quality improvements and that further would move the regulated community forward significantly. We believe that the permit before you today will do just that.
- Specific comments we heard are as follows:

Local Government Related comments included the following regarding the MS4 General Permit, Impaired Waters, and TMDLs:

- The requirements of the proposed Phase II Regulations, including the rigorous TMDL – Impairment Control Plan Component, represent a substantial ramping up of program requirements.
- The revised regulations represent a major increase in work effort for the program. It needs to be remembered that small localities generally do not have staff or funds dedicated to the stormwater effort. Even the larger small communities will need to increase staff and other resources, which will take time to get approved through their budget processes.
- The revised regulations represent a major increase in work effort for the program. It needs to be remembered that small localities generally do not have staff or funds dedicated to the stormwater effort.
- Concerned about over-emphasis in the proposal on TMDLs and the many resource-intensive activities that are triggered in response to TMDLs for specific areas with the MS4 service area.
- Where the regulations describe MS4 operator obligations in relation to a State Water Control Board-approved total maximum daily load (TMDL), the regulation does not reference the maximum extent practicable (MEP) standard required by the other portions of the regulations. We believe this to be an oversight and should be addressed.
- In the definition of “MS4 Program” the proposed additional language “to protect water quality requirements of the CWA and regulations and the Virginia Stormwater Management Act and attendant regulations” adds a new requirement for MS4 Programs above and beyond the already aggressive technology standard of “maximum extent practical”.
- Do not support addressing TMDL under the MS4 permit.

- Believe that the TMDL should be addressed through the implementation plan and not through the MS4 permit.
- The [WLA stormwater pollutant discharge] characterization outlined goes beyond the 6 minimum control measures in addressing the WLA assigned in the TMDL.
- TMDL emphasis will come at the expense of other aspects of local program development.
- The whole concept of TMDL Implementation Plan-specified BMPs must be linked to and qualified by the overarching regulatory standard of MEP.
- This schedule may prove unrealistic for some TMDLs and their associated Implementation Plans, given the highly participatory nature of these efforts.

Environmental Related comments included the following:

- Three sets of interconnected comments were received that posed three key questions.
- The comments include those from:
 - 1) Chesapeake Bay Foundation – December 14, 2007
 - 2) James River Association and Southern Environmental Law Center – December 14, 2007
 - 3) University of Virginia School of Law (Environmental Law and Conservation Clinic), Shenandoah Riverkeeper, and Southern Environmental Law Center – December 13, 2007
- Questions include the following:
 - “Thus, CBF finds that the current proposal should be modified to add more prescriptive and enforceable requirements for MS4 discharges to waters that already violate water quality standards.”
 - a) “Ensure that any **numerical waste load allocations** (WLA) assigned to a MS4 in an EPA-approved TMDL is **included in the MS4 general permit.**”
 - b) “MS4s that discharge to **impaired waters** should be required to document **compliance with water quality standards.**”
 - c) “MS4s that discharge nutrients and sediment to the Bay watershed should be required to **meet specific measurable benchmarks and timetables** that achieve the pollution reductions **called for in the Chesapeake Bay Tributary Strategies and the Chesapeake Bay 2000 Agreement** by the end of the five-year permit cycle.”
 - “CBF finds that the tributary strategies constitute an “equivalent analysis” to a TMDL.”
- JRA and SELC state that “the proposed MS4 Permit must be revised to address the following three critical issues”:

- a) “Include any waste load allocations associated with an MS4 in its permit.”
 - b) “Provide an adequate procedure for addressing pollution contributing to a listed impaired water when an approved clean up plan for the impairment does not exist.”
 - c) “Specify quantitative and measurable requirements for urban best management practices consistent with the Virginia Tributary Strategies for all MS4’s within the Chesapeake Bay Watershed.”
- a. University of Virginia School of Law et al. state that “[i]n order to adequately protect Virginia’s waters, the MS4 permit should:”
- a) “Use numerical effluent limitations to implement Total Maximum Daily Loads (“TMDLs”) where an MS4 discharges into an impaired water with an applicable TMDL.”
 - b) “Mandate that no MS4 discharge authorized under the general permit can contribute to a violation of Virginia water quality standards and develop procedures for preventing discharges that contribute to water quality standards violations, including potentially the use of numerical effluent limitations.”
 - c) “Incorporate Virginia’s Tributary Strategies under the Chesapeake 2000 Agreement into the permit by requiring MS4 operators to implement their proportionate share of best management practices (“BMPs”) contemplated by the applicable tributary strategy.”
- a. Recent Correspondence:

On May 8, 2008, seven environmental organizations [James River Association, Chesapeake Bay Foundation, Friends of the Rappahannock, Potomac Conservancy, Southern Environmental Law Center, Potomac Riverkeeper, and Shenandoah Riverkeeper] issued a letter to the Governor regarding this regulatory action. It stated that “[t]he current draft MS4 General Permit regulations miss an important opportunity to control pollution associated with municipal stormwater and are insufficient to meet Virginia’s water quality standards, as required under the Federal Clean water Act and Virginia Stormwater Management Act.” They further noted their belief “that the general permit and regulations must be strengthened to achieve water quality goals for Virginia and fulfill its legal obligations under the Clean Water Act and Stormwater Management Law” and that “if necessary, [they noted] we are prepared to pursue further action to address the deficiencies of the current proposed regulations”. They specifically requested that the Governor do the following:

1. Incorporate in the proposed MS4 regulations assigned pollution limits for particular urban areas when those limits are specified in an approved cleanup plan (Total Maximum Daily Load); and
[incorporate numeric waste load allocations into the General Permit]

2. Establish and **incorporate** in the proposed MS4 regulations measurable, enforceable **criteria** for urban areas **based on the Chesapeake Bay goals** to ensure that needed nitrogen, phosphorus and sediment pollution reductions are achieved; and

3. **Provide a process** for an urban area to develop and implement a plan **to address pollutants** that are documented to be **contributing to a water quality impairment**; and

[Address those waters where a TMDL has not yet been developed.]

4. Place a hold on the proposed MS4 regulations until they are revised in accordance with items 1 through 3 above.

In light of this letter and its release to the press, several newspaper articles have been generated that we have included in your packets. Additionally a letter from the Hampton Roads Planning District Commission regarding their thoughts on the regulation and further modifications to it has also been included.

Mr. Dowling discussed the Secretary of Natural Resources' response to the environmental organizations:

- The Secretary of Natural Resources responded to the above referenced letter from the seven environmental groups on behalf of the Governor yesterday (5/14). The response provides guidance to the Board regarding the position of the Administration and the Department regarding the General Permit regulations before you today for consideration.

General Statements made in the response:

- It is our belief that the proposed General Permit appropriately advances much needed improvements in the program while balancing these advances with a recognition of what can be reasonably achieved by the regulated community during this upcoming five-year permit cycle.
- I do not believe that it is in the best interest of the environment or the Commonwealth to delay the adoption of these regulations.
- It is our belief that a suspension would be counterproductive to both the regulatory process and to our efforts to protect water quality across the Commonwealth.
- I believe that the best course of action is to allow the Board to consider final action on the regulations at its May 15 meeting.
- The EPA itself has noted that “[i]n the first two to three rounds of permit issuance, EPA envisions that a BMP-based storm water management program that implements the six minimum measures will be the extent of the NPDES permit requirements for the large majority of regulated small MS4s”.
- The permit that has been developed is consistent with both state law and the Federal Clean Water Act standards.
- The draft General Permit will significantly advance protection of Virginia's

waterways and make lasting progress towards achievement of the Commonwealth's water quality goals.

Pursuant to the environment group's specific requests (items 1-3) the response noted:

- While the items that you have suggested may be appropriate to consider for inclusion in future permit cycles, we do not believe they are feasible to include now.
- In response to the request that numeric wasteload allocations for the MS4s be included in the General Permit, the letter offered the following points:
 - The request is contrary to the Clean Water Act and regulations and EPA guidance which indicate that numeric effluent limits, whether in a TMDL or non-TMDL situation, are inappropriate at this time for inclusion in the General Permit. Rather, an iterative BMP management program designed to reduce the discharge of pollutants to the maximum extent practicable, to protect water quality, and to satisfy appropriate water quality requirements of the Clean Water Act is a more appropriate approach to limiting effluent.
 - Permittees do not have the capability for the large scale monitoring required to track numeric goals nor do they have the authority over much of the land within their MS4. Lacking that authority, they cannot fully control the runoff and, therefore, the numeric limits would be both unattainable and unenforceable.
 - The EPA has recommended via memorandum "that for NPDES-regulated municipal and small construction storm water discharges effluent limits should be expressed as best management practices (BMPs) or other similar requirements, rather than as numeric effluent limits".
- In response to the request that we incorporate enforceable criteria based on the Chesapeake Bay goals associated with the Tributary Strategies into the General Permit the letter offered the following points:
 - While it is recognized that the implementation of the General Permit will contribute to the achievement of Strategy goals, it is not appropriate to impose the tributary strategy reductions on MS4 operators. The Tributary Strategies, developed nearly a decade ago, approach nutrient reductions on a watershed basis.
 - While the Tributary Strategies do make individual allocations to significant municipal sewage treatment plant dischargers, they do not make any specific allocations for individual MS4 dischargers.
 - The Tributary Strategies are not reliably scalable at this time to the level necessary to properly assign nutrient reduction allocations to the wide variety of MS4s. In fact, it was never their purpose to do so and the Chesapeake Bay computer model, as it currently exists, is incapable of doing so. This was recently confirmed in a February 2008 report of the model by the Scientific and Technical Advisory Committee (STAC) of the Bay Program which states that "we believe it is inappropriate to use the existing Chesapeake Bay county and subwatershed data sets for local-scale modeling applications".

- In response to the request that we provide a process for an MS4 to develop and implement a plan to address pollutants that will be in the future documented to be contributing to a water quality impairment the response offered the following points:
 - Until a TMDL plan is completed for a specific stream segment, there is no process for the Department of Environmental Quality to assign responsibility to a MS4 operator to address the impairments. The MS4 regulations do, however, recognize the need for MS4s to consider impairments and require that they annually evaluate the appropriateness and the effectiveness of BMPs they are utilizing in addressing discharges into waters that are identified as impaired in the 2006 305(b)/303(d) Water Quality Assessment Integrated Report).
 - Further, it should be noted that the EPA strongly recommends that until the evaluation of the storm water program in 2012, that “no additional requirements beyond the [6] minimum control measures be imposed on regulated small MS4s without the agreement of the operator of the affected small MS4, except where an approved TMDL or equivalent analysis provides adequate information to develop more specific measures to protect water quality.”

Mr. Dowling then explained what the permit that is before the Board will accomplish:

The Secretary’s letter also noted that, this General Permit, once implemented, will significantly advance protection of Virginia’s waterways and make lasting progress towards achievement of the Commonwealth’s water quality goals. If adopted by the Board, this permit will be a valuable part of one of the most progressive stormwater management programs within the region and perhaps the nation and may serve as a model for other states to consider as they reissue their MS4 General Permits.

Specifically, this permit will:

- Establish special procedures within the general permit that a small regulated MS4 shall employ if a wasteload allocation (WLA) is assigned to it as part of a TMDL (Total Maximum Daily Load) plan prior to the effective date of the General Permit. It requires measurable goals, strategies, and implementation schedules to be initiated to address the WLA.
 - It also requires ordinance and policy changes where they will result in reducing the identified water quality impairment.
 - The MS4 operator will need to conduct outfall reconnaissance for those stormwater outfalls discharging to the surface water to which the WLA has been assigned.
 - The General Permit also calls on the operator to conduct pollutant identification and sampling on operator owned or operated property.
 - Additionally, the operator will be required to estimate annually the volume of stormwater discharged and the quantity of the pollutant identified in the WLA discharged.

- Greatly improve and expand the criteria governing the six minimum control practices that each permittee must meet as a condition of the General Permit.
 - Illicit discharge and elimination programs will be advanced and storm sewer system mapping will now be required of all outfalls.
 - Regulated programs will be required to operate in a manner consistent with the Erosion and Sediment Control Law and regulations as well as the Virginia Stormwater Management Act.
 - The criteria of this permit will clearly enhance the expected public education and outreach efforts as well as the public participation opportunities in water quality improvement strategies.
- Require permittees to establish the elements of a MS4 Program Plan they propose to implement under the General Permit including proposed best management practices to be implemented, their associated goals, and an implementation schedule. Such plans will be reviewed by DCR for acceptance.
- Require improved reporting by which a regulated program may be held accountable including, WLA pollutant reduction estimates, number of illicit discharges identified and how they were controlled or eliminated, information regarding new stormwater management facilities brought on line, and a list of agreements with third parties for the implementation of control measures.
- Require all operators to conduct a program self evaluation requirement once every 5 years in accordance with EPA guidance.

Mr. Dowling gave the Regulation Summary and noted that the changes made from the proposed to the final regulations were highlighted in grey in the regulations that were mailed to them and included in their Board packages today.

- Changes made from the proposed to the final version are primarily technical and grammatical in nature or offer clarity. The primary changes to this permit from the proposed to the final version are as follows:
 - The definition of “maximum extent practicable” was modified to clarify that BMPs that have been rejected must be replaced with effective BMPs and that BMPs through an iterative process to the MEP shall attain compliance with water quality standards.
 - The definition of “water quality standards” was amended to align with DEQ regulations.
 - The effective date of the permit was changed from July 1, 2008 to July 9, 2008.
 - The language was amended to specify that the operator shall utilize all legal authority provided to them by the laws and regulations of the Commonwealth of Virginia to control discharges to and from the MS4. This legal authority

may be a combination of statute, ordinance, permit, contract, order or agreement.

- The final regulation was amended to specify that the MS4 program plan include development of a schedule to implement procedures and strategies that address MS4 Program weaknesses, such as timetables to update ordinances and legal authorities (within two years), BMPs, policies, plans, procedures and contracts to ensure consistency with the assumptions of the TMDL WLA.
- The language was amended to specify that the operator may choose to implement BMPs of equivalent design and efficiency instead of those identified in the TMDL implementation plan, provided that the rationale for any substituted BMP is provided and the substituted BMP is consistent with the TMDL and the WLA.
- The requirements for outfall reconnaissance were revised to establish a more attainable standard as well as the amendments clarified that interconnected MS4s may coordinate to accomplish reconnaissance requirements.
- The amendments established that the operator does not have to evaluate all properties owned or operated by the MS4 operator for potential sources of the pollutant identified in the WLA if they are covered under a separate VPDES permit.
- The final regulation specified that the operator's MS4 program must ensure compliance with water quality standards and must satisfy the appropriate water quality requirements of the Clean Water Act and regulations in the absence of a TMDL WLA.
- The final regulation required that the MS4 Program Plan and any modifications be public noticed for review and comment. Public notice is to be given by any method reasonably calculated to give actual notice of the action in question to the persons potentially affected by it.
- In maintaining consistency with both Stormwater Management and Erosion and Sediment Control Programs, the operator shall encourage on construction sites the use of structural and non-structural design techniques to create a design that has the goal of maintaining or replicating predevelopment runoff characteristics and site hydrology.
- The requirement for the operator to track the number of acres by hydrologic unit code developed utilizing low impact development principles was eliminated as we were not prepared yet to define LID in this action.

- It was moved to the evaluation section the requirement for the operator to annually evaluate the effectiveness of BMPs in their MS4 Program Plan in addressing discharges into waters that are identified as impaired in the 2006 305(b)/303(d) Water Quality Assessment Integrated Report.
- The final regulation requires that background information concerning the operator and changes to roles and responsibilities be reported, and that all records be maintained for at least three years.
- An inappropriate reference to DEQ water law was removed from the permit and replaced with an appropriate MS4 stormwater Code reference regarding compliance with the permit.

Mr. Dowling, in closing, said that the Department recommended that the Board adopt the regulations before the Board and that DCR believes these are a quality and balanced set of regulations that will result in reductions in urban stormwater pollution.

As the Secretary's memo noted, "[i]t is in the Commonwealth's best interests that we continue to work together to advance a set of stormwater regulations that will achieve major water quality and quantity improvements."

Mr. Dowling drew to the Board's attention that the last page of this document contains a motion to be considered by the Board at the appropriate time that approves these regulations and that authorizes their filing.

Chairman Campbell thanked Mr. Dowling and called for public comment.

Public Comment:

William Street, James River Association:

Madame Chairman, members of the Board, thank you very much for this opportunity to comment. I'm Bill Street, I'm the Executive Director of the James River Association. I'm speaking here on behalf of not only the James River Association but for the group of organizations you saw in the letter to the Governor. We've been working closely together on this issue throughout the process and have been very engaged with it. Our comments are reflected in the draft. Our comments make it clear that we do take exception with some of the conclusions reached through the TAC and the rest of the administrative process. I know we all have the same goals, but I want to make sure we have a broad view of what we are doing. You have what I view as one of the most important roles in the Commonwealth for the future health of our waters. We have seen the very real impact water quality has on our environment and our citizens. For example, the blue crab. The Governor and the Commonwealth have issued some bold actions. We are likely going to have people losing their livelihoods. The real issue facing the blue crab is degraded water quality. Please keep that in mind. These regulations address one of the most crucial efforts of the Chesapeake

Bay cleanup effort. The U.S. EPA Office of Inspector General has said that development growth is outpacing progress in the clean up of the Bay.

We are making progress on all but three of 23 actions, urban nitrogen, phosphorus and sediment. This urban stormwater runoff threatens to overwhelm the progress we are actually making on other fronts.

Our conclusion is that our current approach is not working. We need some strong efforts and corrective actions to make sure we get these reductions going in the right direction. We would ask, and there will be additional speakers, that you pause on these comments to make sure that we have the clarity that we need for the goals we heard David describe. We need to make sure we are upfront and clear about what the expectations are. As you make sure that we have that crucial question answered, please place a hold on these and make sure that we are not just postponing some of the large discussions that are going to come as we march down this road.

Mike Gerel, Chesapeake Bay Foundation

Thank you, it is a pleasure to speak to you. I'm Mike Gerel, a staff scientist at the Chesapeake Bay Foundation. While the staff report mentioned earlier noted that the Bay watershed data should not be used for local decisions, we suggest that the information does help.

The Commonwealth, along with other Bay partners, has applied unprecedented scientific study and tireless effort to determine the amount of pollution reductions that are needed to heal the Bay and polluted streams across Virginia. Unfortunately, the proposal before you does not mandate achievement of reductions during its 5-year term.

The improved self-planning and reporting procedures in this proposal represent very good intentions. However, if the proposal does not work - if the Department's intentions are not realized - we question if these are the appropriate tools to enforce these reductions.

Thus, the members of the conservation community here today continue to request three additions to the proposal that are necessary to reverse the current trend and begin to realize needed reductions in urban stormwater pollution within the next five years.

- First, pollution reductions already assigned to an urban area in an EPA approved clean up plan should be included in the proposal.
- Next, pollution reductions consistent with those already assigned to urban areas in the Chesapeake Bay Tributary Strategies should also be added.
- A process should be included that urban areas found to be degrading water quality can use - in the absence of a formal clean up plan - to develop and implement corrective actions. Note that nearly 1,500 waters are waiting for a formal plan.

To be clear, we are not suggesting that urban areas must comply with rigid end-of-pipe limits. On the contrary, we have proposed a "framework" that allows permittees (whatever

their size or sophistication) to determine exactly how they will deliver the prescribed reductions, yet adds a way for permittees and the Department to measure and enforce performance that is completely absent from previous permits and the current proposal.

In closing, I would like to say a few words about cost. There will be costs to achieve real reductions in urban stormwater pollution. We know that. However, our proposed framework provides flexibility that will help hold costs down for permittees yet strives to provide reductions that similarly reduce the cost to Virginia's economy and its citizens if we continue on our current path.

Thank you again for the opportunity to speak to you today.

Rick Parrish, Southern Environmental Law Center

Thank you Madame Chairman, Members of the Board. My name is Rich Parrish, I'm an attorney at the Southern Environmental Law Center here in Charlottesville. I'm here today on behalf of the James River Association.

You've heard from my colleagues our appreciation for the effort DCR has done in strengthening this stormwater MS4 permit. We do recognize that and we do appreciate it. Especially with regard to Bay tributaries that already have a TMDL in place, with wasteload allocations to municipalities.

We do believe though, that the rules need strengthening, with regard to those waters previously mentioned, that are recognized as impaired for nitrogen, phosphorus, sediment, but for which a TMDL has not yet been completed. The goal of these rules, this permit, as with all such rules and permits, is to attain compliance with water quality standards in the rivers, streams and the Bay. These rules will not do that. We've heard talk about progress and improvement and we do recognize that there is progress and improvement. But we don't want to be back here in five years talking about strengthening this permit in ways that we know it needs to be strengthened now.

In particular, with respect to discharges to those waters that we know are already impaired, these rules need strengthening.

Briefly, the rules take an approach based on a goal of complying with water quality standards to the maximum extent practicable. You have it within your discretion to go beyond that, and require actual compliance with the standards. That is what we urge you to do so that we're not back here in five years at the same place.

Selecting just a couple of items that we really would like to see not just in the impaired waters, but generally applied to all permit covered waters. If we don't have at least some monitoring of these discharges, we really don't know how effective your program is. We don't urge end of pipe monitoring for every single discharge and every single stream, I mean at every single storm event. But there's got to be more than there is in this permit. Similarly, the targets need to be spelled out much clearer. Whether it is with numeric goals, effluent

limits or otherwise, we need a basis for comparing the performance of municipalities to the goals and targets set by these rules. This is an improvement and we can do better and we have to do better for the water's sake.

Leon Szeptycki, University of Virginia

Thank you Madame Chairman. My name is Leon Szeptycki. I'm the Director of the Environmental Law and Conservation Clinic at the University of Virginia Law School. The way that the clinic works is that we have students who every semester take the clinic for credit and they work to provide legal assistance to environmental groups, conservation groups, community groups, watershed organizations, and the like as part of their legal training. As part of that work, the clinic has been representing the Shenandoah Riverkeeper on a variety of matters including with respect to the comments on this MS4 permit. I'm here today speaking on behalf of the Shenandoah Riverkeeper and not on behalf of the University of Virginia or its Law School or any related entities. I should add that a Clinic student, Devon Hughsby, actually prepared the written comments that were submitted and couldn't be here to follow up orally.

The Shenandoah Riverkeeper, which is a program that's been around for almost three years now and the Clinic has been working with the Shenandoah Riverkeeper for approximately two of those years. One constant frustration that Riverkeepers experience is the issue of discharges, and this relates to MS4s, construction stormwater, and DEQ administered programs. Discharges of pollutants into water bodies that are impaired, but don't yet have TMDL cleanup plans. And the response with respect to attempting to control those discharges to minimize the effect on the impairment, as always, we have to wait until the TMDL is prepared. In effect what that means often is that we are going to keep discharging that pollution and wait until it's too late. The really graphic illustration of this is what's happening in the Valley right now. The water quality in the Shenandoah River and its tributaries is declining significantly. If you look specifically at sediment, the pollutant that's most closely related to MS4 discharges, just on the South Fork of the Shenandoah itself, almost 60 miles of the South Fork are currently impaired for violating the general benthic standard which is almost certainly the result of sediment discharges covering the bottom of the river and essentially choking out the benthic community at the bottom of the river. Countless other tributaries are also impaired for violating the general benthic standard. A lot of this is the result of historic forestry and agricultural pollution, but what's happening in the Valley is the agricultural land is being transformed into developed land. The way that land is going to be developed and the way it is going to be transformed from agricultural land to developed land is going to be determined in part by the terms of this permit. Many of those waters in the valley, including the South Fork, are impaired but they don't yet have TMDL cleanup plans and they won't for a long time. So what's going to happen is these discharges are going to occur without any analysis of the extent of their contribution to that impairment. This is alluding to something Mike Gerel said about cost, when the time rolls around to do a TMDL cleanup all those stormwater management measures will be in place and it will cost more to fix them than it would have to up front try to put them in place effectively so that they don't contribute to the impairment.

I recognize that a lot of work has been done on this permit in terms of the measures that are put in place when there is a TMDL and it does represent a huge improvement but it doesn't deal with this fundamental problem of discharges and why the bodies are impaired and don't yet have the TMDL. The simple fact of the matter is that there are some additional reporting requirements and that kind of thing, but the discharges that will take place over the next five years under this permit, they'll be the same whether the water body is impaired or whether it's not. It's not going to affect the discharges into impaired waters.

What we're asking for is not a major rewrite of the permit, but some additional effort to analyze those discharges. So in terms of the permit we would first of all ask the MS4s to analyze whether the discharges are in fact contributing to an impairment. That would just be looking at whether or not the neighboring water body is impaired, what's it impaired for, and what are the discharges from the MS4 that are contributing to that. After that measure, some requirement that the MS4 operator develop a plan to analyze whether the existing BMPs are effective to minimize the contribution to that impairment or stop the contribution to that impairment, or if they're not, some plan for improving the BMPs so that the discharges stop contributing to the impairment. The next five years after this initial permit is the perfect opportunity to do this. Again, we're not asking for the discharges to be stopped immediately. We recognize that can't be accomplished practically. All we're asking for is some analysis of the extent of the contribution of the discharge to these impairments and then a plan for stopping them. That plan for improving the BMPs could be implemented over the five-year life of the permit. And the next permit renewal would be an excellent opportunity to look at how well that's gone and whether any additional terms need to be added to the permit and to share the information from the MS4s that have had to deal with the problem of discharges into impaired waters. If we don't put these terms in this permit, we will be grappling with this issue from stage one again five years from now. We won't have additional information and we won't have made additional progress.

Again on behalf of Jeff Kelbe, who is the Shenandoah Riverkeeper, who couldn't make it today, thank you for your attention to our comments and the opportunity to speak today.

Anne Jennings, Chesapeake Bay Foundation

Thank you Madame Chair. I am the Virginia Director of the Chesapeake Bay Foundation. I appreciate your time and the opportunity to comment on this very significant measure.

I would start by saying we find ourselves in an unusual or perhaps an awkward position, as we are typically in front of this Board heralding the work of the Department under your leadership in addressing nonpoint source pollution. But we do find ourselves in a position of strongly disagreeing with the recommendation before you. But I say that to you and ask that you not take our comments and our concerns in any way to suggest that we don't thoroughly appreciate the good work that this Board is doing in many areas to address nonpoint source pollution. As you have heard from my colleagues this afternoon, we are looking for opportunities to strengthen this proposal, simply put. I will make summary comments and then leave you with some questions to consider.

As Bill Street indicated, the Commonwealth's efforts to address urban stormwater pollution are simply not working. As we are seeing pollution reductions from point sources, particularly sewage treatment plants, as well as declining pollution from agricultural land, we are at the same time seeing pollution from urban areas increase. An unfortunate trend. We believe that this trend is in part a result of the prior MS4 general permit and the fact that it did not drive actual reductions in pollution to our waters.

We believe that the proposals to revisions that we suggested, that David provided you and Mike spoke about are fully justified. We believe these recommendations are fully justified by years of dedicated study. We believe we've approached this by not being overly prescriptive and our proposals would allow for flexibility in local implementation and that our suggestions are consistent with the Clean Water Act. We do applaud the work of the Department and all of your staff, and the work of the Board in this effort to improve the Commonwealth's Stormwater Management program. But as we suggested before, we really see this as a very important opportunity to ensure major and lasting contributions that will resolve Virginia's water quality crisis.

I think if you could describe all of us in one word, you probably would use the word impatient. We can't wait until 2012. We want to seize this opportunity today to make these real improvements. So we ask the Board to pause your decision on this proposal for a short period and perhaps consider a couple of questions. And those would be:

Ask yourself whether or not this proposal really does provide the Department and the Board with sufficient enforcement authority to quite simply force localities to achieve water quality improvements, and does the proposal provide sufficient criteria for those localities to be certain if they are improving water quality or they're not.

We ask you again to delay your consideration and consider those questions. I truly appreciate this opportunity to comment and for you and the Department to consider our request. Thank you.

John Carlock, Hampton Roads PDC

Thank you Madame Chair and members of the Board. This is the second opportunity I've had to address you on the question of stormwater permits in the last six months and I'm happy to be back again. And I'm happy to say that over the last several years of working on the stormwater program, staff from the Department has worked very closely with local governments throughout the Commonwealth in trying to craft a regulation that certainly advances the state of where we are today. In your agenda package you have a letter and I'm not going to read that letter, but I did want to point out a couple of things.

Much of the letter talks about the cooperative ventures of the Hampton Roads localities. We have six Phase I localities, we have six that are waiting with somewhat baited breath for your action today on Phase II permits. They have been working together for decades. I'm trying to craft stormwater programs as well as other programs, other pieces of the puzzle, to improve water quality, from the Chesapeake Bay Program to other aspects of stormwater and

wastewater, etc. We've been working together very carefully in trying to make sure that we balance all of these programs. The permit and regulation that you are considering today is a major step forward from where we have been for the last five years. It will require local governments to get into the middle of the TMDL process, both at the study phase when there is an impaired water and studies are just beginning as well as in the implementation plan.

The permits that we are working under today that have been around for five years say develop a program. I think we've done a reasonably good job of developing programs at least in our part of the Commonwealth. We have localities that three years ago were not engaged in the TMDL process. They're at the table developing implementation plans to pay for them. Not a state paid-for effort, but the localities are putting money on the table to develop implementation plans.

We're in the process of developing a reporting system. We all think collectively that it's important to have documentation of both the water quality issues and the program aspects. The reporting system localities are funding today will move us in that direction. The localities of the PDC participated in the development of not only this general permit, but in the individual permits and over the last several years of working with the state in the development of two companion regulations. I think if you read this in conjunction with those, you see us moving toward the technical work that my friends in the environmental community have been talking about. That's the technical criteria in local program regulation that David talked about earlier as well as the construction general permit regulation. Both of which have a very strong technical component to them.

Our localities have taken at least a first pass at trying to figure out how much this effort is going to cost. We're looking for those six localities, it's something in the order of a million dollars a year in combination over and above what they are spending now. That makes some assumptions on staffing. It makes some assumptions on their contribution to regional programs that are a cost effective way to deal with some of the requirements and move us a long. The bottom line as far as the localities who asked me to be here are concerned is that we've been working on this, there's a draft regulation, it does move us along much farther than we have been. It's going to cost money; it's going to take resources. Budgets are approved for this coming year. We have delayed certain things waiting for the regulation to happen and now is the time to move forward and approve the regulation and let's get on with the business of implementing it and at the same time trying to improve the program so that we deal with the kinds of issues that Bill and Anne and the rest of the folks have been talking about.

Thank you.

Michael Flagg, Hanover County

Good afternoon members of the Board. My name is Mike Flagg, I'm currently the Public Works Director for Hanover County. I want to thank you for the opportunity to come before you and represent our views and perspective regarding the actions that are before you today with regard to the MS4 program.

I'm a little bit surprised by the reaction of our friends from the environmental sector to delay the permit. It seems to be a presumption that we're not doing things and that we're not moving forward. I think this regulation certainly sets the stage to do many of the things that they are asking to be done.

We're pleased by the level of thoughtful consideration to the comments that were submitted during the comment period for these proposed regulations. It's evident that considerable effort has been made to respond to the comments and provide a balance.

It's also evident that DCR closely considered the applicable Federal Register of Regulations in their response. Hanover County urges the Board to move forward with the adoption of the regulations with the inclusion potentially of some clarifying comments from the representative of VAMSA who will speak later. Certainly some administrative refinements that I think Hampton Roads suggested make a lot of sense to us and we support them.

I come before you as a locality that has issued in the range of 15-16 civil summonses in the past two years which accounts for over \$63,000 in total charges for erosion and sediment control infractions. That also includes the appeals we've had to attend as we've moved forward to enforce these regulations very diligently. I would submit to you that we are at work doing that.

We're very much ready to move forward with our second five-year phase of this program. We're not happy with all the elements of this regulation. We're concerned about the cost of this program to our local government and its citizens. A few months ago there was an article in the Metro section of the Richmond paper about Hanover County and our Rural Glen Subdivision. We are actively trying to work with these communities so that there is a lot going on. There's also a lot of friction in our communities over these very matters. We recognize the value and the iterative approach from enhancing water quality. We strongly oppose any efforts to establish numeric limits for nonpoint sources of pollution including stormwater. Any substantive delay in implementation will not serve water quality goals and will continue to delay important on the ground implementation. We don't want to miss the forest for the trees.

We're interested in a collaborative approach with all the interested citizens and regulatory agencies as we move forward to develop, implement, and refine a program. We support VAMSA's invitation which they will suggest to the signatories of the May 8, 2008 letter to Governor Kaine to work cooperatively. We are increasingly concerned over the adversarial positions of some organizations and government agencies. Increasing threats of unreasonable enforcement actions on localities or suits as a result of these regulations will inevitably result in posturing that will detract from the meaningful and valuable efforts to protect water quality. For example, for us, our Board adopted a Clean Hanover Initiative among our Board of Supervisors to adopt a countywide plan to clean up litter and remove harmful pollutants from our environment. We were afraid to include this in our MS4 report and as a result of the EPA audit when the overreached and over-regulated our commitment. They've set an environment up that frankly makes us fearful to include new measures in the

permit. I don't think any of us want to be there. We have avoided including this in the MS4 program for that overreaching effort. But we do understand and appreciate the necessity for enforcement provisions. I've just described for you the measures we've taken as a local government. Please find another locality in the State of Virginia who has taken anywhere close to the number of civil actions we currently have underway.

I would ask you to consider the unintended consequences of unnecessary threats and insinuations as this program matures. Again, we stand ready to take the next step in permit regulation. Please adopt these regulations with the suggested clarification in administrative refinements in our local government departments and representatives.

Thank you very much.

Chris Pomeroy, Virginia Municipal Stormwater Association

Thank you Madame Chair. Again my name is Chris Pomeroy, I am the representative from the Virginia Municipal Stormwater Association. It is a pleasure to be here with you today.

As has been stated, the draft regulation would in fact mandate a major expansion of the stormwater regulatory program and a significant increase in public spending on these programs, presumably through utility or tax rates or other mechanisms.

VAMSA believes that this is the time to adopt a final regulation and that the substantive request of that May 8 letter from the seven groups that Mr. Dowling read earlier was in fact properly rejected by the Department, and properly rejected by the Governor through Secretary Bryant.

VAMSA does support many aspects of the regulations, but does have concerns about the magnitude of these additional requirements. But today I'm going to limit my comments to a few very targeted recommendations that have been alluded to previously. These are drawn basically from DCR's own written explanations and it's very thoughtful and lengthy response to 300 public comments received.

First, I just want to be very clear that VAMSA does support Governor Kaine, DCR, EPA and other commenters who support a regulation requiring an iterative approach to enhancing water quality over time rather than the alternative regulation requiring either numeric stormwater outfall limits or strict compliance with water quality standards during the permit term.

VAMSA does believe it would be impossible to comply with, the Secretary's word was "infeasible." I'm going to give you an example. I will refer you to a table summarizing the cleanup priorities for the Chesapeake Bay in the State's own cost estimates prepared under Secretary Murphy which amount to about \$10 billion. Let me be clear that is just with one TMDL, not to mention the 1700 others. This is an example of the types of magnitude of the sheer financial impacts of dropping even this one tributary strategy or TMDL into a permit as

a binding legal requirement enforceable by any citizen of the Commonwealth through the Federal Clean Water Act citizen suit provision, which is a very broad provision.

If you would look at the table (handout provided by Mr. Pomeroy), on page three you will see that urban stormwater BMPs would deal with about 17% of the nitrogen and phosphorus load, and only about 8% of sediments to the Bay. But those BMPs are costed at \$7.5 billion. That's fully three quarters of the cost of Virginia's tributary strategies. That's three-fourths of the cost for about 15% of the problem. This is one glaring example of dropping the TMDL permit into this program for something other than an iterative approach that makes reasonable progress over time.

There are 1,700 impaired waters slated for clean up plan development. So we think the Governor in his statement of his May 15 letter where he concluded that it was infeasible to put TMDLs and TMDL actions, strict standards compliance, into this permit. Frankly it would be a game of "gotcha." Remember any citizen can initiate a legal action to enforce a permit. That's punishable to each of our localities for each one to the tune of \$32,500 per day. In other words, if impossible permit provisions were in this permit, you would no longer control this program. Any citizen who acted under that provision of the Clean Water Act to take the matter to court, would then take your program to court and the judge would control it.

I would submit that it is not at all appropriate for the Commonwealth to put its own subdivisions in that posture. Of course the Department has not recommended that be done, nor has the Governor. We appreciate that basic common sense recommendation.

I would like to share with you just two small suggestions for the language.

We're very concerned on page 2 of the citizen group letter, this reference to having participated in the administrative process and being prepared to take further action. We don't know what that means. It sounds like a threat but we don't know what that means. Clearly the pattern across the country has been that similar groups have litigated these issues. They've taken your programs to court to try to rewrite them for you. So I would not be at all surprised, again it has been the pattern elsewhere. But these programs have been litigated against the state agency or against the localities that hold these permits.

We're proposing a couple of clarifications. These are based on DCR's thoughtful explanation in the response to comments document which we believe are fully consistent with the Secretary's letter. Really the reason for this is not so much that they are necessary. I would submit to you that they are not truly necessary. I think the intent of the program is clear, as Mr. Dowling described to you, that it's an iterative process that is conducted over a period of years. Indeed over permit cycles in appropriate cases. And I also believe that the general permit is fully defensible in its current form. Just the same, I'm going to suggest a couple of clarifications that again were drawn straight from the comments document.

The first, I won't spend much time on the MEP definition, bullet #2, but I'll take my remaining time just to touch on bullet #3, which is omission of agency response #127. That's

in response to #127 it says “the intent is to provide for reasonable further progress towards attainment of standards.” VAMSA would suggest that statement from DCR be included in lines 1090, in lieu of that language that says “ensures compliance with the operator with water quality standards.” And that’s the intent that’s been described repeatedly today by the Department staff. We think it would just make things clearer.

Similarly on bullet #4 in the comments, there’s been some concern expressed today that the standards are unclear. There’s a sentence in there, I think it’s perfectly appropriate, but there’s a sentence that says, the TMDL wasteload allocation does not establish that the operator of a regulated small MS4 is in or out of compliance with the conditions of the permit.

So what we’re offering is to add a compliance standard right there. To make things clearer that we’re not going to stand still, but we are going to make a lot of progress. The proposed language is at the end of bullet #4, after that statement that says a wasteload allocation does not establish you are in or out of compliance to add, “however, an operator is required to make reasonable further progress toward the attainment of water quality standards by implementing an updated MS4 program. Implementation of BMPs consistent with the provisions of that update plan constitutes compliance.”

As was described earlier by the staff comments, the locality will have to come to you or to your staff with plans that are acceptable to meet these standards. It’s obviously a program that will require a lot of work together. We need your approval to move forward. But that’s the standard we offer.

Finally, it’s awkward for everyone to be in this posture. The regulations have a lot going into it. Clearly it moves the program so much further ahead. The VAMSA Board at a meeting on Monday afternoon voted unanimously to extend an invitation to the signatories of that letter and with respect to this program see if there are areas in which we can collaborate more than we are apparently right now.

So I make that my open invitation to my colleagues that have signed that letter.

Thank you for your time, I’d be delighted to answer any questions regarding those proposals.

Mr. Maroon said that based on Mr. Pomeroy’s question, he would like to ask staff to look at these two particular suggestions. He asked if Mr. Dowling or Mr. Brown would like to comment.

Mr. Brown addressed bullets #2, 3, and 4. He said with respect to items 2 and 3 that Mr. Pomeroy did correctly cite that in the discussion document that DCR had indicated that this language would be included. However, upon review, the EPA insisted that language be withdrawn and the current language substituted.

Mr. Brown said that with respect to bullet #4 that while he appreciated Mr. Pomeroy’s comments, he did not believe it was necessary to add that to the permit. He said there may

be a different interpretation of the first sentence. He said that the mere presence of a wasteload allocation does not mean that an MS4 is not already doing better than required. He said he would suggest not amending bullet #4.

Mr. Pomeroy said that VAMSA did not find the amendments necessary, but felt they were consistent with the discussions. He thanked the Board for considering them.

Kate Bennett, Fairfax County

Thank you very much for your time, I won't keep you long. My name is Kate Bennett. I'm with Fairfax County. While we are a Phase I community and not directly affected by this regulation, we are following them closely because they are closely related to the Phase I regulations which will be coming. Basically we just wanted to go on record as saying that we appreciate the hard work that's been done by DCR in developing these new permits. We know that it has been a real challenge for them to move the MS4 program forward. We feel it was done in a fair and equitable way. We want to fully support their interpretation of the intent of the Federal Regulations as meeting the Maximum Extent Practicable standard rather than a water quality standard. That should be enforced through the iterative implementation of BMPs rather than numeric wasteload limits. With that being said I want to state that the localities have a shared goal with the environmental groups and with the State of wanting to protect the Chesapeake Bay and local streams. We all want to work together towards that shared goal. Thanks for your time.

Larry Land, VACO

Good afternoon Madame Chair and members of the Board. I'll try to be as brief as I possibly can. I have not been as engaged in this process as those representatives from local government that you've just heard before me. I do want to associate my comments with them in support of the suggestions they have made that you do move forward with the general permit as it has been proposed. I'm here for several very important reasons. I'm almost embarrassed to tell you this, but in the 20 years I've worked with the Virginia Association of Counties, I have not yet attended a meeting of the Soil and Water Conservation Board. Although I have enjoyed great working relationships with members of your staff as long as I've worked with the Association. The reason why I thought it was very important for me to come to this meeting and appear before you to make some comments is because of the very serious nature of this entire program and the regulatory framework that is used, with respect to stormwater management. I really do believe that this is going to be one of the most significant challenges that will be confronting local governments in Virginia over the course of at least the next decade. It's very important that we work as closely with you as we possibly can and with our friends in the environmental community to make sure that we have a structure that is as fair as possible, as reasonable as possible, and as doable as possible. We look forward to working with you to accomplish that. I just wanted to make sure that I made that point today and I will just let my comments conclude with that. I want to thank you all for the hard work that you've done with this and also thank your staff. They have always had the door open to us. We appreciate that. Thank you.

Mr. Maroon said that as a follow-up to Mr. Land's comments he wanted to point out that Mr. Land had been very helpful in spreading the word with regard to the Stormwater Program and the Dam Safety Program. Mr. Maroon noted that DCR staff attended the most recent VACO conference and have also presented before VACO committees.

Chairman Campbell noted that concluded the list of those signed up to speak. She asked for additional public comment and there was none. She asked for additional staff comments.

End of Public Comment

Mr. Dowling said that staff would be happy to answer any questions the Board might have.

Chairman Campbell opened the floor for Board discussion.

Mr. Altizer asked if any of the seven environmental groups were involved with the Technical Advisory Committee.

Mr. Dowling said that at least two of the signatories, perhaps three, were on the TAC.

Mr. Altizer asked why it was May 8, 2008 before the letter was written.

Mr. Street responded that the letter was not the first time these views were expressed. He said that at every meeting the views were expressed consistently. He noted that the groups met with Mr. Maroon as well as the Secretary of Natural Resources. He said that the groups had felt confident staff would arrive at an agreement but an agreement was not reached. It was at that point the groups appealed to the Governor through the May 8, 2008 letter.

Chairman Campbell said that the Board had received the necessary information. She noted that while the desire would be to have 100% support that was a very difficult level to achieve. She said that the discussion was encouraging. She noted that the matter was before the Board for consideration of action. She opened the floor for a motion.

Mr. McNear asked that, on streams where TMDLs do not exist, how difficult it would be to make a statement that the operator could not make it worse?

Mr. Dowling noted that the regulations already included language to that effect on page 64. He said that on lines 1407-1410, staff attempted to make it clear that during the evaluation process, the operator must annually evaluate the effectiveness of the BMPs. He noted that there was language included that addressed non TMDL impaired waters. The intent was that operators be cognizant of impaired waters as they developed a plan. He said the regulations not only indicate that the problem should not be made worse, but that the operators need to find mechanisms to deal with the issue.

Mr. McNear asked why the operators could not be told they must evaluate what they are putting in the stream and that they cannot make it worse until the TMDL is established. He

said that the other side of the issue is where the money would come from. He noted that it would not come from either the federal or state government.

Mr. Dowling said that staff was cognizant of the costs associated with the regulations. He noted that was why staff drafted the regulations to a point where there was a comfort level on the impaired waters. He said the intent was not to expend dollars on strategies that may not be appropriate.

Ms. Packard noted that the new wording said that the operator shall “evaluate the effectiveness.”

Mr. Brown noted that on page 49 of the permit, line 1085 set the tone for the entire MS4 program, which is to be designed to “reduce the discharge of pollutants to the maximum extent practicable.” He said that was the Clean Water Act reduction standard.

Mr. Brown also noted that on line 1090 the language includes a requirement to “ensure compliance by the operator with water quality standards.” He said the goal of the program was for permittees to look at how water quality standards would be addressed within their respective jurisdictions.

Mr. Maitland said this was a work in progress. He noted that if a locality desired to be more restrictive that was acceptable. He said this would give a guideline for the next five years.

Mr. Fritz noted that the regulations state that programs will be different and it was up to the operator to determine the best approach for their respective jurisdictions.

Mr. Maroon suggested on line 1049 to change the languages from “addressing” to “improving” or “reducing.”

Mr. Dowling said that would not necessarily make a substantive change to what is already there. He said staff concern was that EPA has already given concurrence to the permit in this draft format. But he said the change would be at the Board’s discretion.

Mr. Fritz said the purpose of the program was to reduce the discharge. The regulations address what that reduction takes to accomplish. He said the idea behind the iterative process was evaluating whether or not a program works or if something else would be more cost effective and reasonable.

Mr. Maitland moved the following motion. Mr. Altizer seconded. The motion carried unanimously.

VIRGINIA SOIL AND WATER CONSERVATION BOARD

May 15, 2008 Meeting

at the Virginia Department of Forestry

Charlottesville, Virginia

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

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

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

This authorization extends to, but is not limited to, the drafting of any necessary documents and documentation, the posting of the approved action to the Virginia Regulatory TownHall, and the filing of the final regulations and incorporated forms with the Virginia Registrar's Office and the U.S. Environmental Protection Agency, as well as the coordination necessary to gain approvals from the Office of the Attorney General, the Administration, the Virginia Registrar of Regulations, and the U.S. Environmental Protection Agency.

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

Motion made by: Granville M. Maitland

Motion seconded by: Michael Altizer

Action: Motion carried unanimously

Ms. Campbell thanked everyone in attendance for their contributions of many months of work on the regulation.

Briefing on Ag BMP Cost Share Program Modifications for Program Year 2009

Mr. Maroon said that DCR has been trying for the last several years to bring to the Board changes that have been considered and gone through the advisory committee related to the Ag BMP Cost Share Program.

Ms. Campbell asked if there was an item of interest or concern to the advisory committee that did not make the list.

Mr. Meador said that there was interest in looking at the rates of nutrient management in the Bay and beyond.

Mr. Meador reviewed the 2009 Agricultural BMP Cost-Share Program Changes.

1. Increased the funding cap for the WP-4 (Animal Waste Systems) and SL-6 (Grazing Land Protection) practices to - \$70,000 per applicant/year (All other practices remain capped at (up to) \$50,000 per applicant/year)
2. Tax Credit will be available for adding slabs outside of poultry houses and stacking sheds in the Farm Roads or Heavy Traffic Animal Travel Lane Stabilization (SL-11B) practice if needed to address water quality issues
3. Added language to the Nutrient Management Plan Writing (NM-1) practice to clarify the cost share rate to be paid is one rate per acre for the entire plan depending on the fertilizer type (\$2/acre commercial fertilizer; \$3/acre using on farm generated manure)
4. Modified the Harvestable Cover Crop (SL-8H) practice to eliminate the use of fall nutrients
5. Modified the Continuous No-till System (SL-15A) practice to require that the participant must be changing from a tillage system to a no-till system to be eligible for cost share.
6. Added language to the BMP Manual Guidelines to clarify that program funding is not authorized if the applicant must comply with any regulatory required actions or chooses to participate in mitigation banking.
7. Updated the prioritization guidance for cost-share assistance with current Watershed Assessment data which enables ranking of the national watershed boundaries (NWBD) – This data allows for the elimination of the requirement to use outdated and incomplete VIRGIS maps for ranking cost-share requests
8. Added a Risk Assessment Worksheet for use in the Loafing Lot Management System (WP-4B) practice to determine the need for a loose housing component
9. Relaxed the requirement that a Conservation Plan must be developed on certain agronomic priority practices. Comprehensive conservation planning continues to be encouraged, but will not be required for specific nutrient management practices, cover crops, continuous no-till BMPs and the establishment of permanent vegetative cover on cropland. Removal of the requirement to prepare a conservation plan for these specific agronomic BMPs acknowledges the considerable workload SWCDs experience especially in the extremely high volumes these practices are implemented in certain areas of the state

Consultation with Board on distribution of 5% of the WQIF to Districts for FY09

Mr. Meador presented a review of the distribution of 5% of the WQIF to Districts for FY09. He distributed a handout that included as summary and a draft memorandum to Districts. A copy of the draft memorandum is included as Attachment # 3.

WQIF 5% for Technical Assistance to SWCDs

Goal: To allocate available funds in a manner that provides for delivery of the cost-share program with no loss of SWCD technical staff

The 2008 Virginia General Assembly created a new sub-fund within WQIF named the “Natural Resources Commitment Fund” [excerpt follows]

“1. Five percent of the total amount distributed to the Agricultural Best Management Practices Cost-Share Program shall be distributed to soil and water conservation districts to provide technical assistance for the implementation of such agricultural best management practices. Each soil and water conservation district in the Commonwealth shall receive a share according to a method employed by the Director of the Department of Conservation and Recreation in consultation with the Virginia Soil and Water Conservation Board, that accounts for the percentage of the available agricultural best management practices funding that will be received by the district from the Virginia Natural Resource Commitment Fund;...”

- \$20 million was placed in this “Commitment” fund
- The new CODE specifies break down for use of monies placed in the fund
- Two main categories: 5% to SWCD to provide technical assistance in deliver of ag BMPs; 95% to agricultural BMPs
- The 95% BMP monies (\$19 M) are split 60% Bay and 40% Southern Rivers
- The 5% (\$1.0 M) is to provide for technical assistance from SWCDs based upon a distribution determined by DCR Director in consultation with the VA Soil and Water Conservation Board

DCR outlined approach:

- a. On May 16 a “request for information” will be issued to all 47 SWCDs for 5 key pieces of information. (see draft correspondence)
- b. On May 29, information received from up to 47 SWCDs by May 29, that submit requests, will be compiled and reviewed by CDCs (with participation by VASWCD Executive Director).
- c. A funding plan will be presented to DCR Director for review/modification/approval. The plan brought forward will be based upon:
 - If collective requests from SWCDs are less than \$1.0 M, all requests will be honored as submitted; funds remaining will be directed to distribution for Ag BMPs
 - If collective requests from all SWCDs exceed \$1.0 M
 - Districts with an un-obligated emergency reserve fund that exceeds 3 to 6 months will experience a reduction, or no funding towards the amount they requested

- Districts that request funds in an amount that exceeds their response to the final question (the amount they must receive to prevent staff loss/layoff) may receive only the amount absolutely needed to prevent staff loss/layoff
 - Should the preceding adjustments (applied consistently to all requests) still exceed the available \$1.0 M, a percentage reduction of all requests to equally reduce the amounts to the total of \$1.0 M will occur
- d. FY09 contracts (DCR/SWCD grant agreements) covering both technical assistance and cost share allocations will go out to districts in June for FY09 program year.

Ms. Campbell expressed a concern over the turnaround time of the request. She said that some District Boards would not meet in that time frame. She also noted that while she understood concerns about funds in reserve, it appeared as though those Districts with reserves were being penalized.

Mr. Maroon asked if DCR would already know which District had funds in reserve.

Mr. Meador said that information would not necessarily be provided through the audit.

Mr. Maroon said that the concern over the date issue needed to be addressed and that it should not be impractical for districts.

Ms. Sappington noted that if her district was required to use reserves to prevent staff layoffs the District would lose staff.

Mr. Maroon said that a proportional allocation would mean that Districts would not have to be surveyed.

Ms. Campbell suggested that Districts be asked that, without using their reserves, what amount would be essential.

Mr. Maroon said that the goal is to make sure that each District has the money to put in place their amount of cost-share and not lose staff.

Mr. Meador said that part of the need to address this in a timely manner was to include this in the cost-share agreement. However, he noted that these funds could be handled separately.

Ms. Campbell said that she thought the preference would be to handle it separately.

Mr. Berger said that the Association would be happy to work with DCR in this regard.

No official Board action was taken on this matter.

Dam Safety Certificates and Permits

Mr. Browning presented the Dam Safety Certificates.

Compliance Issues – Enforcement Actions

Mr. Browning provided the Board with an update on the status of the seven (7) dams listed under Item #10 (a)(i), indicating that the dam owner has breached Fauber Dam so that it can no longer impound water and that it will be removed from this Item. Copies of these letters have been sent to the dam owners and are available from DCR.

No Board action was needed on enforcements.

He noted that the Board had requested a study be done by DGIF. DCR staff has not had the opportunity to meet with DGIF staff and said that the intent was to meet in the next three weeks.

Mr. Browning updated the Board on the progress that has been made with the dam owner on Summit Dam, Inventory Number 06914 and provided the letter that authorized a two-year extension for the Class I Conditional Operation and Maintenance Certificate.

Mr. Browning also informed the Board that the Jolly Pond Dam, one-year Conditional Operation and Maintenance Certificate issued to James City County (dam owner) expires on July 31, 2008 and that staff was working to get commitment from the County on the Certificate Conditions prior to July 31st.

Compliance Issues – Conditional Certificates

Mr. Browning presented the following recommendations for Conditional Certificates.

03322 Lake Shannon Dam	CAROLINE	Class III SE	5/31/09
03341 Lake Dejarnette Dam	CAROLINE	Class II SE	5/31/10
03342 Lake Pinewood Dam	CAROLINE	Class III SE	5/31/09
05307 Burnt Quarter Dam	DINWIDDIE	Class III Regular	1/31/09
16304 Moore's Creek Dam	ROCKBRIDGE	Class I Regular	5/31/09

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

SECOND: Mr. Altizer

DISCUSSION: None

VOTE: Motion carried unanimously

Mr. Browning presented the recommendations for Regular Certificates.

01506 Upper North River Dam #76	AUGUSTA	Class I	5/31/14
01925 Swan Lake Dam	BEDFORD	Class II	5/31/14
03331 Lake Devolia Dam	CAROLINE	Class II	5/31/14
03332 Lake Heritage Dam	CAROLINE	Class I	5/31/14
03333 Lake Dover Dam	CAROLINE	Class II	5/31/14
03702 Roanoke Creek No. 72A Dam	CHARLOTTE COUNTY	Class I	5/31/14
04126 Napiers Savage Dam	CHESTERFIELD	Class II	5/31/14
08551 Dabney Lake Dam (no Board action needed)	HANOVER	Class IV	5/31/14
08903 Beaver Creek Dam	HENRY	Class I	5/31/14
09903 Lake Jefferson Dam	KING GEORGE	Class III	5/31/14
14922 Lake Fungs Dam	PRINCE GEORGE	Class III	5/31/14
15320 Possum Point Ash Pond D Dam	PRINCE WILLIAM	Class II	5/31/14
18701 Lake of the Clouds Dam	WARREN	Class II	5/31/14
68003 Lake Summit Dam	CITY OF LYNCHBURG	Class II	5/31/14

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

SECOND: Mr. Altizer

DISCUSSION: None

VOTE: Motion carried unanimously

Mr. Browning presented the following recommendations for Construction and Alteration Permits.

04153 Rowlett Pond Dam	CHESTERFIELD	Class III	5/15/08 – 11/30/08
06904 Cherokee Dam	FREDERICK	Class II	5/15/08 – 5/31/09
07903 Green Acres Dam	GREENE	Class I	5/15/08 – 5/31/09
10939 Willow Ridge Dam	LOUISA	Class III	5/15/08 – 1/31/09

MOTION: Mr. Altizer moved that the Virginia Soil and Water Conservation Board approve the Permit Recommendations as presented by DCR staff and that staff be directed to communicate the Board actions to the affected dam owners.

SECOND: Mr. Simms

DISCUSSION: None

VOTE: Motion carried unanimously

Mr. Browning informed the Board that DGIF failed to submit sufficient technical information on Laurel Bed Dam, #16701 for the issuance of the Alteration Permit that the Board approved at its March 20, 2008 meeting. Therefore, the Alteration Permit was not sent to DGIF. A request is being made to change the effective date of the Alteration Permit from 3/20/08 – 3/20/10 to 5/15/08 – 5/31/10. Motion to accept the change was made by Mr. Maitland, seconded by Mr. Simms. Motion carried unanimously.

Mr. Browning presented the list of Extension recommendations.

00349 Loftlands Dam	ALBEMARLE	Class III Regular	9/30/08
00385 Mountain Valley Dam No. 1	ALBEMARLE	Class III Conditional	9/30/08
01501 South River Dam #26	AUGUSTA	Class I Conditional	5/31/09
01502 South River Dam #25	AUGUSTA	Class I Conditional	5/31/2010
01508 South River Dam #23	AUGUSTA	Class I Conditional	9/31/08
01903 Beaverdam Creek Dam	BEDFORD	Class II Conditional	11/30/08
01905 Bedford Lake Dam	BEDFORD	Class II Conditional	11/30/08
01930 Elk Garden Lake Dam	BEDFORD	Class III Regular	9/30/08
05906 Lake Accotink Dam	FAIRFAX	Class I Conditional	11/30/08
06715 Musgrove Dam	FRANKLIN	Class III Conditional	11/30/08
06905 Cove Dam #1	FREDERICK	Class I Regular	9/30/08
06906 Cove Dam #2	FREDERICK	Class I Regular	9/30/08
07501 Picketts Creek Dam	GOOCHLAND	Class III Regular	1/31/09
08910 Lanier Dam	HENRY	Class II Conditional	11/30/08
09519 Rennicks Pond Dam	JAMES CITY	Class II Regular	9/30/08
10934 South Anna Dam #22	LOUISA	Class II Regular	9/30/08
14533 Westlake Dam	POWHATAN	Class III Conditional	9/30/08
15303 Lake Montclair Dam	PRINCE WILLIAM	Class I Regular	9/30/08
16305 Willow Lake Dam	ROCKBRIDGE	Class I Conditional	5/31/09
16504 Lower North River #22B Dam	ROCKINGHAM	Class II Conditional	11/30/08
16506 Lower North River #81C Dam	ROCKINGHAM	Class I Conditional	9/30/08
18709 Apple Mountain Dam	WARREN	Class II Conditional	9/30/08
18711 Upper Apple Mountain Dam	WARREN	Class II Conditional	9/30/08

MOTION: Mr. Maitland moved that the Virginia Soil and Water Conservation Board approve the extension recommendations as presented by DCR staff and that staff be directed to communicate the Board actions to the affected dam owners.

SECOND: Mr. Altizer

DISCUSSION: Ms. Campbell indicated that she would abstain from the voting.

VOTE: Motion carried with Ms. Campbell abstaining

Mr. Simms asked if there was an update on the Lake of the Woods Association dams.

Mr. Browning said that the extension issued by the Board gave timelines on the actions they were to take. These dates have been met. The last submission was on May 1st, 2008.

Mr. Maroon said that staff is hoping to meet with LOWA to address concerns.

Dam Safety Flood Prevention and Protection Assistance Fund Update

Mr. Brown said that at the March meeting the Board approved two applications for funding under the Dam Safety Flood Prevention Protection Assistance Fund. These applications have been forwarded to the VRA and are undergoing that review.

Mr. Brown noted that as a result of Delegate Sherwood's legislation, the fund will have additional authorities. Additionally, when the revised Impounding Structure Regulations take effect, those revisions will affect the administration of the Fund. To that end, a revised manual will be prepared following the effective dates of the legislation and the regulations.

Partner Agency Reports

Department of Conservation and Recreation

Mr. Foreman gave the DCR report. A copy is attached as Attachment # 4.

Natural Resources Conservation Service

Mr. Dorsett gave the report for NRCS. A copy is attached as Attachment # 5.

Public Comment

Mr. Ted Wessel asked if there was an estimated timeframe when DCR would respond to LOWA.

Mr. Robinson indicated he would probably visit before writing a letter. Mr. Maroon said that DCR hoped to set a meeting with the LOWA Engineer and Board chair as well as others.

Mr. Flagg spoke on behalf of Hanover County. He said that the County works to make their comprehensive plan extensive and that the County works towards a distribution of 30%

suburban and 70% for rural preservation. He said that this has been the year of regulations with policy changes with regard to the RPA buffer, the stormwater criteria, Department of Transportation criteria and more. He said that the County cannot preserve large spaces and indicated that there may be unintended consequences of the rules and regulations.

Next Meeting

July 17, 2008

Association of Electric Cooperatives

Richmond, VA

September 17 - 18th

Patrick Henry Building, East Reading Room

Richmond, VA

Adjourn

There was no additional business and the meeting was adjourned.

Respectfully submitted,

Linda S. Campbell
Chair

Joseph H. Maroon
Director

Attachment # 1

Adopted May 20, 1999
Amended by Board Action May 17, 2007

Virginia Soil & Water Conservation Board (Board) Policy

Title: Financial Assistance for Soil & Water Conservation Districts (SWCD/districts)

Purpose:

To make funding available to support the essential operating costs of every soil and water conservation district (district) as authorized by Title 10.1 of the Code of Virginia.

To provide additional funding to districts that support the Commonwealth's conservation and water quality improvement initiatives.

To encourage districts to speak in a unified voice on SWCD funding requests.

I "Essential" Financial Assistance Available to Districts:

- 1) Definition of Essential Operating Support: The Commonwealth's financial support to districts provides for the essential needs of every district in order to maintain district existence for delivery of state mandates. The components of essential support needs of every district are:
 - a) The business expenses of the district board of directors.
 - b) The existence of an office and support equipment that are necessary to perform the essential functions of the district.
 - c) Administrative and technical capabilities to perform state mandates.
- 2) Every district approved by the Board is eligible to receive an annual grant to support essential operating expenses. Based upon the above components that comprise essential support needs of every district, the Board shall establish a list of reasonable cost estimates for all essential components and incorporate the list as Attachment A to this policy. Authorized funding will normally be rounded to the nearest thousand dollars (excluding the additional district director travel and training allowance). Prior to June 1st each year, the Board shall review the attachment and determine if modifications are necessary.

II Financial Support to Address Water Quality Priorities of the Commonwealth:

- 1) Districts are eligible to receive additional financial assistance to support water quality improvement goals of the Commonwealth. The Board shall utilize a system for estimating nonpoint (NPS) source pollution contributions to state waters on a district by district basis. Funds that remain after essential support needs of districts have

been fulfilled, will be made available to address NPS pollution problems on a proportional basis.

III Additional Funding Provisions:

- 1) The Board may annually dedicate a portion of funding under its control to provide additional funding to all, or specific districts, to ensure equitable and fair distribution of funds and treatment of districts.
- 2) Districts may apply for loans to purchase conservation equipment. Funds may be made available from the revolving fund to purchase machinery and equipment for engineering and other operations. The Board will determine the interest rate and term of repayment which unless otherwise stated, will be 6% with an annual repayment schedule for a loan duration of two years.

IV Grant Agreements and Accountability:

- 1) A grant agreement will be established between DCR and each district receiving financial assistance through this policy, prior to the beginning of a fiscal year, for operational support funds. DCR staff will define the expected outcomes or “deliverables” for district funding for review and approval by the Board annually, and prior to June 1st.
- 2) Deliverables will be based on the Commonwealth’s conservation and water quality priorities and resolved between DCR staff and affected districts.

V Unexpended State Funds Maintained by Districts:

- 1) Operational support funds issued to districts that remain unexpended at the close of the grant period will remain in the district account (s).
- 2) Targeted funds will normally be issued through a reimbursement basis. Unexpended funds will revert to DCR and may be applied to a future targeted grant agreement.
- 3) It is inadvisable for any public entity to accumulate more than about six months of undedicated reserve funds. Public funds from local, state and federal sources are provided to districts not for savings, but for performance of conservation. DCR will monitor the growth of unexpended funds through audit reports, and report situations of concern to the Board. The Board may reduce future funding to districts that fail to act upon guidance and recommendations from auditors and DCR staff. Decisions and Board actions will be addressed on a case-by-case basis.

VI DCR Support of Districts on behalf of the Board:

- 1) DCR staff are responsible for developing procedures to include submission and reporting deadlines, and supporting materials that are necessary for implementation of this policy.
- 2) DCR support of districts as authorized by section 10.1-502 through 505., and 10.1-506. through 559. of the Code of Virginia, will include provisions for: 1) liability coverage; 2) audits; 3) bonding for employees and officers that are entrusted with funds; 4) placement of newspaper notices for district director elections; and, 5) statewide training initiatives that enhance skills and capabilities of district directors and staff. DCR will apprise the Board of costs associated with these services for the Board's consideration with the overall financial resources available to districts.

VII Noncompliance with this policy:

In the event any district fails to comply with provisions of this policy, the Board reserves the right to instruct DCR staff to delay, or permanently withhold funding that otherwise would be made available to the affected district(s). The Board further reserves the right to require repayment of previously issued funds and/or direct further appropriate actions based upon noncompliance circumstances. Should an issue arise which impacts funding, the affected district(s) will be apprised of the issue(s) and provided an opportunity to address the concerns of the Board prior to Board action.

VIII Criteria for Financial Assistance:

- 1) Funding granted to districts is contingent upon appropriations by the General Assembly. In the event districts experience a statewide reduction in funding from the Commonwealth, the Board will generally address the shortfall as follows (but reserves the right to deviate from these options):
 - a) When a reduction of funds occurs during the course of a fiscal year, every district will receive an equal percent reduction which will be calculated and deducted from each district's total approved operational funding specified within the DCR/SWCD grant agreement for the applicable fiscal year.
 - b) When a reduction of funds is necessary prior to the start of a fiscal year, the Board will strive to fulfill the Essential Operating Support (see item *I* of this Policy) to the maximum extent possible. Any remaining funds once the essential support is fully satisfied will be dedicated to SWCD director travel and training. Should funds remain once these items have been fully satisfied, the Board will follow item *II Financial Support to Address Water Quality Priorities of the Commonwealth* (of this Policy) to distribute a proportional share of the remaining balance of district funding to every SWCD.
- 2) In the event a new district is formed or an existing district expands its boundaries, the Board will examine the total financial resources under its control and

its priorities for use of these funds and adhere to its Policy entitled Financial Commitments For Establishment of A New Soil & Water Conservation District (SWCD/district), or Realignment of an Existing District on all funding decisions in this Policy. The newly created or expanded district may be funded at a reduced level, or may be required to share funding in an arrangement determined by the Board until sufficient funding is made available to fulfill provisions of this policy and priorities of the Board.

- 3) Expenditure of district funds, regardless of source, will be made without regard to any person's race, color, religion, sex, age, national origin, handicap, or political affiliation.
- 4) All funds received by districts are public funds and provision of the Freedom of Information Act apply to financial records. Each district shall safeguard, provide accountability and expend funds only for approved purposes.

(BPol17May07.doc)

ATTACHMENT A (VSWCB Policy for SWCD Financial Assistance)
Essential SWCD Components and Annual Cost Estimates

Essential Components	Approach	Est. Cost/year
Tech. FTE Salary	Use Commonwealth of Va Pay Scale This amount is within Pay Band 3 of the Commonwealth of Virginia's Salary Structure system	<u>Range</u> \$22,199 to \$45,539 <u>Mid-point:</u> \$33,869
Tech. FTE Fringe	.30 times salary	\$10,160
Tech. FTE Training, Travel, Support	Training allowance@ estimated at \$1,300/year Travel est. by 15,000 miles times .445 cents/mile (\$6,675) Support (misc. field equipment, etc....) \$2,000/year	\$9,975
Secretary FTE Salary	Use Commonwealth of Va Pay Scale This amount is within Pay Band 2 of the Commonwealth of Virginia's Salary Structure system	<u>Range:</u> \$18,567 to \$38,105 <u>Mid-point:</u> \$28,336
Secretary FTE Fringe	.30 times salary	\$8,500
Secretary FTE Training Travel	Training allowance@ estimated at \$500/year Travel est. by 3,000 miles times .445 cents/mile (\$1,335)	\$1,835
Office Rent	Justifiable space (using Com. of Va. system) for 2 employees & conf. room --750 square feet. Average estimated cost per square foot per year: \$16 square ft. (includes utilities)	\$12,000
Office Support expenses	Includes information systems (phones/ Internet \$2,300/year), postage (\$1,000/year), office supplies (\$700/year), misc. expenses (\$500/year)	\$4,500
Office Equipment Replacement	Annual allowance for furniture, copier, fax, computers, and misc. office appurtenances	\$2,100
Total Costs	Amounts represent budgeted calculations for core expenses	\$111,275
	<i>TOTAL COSTS APPROVED:</i>	<i>\$111,000</i>
<i>PLUS</i> District Director Travel/Training	Average annual allowance of <u>\$500 per director</u> for travel expense reimbursement and training allowance.	\$2,500 to \$6,000 per SWCD

Virginia Soil and Water Conservation Board originally adopted 5/20/99

Amended by Board Action May 17, 2007

Attachment #2

FINAL Changes 5/16/08

DCR/SWCD Grant Agreement No. «AgreementN»

ATTACHMENT A**Soil & Water Conservation District (district)****FY 2007-2008 09 Performance “Deliverables”**

For Acceptance of DCR Funds to Carry Out This Agreement
and for Operating Expenses to the Extent That Funding Permits

- Administer and provide technical assistance with nonpoint source pollution reduction and related natural resource conservation efforts including support and/or implementation of the following:
 - The Virginia Agricultural BMP Cost-Share program
 - The Virginia Agricultural BMPs Tax Credit Program
 - Virginia Water Quality Improvement Act
 - Conservation Reserve Enhancement Program
 - Voluntary BMP installation by property owners/managers
 - TMDL (Total Maximum Daily Load) development and implementation processes
 - Agricultural Stewardship Act
 - BMP Revolving Loan Program
 - Small Business Environmental Assistance Fund Loan Program
 - Support the Governor’s 400,000 acre land conservation initiative
- Wherever applicable, actively participate in the local development and implementation of:
 - **Chesapeake Bay and Virginia Waters Clean-Up Plan (§62.1-44.117) actions**
 - ~~Tributary Strategies~~
 - Small Watershed Management plan development
 - Sound land use planning approaches
 - Environmental Education programs
 - ~~Chesapeake 2000 Agreement goals~~
 - Nutrient management plans
- ~~Deliver local natural resource conservation programs with consideration to resource needs and issues affecting watersheds within the district, and watersheds that flow beyond the district boundaries.~~
- Support and foster partnerships **to deliver natural resource conservation programs with consideration to resource needs and issues** with local governments, the agricultural community, agencies, organizations, councils, roundtables and others to protect soil resources, to improve water quality, and further natural resource conservation. **Consideration shall be given to watersheds within the district, and watersheds that flow beyond district boundaries.**
- Hold monthly meetings with a quorum of district board members present.
- Develop and maintain a longer term plan that enhances district capabilities, on a 4 year cycle consistent with the election cycle of district directors, through a facilitated process with participation by district stakeholders. Review of the plan is expected at least annually during a scheduled meeting of the district board. ~~Plans should include watershed priorities.~~
- Prepare and follow an annual plan of work that connects to the district’s longer term plan.
- Submit meeting minutes from all routine and special meetings of the district board and a copy of district publications (including an annual plan of work, an annual report, the longer term 4 year plan) to the district’s assigned Conservation District Coordinator (CDC).
- Submit quarterly financial reports to request funding drawdowns from DCR to the district’s assigned CDC.
- Maintain employee position descriptions, performance expectations and the district personnel policy; conduct timely employee evaluations. Provide the district’s assigned CDC with a copy of employee

position descriptions and the district personnel policy once updated documents are resolved.

- Provide data, and other information needed for preparation of legislated studies and reports that pertain to programs and services delivered by SWCDs, as requested by DCR to support nonpoint source pollution reduction initiatives that improve water quality.
- Ensure staff implementing the Virginia Agricultural BMP Cost-Share Program, and other agricultural related programs, seek and maintain needed conservation planning certification and job approval authority for appropriate BMPs within the service area of the district.
- Complete and submit an annual report in a format provided by DCR, reflecting local participation in the agricultural programs and services implemented by the district.
- In the interest of local community public health, safety and water quality, assist DCR by notifying DCR of any dams that the district may have identified that could threaten life or property, ~~and dams that were formerly non-regulated prior to the July 1, 2002 change in the Code of Virginia which pertains to the definition of impounding structures.~~

Adopted by the Virginia Soil and Water Conservation Board

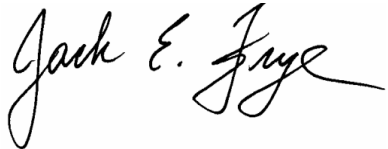
Revised and continued

May 26, 2004

May 16, 2008

Attachment # 3

MEMORANDUM


TO: SWCD Chairpersons
FROM: Jack E. Frye, Director, Soil and Water Conservation Division
DATE: May 16, 2008
SUBJECT: SWCD Use of 5% of Ag BMP Cost Share Program Funds for Program Year 2009
cc: SWCD Administrative Secretaries
Joseph H. Maroon
DCR CDCs

As committed within correspondence sent to you by DCR Director Joseph H. Maroon dated April 15th, 2008, this communication provides further guidance for SWCD use of the 5% portion of Virginia Agricultural BMP Cost Share Program funding for program year 2009. The newly established Virginia Natural Resources Commitment Fund (within Virginia Code) specifies:

“1. Five percent of the total amount distributed to the Agricultural Best Management Practices Cost-Share Program shall be distributed to soil and water conservation districts to provide technical assistance for the implementation of such agricultural best management practices. Each soil and water conservation district in the Commonwealth shall receive a share according to a method employed by the Director of the Department of Conservation and Recreation in consultation with the Virginia Soil and Water Conservation Board, that accounts for the percentage of the available agricultural best management practices funding that will be received by the district from the Virginia Natural Resource Commitment Fund;...”

The appropriation to the new Commitment Sub-Fund will total \$20 million for FY09. No appropriation was made for the second year of the biennium (FY10), although we are hopeful that funds will be authorized during the 2009 session of the General Assembly. Up to five percent (5%) of those funds appropriated for FY09, totaling \$1 million will be distributed to districts for technical assistance.

Given recent changes in SWCD funding I am aware of the fiscal challenges many districts will face during the upcoming fiscal year. Rather than adhere to restricting each SWCD to receiving no more than 5% of your 2009 Cost Share program funding allocation, we will provide all districts with an opportunity to specify your critical funding needs by completing and forwarding the attached information to your CDC **by June 16, 2008**

Above all, our primary mutual interest in the use of the \$1 million is to maximize continued employment of district technical staff that serve to carry out the Cost Share program. Therefore I ask that each district closely examine the critical funding need you may face, and to the greatest extent possible, minimize your requested portion of these funds. No additional resources are available beyond the \$1 million should the collective requests of all districts exceed this amount.

Given the challenging economic times, SWCDs and DCR fared very well within the state's biennial budget. We will continue to advance the need for funding to implement the Cost Share program in 2010 and we must collectively operate within the framework that is now in place for the Virginia Natural Resource Commitment Fund.

Thank you for your support and cooperation. Should you have any questions or needs related to this correspondence, please direct them to your CDC.

**SWCD Request for Technical Assistance Funding
for Implementation of the 2009 Ag BMP Cost Share Program**

SWCD: _____	Date: _____

Completed by: (Name) _____, (Title) _____	
1) Specify the amount of funding that was approved by your CDC (through Attachment F within the DCR/SWCD NPS Implementation Assistance Agreement) for technical support and expenses associated with implementation of the Cost Share program for:	
2007 Program Year (July 1, 2006 thru June 30, 2007)	\$ _____
2008 Program Year (July 1, 2007 thru June 30, 2008)	\$ _____
2) For the 2009 Program Year (July 1, 2008 thru June 30, 2009), enter the amount of funding requested from the statewide total of \$1 million available for technical support:	
	\$ _____
3) Briefly summarize the basis for the amount requested (continue on a separate sheet if needed):	
4) What amount of funding is essential to retaining existing technical staff that presently implement the VACS program? (Unless this amount is received, a reduction in one or more staff will occur.)	
	\$ _____

For all SWCDs that wish to request a portion of the 5% Cost Share program funding for support of district technical staff for program year 2009, submit this completed information to your CDC by June 16, 2008.

Attachment # 4

Department of Conservation and Recreation
Report to the Virginia Soil & Water Conservation Board
May 15, 2008

1. Conservation Partner Employee Development

The conservation partners continue to work through the “JED” –Joint Employee Development system which relies on 4 regional teams (coordinated through a separate state level JED team) to address training and development of SWCD and other partner agency field staff. The state level JED team meets no less than quarterly through face to face meetings or through conference calls. The group held a conference call on April 30, 2008 and will meet face to face on July 23, 2008 at the DOF headquarters in Charlottesville.

The state level JED team continues to focus on delivery of 3 “core courses”. The short course “Conservation Selling Skills” was delivered last fall and is tentatively planned for this fall (2008) if sufficient need exists to justify course delivery. NRCS is supporting delivery of the EP&I (Effective Presentation and Instruction) short course with an initial focus of training course instructors that will deliver the course through the 4 regional JED teams. The third “core course” –Conservation Orientation for New Employees is delivered regionally when sufficient need exists to justify the sessions. Broader training needs are being addressed regionally through the 4 regional JED teams.

2. Orientation Training for Newly Elected SWCD Directors

From the November, 2007 elections, 57 of the 239 elected directors that took office January 1st, 2008 are new to their office (non-incumbents). Three regional programs were delivered in April, 2008 by representatives from conservation partner agencies to help orient new directors to their new responsibilities. Orientation programs were held in Wytheville (April 7), Charlottesville (April 9) and Richmond (April 11). During the sessions presentations were delivered on topics that include the history of SWCDs, statutory responsibilities of directors and programs delivered by districts, and briefings on primary conservation partner agencies. During the afternoon portion of each session directors worked in small groups to explore appropriate actions they might take on their district boards by using case studies that serve as examples of situations that have challenged district boards in recent years. Prior to the April sessions, the CDCs provided training for new directors in smaller group settings and shared information that pertains to the Virginia Freedom of Information Act, the organizational structure of SWCDs, personnel and fiscal information and director responsibilities.

3. SWCD Dams:

The SWCD dam owner work group comprised of representatives from the 12 SWCDs that own dams, DCR, NRCS and others, continue to meeting approximately every 3 months (a quarterly annual schedule). Of the roughly 4 meetings per year, one session is focused on Emergency Action Plans, another addresses routine annual maintenance of district dams and the remaining two meetings will address priority topics identified by the group. The group last met on April 24th in Charlottesville and had over 20 in attendance. The focus of that meeting was Emergency Action Planning. The group will meet again on July 31st and the primary focus will be procurement processes districts must satisfy to comply with the Virginia Public Procurement Act as they perform many of the smaller repairs and maintenance tasks that are necessary to fulfill dam certification requirements.

4. Agricultural BMP Cost-Share Program:

A Steering Team has been formed by DCR to guide the “modernization” of the Ag BMP Tracking Program during the coming year and beyond. The team consists of one or more representatives from

DCR, SWCDs and NRCS. The group held its initial meeting in April and developed a process outline and timetable for achieving critical business processes. The team will continue to meet periodically to address specific tasks and monitor overall progress. The goal is to have a more effective, user friendly, web based tracking program running on updated servers ready for implementation on July 1, 2009. This initial phase will fulfill the essential data collection and processing needs of the program, with some enhanced features to address GIS capability and manage funds. It is believed that this level of modernization will be achievable with the existing funds. Thereafter, additional funds will be needed to enhance the system and add features and capabilities that are desired by SWCDs and DCR.

The Cost-Share program's Technical Advisory Committee continues to meet no less than 4 times a year to assist DCR with improving and refining BMPs that receive financial incentives. The TAC most recently met on April 21st to finalize recommended changes to the 2009 Cost-Share program (begins July 1, 2008). The TAC will meet again August 21. At this meeting suggested changes to the Cost-Share program will be reviewed and prioritized for action and potential implementation during the following (2010) the program year.

5. Conservation Reserve Enhancement Program (CREP):

The prospect for a new federal Farm Bill continues to receive considerable attention in recent weeks. Presently the CRP and the CREP are operating on yet another 2002 Farm Bill Extension that will remain in effect until May 16, 2008. USDA and Virginia have signed an addendum to the Southern Rivers and Chesapeake Bay CREP Agreements that eliminate a specific ending date and will allow CREP enrollment in Virginia so long as the Conservation Reserve Program (CRP) is authorized.

6. Marketing Agricultural Conservation Messages:

DCR is winding down a contract with Open Door Communications (ODC, formerly McFadden-Clay Marketing Group) that began over two years ago with special funding from Virginia Income Tax Checkoff contributions for Chesapeake Bay restoration. Market research about Virginia farmers was conducted to understand how to best reach farmers with conservation messages and how they perceive staff of conservation partner agencies as technical resources for conservation. The research and outreach materials were tested in the Shenandoah Valley during 2007.

ODC in collaboration with DCR will held 3 regional programs (March 19 in Culpeper, March 25 in Norge, March 27 in Farmville) to share their research, marketing products and the final materials that will soon be available for use by SWCDs, NRCS, VCE and others that have interest in this work.

7. Erosion and Sediment Control Program

The Virginia Soil and Water Conservation Board and DCR established a goal of 90% of 164 locality adopted erosion and sediment control programs to be consistent with the Erosion and Sediment Control Law and Regulations by July 2010. To meet this goal, DCR staff implemented a 5-year local program review cycle in FY2005. DCR staff has completed 111 reviews and 80 programs (72%) have been determined to be consistent with the law and regulations. The program reviews for the remaining 53 localities will be completed by the end of FY09.

8. Stormwater Management Program

The Virginia Soil and Water Conservation Board and DCR have four regulatory actions underway regarding the stormwater management program and regulations: (1) involves revisions to Part II: Stormwater Management Program Technical Criteria and Part III: Local Programs, (2) involves revisions to Part XIII: Fees, (3) involves revisions to Part XIV: General Virginia Stormwater Management Program (VSMP) Permit for Discharges of Stormwater from Construction Activities, and (4) involves revisions to Part XV: General Virginia Stormwater Management Program (VSMP) Permit

for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems. Information regarding the draft proposed regulations for the regulatory actions may be found on the DCR webpage at www.dcr.virginia.gov/lawregs.

9. Nutrient Management Related Issues

The State Water Control Board issued a Notice of Intended Regulatory Action (NOIRA) to consider amending Virginia Pollution Abatement poultry regulations to place some additional requirements on transfers of poultry litter to end-users. More than 80% of poultry waste is currently transferred from permitted poultry farms to end-users and is not covered by the current regulation. The DEQ has formed a technical advisory committee to assist in developing potential regulatory changes to better address off-farm transfers of poultry litter.

DCR hired Jacob Powell to coordinate DCR's review of biosolids nutrient management plans (NMPs) required by changes in the Code of Virginia. Jacob has three years of experience as a certified nutrient management planner. He holds a B.S. degree from West Virginia University. DEQ has now taken over the role of permitting and inspecting biosolids application in Virginia from the Department of Health, while DCR is mandated by the legislature to oversee the NMPs now required on all biosolids application sites.

10. Total Maximum Daily Load (TMDL)

DCR hosted a TMDL project coordination meeting with eight SWCDs on April 22 in Lexington. The eight districts asked to participate were those that have WQIF grant agreements with DCR in targeted TMDL Implementation areas. A significant portion of the meeting was dedicated to sharing of implementation approaches the various SWCDs had tried and found to be successful over the past 18 months. Participating SWCDs included Blue Ridge, Headwaters, Lord Fairfax, Piedmont, Pittsylvania, R.E. Lee, Southside, and Tazewell. DCR intends to continue all of these TMDL - WQIF targeted projects through the next biennium (FY09-10).

The State Water Control Board is seeking public comment on two options for future bacteria standards in freshwater. Only one value will be adopted into the final regulation. The first option is the current E. coli standard of 126 colony forming units (cfu) per 100 ml of water as a geometric mean and a single sample maximum of 235 cfu/100 ml. The second option is a geometric mean of 206 cfu/100ml and a single sample maximum of 384 cfu/100 ml. The difference is based on increasing the human health risk from 8 illnesses per 1,000 to 10 illnesses per 1,000. Either illness rate is protective according to EPA. The second option would reduce social and economic burdens to reduce nonpoint sources of bacteria from agricultural, residential and urban land uses and make it more likely to be able to delist waters by installing NPS BMPs. Based on TMDLs and implementation plans that have been developed for the current standard, reductions of 95% to 100% of nonpoint sources of bacteria are often needed currently. These reductions are difficult or impossible to achieve in many cases and may actually discourage attempts to clean up the waters through NPS practices. Send comments to Jean Gregory, Department of Environmental Quality, P.O. Box 1105, Richmond, Virginia.

Attachment # 5

NRCS REPORT
VA Soil & Water Conservation Board Meeting
May 15, 2008
Department of Forestry
Charlottesville, VA

FARM BILL PROGRAMS

Congress has passed the fifth extension of the 2002 Farm Bill to extend the provisions of the Act until May 16, 2008. The conferees are still working on compromise language to address the difference in the versions passed by the House of Representatives and Senate. A Presidential veto has been suggested due to the cost of many of the programs. Currently, the EQIP and CSP program authorizations are not affected by this legislation. All other programs for financial assistance and easements are tied directly to this bill.

CONSERVATION SECURITY PROGRAM (CSP)

NRCS is currently conducting a sign up for the Conservation Security Program (CSP) in the Great Wicomico-Piankatank watersheds in eastern Virginia. This program is designed to reward and encourage continuation of existing conservation practices and encourage further adoption.

ECOLOGICAL SCIENCES

A series of In-Service trainings have been conducted around the state for all NRCS and SWCD technical staff by the state biologist on various emerging wildlife issues facing field staff. Presentations included segments on Virginia bats, reptiles, native wild plants, and planning concepts, such as corridors and other key wildlife habitats. Additional training is planned this summer on IPM concepts for crop and pasture land situations. VDACS Category 10 recertification is available for all staff that attends.

A revision of the Local Operating Procedures (LOP) on wetlands is underway to keep our state process current with changes made to national cooperative agreements among wetland agencies. Training will be provided to all staff when completed.

NRCS is upgrading computer software used in conservation planning and mapping. All computers not on the USDA network will not be allowed to utilize this software.

NRCS is purchasing the necessary storage (RAM) for SWCD machines on the network that are not capable of running this software.

Staff is currently working on revisions to the statewide Average Cost List and program guidance for the FY 2009 programs. The Average Cost List is expected to be completed by July 1, 2008 for use with the State financial assistance programs also.

WATERSHED PLANNING AND SURVEYS

NRCS Planning Staff completed the watershed plan for the North Fork Powell River Watershed in Lee County. The final plan is a land treatment project that will address water quality issues associated with abandoned mines and acid mine drainage. The project sponsors are the Daniel Boone SWCD, Lee County, and the Virginia Department of Mines, Minerals, and Energy. The Plan was submitted to Chief Arlen Lancaster for authorization. However, we were notified that all new watershed plan authorization requests are being deferred at this time. If approved and funded, the project will provide 65% cost-share for the installation of needed measures in this watershed. The estimated construction cost is \$963,000.

DAM REHABILITATION

South River Site 26 (Inch Branch) in Augusta County – Construction began in March on the rehabilitation of the Inch Branch dam. The project is being constructed by Hammond – Mitchell, Inc. of Covington, Virginia at a contract price of \$640,035. The auxiliary spillway will be widened by 50 feet, the riser will be replaced, a new access road built, and all disturbed areas will be seeded and mulched. Construction should be completed in early July 2008.

South River Site 25 (Toms Branch) in Augusta County – NRCS has received a preliminary design for rehabilitation of Toms Branch dam. An outside consultant has been hired to complete the final design. The design should be completed by July or August and a construction contract awarded by September 2008. Construction is scheduled for FY-09.

Pohick Creek Site 4 (Royal Lake) in Fairfax County – Fairfax County has awarded a contract for the rehabilitation of Royal Lake. The award price is about \$1.5 million. Construction will begin in May and run through December 2008.

The cultural resources work has been completed on the recovery of archaeological materials at this dam. The prehistoric materials date back almost 4,000 years. The artifacts are being reviewed by a curator and will be placed on display at the Fairfax County Museum. NRCS is developing a training video from the work.

Pohick Creek Site 3 (Woodglen Lake) in Fairfax County – NRCS has completed the final plan for rehabilitation of Woodglen Lake. A plan-signing ceremony between

Fairfax County, the Northern Virginia SWCD, and NRCS is scheduled for June 30, 2008. Design is underway now. The plan will be submitted to the Chief of NRCS for authorization and funding requested in the FY-09 budget. If all goes well, construction should begin in the spring of 2009.

Pohick Creek Site 2 (Lake Barton) in Fairfax County – NRCS is developing a draft plan for rehabilitation of Lake Barton. The draft plan should be complete by September 2008.

Moratorium Placed on New Assessments of Dams – The Chief of NRCS placed a moratorium on assessments of new dams in FY-08. It is anticipated that the moratorium will be lifted in FY-09 but he will only allow assessments on “High Hazard Dams”. NRCS has received 4 new requests for planning assistance under the Dam Rehabilitation Program. These sites need to be assessed and a risk analysis completed for each of them. The four sites are South River Watershed in Augusta County Site 7 - Lake Wilda; South River Watershed in Augusta County Site 19 - Waynesboro Nursery Lake; Upper North River Watershed in Augusta County Site 10 - Todd Lake; and Johns Creek in Craig County - Site 3. At this time, all are classified as “high hazard” except the Waynesboro Nursery Lake in Augusta County. NRCS will submit a budget request to complete the three assessments in FY-09.

WATERSHED OPERATIONS

Buena Vista Flood Control Project – Construction is complete on the replacement of two undersized bridges in Buena Vista. The contract for \$860,165 will be paid 100% by PL-566 watershed funds.

In FY-08, NRCS received funds to acquire and demolish one home that is located in the floodplain on the Chalk Mine Run tributary in Buena Vista. The total cost is estimated at \$41,000. This will be completed using a local contract.

RAPID WATERSHED ASSESSMENT

South Fork Shenandoah River – The Virginia Department of Conservation and Recreation has completed a Rapid Watershed Assessment (RWA) on the South Fork of the Shenandoah River. NRCS administered a cooperative agreement with DCR which became effective July 1, 2006 and provided nearly \$38,000 in Cooperative Conservation Partnership Initiative funds to collect and analyze data, and to develop a watershed profile.

RESOURCE CONSERVATION AND DEVELOPMENT

The Virginia Association of Resource Conservation and Development Councils held their annual spring meeting April 30-May 2, 2008 at the Breaks Interstate Park. Black Diamond RC&D Council hosted the meeting. Eastern Shore RC&D was recognized as the outstanding council for 2007; Joan Comanor received the outstanding council member award; Bobby Whitescarver was recognized for his exemplary assistance to a council; and the Big Sandy River Interstate Agreement was the outstanding RC&D project for 2007.

CHESAPEAKE BAY CONSERVATION INNOVATION GRANTS

The National Fish and Wildlife Foundation in partnership with USDA's Natural Resources Conservation Service, will award grants on a competitive basis of between \$75,000 and \$1 million each to support the demonstration of innovative natural resource conservation and restoration practices on agricultural lands throughout the Chesapeake Bay watershed. The purpose of the program is to expand the collective knowledge about the most effective ways to engage working farms in protecting and restoring vital natural resources in the Chesapeake Bay region while sustaining agricultural production. The proposed notification date is May 15, 2008.