

**Virginia Soil and Water Conservation Board
Thursday, March 19, 2009 – 9:30 a.m.
East Reading Room, Patrick Henry Building
Richmond, Virginia**

MINUTES

Virginia Soil and Water Conservation Board Members Present

Linda S. Campbell, Chair	Darlene Dalbec
Susan Taylor Hansen	Gary Hornbaker
Granville M. Maitland, Vice Chair	Joseph H. Maroon, Director, DCR
Jean R. Packard	Michael J. Russell
Raymond L. Simms	John A. “Jack” Bricker, NRCS, Ex Officio

DCR Staff Present

Robert Bennett	Ryan J. Brown
William G. Browning	Eric Capps
David C. Dowling	Michael R. Fletcher
J. Michael Foreman	Douglas Fritz
Jack E. Frye	Mark B. Meador
Jim Robinson	Christine Watlington
Elizabeth Andrews, Office of the Attorney General	

Others Present

Tyler Craddock, Virginia Chamber of Commerce
Michael Flagg, Henrico County
Mike Gerel, Chesapeake Bay Foundation
Preston Hartman, Shenandoah Riverkeeper/ UVA Law School
Jeff Kelble, Shenandoah Riverkeeper
Roy Mills, VDOT
David Sligh, James River Association
Michael Sisson, Richmond County
Wayne Nelson, Town of Christiansburg
Clark Draper, Town of Scottsville
Nancy Olin, Clarke County
Wilkie Chaffin, VASWCD
Kendall Tyree, VASWCD

Call to Order and Introductions

Chairman Campbell called the meeting to order and declared a quorum present.

Approval of Minutes from January 30, 2009

MOTION: Ms. Packard moved that the minutes of the January 30, 2009 meeting of the Virginia Soil and Water Conservation Board be approved as submitted.

SECOND: Ms. Hansen

DISCUSSION: None

VOTE: Motion carried unanimously

Director's Report

Mr. Maroon gave the Director's Report. He said that he would present the legislative and budget update at the end of the meeting.

Mr. Maroon directed members to the Board manual provided on CD. These CDs contain information relevant to the Board and DCR.

Mr. Maroon distributed two articles regarding the Governor's visit to Loudoun County. Those articles may be viewed at the following locations:

Kaine Champions Water Protection at Loudoun Farm
http://www.leesburg2day.com/articles/2009/04/02/news/loudoun_county/8664kaine031809.txt

Kaine Touts Progress, Seeks Federal Help for More
http://mobile.washingtonpost.com/news.jsp?key=364247&rc=va_me

Mr. Hornbaker said that the event in Loudoun County was an enjoyable day.

Mr. Frye said that three other Clean Water Farm Award Grand Basin winner's farms were also close by. The Governor also met with several previous award winners.

Mr. Maroon reviewed a letter sent to Daphne Jamison, Chair of the Blue Ridge Soil and Water Conservation District regarding Open Space Easements. A copy of this letter is available from DCR.

Chairman Campbell asked that this letter and a summary be provided to the Districts.

Mr. Maroon noted that an article in that day's edition of The Washington Post addressed the Bay Barometer. This was an announcement by the EPA and the regional Chesapeake Bay Program regarding the conditions of the Bay. The Barometer addresses the progress of the regional Bay programs.

Mr. Maroon said that Michael Altizer had submitted his resignation to the Board effective immediately due to family concerns. The Area is preparing recommendations for a replacement.

Chairman Campbell asked that the Board send a letter to Mr. Altizer extending appreciation for his service.

Erosion and Sediment Control

Mr. Capps presented the Erosion and Sediment Control actions.

2009 Annual Standards and Specifications for Virginia Natural Gas/AGL Resources

MOTION: Mr. Maitland moved the following:

The VSWCB receives the staff update concerning the review of the 2009 annual standards and specifications for Virginia Natural Gas/AGL Resources. The Board concurs with staff recommendations for conditional approval of the 2009 specifications for Virginia Natural Gas/AGL Resources 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.

The four items for conditional approval are:

1. A revised list of all proposed projects planned for construction from March 19, 2009 to December 31, 2009 must be submitted by April 20, 2009. 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 April 20, 2009 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.

SECOND: Mr. Russell

DISCUSSION: Mr. Hornbaker asked if anyone was present representing Virginia Gas. There was not.

VOTE: Motion carried unanimously

Final Approval of Alternative Inspection Program for Northumberland County

Mr. Capps noted that the proposed Alternative Inspection Program for Northumberland County had been presented and accepted for review by the Board at the January meeting. He said that staff recommendation was that the Board approve the AIP.

MOTION: Ms. Hansen moved that the Virginia Soil and Water Conservation Board approve the proposed Alternative Inspection Program for Northumberland County as being consistent with the requirements of the Erosion and Sediment Control Law and Regulations. And further the Board requests the Department of Conservation and Recreation staff to monitor the implementation of the alternative inspection program by the County to ensure compliance with the approved program.

SECOND: Ms. Packard

DISCUSSION: None

VOTE: Motion carried unanimously

Initial Acceptance of Alternative Inspection Programs

Mr. Capps said that two localities had submitted proposals for Alternative Inspection Programs. Those localities are Craig County and Prince Edward County. He said that the staff recommendation was that the Board accept the proposals for review.

MOTION: Ms. Packard moved the following:

The Virginia Soil and Water Conservation Board (Board) receives the staff update and recommendation regarding the proposed Alternative Inspection Program for Craig County and Prince Edward County. The Board concurs with the staff recommendation and accepts the proposed Alternative Inspection Programs for review and future action at the next Board meeting.

SECOND: Ms. Dalbec

DISCUSSION: None

VOTE: Motion carried unanimously

Local Programs recommended to be found consistent based on Initial Review

Town of Woodstock

Mr. Capps gave the background for the Town of Woodstock.

DCR staff completed the initial program review for the Town of Woodstock's Erosion and Sediment Control Program and the scores for the individual program components were as follows: Administration - 100, Plan Review - 90, Inspection - 95, 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 Town's Erosion and Sediment Control Program consistent with the Virginia Erosion and Sediment Control Law and Regulations.

MOTION: Mr. Simms moved that the Virginia Soil and Water Conservation Board commend the Town of Woodstock for successfully implementing the Town'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: None

VOTE: Motion carried unanimously

City of Portsmouth

Mr. Capps gave the background for the City of Portsmouth.

DCR staff completed the initial program review for the City of Portsmouth's Erosion and Sediment Control Program and the scores for the individual program components were as follows: Administration - 98, Plan Review - 100, Inspection - 95, 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 City's Erosion and Sediment Control Program consistent with the Virginia Erosion and Sediment Control Law and Regulations.

MOTION: Mr. Maitland moved that the Virginia Soil and Water Conservation Board commend the City of Portsmouth for successfully implementing the City'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. Packard

DISCUSSION: None

VOTE: Motion carried unanimously

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

Mr. Capps said that staff was recommending that the City of Salem and Patrick County be found consistent following the completion of their respective Corrective Action Agreements (CAA).

MOTION: Ms. Packard moved that the Virginia Soil and Water Conservation Board commend the City of Salem and Patrick County for successfully improving their respective Erosion and Sediment Control Programs 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: Ms. Hansen

DISCUSSION: None

VOTE: Motion carried unanimously

Mr. Capps noted that as of the meeting date, staff had completed 149 reviews. Of those, 124 programs, or 83%, have been found consistent. He noted that this was a significant improvement.

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

Mr. Capps gave the background for Caroline County.

DCR staff completed the initial program review for the Caroline County's Erosion and Sediment Control Program and the scores for the individual components were as follows: Administration - 100; Plan Review - 65; Inspection - 95; and Enforcement - 70.

Caroline County's program review was presented to the Board at the January 30, 2009 meeting and at the request of the County's representative, the Board directed the Central Office staff to re-evaluate the Plan Review component of the program review. Central Office staff met with the County's representative in Caroline and examined the County's documents that the Regional Office staff used during the review. Central Office Staff found the conclusions and recommendations made by the Regional Office staff to be consistent with Plan Review component of the program review.

Mr. Capps said that since that time, it had been brought to his attention that the locality believed that there were still items DCR staff may have missed during the program review. The County has requested that the Board decision be postponed in order to allow the County to bring those items to staff's attention. Staff is in agreement with that request and would provide the final report at the May Board meeting.

MOTION: Mr. Maitland moved that the Virginia Soil and Water Conservation Board accept the staff recommendation to postpone the action regarding Caroline County's program until the May 28, 2009 meeting.

SECOND: Mr. Simms

DISCUSSION: Mr. Maroon noted that it was important to point out that the Caroline County program did not have a lot of deficiencies. He said that this was a situation where the County met three of the four requirements and was very close on the fourth.

VOTE: Motion carried unanimously

Mr. Capps gave the background for Richmond County.

DCR staff completed the initial program review for Richmond County's Erosion and Sediment Control Program and the scores for the individual components were as follows: Administration - 83; Plan Review - 50; Inspection - 70; and Enforcement - 70. As all program components did not receive a score of 70 or greater, 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.

MOTION: Ms. Hansen moved that the Virginia Soil and Water Conservation Board accept the staff recommendation and find Richmond County's Erosion and Sediment Control Program inconsistent with the Virginia Erosion and Sediment Control Law and Regulations and approve the County's CAA and, further, that the Board direct DCR staff to monitor the implementation of the CAA by the County to ensure compliance.

SECOND: Mr. Russell

DISCUSSION: Michael Sisson, Program Administrator for Richmond County, said that the County had no issues with the CAA. He said that the County looked forward to getting the program back in line.

VOTE: Motion carried unanimously

Mr. Capps gave the background for the Town of Christiansburg.

DCR staff completed the initial program review for the Town of Christiansburg's Erosion and Sediment Control Program and the scores for the individual components were as follows: Administration - 98; Plan Review - 85; Inspection - 55; and Enforcement - 80. As all program components did not receive a score of 70 or greater, 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.

MOTION: Ms. Packard moved that the Virginia Soil and Water Conservation Board accept the staff recommendation and find the Town of Christiansburg's Erosion and Sediment Control Program inconsistent with the Virginia Erosion and Sediment Control Law and Regulations and approve the Town's CAA and, further, that the Board direct DCR staff to monitor the implementation of the CAA by the Town to ensure compliance.

SECOND: Ms. Dalbec

DISCUSSION: Wayne Nelson, Director of Engineering and Public Works for the Town of Christiansburg said that he appreciated the opportunity to address the Board. He said that the Town was taking advantage of the slow down in construction to reinforce middle management and inspection staff through improved reporting and accountability. He said that the Town fully expected to comply with the CAA.

VOTE: Motion carried unanimously

Mr. Capps presented the background for the Town of Scottsville.

DCR staff completed the initial program review for the Town of Scottsville's Erosion and Sediment Control Program and the scores for the individual components were as follows: Administration - 40; Plan Review - 70; Inspection - 90; and Enforcement - 85. As all program components did not receive a score of 70 or greater, 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.

MOTION: Mr. Simms moved that the Virginia Soil and Water Conservation Board accept the staff recommendation and find the Town of Scottsville's Erosion and Sediment Control Program inconsistent with the Virginia Erosion and Sediment Control Law and Regulations and approve the Town's CAA and, further, that the Board direct DCR staff to monitor the implementation of the CAA by the Town to ensure compliance.

SECOND: Ms. Packard

DISCUSSION: Clark Draper, Town Administrator said that he had worked with DCR staff and had received model ordinance language. This will be taken to the Town Council for approval.

VOTE: Motion carried unanimously

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

Mr. Capps gave the background for Clarke County.

The Virginia Soil and Water Conservation Board (Board) approved Clarke County's Corrective Action Agreement (CAA) with a completion date of January 13, 2009. At the direction provided by the Board, Department of Conservation and Recreation (DCR) staff reviewed Clarke 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. DCR staff recommends that the County be given until September 17, 2009 to comply with the outstanding CAA.

MOTION: Ms. Hansen moved that the Virginia Soil and Water Conservation Board accept the staff recommendation and grant Clarke County an extension until September 17, 2009 to fully comply with the outstanding CAA and that the Board further request that the Director of DCR and his staff evaluate the County's compliance with the outstanding CAA and provide a report at the November 2009 Board meeting.

SECOND: Mr. Russell

DISCUSSION: Nancy Olin from Clarke County said that the County had been working with the Staunton office and had now amended the Erosion and Sediment Control ordinance. She noted that since the report she had become the E&S Administrator and had received her certification.

VOTE: Motion carried unanimously

Stormwater Program Update

Mr. Capps gave an update regarding the Stormwater Program. As of March 1, 2009 for FY09, 1,345 permits have been issued. Numbers for previous years were 1,657 in FY08, 1,615 in FY07 and 1,499 in FY06. Mr. Capps said that the decrease in FY09 was likely related in part to the economy.

Mr. Capps said that enforcement staff has also begun an initiative to locate unpermitted sites. As these are located, they are forwarded to the regional office for appropriate follow up and action as necessary.

Update of Regulatory Actions

Mr. Dowling gave an update on the Board's regulatory actions. He said that he would focus on three areas and then defer to Mr. Brown to discuss the Construction General Permit. Mr. Dowling said that staff would also ask the Board to consider taking action regarding a motion concerning legislation from the recent General Assembly Session.

Mr. Dowling gave the following report.

Stormwater Regulatory Status as of March 19, 2009

SW – Construction General Permit (Parts I and XIV) [Modified APA process - §2.2-4006 A9]

- Proposed regulation approved by the Board at the September 25, 2008 meeting.
- The regulation was published in the Virginia Register of Regulations on October 27, 2008 (V 25, Issue 4).
- The regulation was public noticed in accordance with federal requirements; ~\$17,000 in statewide newspaper notices; postcards sent to over 6,000+ permittees.
- The 60-day public comment period closed on December 26, 2008.
- The following public hearings were held to receive input on the proposed regulations. All meetings started at 7 p.m.:
 - Dec. 2 – Manassas City Council Chambers, 9027 Center Street, 20110
 - Dec. 3 – Roanoke City Council Chambers, Noel C. Taylor Municipal Building, 215 Church Avenue S.W., 24011
 - Dec. 10 – Williamsburg City Council Chambers, 412 North Boundary Street, 23185
- Public comment period results (October 27, 2008 - December 26, 2008)
 - Dec. 2 - Manassas - 30 people attended; 10 spoke
 - Dec. 3 - Roanoke - 17 people attended; 5 spoke
 - Dec. 10 - Williamsburg - 16 people attended; 3 spoke
- We received 75 written comments; 90 unique comments (written and oral).
- Department completed review of the public's and EPA's comments received and developed final regulation to address issues raised.
- Individual meetings with the Attorney General's Office, the Director, and the EPA were held to seek approvals to proceed to the Board.
- Final regulation recommendations presented to the Board at the March 19, 2009 meeting.
- Target permit renewal letters to current General Permit holders to be sent by the end of March.
- Permit must be effective by July 1, 2009.

SW – Local program and Water Quality and Water Quantity Criteria (Parts I, II, and III)

- Proposed regulation approved by the Board at the September 24, 2008 meeting.
- VT Economic Analysis completed at the end of December and posted to DCR's website for public review.
- DCR is currently completing work on its economic analysis and regulatory discussion package.
- File the regulations on the TownHall (mid March).
- Review by the Administration – potentially March thru May 2009.
 - Official OAG review – 3 days
 - 45 days DPB fiscal analysis review – Mid- April 2009
 - 14 days SNR – late April 2009

- No deadline Governor – May 2009
- Submit to Registrar – Late May 2009
- Registrar publication – Early June 2009
- 60-day public comment period – early June – early Aug. 2009; public hearings; concurrent EPA review.
- Make regulation refinements; EPA review – by end of September 2009.
- Take final regulation to the Board at a September/ October 2009 meeting (when we have resolved concerns to the best of our ability).
- Final Regulation Review by DPB, SNR, Governor adoption – by November 15, 2009.
- File with Registrar and publish for 30 days - Dec. 31, 2009.
- EPA final approval by Dec. 31, 2009.
- Per HB1991 (2009 Session), the regulation shall not become effective prior to July 1, 2010.

Additional significant related actions include:

- BMP Clearinghouse – Clearinghouse TAC meetings are continuing and the website pages with the BMP specifications are being refined.
- Updated Stormwater Management Handbook – Major chapters have been drafted and have been circulated to the Handbook TAC for review and comment.
- Updated versions of the Runoff Reduction Method spreadsheet and explanatory documents have been completed by the Center for Watershed Protection with DCR and posted to DCR's website for public review.
- A third series of charrettes on the Runoff Reduction Method and stormwater regulations are planned across the state in February, March, and perhaps April.
- DCR has continued to meet with interested parties to discuss their concerns and recommendations. DCR has already started drafting language to address issues raised such as grandfathering.

SW – Permit Fees (Part XIII) [Currently same schedule as above]

SW - MS4 Individual Permits – Extensive discussions are continuing with localities and EPA to negotiate the MS4 individual permits for the 11 required localities. A meeting is being scheduled between the EPA, localities, and DCR to discuss remaining permit issues and to develop a path forward so that the proposed permits might be released for public comment.

SW – Stormwater Nutrient Offsets – With the passage of HB2168, the Board is authorized to promulgate regulations associated with stormwater nutrient offsets. A discussion of this legislation and a Board motion to initiate a regulatory action are attached on the following pages.

Mr. Dowling addressed HB 2168 regarding Stormwater Nonpoint Nutrient Offsets. A copy of this legislation is included as Attachment #1.

Mr. Dowling gave the following review of this legislation.

This legislation establishes a process for approving stormwater management nonpoint nutrient offsets in the Chesapeake Bay watershed from development projects and grants the Virginia Soil and Water Conservation Board the necessary authority to develop a future program in the remainder of the state. Offsets need to be approved in accordance with the procedures established in the law:

- The offsets have to be in the same tributary as the permitted activity and generated in the same or adjacent eight digit hydrologic unit code (unless otherwise allowed pursuant to the legislation).
- The permit issuing authority may only allow the use of nonpoint nutrient offsets when the permit applicant demonstrates that
 - (i) alternative site designs have been considered that may accommodate on-site best management practices (BMPs),
 - (ii) on-site BMPs have been considered in alternative site designs to the maximum extent practicable,
 - (iii) appropriate on-site BMPs will be implemented, and
 - (iv) full compliance with post-development nonpoint nutrient runoff compliance requirements cannot practicably be met on site.
- The legislation does not change the requirement for on-site control of water quantity.

Although the regulations already contained offsite compliance opportunities, the offset bill provides additional structured avenues to achieve compliance with both the existing stormwater management and the proposed stormwater management regulations.

HB 2168 will allow for less costly compliance for development sites to be achieved through nutrient offsets.

This legislation will result in the Board needing to:

- 1) Establish preliminary guidance relative to the implementation of the offset law within the Chesapeake Bay watershed (ex. maximum extent practicable; determining whether a local fee-in-lieu-of, pro-rata share, or similar program is substantially equivalent in nutrient reduction benefits to a brokered offset generating facility; etc.)
- 2) Establish by regulation a stormwater nutrient program for portions of the Commonwealth that do not drain to the Chesapeake Bay.
- 3) Establish regulations as may be deemed necessary to clarify/explain the implementation of the offset program. However, the bill specifies that no regulations are necessary prior to the implementation of the legislation.

- 4) Make further amendments to the existing and proposed stormwater regulations in accordance with this legislation.

Ms. Hansen said that she was delighted with this action and asked about the internal timeline.

Mr. Dowling said that this would be overlaying on top of other current regulatory actions.

Mr. Maroon said that staff hoped to have developed preliminary guidance by the May or July meeting.

Mr. Dowling presented a draft motion for Board consideration.

MOTION: Ms. Hansen moved the following:

Motion to authorize and direct the filing of a Notice of Intended Regulatory Action (NOIRA) related to implementing House Bill 2168 (2009 Session) that establishes the use of stormwater nonpoint nutrient offsets in the Chesapeake Bay watershed of Virginia and which authorizes the Board to establish processes and procedures relating to the use of such offsets in the remainder of the Commonwealth.

Specially, this motion includes creating a new Part XVI within the Board's Virginia Stormwater Management Program (VSMP) Permit Regulations associated with stormwater nonpoint nutrient offsets and other associated actions including but no limited to revisions to Parts I, II, III, forms revisions and development of incorporated documents, and any additional revisions necessary to other Parts within the Permit Regulations to properly incorporate the new Part:

Whereas, the 2009 General Assembly passed HB2168 relating to stormwater nonpoint nutrient offsets and created a new section numbered 10.1-603.8:1 that stipulates that a permit issuing authority may allow compliance with stormwater nonpoint nutrient runoff water quality criteria through the use of the permittee's acquisition of nonpoint nutrient offsets in the same tributary; and

Whereas, the legislation authorized the Board to establish by regulation a stormwater nutrient program for portions of the Commonwealth that do not drain to the Chesapeake Bay; and

Whereas, the Board was authorized to conform its stormwater regulations to the offset act through an exempt action; and

Whereas the Board is also authorized to adopt regulations as deemed necessary to clarify the process by which the act will be implemented by a permit issuing authority, recognizing that the law specifies that no regulatory action is necessary prior to implementation of the act; and

Whereas the Department has received multiple inquiries since passage of the bill regarding how this act will be implemented and requesting the Department to develop preliminary guidance explaining the implementation process and terms utilized in the act such as maximum extent practicable;

Now therefore be it resolved that the Board authorizes the Director of the Department of Conservation and Recreation and the Departmental Regulatory Coordinator to:

- 1) Establish a regulatory advisory panel to establish preliminary guidance relative to the implementation of the act within the Chesapeake Bay watershed and to continue the work of the development of the regulations following completion of preliminary guidance, and
- 2) Prepare and submit a NOIRA that specifies the Board's intent to consider changes and solicit recommendations related to the Board's Virginia Stormwater Management Program (VSMP) Permit Regulations in order to address stormwater nutrient offset provisions.

The changes may include, but not be limited to, development of regulations that will establish a stormwater nutrient offset program for portions of the Commonwealth that do not drain to the Chesapeake Bay, regulations that will clarify the process by which the act will be implemented by a permit issuing authority within the Chesapeake Bay watershed, and other technical amendments necessary to properly incorporate offset provisions within the existing stormwater regulations. As part of this process, the Board further authorizes a public meeting(s) to be held by the Department after publication of the NOIRA(s) in the Virginia Register of Regulations, that a regulatory advisory panel be established to make recommendations to the Director and the Board on potential regulatory changes, that the Department hold other stakeholder group meetings as it deems necessary, and that the Department prepare a draft proposed regulation for the Board's review and consideration.

This authorization is related to those changes that are subject to the Administrative Process Act and to the Virginia Register Act. The Department shall follow and conduct actions in accordance with the Administrative Process Act, the Virginia Register Act, the Board's Regulatory Public Participation Procedures, the Governor's Executive Order 36 (2006) on the "Development and Review of Regulations Proposed by State Agencies," and other technical rulemaking protocols.

This authorization extends to, but is not limited to, the drafting and filing of the NOIRA, the holding of public meetings, the development of the draft proposed regulation and other necessary documents and documentation as well as the coordination necessary to gain approvals from the Department of Planning and Budget, the Secretary of Natural Resources, the Governor, the Attorney General, and the Virginia Registrar of Regulations.

The Board requests that the Director of the Regulatory Coordinator report to the Board on these actions at subsequent Board meetings and for the Department to work with the Board's Stormwater Management subcommittee during the regulatory process as deemed appropriate.

SECOND: Ms. Packard

DISCUSSION: Ms. Packard asked if urban areas would be included.

Mr. Dowling said that, in this regard, urban areas would be one of the more important areas of influence.

Mr. Maitland said that he did not feel he had information to vote on this matter at this time.

Mr. Maroon said that this was an action to begin the formal process to meet the legislative requirement, and that more information would be forthcoming as the regulatory process moved forward.

VOTE: Motion carried with Mr. Maitland abstaining

Mr. Dowling continued with the regulatory report and provided a potential schedule for important stormwater regulatory actions or related program targets. He emphasized that elements of this schedule are tentative. The schedule is as follows:

How are the pieces expected to come together?

- 2004 passage of HB1177; Jan. 29, 2005 DCR took over administration of Stormwater GP; July 21, 2005 Board authorized NOIRA on Parts I, II, and III and Part XIII.
- March 2009 - Board authorizes Final 5-year Construction General Permit (July 1, 2009 – June 30, 2014)
- March 2009 – Board authorizes DCR to begin work on nonpoint nutrient offset guidance and regulation development (create a Part XVI) [target Dec. 2010 for completion of reg.] [Per HB2168]
- May/ June 2009 - Draft stormwater management handbook substantively developed for public review
- June/ July/ August 2009 – Public comment on proposed Part I, II, III and Part XIII stormwater regulations

- Sept./ October 2009 – Final Part I, II, III and Part XIII stormwater regulations to Board with Dec. 2009 adoption date. (Part XIII effective)
- Nov. 2009 – Board authorizes DCR to begin development of (second) 5-year Construction General Permit to incorporate new criteria. [18-month process expected] [EPA may also release new construction standards (ELGs) that will need to be considered]
- July 2010 – Part I, II, III stormwater regulations become effective [Per HB1991]
- Board and DCR continue work on Enterprise website, local stormwater ordinance, local program application process, BMP Clearinghouse cleanup, program adoption schedules for DCR run programs, etc.
- Dec. 2010 EPA target for publication of Bay TMDL
- July 2011 - Board authorizes Final 5-year Construction General Permit (July 1, 2011 – June 30, 2016) [SECOND GP]
- Begin regulatory action to modify Erosion and Sediment Control Regulations (MS19, etc.)
- From the effective date of the Part I, II, and III action (July 1, 2010), localities have between 15 months (Oct. 2011) and 21 months (May 2012) to develop a local stormwater program and present it to the Board for approval (1 year extension may be granted by Board)
- All local programs should be in place by May 2013. [The 2nd Construction General Permit with the new Part II criteria will be implemented upon approval by the Board of a locality's stormwater management program.]

Board Action on Final General Permit for Discharges of Stormwater from Construction Activities Regulations (Parts I and XIV)

Mr. Brown gave the following presentation:

Presentation to the Virginia Soil and Water Conservation Board by Ryan J. Brown, Policy and Planning Assistant Director, Department of Conservation and Recreation.

March 19, 2009 Board Meeting at the Patrick Henry Building, Richmond, Virginia

General Permit for Discharges of Stormwater from Construction Activities

This regulatory action amends the General Permit for Discharges of Stormwater from Construction Activities (General Permit). The current General Permit is valid for five

years, and is set to expire on June 30, 2009. This proposal is a revision of that current permit that will be effective from July 1, 2009 through June 30, 2014. This will be the first such revision of this permit since the Board received responsibility for the VSMP program.

Purpose of the General Permit

What is the General Permit?

- The General Permit is a permit issued by the Board in the form of a regulation. It is a Clean Water Act (NPDES) permit.
- A permit can be thought of as a license. The General Permit is a “license” to discharge stormwater. The terms of the General Permit are what the regulated community (i.e., land developers) follow when developing their sites.
- As with all VSMP permits, it is developed based on the requirements of the underlying VSMP regulations (i.e., the provisions of the other “parts” of the regulations). Although it is a regulation, the role of the General Permit is to implement the existing VSMP regulations, not to develop new “rules”.
- While “individual” permits are drafted to apply to a single permittee, “general” permits are written to apply to a category of permittees who have similar circumstances.
- This general permit governs construction activities that are:
 - Greater than one acre in size (statewide)
 - 2,500 square feet or greater in size (in areas designated as subject to the Bay Act)
 - Any areas that are part of a common plan of development or sale that, in total, are one acre or greater in size.
- All regulated construction activities must have permit coverage, whether in the form of general permit coverage or an individual permit.

Framework of Stormwater Regulations

Where does this action fit into the ongoing regulatory actions associated with stormwater management?

VIRGINIA STORMWATER MANAGEMENT PROGRAM (VSMP) PERMIT
REGULATIONS [4 VAC 50-60-10 et seq.]

Part I: Definitions, Purpose, and Applicability

Part II: Stormwater Management Program Technical Criteria

Part III: Local Programs
Part IV: Technical Criteria and Permit Application Requirements for State Projects
Part V: Reporting
Part VI: VSMP General Program Requirements Related to MS4s and Land-Disturbing Activities
Part VII: VSMP Permit Applications
Part VIII: VSMP Permit Conditions
Part IX: Public Involvement
Part X: Transfer, Modification, Revocation and Reissuance, and Termination of VSMP Permits
Part XI: Enforcement of VSMP Permits
Part XII: Miscellaneous
Part XIII: Fees
Part XIV: General Virginia Stormwater Management Program (VSMP) Permit for Discharges of Stormwater from Construction Activities
Part XV: General Virginia Stormwater Management Program (VSMP) Permit for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems – Effective July 9, 2008
FORMS

The Regulatory Process to Date

- Board Motion: March 20, 2008
- This is an “exempt” Administrative Process Act action pursuant to § 2.2-4006(A)(9):
 - Requires the publication of a NOIRA, organization of a TAC, ability for the public to submit oral and written comment, and at least one public meeting.
- Filed NOIRA: March 24, 2008
- The 30-day public comment period on the NOIRA opened on April 14, 2008 and closed on May 14, 2008.
- We received 4 comments and 9 requests to be placed on the TAC.
- The TAC was composed of 19 members including consultants (7); local governments (2); environmental groups (3); state agencies (3); federal agencies (2); colleges and universities (1); and planning district commission (1).
- The TAC was facilitated by Dr. Frank Dukes from the Institute for Environmental Negotiation.
- Committee Meetings

- The 1st meeting of the TAC: July 22, 2008
 - The 2nd meeting of the TAC: August 19, 2008
 - The 3rd meeting of the TAC: September 9, 2008
- The Board proposed this permit regulation on September 25, 2008.
 - The 60-day public comment period on the proposed General Permit opened on October 27, 2008 and closed on December 26, 2008.
 - Public hearings were conducted on the proposed General Permit on December 2, 2008 (Manassas), December 3, 2008 (Roanoke), and December 10, 2008 (Williamsburg). In all, 63 people attended these public hearings and 18 spoke.
 - In addition, 75 written comments were received on the proposed General Permit [in all, 90 unique comments—written and oral—were received (3 parties both spoke at public hearings and submitted written comments)].
 - Revisions recommended to be made to the proposed General Permit were submitted to EPA and the Office of the Attorney General:
 - A statement of the Board’s authority for this regulation was received from the Office of the Attorney General on March 6, 2009.
 - We have consulted with the EPA verbally and at this time it does not appear that EPA will have any objection.

Summary of Recommended Revisions to the Current General Permit

(Grey highlight indicates changes to the proposed General Permit recommended following public comment and EPA review)

- 1) Updating and adding needed definitions such as “Act”, “best management practice (BMP)”, “common plan of development or sale”, “contiguous zone”, “control measure”, “discharge of a pollutant”, “general permit”, “hazardous substance”, “linear development project”, “qualified personnel”, “minor modification”, “qualified personnel”, “stormwater pollution prevention plan”, “Virginia Stormwater Management BMP Clearinghouse website”, “variance”, “final stabilization”, and “minimize” (lines 7-793); PART I [section 10] and PART XIV [section 1100]. Also, it is explained in section 1100 that, for purposes of the General Permit, if a term is not defined in the permit, the VSMP regulations, or the Virginia Stormwater Management Act, it is to be given the meaning attributed to it in the Clean Water Act (lines 764-65); PART XIV [section 1100].
- 2) Specifying that this General Permit is effective on July 1, 2009 and expires on June 30, 2014 (lines 817-818); PART XIV [section 1120]. In order to allow current permit coverage holders to reapply for permit coverage and to utilize the revised registration statement, however, it is recommended that section 4VAC-50-

60-1150 be made effective on May 13 or as soon as possible thereafter, with the remainder of the regulatory action having an effective date of July 1, 2009.

- 3) Adding a requirement that stormwater discharges from construction activities not cause or contribute to an excursion (i.e., a violation) above any applicable water quality standard, and that all control measures be employed in a manner that is protective of water quality standards (lines 1308-36 and 1843-47); PART XIV [section 1170]. Discharges that the State Water Control Board determines cause, may reasonably be expected to cause, or contribute to a violation of water quality standards are not covered by the permit (lines 881-83); PART XIV [section 1130].
- 4) Adding a statement that discharges to waters that have been identified as impaired on the 305(b)/303(d) Water Quality Assessment Integrated Report are not eligible for coverage under the permit unless they are addressed consistent with the terms of the permit (lines 871-74, 1238-42, and 1843-47); PART XIV [sections 1130 and 1170]. The terms of the permit explain that discharges to waters identified as impaired on the new 2008 305b/303d Water Quality Assessment Integrated Report must be addressed through construction site operators ensuring that their discharges do not cause or contribute to an excursion above any applicable water quality standard (lines 1308-36 and 1843-47); PART XIV [section 1170].
- 5) Updates to the registration statement (i.e., application) for coverage under the general permit, including:
 - a. A statement that permit coverage becomes effective 15 business days following submission (postmarking) of a complete and accurate registration statement, unless an earlier notification of coverage is made by the Department. (lines 978-989); PART XIV [section 1150].
 - b. A requirement that current permit coverage holders reapply for coverage under this new general permit by June 1, 2009. Provided that a complete and accurate registration statement is submitted by the June 1 reapplication date, the permit application (registration statement) fee will be waived for land disturbing activities for which the Department initially issued permit coverage on or after July 1, 2008 (lines 969-74); PART XIV [section 1150].
 - c. A specification that only one construction activity operator may receive coverage under a single registration statement (lines 1009-10); PART XIV [section 1150].
 - d. A requirement that each registration statement note direct discharges to any receiving water identified as impaired on the 2008 305(b)/303(d) Water Quality Assessment Integrated Report or for which a TMDL WLA has been established for stormwater discharges from a construction activity (lines 1019-22); PART XIV [section 1150].
 - e. A requirement that anticipated purchases of nutrient offsets be noted in the registration statement, and an inclusion of a note pointing out that a

SWPPP must be prepared prior to the submission of a registration statement (lines 1033-34); PART XIV [section 1150].

- 6) Updates to the notice of termination, which ends permit coverage and becomes effective at midnight on the date that it is submitted (previously, it had been effective seven days after submission). The notice of termination must also include information related to nutrient offsets, as well as information related to participation in a regional stormwater management plan (lines 1075-1150); PART XIV [section 1160].
- 7) Updates to the requirements for, and contents of, a Stormwater Pollution Prevention Plan (SWPPP) for the construction site, including:
 - a. A requirement for the initial SWPPP to be made available to the public. A copy of the initial SWPPP for the site would be required to be posted online or available in hard copy, at the choice of the permittee. The website address for the SWPPP (or who can be contacted for access to a hard copy) must be posted near the entrance to the site. If access is allowed by hard copy, then access, if requested, must be permitted no less than once per month. Access to updates to the initial SWPPP would not be required. Certain information precluded by law from disclosure, as well as information that may be contained in the SWPPP but that is not required by the terms of the General Permit, would not be required to be released. This requirement applies only to new permit coverage holders, and not those having coverage before the effective date of this permit (lines 1426-41); PART XIV [section 1170].
 - b. A direct requirement that all operators implement an Erosion and Sediment Control plan for the site in accordance with the Erosion and Sediment Control Law and Regulations. Previously, the SWPPP had been required to address Erosion and Sediment Control through specific language in the permit; however, as a practical matter, operators simply followed their approved E&S plans. This change aligns the permit language with that practice (lines 1521-96); PART XIV [section 1170].
 - c. Clarification that water quality and quantity requirements must be met by the operator. Under the current permit, there has been confusion at times as to whether or not water quality measures are required on every site statewide. The draft proposed language makes it clear that water quality is required on all sites (lines 1619-22); PART XIV [section 1170].
 - d. The addition of an option for inspections of the site to be conducted every seven days by the operator. The operator can still choose the current inspection schedule of every 14 days and within 48 hours following a runoff producing event if desired. It is clarified that inspections do not need to be completed on those areas identified as finally stabilized; and inspection reports can contain an estimate of rainfall amounts at the site rather than the actual amount (lines 1730-35, 1738-39, and 1786); PART XIV [section 1170].

- e. Requirements that TMDL wasteload allocations made to construction activities be addressed through the implementation of control measures and strategies contained in the SWPPP that ensure consistency with the assumptions and requirements of the TMDL WLA that apply to the operator's discharge. Coverage holders that are subject to a TMDL WLA are instructed to consult with the state or federal TMDL authority to confirm that meeting permit requirements will be consistent with the approved TMDL (lines 1815-42); PART XIV [section 1170].
 - f. A clarification that amendments made to a SWPPP during construction must be signed, but don't need to include the certification statement contained in Section III K 4 (lines 1463-64); PART XIV [section 1170].
 - g. A requirement that information related to participation in regional stormwater management plans and nutrient offsets be included in the SWPPP (lines 1647-49); PART XIV [section 1170].
 - h. The requirement for the SWPPP to include correspondence with federal officials regarding endangered species and their habitats has been removed (lines 1806-15); PART XIV [section 1170].
- 8) General updates to the basic Conditions Applicable to All VSMP Permits section that appears in every VSMP permit (lines 1848-2255); PART XIV [section 1170].
 - 9) The inclusion of new sections 4VAC50-60-1180, 1182, 1184, 1186, 1188, and 1190. Sections 1182-1190 are copies of the currently-effective Part II (water quality and quantity) of the stormwater regulations, with only minor amendments made where necessary to adapt the language to these new sections or to ensure continuity of program administration. This will prevent the revisions to Part II that are currently underway from affecting persons holding coverage under this general permit. A new general permit will then be developed to incorporate the changes to Part II on a going forward basis for new projects (lines 2257-2438); PART XIV [sections 1180, 1182, 1184, 1186, 1188, and 1190].
 - 10) Updates to forms associated with the General Permit, including the registration statement (DCR 199-146), notice of termination (DCR 199-147), transfer form (DCR 199-191), and permit fee form (DCR 199-145).

Next Steps

- Should the Board adopt a final permit regulation today, it would be our intention to file the regulation with the Registrar of Regulations on March 25th. The regulation would be published in the *Virginia Register of Regulations* on April 13th.
- The adopted regulation will be submitted to EPA for official review.

- Existing permit coverage holders will need to reapply for coverage by June 1 in accordance with section 4VAC50-60-1150 (which will become effective May 13 or as soon as possible thereafter; the remainder of the permit will become effective July 1).
 - Renewal letters will be sent to existing coverage holders, hopefully near the end of March.

Chairman Campbell asked if the language under item 5a meant that the application could not be faxed.

Mr. Brown said that DCR was in discussion with EPA on options for electronic signatures, but at this time an original copy was still required.

Public Comment

Chairman Campbell called for public comment. She asked speakers to limit their time to five minutes.

Roy Mills, VDOT

Good morning. My name is Roy Mills and I represent the Virginia Department of Transportation. We have previously provided written comments on the draft language back in December during the public comment period. DCR staff has addressed our comments to the best of their abilities and within confines of the law and regulation. Unfortunately, the answer did not alleviate some of our concerns.

Additional discussion was had this morning and has helped address some of those concerns. But I will go ahead and make my comments so that I will be officially on the record.

Our first concern is on the issue of coverage under the new permit for those activities that are currently covered under the current permit. Under the current proposal we would have to resubmit complete registration statements for each of the affected activities to gain coverage under the new permit. Another permit fee would be required for those activities that are issued permit coverage prior to July 1, 2008.

Currently VDOT has approximately 500 active projects with permit coverage. Approximately 375 of those projects were issued coverage prior to July 1, 2008. With the permit fees typically being \$500 per permit fee, that's in excess of \$185,000 to re-permit those projects. If you add to that the effort of coming up with the new applications and submitting those to DCR, the amount could easily double. Even in good economic times, that's not a drop in the bucket.

VDOT is trying to maintain the transportation system. What do the taxpayers get for their money?

We've been told that the content of the permit is the same as the existing permit. All we see is that we are getting another permit number. We believe there has to be a better way to process this.

Our second concern is involves the requirement for currently permitted activities to update their Stormwater Pollution Prevention Plan (SWPPP). While we are told that the new requirements basically mimic those of the current permit there certainly could be subtle changes that could have a major impact. Even the change of a word here or there could add a whole new meaning to a particular requirement.

For VDOT construction projects that are being completed under a signed contract with a private entity, any change in the contract could result in claims by the contractor for more money. Even requiring the contractor to read and understand the new permit will in all likelihood result in a claim for additional compensation.

Again, in today's tight budgets, any additional costs for these ongoing projects will be difficult to account for. With the new permit changes, we're not getting visible benefits.

The projects currently permitted need to be grandfathered from any new or more expensive conditions that might be contained in the new permit.

Again, these are issues we are dealing with and most of them have to do with budgets. Our concern is the additional permit costs and the additional requirements on the contractors as a result of the new permit. We would request that the Board respectfully consider these concerns.

Michael Flagg, Hanover County

Good morning. I'm Michael Flagg, Director of Public Works for Hanover County. I appreciate the opportunity to come before you and address this general permit. I want to start out by thanking the Board for your volunteer service on this topic. It's a complex topic and we certainly appreciate the time you put forward. I also want to thank the department staff; irrespective of how you feel about the requirements of the permit, there's no doubt they worked very hard in summarizing these comments.

Overall, we feel there are a lot of good things about this permit. It's pretty balanced. Certainly there are some things that aren't perfect, but it does consolidate a lot of existing rules into a clear permit document. It provides an appropriate regulatory trigger and can be carried on state wide. And we certainly support that in many regards.

I do echo some of VDOT's concerns about the transitioning or grandfathering of projects. There probably is yet to be an undisclosed amount of work dealing with those transitions

for fairly marginal amount of benefit since we are actually trying to consolidate existing rules.

Certainly, no proposal is perfect. We recognize that and appreciate the effort the staff has made to thread the needle.

You will probably receive comments from many folks suggesting that you include effluent limit guidelines in this permit. That's an ongoing topic. We would like to specifically advise you on some of the reasons you should not consider effluent limit guidelines. In particular, in Hanover's case, we continue to struggle with enforcement of Erosion and Sediment Control. I am not pleased when I ride around our County and often times see noncompliance. We have issued numerous civil violations. Since 2005 we've issued 24 civil actions, most of which have been adjudicated in district or circuit court to enforce these requirements and require civil fines. That's a painstaking process. What effluent limits do is increase our level or burden of proof in violations. It will bring in things like quality assurance, quality control plans and testing methods. Things that will make, quite frankly, getting convictions tougher. The ones that we've had trouble with, and I am proud of our attorney group, we've prevailed in about 23 cases. But the tough ones are the ones, quite frankly, with existing permits. You have to have very painstaking information regarding what the violations were and even the constraints on the admittance of evidence make it difficult. I'd submit to you that these effluent limit guidelines will do more to hurt and will not help.

Additionally, you can reference projects such as those within the Department of Conservation and Recreation. If you look at EPA effluent limit guidelines proposal that is currently out with its 13 NTUs, it's roughly synonymous with the total suspended solids requirement. In those watersheds routinely you see values from 50 to 600. So the proposals on the table we would argue may be unrealistically low as well. But we're most concerned about the impact of enforcement.

Looking towards the future, again as you read through this, I can't help but imagine you see how immensely complicated this permit is. All the "i's" you need to dot, the "t's" you need to cross with regard to every project ensuring compliance with every conceivable term of this permit.

I would submit to you that this action is very simple as compared to what is before you on the revisions to Parts I, II and III. There is light years of difference in terms of requirements as well as the specifics with the engineering analysis and so forth. So I would invite us to think about the appropriateness of this current approach as we look towards the future with Parts I, II and III. It provides an adequate balance that we think is good as we work to enforce existing rules.

Lastly, I ask you think about the big picture for the moment. One of the things we are currently challenged with, as Mr. Dowling began to explain, there are multiple actions out here that are ongoing simultaneously, including TMDL developments for the Chesapeake Bay, MS4 Permits and compliance, the General Permit, and how they

interact. Things like wasteload allocations. To put the numbers on the table you need to continue to think about the big picture and how we are going to come up with a realistic implementation plan.

In Hanover we've begun to study those things. For example, under the existing 2005 Tributaries Strategies documents, Hanover's share of the \$7.5 billion implementation dollar figure is \$165 million. Now there are discussions currently about MS4 implementation that would request that we possibly consider implementation under these new TMDLs in the range of five percent. Whether that becomes true or not we don't know. But that number is an eight or nine million dollar annual allocation.

That \$165 million represents and exceeds our current debt obligation that we're allowed to undertake to maintain our bond rating. Currently our debt obligation is about \$1,525 per person. That \$165 million would represent over \$1,600 a person. The numbers are staggering.

As we really look towards the broader picture of implementation, and that was under these existing rules, not the new proposed rules. As we think about the big picture and the practicality of implementing the rules, I just ask you to think about us all working collectively towards an implementation plan. The costs are staggering, however it's an important topic.

Thank you very much.

Jeff Kelbe, Shenandoah Riverkeeper

Thank you, Madame Chairman, members of the Board and staff.

First and foremost, I'm a heavy river user. A lifetime river user in Virginia and other states. I'm also here representing my organization, Shenandoah Riverkeeper, and our members. I'm going to testify on behalf of our membership which is nearly 2,000 heavy river users as well, who range from landowners to farmers to fishermen, kayakers, canoers who are concerned about the action before you.

I guess the greatest value that I can provide to the Board in your considerations for this permit is my on the ground observations. That's probably the most valuable thing I can bring to you.

As a heavy user, having spent nearly a decade making my living as a fishing guide, traveling the rivers in the state, I've experienced too many occasions where I've come to a stream, maybe for the first time maybe for the tenth time, where I see the effects of sediment and nutrient pollution. In the Shenandoah Valley what it looks like is a stream bed concreted over with red dirt with algae growing on top of it and not much going on in that stream.

I see an incongruity with the action before you. I see a great amount of effort in the Commonwealth on behalf of NPDES permit holders, sewage treatment facilities, industrial facilities and farmers. A great amount of effort to try to remedy the problems that are in those streams. I feel the action that is being proposed is lagging behind all of the other actions.

I want to be respectful of the work that DCR has put into this. They have an unenviable task of trying to find middle ground with all the interests involved. I know how much effort is going into the other permitting actions that are coming in the next several years. There's a bright future for stormwater in Virginia. But, again I believe that this action is lagging behind.

I'll be more specific about why I feel that way. Specifically in two areas. I'll give you a little more background.

As I began to see these problems in these rivers, and as I took on the duties of the Shenandoah Riverkeeper three years ago, I wanted to understand exactly what was causing these problems.

I spent a lot of time looking at the sources. A lot of our original sources of sediment and nutrient pollution come from agriculture and agricultural practices. We have 200 years worth and we're making progress on those. Then we began to see construction sites popping up on those same streams where there were millions of dollars being spent and folks who run small farms being asked to spend their money to make stream improvements. And then on the other side of the stream there's a construction site who was issued a permit, an NPDES permit to discharge into the same stream without evaluation of their contribution to the problem.

They get permission to discharge when the form goes into the mail. Now we've got 15 days. I'm not compelled to feel that is going to protect our streams.

At that point I started to see this and I thought the Clean Water Act said you can't be issued a permit that causes or contributes to impairment. So I sought counsel from UVA's Environmental Law Clinic to understand the issue. And I began to try to enforce these permits on construction sites. I had a group of volunteers. I asked for assistance from the Law Clinic and other legal resources to try and understand the problems.

I saw a vast problem of enforcement that we all know. We're understaffed. The regulated community is catching up in the Valley. I think we didn't anticipate any development and we got it. So I understand the agencies are behind.

So I'm trying to be a part of that to provide eyes and ears and to provide a second opinion on the compliance of those sites. We've tried to push better compliance on those sites. I think we did that in a lot of cases. I also think we may have helped to wake up some of the localities to the fact that there are issues in their county along with DCR, who has spent a tremendous amount of time approving the E&S plans.

I also discovered in this process that the documents that every other individually permitted facility, everybody else with a VSMP or VPA which is a Virginia Pollution Abatement permit, or NPDES permit or VPS permit was required to do was not required of this community.

All the permitting documents, all the information of what permits were being issued in what watersheds, what pollution controls would be in place, what was going to be done on an ongoing basis on those construction sites was locked in a black box. I couldn't get it. I was trying to enforce the compliance on these construction sites. We had to go around and this became a major impediment. Congress, when they created the Clean Water Act, did not contemplate there being impediments to citizen enforcement. They actually tried to lubricate that process and make it easier for people to get these documents to enforce when the government either didn't have the staff like we have in the situation like now or for other reasons were unable to enforce.

Although the permit action now is going to allow access to the initial copy of that SWPPP, this isn't really what we're after. The SWPPP contains a plan for compliance. But the most important piece of this is the plan for inspections, updates, the changes, and the evaluation of whether that construction site is discharging. If I want to, and I've done this on numerous occasions, if I want to know what a sewage treatment facility is doing I can go to DEQ and get every document and do in advance of those permitting actions, in order to know who is going to be allowed to discharge. I can get the DMRs, the Discharge Monitoring Report that is a four page document that says exactly what will be discharged into that river. I can evaluate its effect and evaluate the compliance of that facility. If I have a concern about a farm, I can go to DEQ and pull their VPA permit and the farmer, if he has more than 300 head of cattle, 20,000 chickens, 11,000 turkeys, they're required to have a VPA permit. They have to get a certified nutrient management plan that is certified by DCR. They have to maintain it, update it, follow it. It's submitted to DEQ. That's available for me to review. An individual farmer is required to do this.

You have a construction community that complains that this is an overburden on the industry. I don't understand that. It's not working.

I would just like to finish by encouraging the Board in this difficult consideration to deny this action. We proposed in the TAC many pieces of language that could fix this. Different ways to permit this action that would address these two issues and we're really not getting there. I believe the permit should be denied.

I appreciate the opportunity to present this opinion.

Preston Hartman, Student at UVA Law

I'm Preston Hartman, a student at UVA Law School. I've been working with Jeff. He did a good job of giving the real world picture of what's happening and the effect of the inadequacies of the permit.

I wanted to talk about two specific parts of the permit. One pertaining to protection impaired waters and the other the SWPPPs.

First, the permit purports to prohibit discharges into impaired waters that would violate water quality standards. That's great, but just saying that doesn't make it so. I think Virginia is really far beyond other states in laying out what has to be done. These are waters that can bear no more pollution. It makes sense to have stricter controls. Stepped up BMPs. Something beyond what you would have in non-impaired water. Also if you look at Section I H, this pertains to an operator discharging into impaired waters who has to rework his control measures if they aren't working. There's this language where it was determined by the State Water Control Board that anytime the operator of stormwater discharges had the potential to cause or contribute to an excursion. That's the trigger. He has to rework his control measures to comply.

We're wondering why this refers to the State Water Control Board. Perhaps Mr. Brown could address this. That might be in reference to TMDLs that come out. It seems like that should be DCR, DEQ or local E&S or anyone who actually can look at specific sites to determine if this discharge has the potential to violate water quality standards.

Regarding the public availability of the SWPPPs. The original language, as we've been through, would have required the updates to be made public. The current draft makes the initial SWPPP available. This is characterized as a compromise, but I don't see a compromise between the public knowing what is going on in their waters, what pollution is flowing into Virginia waters, and not knowing.

As Jeff explained, we really have no way to get a hold of that compliance statement. That's what is important. That's how you know if the site is contributing to an impairment or a violation of water quality standards.

I'd like to read a small part of the Clean Water Act which states that *public participation in the development, revision and enforcement of any regulation standard, effluent limitation, plan or program established by the administrator or any state under this chapter shall be provided for, encouraged and assisted by the administrator or the state.*

Right there you have enforcement. Citizen enforcement is clearly contemplated by the Act. If you can't get a hold of those self inspection reports, you can't do any meaningful enforcement.

There could be a compromise between the different comments received, but it's still locking the public out. I can argue about the Clean Water Act and read you pieces of that, but I think more fundamentally it's about citizens of the Commonwealth knowing

what is going on in their waters. Most everyone could agree the public has a right to know what's happening in public waters.

I think I'll leave it at that. I thank the Board and I hope you will consider these comments.

David Sligh

Thank you for the chance to provide comments regarding the construction stormwater regulation. I am David Sligh, Upper James Riverkeeper with the James River Association and I speak on behalf of the Association and our thousands of members and supporters throughout Virginia. In the last couple of years, the James River Association has served on the Technical Advisory Committee assembled to consult on this regulation. We provided comments to DCR during the public review period and we have continued to communicate our ideas and concerns to DCR.

We want to thank the DCR staff for their work on this regulation and their efforts to improve the way construction stormwater pollution is controlled in Virginia. We, like DCR and this Board, are strongly committed to the effort to adopt and enforce a regulation that is fully protective of Virginia's waters and also practical and efficient in its application.

We wish to highlight some particular changes the staff proposes and to encourage the Board to adopt these measures. These include: 1) The requirement at Section II.B.4 of the general permit, which makes the initial SWPPP available to citizens, 2) the regulations at 4VAC50-60-1120, whereby no discharge that may reasonably be expected to cause, or contribute to a violation of water quality standards may be covered under the general permit, and 3) the requirement that applicants report information on nutrient offsets and credits, at 4VAC50-60-1150.B.10.

Despite these necessary improvements, we must ask this Board to reject the proposed regulation in its present form. We believe this proposal stops short of the necessary progress in each of these areas and others and fails to meet the goals we all share. Therefore, we propose specific changes that must be made to provide sufficient water quality protection and meet legal mandates.

First: This permit fails to provide for effective review to ascertain whether water quality based controls are required at sites to be covered under the general permit and to ensure that those controls are implemented where necessary. The permit makes blanket statements, that no site may be covered under the general permit if it will cause or contribute to any violation of a water quality standard or a TMDL allocation or requirement and, while these blanket statements are necessary and appropriate, they do not provide the reasonable assurance that Virginia is obligated to provide under the Clean Water Act, EPA regulations, and Virginia law. This is especially important where waters are already impaired but for which TMDLs have not yet been completed.

I have provided a short report with my statement which shows that more than 1,100 new construction sites have been allowed to discharge pollution to impaired waters under the current general permit. (This report is included as Attachment #2) . This report was prepared by comparing a DCR data base of over 9,000 construction sites covered to the list of impaired water bodies designated by the Virginia DEQ in the 2008, 305b/303d report. In each of these cases, we believe that pollutants contained in the discharges are likely to add to the use impairments already present in the receiving waters. These sites are located in every part of Virginia and, in many cases, multiple sites (sometimes dozens of them) were allowed new discharges to a particular degraded water body. We find no evidence that enhanced control measures were required or used at any of these sites and believe that this demonstrates a gross failure to meet the Clean Water Act and Virginia law. We see no prospect that the proposed new general permit would be any more effective at preventing this problem.

The proposed regulation gives construction sites automatic coverage under the general permit, as long as the registration statement is submitted and is deemed complete. The applicant must certify that it has prepared a Stormwater Pollution Prevention Plan (SWPPP) when it files the registration statement and that the SWPPP ensures conformance with water quality standards and TMDL provisions. But DCR does not review the SWPPP before the applicant receives coverage under the permit and will not routinely determine whether that SWPPP is indeed complete or sufficient – thereby making it impossible for DCR to provide the required “reasonable assurance” that water quality requirements will be met. This allows a degree of self-regulation for the applicants that is simply impermissible.

Whenever water quality is already impaired in receiving waters, a new discharge must not be allowed to add to the pollution that has caused that impairment. Meeting this mandate will often require enhanced erosion and sediment control measures and permittees are given no guidance as to the nature or extent of these measures. Verifying compliance and preventing further contributions to the water quality impairments will require the permittee to determine which parameters must be controlled and to monitor to ensure that they are sufficiently controlled. Again, there are no requirements to ensure that these measures are taken.

In fact, water quality violations by construction sites will probably be discovered only after the new discharges begin and, only then, on a very sporadic and uncertain basis, because of the shortage of DCR inspectors.

We further note that the regulation mandates a duty for the Virginia State Water Control Board to determine whether construction sites are causing any water quality violations and to trigger changes to alleviate these problems. We are concerned that this provision may improperly mandate a duty for the State Water Control Board, another independent citizen body, and we have learned that at least one Water Control Board member was unaware of this proposal. Even if such a delegation on this Board’s part is proper, however, we assert that for such a system to work that there must be a specific and

guaranteed mechanism for the Water Control Board to review possible problem sites and to communicate their determinations to this Board.

Second: Under the Clean Water Act and Virginia Law, citizens have a central role in the implementation of these statutes. Not only do citizens' voices have to be heard and respected when regulations are adopted and permits issued, citizens are also explicitly empowered to play an enforcement role. This is a bedrock principle of the Clean Water Act. To play their role as the law envisions, citizens must have access to documents that express the requirements permittees are to meet and to data and inspection reports that demonstrate compliance or non-compliance at the site.

The SWPPPs prepared by applicants for coverage under the general permit spell out the specific measures required to meet the general goals of the permit and are, in fact, an enforceable part of the permit. SWPPPs are equivalent to the specific limitations placed in individual permits NPDES permits and must be easily available to citizens for review. The proposed permit goes part way to meeting this requirement but falls short in several respects. Requiring that the original SWPPP be available for public review, as DCR proposes, is an important and laudable step. However, citizens are not granted the right to view revisions to the SWPPP that may be made subsequently, during the coverage period for a site. Nor is the public allowed to see inspections reports and records of site activities, whose review is necessary to know whether permit compliance is being achieved. This improperly and unlawfully deprives citizens of information they must have to properly play the role the law defines for them.

Third: The proposed regulation calls for applicants to state in their registration statements whether nutrient offsets are intended to be acquired in accordance with §10.1-603.8:1 of the Code of Virginia. However, detailed information concerning these credits is only required as part of the SWPPPs. This detailed information includes: the name of the broker from which offsets will be acquired; the geographic location (county or city and Hydrologic Unit Code) of the broker's offset generating facility; the number of nutrient offsets to be acquired (lbs. per acre per year); and the nutrient reductions to be achieved on site (lbs. per acre per year) is confined to the SWPPPs. We believe these facts must be submitted to DCR, in every applicable case, to allow for proper accounting and tracking of these credits.

Fourth: We have called for a period of coverage of only one to two years for this general permit, rather than the standard five year permit term, because we believe crucial information that will support even more necessary requirements will be available at that time – and we believe deficiencies in this permit, such as the failure to include numeric effluent limits must be remedied as soon as possible but certainly in less than five years.

The U.S. Environmental Protection Agency is currently considering a new federal regulation that would establish numeric effluent limit guidelines for many sites around the country and EPA's determination from that process must be incorporated in the Virginia permit. Also, new technical knowledge defining appropriate performance standards for Virginia sites is being developed and must also be incorporated in the

general permit as soon as possible. We suggest that the Technical Advisory Committee process be continued to further define these standards.

If this Board chooses to issue the general permit for five years, as proposed by DCR staff, then we ask that you order staff to return to this Board after one year to report on the status of EPA's actions and on current findings on applicable performance standards for Virginia construction sites. We further suggest that this Board order DCR to begin preparation and processing of a revised general permit during the second year of this permit's coverage period, to be completed no later than two years from issuance of this permit.

Thank you for your consideration of these comments.

Tyler Craddock, Virginia Chamber of Commerce

Madame Chair and members of the Board, I am Tyler Craddock, representing the Virginia Chamber of Commerce and also the sentiments of the Virginia Home Builders Association. Thank you for the opportunity to offer final comments on this proposal.

Our previous written comments focused on two major issues: the mandated inclusion of endangered species information in the Stormwater Pollution Prevention Plan (SWPPP) and the mandated public availability of SWPPPs.

Regarding the endangered species information mandate, we note our strong support of its being removing it from the proposal. That was the right thing to do, and we fully agree with the recommendation that it not be included.

We cannot support the part of the proposal that continues to mandate the public availability of SWPPPs. To be certain, we recognize that changes have been proposed to this provision, and we appreciate the spirit in which those proposed changes are offered. In our view, however, this is not an issue where there can be compromise. At the end of the day, the choice is clear. Based on how you vote, Virginia businesses are either going to be mandated to disclose to the general public internal control documents or they are not. This is a simple question of right or wrong policy – there is no gray area; if you mandate disclosure of private, internal control documents, you are making what is in our view the wrong policy choice and setting a dangerous precedent. As we have stated on more than one occasion, a business should only be required to provide SWPPP access to the appropriate governmental agency – in this case, DCR – expressly charged with enforcement of the permit. The SWPPP is not a public document, and its mandated disclosure is inconsistent with other stormwater permits. Accordingly, we would ask you strike entirely the provisions placing mandates on the business community to provide for public availability of SWPPPs.

There was no further public comment. Chairman Campbell called on DCR staff to respond.

Mr. Brown said he would be glad to respond to any questions. He said that the comments were not unexpected.

Ms. Packard asked about the comment regarding the lack of availability of amendments to the SWPPP. She said that she thought those should be available if there were going to be changes.

Mr. Brown said that was a topic where there was not a happy medium or where DCR could get an agreement. He said that the proposed general permit had included a requirement for the SWPPP to be made publicly available without qualifications. He said that the existing recommendation modified this by limiting access to the initial SWPPP and not providing access to updates. He said that some updates to plans would be available locally through FOIA.

Ms. Packard said that it seemed the point was that if the amendments were not available, the public couldn't really know what was happening. She asked if FOIA was available only through the state.

Mr. Brown said that in cases where the information was not in the hands of state or local government, FOIA would not apply.

Mr. Brown said that it was important to know that the public had the ability to file a complaint through DCR and that DCR would investigate. He said that the public availability of the SWPPP was a new concept to this regulatory action. He said that DCR did a fair amount of research on the subject.

Mr. Brown said that the Homebuilders have pointed out court cases from other jurisdictions that say the SWPPP does not have to be made available, although those cases do not prohibit it from being made available. Other groups point to language in the Clean Water Act that encourages public participation, but that does not specifically require the SWPPP to be made publicly available. He said that there was not a lot of mandatory legal guidance regarding what had to be done. A number of states have decided to make the SWPPP available, but there are also many states where the SWPPP is not available.

Mr. Brown said that the staff put forward a proposal, but the final decision was up to the pleasure of the Board.

Ms. Hansen asked if the document could be amended back to the original language. She said that she had the same concern regarding public participation. She said this type of violation often happened quickly and out of sight. She suggested removing the word "initial" with regard to the SWPPP.

Mr. Russell expressed concerns for grandfathering in existing projects. He said that he tended to agree with the concept of grandfathering as requested. He said there was merit to that, especially during the transition from one permit to another.

Mr. Dowling said that DCR had attempted to balance the fee issue with the one-year waiver. He said that DCR stormwater programs are 100% funded by fees and that the waiving of fees altogether could mean the elimination of staff. He said that with regard to grandfathering, there had been extensive discussions. He said that the regulations were clear that the project must re-register to maintain permit coverage. He said that by July 1, 2009, a new permit must be in place.

Mr. Dowling said that the staff believed it was best to migrate individuals from one General Permit to the next. He said that part of this was for the Board's administrative capabilities. He said that because of the new General Permit that would be developed following adoption of the revised Parts I, II, and III, there would already be a layering of General Permits. He said that DCR was aware of the re-registration issues and had already discussed potential simplifications to the administrative process with VDOT.

Mr. Dowling said that the fees were at the Board's discretion. He said that DCR was already looking at less revenue. However, he noted that even though there were fewer permits, the workload had not been substantially reduced.

Ms. Campbell asked if the Board's additional recommended amendments needed additional research by staff.

Mr. Brown said that staff would appreciate time to review the suggestions.

Mr. Maitland said that in regards to the SWPPP, the local Erosion and Sediment Control plan offered the opportunity for the public to review the information.

Mr. Brown said that it should be noted that not everything in the SWPPP was also in the E&S plan.

Mr. Dowling said that the matter of SWPPP inspection by the public was up to the discretion of the Board. He pointed out that the development community raised significant economic concerns from their perspective. He said that posting of the SWPPP online would not require a representative of the permit holder to be present at each review. He said that updates also could be posted electronically.

Chairman Campbell asked if amendments to the proposed draft would require a review by the Office of the Attorney General.

Mr. Brown said that the items being discussed appeared to be within the policy discretion of the Board.

Chairman Campbell suggested that the Board recess for lunch and allow staff time to draft amendments to reflect the Board's discussion.

At this time the Board recessed for lunch.

Chairman Campbell called the meeting back to order. She asked Mr. Meador to address District issues.

District Resignations and Appointments

Mr. Meador presented the list of District Director Resignations and Appointments.

Eastern Shore

Resignation of James N. Belote, III, effective 3/4/09, Extension Agent director position (term of office expires 1/1/13).

Recommendation of William E. Shockley, Jr., Northampton County, to fill unexpired Extension Agent term of James N. Belote, III. (term of office to begin on or before 4/18/09 – 1/1/13).

MOTION: Mr. Maitland moved that the list of District Director Resignations and Appointments be approved as submitted by staff.

SECOND: Mr. Simms

DISCUSSION: None

VOTE: Motion carried unanimously

Mr. Meador noted that at the January meeting, the Board had expressed concern regarding the procedure to fill District Director vacancies. He distributed a copy of the procedure staff had followed with suggested edits. He noted that the concerns expressed dealt with the circumstances for the vacancy and the interviews of prospective candidates to fill the seat.

Mr. Meador said that the recommended changes were based on Mr. Brown's review and discussions with the Office of the Attorney General and the Virginia FOIA Counsel.

Ms. Campbell clarified that the information was not before the Board for approval, but for review.

Mr. Meador said that, in the past, the Board had taken no action regarding this procedure. He said that this was basically the procedure that had been followed and noted that if the Board desired to adopt the document that was up to the Board's discretion.

Chairman Campbell asked if item 7 referred to open Board meetings or committee meetings.

Mr. Meador said that the intent was for Board meetings.

Ms. Campbell noted that some Districts handle this action by committee.

Ms. Packard asked if that would come under an adequate reason for Executive Session. She said that the concern was that her District was not sure about conducting interviews and whether they needed to be in a previously scheduled Board meeting or could a regular meeting be recessed for the purpose of conducting interviews.

Mr. Brown said there were two issues. The first is related to the type of meeting, that being a regularly scheduled meeting vs. a special meeting. He said that as long as the meetings were properly noticed, either option would be appropriate. The second issue is related to whether or not a closed meeting is appropriate. He said that with regard to FOIA, there was an exception to allow a hiring or appointing authority to go into closed session for hiring or appointing matters. However, he noted that the Districts in this case are not the actual appointing authority. He said that discussions with the FOIA Council have revealed that if the body conducting the interviews, in this case the District, was not the appointing authority, in this case the Board, then closed sessions were not appropriate and interviews need to be conducted in open session.

Mr. Hornbaker asked if the Board was being asked to approve and adopt the procedure.

Mr. Meador said that was up to the Board. He said that the decision could be left until the next meeting. He said that this had been specifically written as a recommended procedure.

Mr. Dowling said that when there was more of a directive it would be handled as guidance. He said that if the Board would like to formalize the procedure, it could be redrafted as guidance.

Mr. Maroon said that the question was whether or not a District could follow a different policy if they so desired.

Mr. Brown said that the requirements for selecting District Directors was set out in the Code of Virginia and that nothing that the Board adopted would be mandatory upon the Districts or override the Code requirements.

Mr. Chaffin with the VASWCD said that Districts often operate in an independent manner. He suggested that Districts would be more comfortable if this remained as a recommendation rather than a policy.

Ms. Campbell suggested that Code references be added to the document where appropriate.

The Board received the information and asked Mr. Meador to bring back an amended version at the May Board meeting.

Lake Barcroft WID Budget

Mr. Meador presented a letter from Ms. Packard on behalf of the Lake Barcroft Watershed Improvement District. The letter was the annual request to approve the WID budget. A copy of the letter is available from DCR.

MOTION: Mr. Maitland moved that the Virginia Soil and Water Conservation Board approve the Lake Barcroft Watershed Improvement District FY 2010 Budget as proposed.

SECOND: Mr. Simms

DISCUSSION: None

VOTE: Motion carried with Ms. Packard abstaining

Board Action on Final General Permit for Discharges of Stormwater from Construction Activities Regulations (Parts I and XIV) (continued).

Chairman Campbell returned to the General Permit discussion.

Mr. Brown reviewed staff edits based on prior discussion.

Beginning on line 1419, Mr. Brown said that staff understanding was that the Board intended to make all of the SWPPP available over the time of the project. Mr. Brown reviewed the specific changes in that regard: line 1419, strike the word “initial”; line 1420, strike the words “developed at the time of registration statement submittal”; line 1421, strike the word “initial”; line 1428, strike the word “initial”; line 1428, strike the words “developed at the time of registration statement”; line 1429, strike the word “submittal”; line 1429, strike the word “initial”; line 1431, strike the word “initial”; and line 1433, strike the word “initial”.

On line 1426, Mr. Brown noted that the requirement for the SWPPP availability would only apply to new sites first receiving permit coverage on or after July 1, 2009. Hard copies of the SWPPP would need to be made available once per month unless the information was posted electronically.

Ms. Packard asked about the once per month frequency.

Mr. Brown said that the proposed permit had required the SWPPP to be made available twice per month. However, he noted that the fear of the development community was that it would cause an undue burden. He said that there was a fear that someone who does not care for a project could use this as a tool for harassment.

Mr. Brown said that the idea was to limit the number of times or frequency with which something could be requested.

Ms. Hansen asked if posting the SWPPP on the internet would solve the issue.

Mr. Brown said it would if the operator had that capability. He said the concern was whether this was practical to do on a daily basis on all sites. He noted that the permit applies to everything from 2,500 sq. ft. to major developments.

Mr. Brown said that on lines 881 and 1326, staff recommended that the language be amended to add “the permit-issuing authority in consultation with” before “the State Water Control Board”.

Ms. Campbell said that she wanted to be clear that this second set of amendments was recommended by the staff. The amendments pertaining to SWPPP availability were not a recommendation of staff but were prepared at the Board’s direction.

Mr. Capps said staff had reviewed the numbers related to VDOT. DCR numbers show that an estimated 31 VDOT projects needing permit coverage would not be terminated and would still be active June 30, 2009 and would also need to pay the permit fee for reapplication. This is out of an overall 400 permit coverages held by VDOT, as compared to a little more than 7000 private projects that are currently covered by the general permit. It is estimated that 640 private projects would need to pay the reapplication fee.

MOTION: Mr. Maitland moved that the Virginia Soil and Water Conservation Board accept the staff recommendations regarding the addition of “the permit issuing authority in consultation with” before “the State Water Control Board.”

SECOND: Mr. Simms

Ms. Hansen moved to amend the motion as follows:

MOTION: Ms. Hansen moved that the document also be further amended to include the amendments that would allow access to the SWPPP and all updates as drafted by DCR staff at the Board’s request.

SECOND: Ms. Packard

DISCUSSION: Ms. Packard said that it should be made clear that this amendment was not a staff recommendation but was prepared as a reaction by staff to inquiries received from the Board.

Mr. Russell asked if there was any opportunity to deal with the fee structure.

It was noted that would require a separate amendment.

VOTE: Motion carried with Mr. Maroon abstaining

Ms. Campbell asked if there were other recommended amendments.

Mr. Russell asked about fees and whether during the transition it would be in order to waive particular fees.

Ms. Hansen said that she was less concerned with that when she heard the actual numbers.

Mr. Maitland said that he would prefer to see a sliding scale.

Ms. Campbell said that the current language would appear to be an incentive to complete a project.

Mr. Maitland said that he would like an amendment that anyone with one to three years remaining on the permit would have a sliding scale for the transition.

Mr. Maroon said that he was concerned about a graduating scale. He said that anyone who is reissued a permit does have five more years of life under that permit. He said that staff did come up with a waiver that was beyond what most general permits allow.

MOTION: Mr. Maitland moved the following:

Motion to approve, authorize and direct the filing of final regulations related to Part XIV 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 XIV of the Board's Virginia Stormwater Management Program Permit Regulations [**entitled "General Permit for Discharges of Stormwater from Construction Activities"**] and other approved sections, including,

but not limited to, Part I (Definitions) and all associated forms (including DCR199-145, DCR199-146, DCR199-147, and DCR199-191 which are 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.

The Board further directs that the amendments to section 4VAC50-60-1150 (located in Part XIV) and form DCR199-146 become effective May 13, 2009 or as soon as possible thereafter. Other portions of this regulatory action are directed to become effective on July 1, 2009.

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 state and federal regulations 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.

SECOND: Mr. Simms

DISCUSSION: None

VOTE: Motion carried unanimously (included adoption of amendments passed in preceding discussion)

Mr. Brown said that staff was also asking the Board to take action with regard to extending the reapplication date for current permit coverage holders. He gave the following explanation:

The existing 5-year General Permit for Discharges of Stormwater from Construction Activities expires on June 30, 2009. According to the requirements of the current General Permit (set out in 4VAC50-60-1170 Section III M), current permit coverage holders must reapply for coverage "...at least 90 days before the expiration date of the existing permit [April 1st], unless permission for a later date has been granted by the Board."

Section 4VAC50-60-1150(A)(3)(a) of the new General Permit (effective July 1, 2009) explains that in order to continue permit coverage, existing coverage holders should reapply for coverage by June 1, 2009. This will provide additional time for reapplication to be made, while still providing sufficient time to the Department for processing registration statements submitted for the purposes of reapplication. Also noted in that section is the provision that, provided a complete and accurate registration statement is submitted by the June 1st reapplication date, the permit application (registration statement) fee that would otherwise be due will be waived for land disturbing activities for which the Department initially issued permit coverage on or after July 1, 2008.

As the Board is aware, regulatory changes must go through an adoption period prior to becoming finally effective. As such, in order to provide certainty to current permit coverage holders in advance of the final effectiveness of the new General Permit, it is recommended that the Board affirm the new reapplication date in accordance with its authority in 4VAC50-60-1170(III)(M) and recognize the provision related to reapplication fees contained in the new General Permit by motion.

MOTION: Ms. Hansen moved that the Virginia Soil and Water Conservation Board, in accordance with its authority in 4VAC50-60-1170(III)(M), hereby extends the deadline for current permit coverage holders to reapply for coverage under the Board's General Permit for Discharges of Stormwater from Construction Activities to June 1, 2009. The Board further recognizes that 4VAC50-60-1150(A)(3)(a) of the new General Permit will, upon its effectiveness, provide a waiver of the permit application (registration statement) fee that would otherwise be due for land disturbing activities for which the Department initially issued permit coverage on or after July 1, 2008, provided that those activities reapply by the June 1, 2009 date.

SECOND: Mr. Maitland

DISCUSSION: None

VOTE: Motion carried unanimously

Dam Safety Certificates and Permits

Mr. Browning addressed the Dam Safety Certificate and Permit recommendations.

Compliance Issues

Mr. Browning gave an update regarding Compliance Issues. He said that a court date of March 25, 2009 had been scheduled for Mellott Dam in Fauquier Circuit Court.

No Board action was needed on the Enforcement Actions.

Mr. Browning presented the Conditional Certificate Recommendations.

Beaver Creek Dam #1	00301	Albemarle	1 Year Conditional
Chislom Dam	00347	Albemarle	1 Year Conditional
Evergreen Lake Dam	01911	Bedford	1 Year Conditional
Willis River Dam #1A	02901	Buckingham	1 Year Conditional
Willis River Dam #1B	02902	Buckingham	1 Year Conditional
Willis River Dam #7	02909	Buckingham	1 Year Conditional
Wills River Dam #2	02919	Buckingham	1 Year Conditional
Ladysmith Lake Dam	03350	Caroline	1 Year Conditional
Barr Dam	06113	Fauquier	1 Year Conditional
Leatherwood Creek Dam #2	08905	Henry	1 Year Conditional
Lake Madison Dam	09905	King George	1 Year Conditional
Malvern Dam	11311	Madison	1 Year Conditional
Grymes Mill Dam	13704	Orange	1 Year Conditional
Dry Run Dam 101	13902	Page	1 Year Conditional
Camp Shawnee Dam	14315	Pittsylvania	1 Year Conditional
Garland Millpond Dam	15902	Richmond	1 Year Conditional
Stoney Creek Dam #10	17102	Shenandoah	1 Year Conditional
Fawn Lake Dam	17709	Spotsylvania	1 Year Conditional
Hazel Grove Dam	17717	Spotsylvania	1 Year Conditional
Newman Lake Dam	66001	City of Harrisonburg	1 Year Conditional

MOTION: Ms. Hansen moved that the Virginia Soil and Water Conservation Board approve the Conditional Operation & Maintenance Certificate Recommendations (except for Dams #00301, #00347, #03350, #14315 and #17717) as presented by DCR staff and that the Board approve the Conditional Operation & Maintenance Certificate Recommendations for Dams #00301, #00347, #03350, #03350, \$14315 and #17717 contingent upon the dam owner submitting the required fee. Further that DCR staff be directed to communicate the Board actions to the affected dam owners.

SECOND: Ms. Packard

DISCUSSION: None

VOTE: Motion carried unanimously

Regular Operation and Maintenance Certificate Recommendations

Trices Lake Dam	04901	Cumberland	6 Year Regular
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MOTION: Mr. Maitland moved that the Virginia Soil and Water Conservation Board approve the Regular Operation & Maintenance Certificate Recommendation as presented by DCR staff and that staff be directed to communicate the Board action to the affected dam owner.

SECOND: Ms. Packard

DISCUSSION: None

VOTE: Motion carried unanimously

Permit Recommendations

Dominion Generation VA City Dam	19525	Wise	Construction Permit
Dominion Generation VA City Dam	19526	Wise	Construction Permit

MOTION: Ms. Packard 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 action to the affected dam owners.

SECOND: Ms. Hansen

DISCUSSION: None

VOTE: Motion carried unanimously

Extensions

Mr. Browning presented the list of Extension recommendations. He noted that the following five dams had outstanding information or fees and requested that the Board approve the extensions provisionally with approval granted upon receipt of the missing information or fees.

Pohick Creek Dam #4	05922	Fairfax	1 Year Extension
Golden Eagle Dam	10304	Lancaster	1 Year Extension
Gordonsville Dam	10923	Lancaster	1 Year Extension

Apple Mountain Dam	18709	Warren	1 Year Extension
Upper Apple Mountain Dam	18711	Warren	1 Year Extension

MOTION: Mr. Hornbaker moved that the Virginia Soil and Water Conservation Board approve the above listed Extension Recommendations contingent upon the dam owner submitting the required fee and that DCR staff be directed to communicate the Board actions to the affected dam owners.

SECOND: Mr. Russell

DISCUSSION: None

VOTE: Motion carried unanimously

Mr. Browning presented the remaining Extension recommendations.

South River Dam #7	01522	Augusta	2 Year Extension
Mill Place Commerce Park Dam BMP	01532	Augusta	2 Year Extension
Boonsboro Country Club Dam	01934	Bedford	1 Year Extension
Lake Overton Dam	08714	Henrico	1 Year Extension
Keokee Dam	10502	Lee	2 Year Extension
Black Creek Impoundment	12514	Nelson	1 Year Extension
Bush River Dam #5	14739	Prince Edward	1 Year Extension
Bush River Dam #6	14740	Prince Edward	1 Year Extension
T. Nelson Elliott Dam	15302	Prince William	1 Year Extension
Hidden Valley Lake Dam	19104	Washington	1 Year Extension
Upper Norton Reservoir Dam	72002	City of Norton	2 Year Extension

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

SECOND: Mr. Russell

DISCUSSION: None

VOTE: Motion carried unanimously

Mr. Hornbaker asked if it would be appropriate for the Board to ask DCR staff to note the Board's concern regarding the number of extensions granted.

Mr. Maroon said that was among several issues that needed to be addressed. He said that the number of extensions has always been an issue. He said that there is now a provision that allows DCR to take a more proactive approach. He said that the Agency had not yet been in a position to pursue that.

Mr. Browning said that staff had already written the dam owners in this regard.

Mr. Maroon noted that at the Virginia Lakes and Watershed Conference, DCR staff was recognized for work on Stormwater and Dam Safety.

Financial Assistance for Districts

Mr. Meador addressed the Board Policy on *Financial Assistance for Soil and Water Conservation Districts*. He noted that Board policy said that the Board would review Attachment A prior to June 1 each year.

Mr. Meador said that the staff recommendation was to include a footnote at the bottom of the page to reflect the actual funding level.

Mr. Chaffin from the Virginia Association of Soil and Water Conservation Districts said that, at their annual meeting, the Association determined that the amount necessary for essential funding would be \$120,000. This number was included as part of the Association's legislative package presented to the General Assembly. A copy of Mr. Chaffin's proposed essential funding is available from DCR.

Mr. Maroon commended Mr. Chaffin and the Association for developing these numbers. He said that the numbers would be helpful in terms of explaining the request.

Mr. Maitland suggested that the information be distributed to Districts.

Mr. Hornbaker said that he would be interested in seeing a comparison of the levels of local funding.

Mr. Chaffin said that the Association had that information available.

DRAFT FY 10 Performance Deliverables for Soil and Water Conservation Districts

Mr. Meador presented the suggested revisions to the DRAFT FY10 Performance Deliverables for Districts. The information was provided for Board review and action at the May meeting.

Mr. Russell said that it would be helpful to provide Districts with the information regarding eVA procurement in the Commonwealth.

Legislation and Budget Report

Mr. Maroon gave the legislative and budget report from the General Assembly session. A copy of this report is available from DCR.

Partner Agency Reports

Department of Conservation and Recreation

Mr. Frye gave the report for the Department of Conservation and Recreation. A copy of this report is included as Attachment #3.

Natural Resources Conservation Service

Mr. Bricker gave the report for the Natural Resources Conservation Service. A copy of this report is included as Attachment #4.

Virginia Association of Soil and Water Conservation Districts

Ms. Tyree gave an update from the Association. She said that VASWCD was appreciative of the \$20 million in funding as well as the indication that the Office of the Attorney General was available to represent Districts.

Mr. Chaffin complimented DCR staff and the working relationship with the Districts.

Public Comment

There was no additional public comment.

Next Meeting

The next meeting of the Virginia Soil and Water Conservation Board will be Thursday, May 28, 2009. Staff will attempt to find a suitable location in Charlottesville.

Other Business

There was no further business.

Adjourn

There was no further business and the meeting was adjourned.

Respectfully submitted,

Linda S. Campbell
Chair

Joseph H. Maroon
Director

Attachment #1

2009 SESSION

ENROLLED

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend the Code of Virginia by adding a section numbered 10.1-603.8:1, relating to*
3 *stormwater nonpoint nutrient runoff offsets.*

[H 2168]

4
5 Approved

6 **Be it enacted by the General Assembly of Virginia:**

7 **1. That the Code of Virginia is amended by adding a section numbered 10.1-603.8:1 as follows:**

8 *§ 10.1-603.8:1. Stormwater nonpoint nutrient offsets.*

9 *A. As used in this section:*

10 *"Nonpoint nutrient offset" means nutrient reductions certified as nonpoint nutrient offsets under the*
11 *Chesapeake Bay Watershed Nutrient Exchange Program (§ 62.1-44.19:12 et seq.).*

12 *"Permit issuing authority" has the same meaning as in § 10.1-603.2 and includes any locality that*
13 *has adopted a local stormwater management program.*

14 *"Tributary" has the same meaning as in § 62.1-44.19:13.*

15 *B. A permit issuing authority may allow compliance with stormwater nonpoint nutrient runoff water*
16 *quality criteria established pursuant to § 10.1-603.4, in whole or in part, through the use of the*
17 *permittee's acquisition of nonpoint nutrient offsets in the same tributary.*

18 *C. No permit issuing authority shall allow the use of nonpoint nutrient offsets to address water*
19 *quantity control requirements. No permit issuing authority shall allow the use of nonpoint nutrient*
20 *offsets in contravention of local water quality-based limitations: (i) consistent with determinations made*
21 *pursuant to subsection B of § 62.1-44.19:7, (ii) contained in a municipal separate storm sewer system*
22 *(MS4) program plan approved by the Department, or (iii) as otherwise may be established or approved*
23 *by the Board.*

24 *D. A permit issuing authority may only allow the use of nonpoint nutrient offsets when the permit*
25 *applicant demonstrates to the satisfaction of the permit issuing authority that (i) alternative site designs*
26 *have been considered that may accommodate on-site best management practices, (ii) on-site best*
27 *management practices have been considered in alternative site designs to the maximum extent*
28 *practicable, (iii) appropriate on-site best management practices will be implemented, and (iv) full*
29 *compliance with postdevelopment nonpoint nutrient runoff compliance requirements cannot practicably*
30 *be met on site.*

31 *E. Documentation of the permittee's acquisition of nonpoint nutrient offsets shall be provided to the*
32 *permit issuing authority in a certification from an offset broker documenting the number of phosphorus*
33 *nonpoint nutrient offsets acquired and the associated ratio of nitrogen nonpoint nutrient offsets at the*
34 *offset generating facility. The offset broker shall pay the permit issuing authority a water quality*
35 *enhancement fee equal to six percent of the amount paid by the permittee for the nonpoint nutrient*
36 *offsets. If a locality is not the permit issuing authority, such fee shall be deposited into the Virginia*
37 *Stormwater Management Fund established by § 10.1-603.4:1. If the permit issuing authority is a locality,*
38 *such fees shall be used solely in the locality where the associated stormwater permit applies for*
39 *inspection and maintenance of stormwater best management practices, stormwater educational*
40 *programs, or programs designed to protect or improve local water quality.*

41 *F. Nonpoint nutrient offsets used pursuant to subsection B shall be generated in the same or*
42 *adjacent eight digit hydrologic unit code as defined by the United States Geological Survey as the*

43 permitted site. Nonpoint nutrient offsets outside the same or adjacent eight digit hydrologic unit code
44 may only be used if it is determined by the permit issuing authority that no nonpoint nutrient offsets are
45 available within the same or adjacent eight digit hydrologic unit code when the permit issuing authority
46 accepts the final site design. In such cases, and subject to other limitations imposed in this section,
47 nonpoint nutrient offsets generated within the same tributary may be used. In no case shall nonpoint
48 nutrient offsets from another tributary be used.

49 G. For that portion of a site's compliance with stormwater nonpoint nutrient runoff water quality
50 criteria being obtained through nonpoint nutrient offsets, a permit issuing authority shall (i) use a 1:1
51 ratio of the nonpoint nutrient offsets to the site's remaining postdevelopment nonpoint nutrient runoff
52 compliance requirement and (ii) assure that the nonpoint nutrient offsets are secured in perpetuity.

53 H. No permit issuing authority may grant an exception to, or waiver of, postdevelopment nonpoint
54 nutrient runoff compliance requirements unless off-site options have been considered and found not
55 available.

56 I. In considering off-site options, the permit issuing authority shall give priority to the use of
57 nonpoint nutrient offsets unless a local fee-in-lieu-of, pro-rata share, or similar program has been
58 approved by the Board as being substantially equivalent in nutrient reduction benefits. However, prior
59 to approval by the Board, there shall be a rebuttable presumption that any local government fee-in-lieu-
60 of, pro-rata share, or similar program is substantially equivalent in nutrient reduction benefits. The
61 Board shall establish criteria for determining whether any such local program is substantially
62 equivalent, which shall be used during the local stormwater management program approval process in
63 § 10.1-603.3.

64 J. The Board may establish by regulation a stormwater nutrient program for portions of the
65 Commonwealth that do not drain into the Chesapeake Bay.

66 **2. That no Virginia Soil and Water Conservation Board regulatory action, nor any local**
67 **government ordinance or regional (watershedwide) stormwater management plan amendment, is**
68 **necessary prior to implementation of this act; however, the Virginia Soil and Water Conservation**
69 **Board may conform its regulations to this act through an exempt action and may adopt**
70 **regulations through a nonexempt action.**

Attachment #2

Basin	Stream	Impairment	Running	
			# of Site!	Total
Potomac & Shenandoah	North Fork Catoctin Creek	benthic	2	2
Potomac & Shenandoah	South Fork Catoctin Creek	benthic	1	3
Potomac & Shenandoah	Broad Run	benthic	65	68
Potomac & Shenandoah	Difficult Run	benthic	32	100
Potomac & Shenandoah	Captain Hickory Run	benthic	1	101
Potomac & Shenandoah	Holmes Run	benthic	4	105
Potomac & Shenandoah	Tripps Run	benthic	4	109
Potomac & Shenandoah	Accotink Creek	benthic	47	156
Potomac & Shenandoah	Long Branch	benthic	6	162
Potomac & Shenandoah	Flatlick Branch	Aquatic Life/benthic Aquatic life/pH, D.O.,	3	165
Potomac & Shenandoah	Occoquan River/Reservoir	estuarine bioassessment Aquatic Life/estuarine	2	167
Potomac & Shenandoah	Quantico Creek	bioassessment	10	177
Potomac & Shenandoah	Chopawamsic Creek	Aquatic life/pH Aquatic Life/D.O. & aquatic	6	183
Potomac & Shenandoah	Upper Machodoc Creek	plants Aquatic Life/D.O., pH, &	5	188
Potomac & Shenandoah	Williams Creek	aquatic plants	3	191
Potomac & Shenandoah	Red Bud Run	Aquatic Life/benthic	4	195
Potomac & Shenandoah	Long Meadow Run	Aquatic Life/temperature	1	196
Potomac & Shenandoah	Back Creek	Aquatic Life/benthic	1	197
Potomac & Shenandoah	South River	Aquatic Life/benthic	3	200
Potomac & Shenandoah	Naked Creek	Aquatic Life/benthic	2	202
Potomac & Shenandoah	Happy Creek	Aquatic Life/benthic	1	203
Potomac & Shenandoah	Long Meadow Run	Aquatic Life/benthic	1	204
Potomac & Shenandoah	North Fork Shenandoah River	Aquatic Life/benthic	3	207
Potomac & Shenandoah	Dry Fork	Aquatic Life/benthic	5	212
Potomac & Shenandoah	Crooked Run	Aquatic Life/benthic Aquatic Life/benthic &	6	218
Potomac & Shenandoah	Stony Creek	temperature	1	219
Potomac & Shenandoah	Stephens Run	Aquatic Life/D.O.	3	222
Potomac & Shenandoah	Spout Run	Aquatic Life/benthic Aquatic Life/Chlorophyll-a,	1	223
James	James River	Vegetation	92	315
James	Kingsland Creek	Aquatic life/pH	22	337
James	Gillies Creek	Aquatic life/pH	13	350
James	Johnson Creek	Aquatic Life/D.O., pH	15	365
James	Bailey Creek	Aquatic life/pH	1	366
James	West Run	Aquatic life/pH	1	367

		Aquatic Life/benthic, D.O.,		
James	Grassy Swamp Creek	pH	1	368
James	Upham Brook	Aquatic Life, D.O.	12	380
James	North Run	Aquatic Life/benthic, pH	2	382
James	Beaverdam Creek	Aquatic life/pH	1	383
James	White Oak Swamp	Aquatic Life/D.O., pH	12	395
James	Deep Run	Aquatic Life/D.O.,pH	6	401
James	Rumley Marsh	Aquatic Life/D.O.	3	404
James	Mill Creek	Aquatic Life/D.O.	2	406
James	Diascund Creek	Aquatic Life/D.O.	15	421
James	Lake Meade	Aquatic Life/D.O.	4	425
James	Lake Kilby	Aquatic Life/D.O.	1	426
James	Shingle Creek	Aquatic life/pH	6	432
	Southern Branch Elizabeth	Aquatic Life/estuarine		
James	River	bioassessment	35	467
		Aquatic Life/estuarine		
James	Paradise Creek	bioassessment	6	473
		Aquatic Life/estuarine		
James	Saint Julian Creek	bioassessment	1	474
		Aquatic Life/estuarine		
James	New Mill Creek	bioassessment	8	482
		Aquatic Life/estuarine		
James	Deep Creek	bioassessment	2	484
		Aquatic Life/estuarine		
James	Eastern Branch Elizabeth River	bioassessment	16	500
		Aquatic Life/estuarine		
James	Broad Creek	bioassessment	3	503
James	Totier Creek	Aquatic Life/benthic	1	504
James	Ivy Creek	Aquatic Life/benthic	3	507
James	Moores Creek	Aquatic Life/benthic	14	521
James	Meadow Creek	Aquatic Life/benthic	3	524
James	Rivanna River	Aquatic Life/benthic	16	540
James	Stegers Creek	Aquatic Life/D.O.	1	541
James	Branch Creek	Aquatic Life/D.O.	3	544
James	Powwhite Creek	Aquatic Life/benthic	11	555
James	Reedy Creek	Aquatic Life/D.O.	7	562
James	Jones Creek	Aquatic Life/benthic	2	564
James	Jackson River	Aquatic Life/benthic, D.O.	6	570
James	Woods Creek	Aquatic Life/benthic	5	575
James	Maury River	Aquatic Life/benthic	4	579
James	Goodwin Lake	Aquatic Life/D.O.	1	580
James	Lake Chesdin	Aquatic Life/D.O.	9	589
James	Oldtown Creek	Aquatic Life/D.O.	8	597

James	Swift Creek Lake	Aquatic Life/D.O.	13	610
James	Swift Creek	Aquatic Life/D.O.	45	655
James	Franks Branch	Aquatic life/pH	1	656
James	James River	Aquatic Life/D.O.	43	699
Rappahannock	Lake Pelham	Aquatic Life/D.O.,pH	2	701
Rappahannock	Mountain Run	Aquatic Life/benthic	10	711
Rappahannock	Hazel Run	Aquatic life/pH	18	729
		Aquatic Life/D.O., aquatic plants	3	732
Rappahannock	Rappahannock River			
Rappahannock	Hoskins Creek	Aquatic life/pH, Chloride	1	733
Rappahannock	Piscataway Creek	Aquatic Life/Chloride	1	734
Rappahannock	Mussell Swamp	Aquatic Life/D.O.	1	735
Rappahannock	Mulberry Creek	Aquatic Creek/Chloride	1	736
Roanoke and Yadkin	Roanoke River	Aquatic Life/benthic	35	771
Roanoke and Yadkin	Mud Lick Creek	Aquatic Life/benthic	3	774
Roanoke and Yadkin	Mason Creek	Aquatic Life/benthic	9	783
Roanoke and Yadkin	Leesville Lake	Aquatic Life/D.O.	5	788
Roanoke and Yadkin	Johns Creek	Aquatic Life/benthic	6	794
Roanoke and Yadkin	Buffalo Creek	Aquatic Life/benthic	1	795
Roanoke and Yadkin	Smith River	Aquatic Life/benthic	3	798
Roanoke and Yadkin	Beaver Creek	Aquatic Life/benthic	3	801
Roanoke and Yadkin	Smith River	Aquatic Life/benthic	6	807
Roanoke and Yadkin	Coleman Creek	Aquatic Life/benthic	1	808
Roanoke and Yadkin	Kerr Reservoir	Aquatic Life/D.O.	4	812
Roanoke and Yadkin	Lake Gaston	Aquatic Life/D.O.	3	815
Roanoke and Yadkin	Poplar Creek	Aquatic life/pH	1	816
Roanoke and Yadkin	Lovills Creek	Aquatic Life/temperature	1	817
Chowan River and Dismal Swamp	Lazaretto Creek/Nottoway River	Aquatic Life/D.O.	1	818
Chowan River and Dismal Swamp	Hurrigan Branch	Aquatic Life/D.O.	1	819
Chowan River and Dismal Swamp	Mill Dam Creek	Aquatic Life/D.O.	3	822
Chowan River and Dismal Swamp	North Landing River	Aquatic Life/chloride	13	835
Chowan River and Dismal Swamp	West Neck Creek	Aquatic Life/chloride, D.O.	18	853
Chowan River and Dismal Swamp	Nawney Creek	Aquatic Life/chloride, D.O.	1	854
Chowan River and Dismal Swamp	Muddy Creek	Aquatic Life/chloride	1	855
Chowan River and Dismal Swamp	Back Bay	Aquatic Life/chloride	4	859
Tennessee and Big Sandy				

River	Wolf Creek	Aquatic Life/benthic	10	869
Tennessee and Big Sandy River	Beaver Creek	Aquatic Life/lead	19	888
Tennessee and Big Sandy River	Lick Creek	Aquatic Life/benthic	1	889
Tennessee and Big Sandy River	Laurel Creek	Aquatic Life/benthic	2	891
Tennessee and Big Sandy River	North Fork Holston River	Aquatic Life/benthic	4	895
Tennessee and Big Sandy River	Coal Creek	Aquatic Life/benthic	1	896
Tennessee and Big Sandy River	Ely Creek	Aquatic Life/benthic	1	897
Tennessee and Big Sandy River	North Fork Powell River	Aquatic Life/benthic	1	898
Tennessee and Big Sandy River	Levisa Fork	Aquatic Life/benthic	2	900
Tennessee and Big Sandy River	Garden Creek	Aquatic Life/benthic	1	901
Tennessee and Big Sandy River	Bull Creek	Aquatic Life/benthic	3	904
Tennessee and Big Sandy River	Russell Prater Creek	Aquatic Life/benthic	1	905
New River	Slate Branch	Aquatic Life/benthic	9	914
New River	Dodd Creek	Aquatic Life/temperature	1	915
New River	Little Reed Island Creek	Aquatic Life/temperature	5	920
York River	York River	Aquatic Life/vegetation, D.O. Aquatic Life/vegetation,	21	941
York River	Carter Creek	D.O., benthic	2	943
York River	Sarah Creek	Aquatic Life/vegetation, D.O.	5	948
York River	Felgates Creek	Aquatic Life/vegetation, D.O.	1	949
York River	King Creek	Aquatic Life/vegetation, D.O.	1	950
York River	Wormley Creek	Aquatic Life/vegetation, D.O.	4	954
York River	Skimino Creek	Aquatic Life/vegetation, D.O.	1	955
York River	Ware Creek	Aquatic Life/vegetation, D.O.	5	960

York River	Waller Mill Reservoir	Aquatic Life/D.O.	8	968
		Aquatic Life/D.O., estuarine bioassessment, chloride, nutrients, pH	11	979
York River	Mattaponi River	Aquatic life/pH, D.O.	1	980
York River	Walkerton Branch	Aquatic life/pH	1	981
York River	Maracossic Creek	Aquatic life/pH	3	984
York River	Polecat Creek	Aquatic Life/chloride, D.O.	26	1010
York River	Pamunkey River	Aquatic Life, pH	11	1021
York River	Totopotomoy Creek	Aquatic Life/D.O.	1	1022
Chesapeake Bay/Atlantic/Small Coastal Basins	Dragon Swamp	Aquatic Life/ pH	1	1023
Chesapeake Bay/Atlantic/Small Coastal Basins	Dragon Run	Aquatic Life/D.O.	1	1024
Chesapeake Bay/Atlantic/Small Coastal Basins	Piankatank River	Aquatic Life/estuarine bioassessment, D.O., vegetation	7	1031
Chesapeake Bay/Atlantic/Small Coastal Basins	Burke Mill Stream	Aquatic Life/D.O.	1	1032
Chesapeake Bay / Atlantic/Small Coastal Basins	Fox Mill Run	Aquatic Life/D.O.	12	1044
Chesapeake Bay/Atlantic/Small Coastal Basins	Northwest Branch of Severn River	Aquatic Life/chloride, D.O.	2	1046
Chesapeake Bay/Atlantic/Small Coastal Basins	Harwood Mills Reservoir	Aquatic Life/D.O.	4	1050
Chesapeake Bay/Atlantic/Small Coastal Basins	Newmarket Creek	Aquatic Life/D.O. Aquatic Life/Estuarine Bioassessments, D.O.	7	1057
Chesapeake Bay / Atlantic/Small Coastal Basins	Lynnhaven River	vegetation	49	1106
Chesapeake Bay/Atlantic/Small Coastal Basins	Lake Whitehurst	Aquatic Life/D.O.	5	1111
Chesapeake Bay/Atlantic/Small Coastal Basins	Lake Smith	Aquatic Life/D.O.	5	1116

Chesapeake Bay/Atlantic/Small Coastal Basins	Sandy Bottom Branch	Aquatic Life/benthic, copper	1	1117
Chesapeake Bay/Atlantic/Small Coastal Basins	Assawoman Creek	Aquatic Life/D.O.	2	1119
Chesapeake Bay/Atlantic/Small Coastal Basins	Mill Creek	Aquatic Life/D.O., pH	1	1120
Chesapeake Bay/Atlantic/Small Coastal Basins	Mobjack Bay	Aquatic Life/D.O., vegetation	1	1121
Chesapeake Bay/Atlantic/Small Coastal Basins	Chesapeake Bay segment CB8PH	Aquatic Life/vegetation	38	1159

Attachment #3

Department of Conservation and Recreation
Report to the Virginia Soil and Water Conservation Board
March 19, 2009

1. DCR/SWCD Operational Funding:

All 47 SWCDs were issued a grant agreement with DCR in May, 2008 for Operational funding this fiscal year (FY09). Each returned a fully endorsed agreement to their CDC. All districts were issued an initial quarterly disbursement of funds during late July or August, 2008. Second quarter disbursements were issued during November; third quarter disbursements were issued during February, 2009. Final disbursement will be issued in late April and early May (2009).

At the outset of this fiscal year (FY09), operational funding for all districts totaled \$3,943,790. During October, 2008 a reduction of \$203,697 was imposed on operational funding making the new total funding amount \$3,740,093. This amount reflects a decrease below FY08 operational funding and below the peak funding level experienced by districts in FY01 (\$4,301,000).

2. 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 JED team meets no less than quarterly through face to face meetings or through conference calls. The group will hold their next meeting on May 6th, 2009.

The state level JED team continues to focus on delivery of 3 “core courses.” The short course “Conservation Selling Skills” was held last fall and the expectation is to offer the course during the fall of 2009. 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. Teams have been established through a training session for these regional instructors that was delivered January 27-29, 2009 at the NRCS state office. The 4 newly trained teams will deliver the course within their 4 regions of the state based upon the needs and collective resources within each region. 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.

3. SWCD Dams:

The SWCD dam owner work group comprised of representatives from 12 SWCDs that own dams, DCR, NRCS and others, continue to meet approximately every 3 months (a quarterly annual schedule). Of the roughly 4 meetings per year, one session is focused on Emergency Action Plans (EAPs), another addresses routine annual maintenance of district dams and the remaining two meetings address the priority topics identified by the

group. The group last met on October 16th, 2008 and focused on two topics. They received a briefing on the significant changes of the recently enacted Dam Safety regulations. Later that day they discussed 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. The group was scheduled to meet on January 29, 2009 to address the topic of annual dam maintenance. It was necessary to cancel the session. The next meeting of this group is April 23, 2009 and the primary focus will be fulfilling the new Dam Safety regulations that pertain to EAPs.

4. Agricultural BMP Cost-Share Program:

DCR staff in partnership with representatives from SWCDs, the VASWCD and NRCS continue to advance work towards “modernizing” the automated Ag BMP Tracking Program. Since early November, 2008, the contractor performing the modernization tasks (CACI/WorldView) has been making significant progress in the development of a web based system that will better meet the needs of SWCD and DCR program users. DCR is meeting bi-weekly with project staff to assure clear communications about project milestones and to work through system development, work flow and desired outputs of the program. Development of the preliminary data collection and entry system is proceeding. The goal of a more efficient and effective tracking program that will be in place by August 1st, 2008 is expected to be accomplished. The 2009 General Assembly approved DCR to expend up to an additional \$500,000 (from deposits to the Water Quality Improvement Fund) to continue advancing the modernization of the Ag BMP Tracking Program.

All data entered by SWCDs in program year 2008 (ending June 30, 2008) has been captured and stored in the program database maintained by DCR. Several changes necessary to collect data during the current program year (2008), have been completed and integrated into the system. Data entry by SWCDs for 2009 program year BMP implementation is continuing through winter and spring months.

The Cost Share Program Technical Advisory Committee (TAC) held meetings on October 9th, December 5th, and a conference call on January 30th, 2009. Attendance and participation by TAC members (or designated alternates) continues to be very good. The group is focusing on changes to the Cost Share program that will take effect July 1, 2009. The TAC’s “program of work” includes consideration of changes to cover crop practices, BMPs related to biofuels, modifications to nutrient management, new livestock exclusion and long term no till system practices, as well as other areas of focus. The next meeting of the TAC is scheduled March 19th, 2009.

5. Conservation Reserve Enhancement Program (CREP):

A subcommittee of the Virginia Agricultural BMP Cost Share Program TAC along with the CREP TAC continue to explore ways the Agricultural BMP Cost Share program may complement CREP through additional financial incentives to encourage CREP enrollment in the Chesapeake Bay. The state office of the USDA Farm Service Agency submitted a request to the national office program staff to increase the cost share caps on

all CREP components that are currently limited by cost share caps. DCR and the Environmental Defense Fund has transmitted letters of support for the proposed cap increases to USDA. No decision by USDA has been rendered to date. It is hoped that an increase in cost share funds will stimulate new participants with enrolling in the Chesapeake Bay CREP. Of the 25,000 acre goal authorized for the Chesapeake Bay basin in Virginia, approximately 10,200 acres remain to be enrolled.

6. Total Maximum Daily Load (TMDL):

On December 18th, 2008, DCR announced two additional pilot cost-share practices that deal with livestock exclusion in areas having targeted TMDL implementation projects supported with DCR funds. Meetings were held on January 13th and 14th, 2009, to brief the 17 affected SWCDs on these new practices. One practice allows for an enhanced 85% cost share rate for excluding livestock with a minimum 35 foot buffer and alternative water. The other new practice allows for cost sharing at a 50% rate for practice costs that include the stream protection fence (minimum requirement of 2 stand polywire, electrified) using a 10 foot minimum setback from the stream or water body, and expenses of an alternative water source for livestock. In meetings with DCR, the need for additional options such as these new practices were suggested by SWCDs in TMDL project areas to increase participation in livestock exclusion practices. DCR will assess the magnitude of sign-up and implementation of new practices that may result.

Attachment #4

**NRCS Report
VA Soil & Water Conservation Board Meeting
March 19, 2009
Patrick Henry Building
Richmond, VA**

BUDGET

At this writing, the federal government is still under a Continuing Resolution which expires March 6, 2009. An Omnibus Bill has passed the House. The Senate is debating the Bill and it is unknown if they will pass the Omnibus Bill or extend the Continuing Resolution to fund the government. Therefore, NRCS continues to operate without a finalized allocation.

FARM BILL PROGRAMS – Every NRCS Service Center has held or will be holding at least one outreach and information meeting for landowners and producers about the new Farm Bill.

Easement Programs: All of the interim final rules have been released and published in the Federal Register. The agency is currently taking public comment on these programs. We are operating the FY 2009 programs under these interim rules for the Grassland Reserve Program (GRP), Wetland Reserve Program (WRP), and Farm and Ranchland Protection Program (FRPP). Sign up is being taken on a continuous basis for the WRP. No sign-ups have been announced for the other easements programs.

Financial Assistance Programs: Interim Final Rules have been published for both the WHIP and EQIP programs and public comment is also currently being taken. Both programs will operate under these interim rules for the current sign up. Sign up is continuous. We anticipate making approval of applications as early as the end of March. All current year funds will need to be obligated by July 15. Under the Continuing Resolution budget, the current funding allocation has distributed \$9.8 million in EQIP funding and \$684,000 in WHIP funding to Virginia. Additional funding may be received in the final federal FY-2009 budget.

Stewardship Program: The interim final rule for the new Conservation Stewardship Program (CStP) has not been released.

Chesapeake Bay Initiative (CBI): A Notice of Federal Assistance has been released announcing special funding directed to the Chesapeake Bay Watershed. NRCS has been working with the other states to develop targeted watersheds and a conservation practice list to accelerate certain water quality. Specific funding will go to the Shenandoah River Basin, Potomac River Basin and general Bay areas. In addition, high priority sub-basins have been identified to receive additional priority consideration.

ECOLOGICAL SCIENCES HIGHLIGHTS

- NRCS staff is working to update over 60 conservation practice standards.
- A rainfall simulator has been purchased and NRCS staff is traveling around the state giving presentations on soil quality and erosion reduction programs.

RAPID WATERSHED ASSESSMENT

Lower Shenandoah River – NRCS staff is working on a Rapid Watershed Assessment of the Lower Shenandoah River Watershed. This is a multi-state project between West Virginia and Virginia. This assessment, along with the South Fork and North Fork assessments, will complete

the entire Shenandoah River Watershed in Virginia and West Virginia. The assessment will be completed in June, 2009.

DAM REHABILITATION

Pohick Creek Site 4 (Royal Lake) in Fairfax County – Fairfax County is administering a construction contract for the rehabilitation of Royal Lake Construction is ongoing and should be completed soon.

Pohick Creek Site 3 (Woodglen Lake) in Fairfax County – NRCS is assisting Fairfax County with the design of this project. Funding for the construction of this project has been requested.

Pohick Creek Site 2 (Lake Barton) in Fairfax County – A public meeting was held on February 18, 2009 to present the proposed alternatives for rehabilitation of this dam. A draft plan should be completed by the end of April. Funding for the completion of the plan, design and construction has been requested.

South River Site 10A (Mills Creek) in Augusta County – Augusta County has requested NRCS planning assistance to rehabilitate this dam. The County has already completed most of the engineering studies and analysis but needs help with the environmental, sociological, and economic portions of the plan. They want to organize the information into a document that will meet the Dam Rehabilitation Program requirements so they can qualify for NRCS cost-share on the project. NRCS has requested funding to assist Augusta County to develop a plan and to complete the design for this dam.

Assessments for High Hazard Dams – NRCS has requested funding to conduct assessments of the following three dams in Virginia.

- South River Watershed Site 7 – Lake Wilda in Augusta County
- Upper North River Watershed Site 10 – Todd Lake in Augusta County
- Johns Creek Site 3 in Craig County

WATERSHED OPERATIONS

Buena Vista Flood Control Project – NRCS is assisting the City of Buena Vista with the acquisition of environmental permits for the channel modification of Chalk Mine Run. The proposed mitigation is to establish a riparian buffer along the Calfpasture River and to acquire a perpetual easement on that riparian zone. NRCS has requested funding to complete the design for the channel modification project.

NRCS and the City of Buena Vista have signed a cooperative agreement for \$42,000 to acquire and demolish one home that is located in the floodplain on the Chalk Mine Run tributary in Buena Vista. The City is completing the legal work necessary to complete this project.

2009 FARM BILL SECTION 1619

Section 1619 of the 2009 Farm Bill prohibits USDA employees from disclosing certain information on agricultural landowners and producers that participate in USDA programs. This law protects confidentiality in processing requests under the Freedom of Information Act. Information protected, but not limited to, includes conservation plans, determinations, designs and maps. In order for NRCS to be able to share this information with partners solely for the purpose of assisting with providing technical assistance, each person will need to sign a certification that they understand and agree to conform to Section 1619 safeguarding the information acquired from USDA. Letters of notification have been mailed to agency and partner head. NRCS District Conservationists will be acquiring the signatures locally. NRCS' goal is to be in compliance with this new law by May 1, 2009.

INFORMATION SECURITY AND PRIVACY BASICS TRAINING

All NRCS and Soil & Water Conservation District employees must complete the USDA Information Security and Privacy Basics training by March 31, 2009. For those NRCS and district employees who do not complete the training by that date, their USDA active directory accounts will be deactivated.

BACKGROUND INVESTIGATIONS

There is a new web-based system that NRCS and Soil and Water Conservation District employees must use to complete their background investigations. This new system must be used if they work in a USDA Service Center and/or are requesting a USDA active directory account.

FEDERAL GOVERNMENT-ISSUED IDENTIFICATION CARD – LINCPASS

Soil & Water Conservation District employees are currently receiving e-mail messages to register for their LincPass. Currently, there are not enough enrollment centers throughout Virginia for district employees to easily access. We are working with our Washington, D.C. Office on this matter. Further information will be forthcoming.