

**Virginia Soil and Water Conservation Board
Tuesday, September 26, 2017
Old Dominion Electric Cooperative, Glen Allen, Virginia**

TIME AND PLACE

The meeting of the Virginia Soil and Water Conservation Board convened at 11:00 a.m. on Tuesday, September 26, 2017 at the Old Dominion Electric Cooperative in Glen Allen, Virginia.

VIRGINIA SOIL AND WATER CONSERVATION BOARD MEMBERS PRESENT

Daphne Jamison, Chair
Richard A. Street, Vice Chair
Gray Coyner
Janette Kennedy
Stephen Lohr
Barry Marten
Cindy Smith
David Kriz for John A. Bricker, NRCS. Ex Officio
Dr. Bobby Grisso, Virginia Cooperative Extension, Invitee

VIRGINIA SOIL AND WATER CONSERVATION BOARD MEMBERS NOT PRESENT

C. Frank Brickhouse, Jr.

DCR STAFF PRESENT

Rochelle Altholz, Deputy Director for Administration and Finance
Darryl Glover, Director, Division of Soil and Water Conservation
Micah Fairchild, Director of Human Resources
Michael Fletcher, Board and Constituent Services Liaison
Melissa Jackson, Budget Manager
Wendy Howard-Cooper, Business and Administration Manager
James Martin, Conservation Data Specialist
Stephanie Martin, Soil and Water Conservation District Liaison
Barbara McGarry, Resource Management Program Plan Specialist
Lisa McGee, Director of Policy and Planning
Sharon Partee, Finance Director
Amanda Pennington, District Engineering Services Manager
Carl Thiel-Goin, Conservation Planning and Training Coordinator
Amy Walker, Conservation District Coordinator
Christine Watlington, Senior Policy and Planning Analyst
David Wilmoth, Dam Safety Engineer
Matthew Gooch, Office of the Attorney General

OTHERS PRESENT

Arielle Brown, Virginia Farm Bureau Federation
Sharon Connor, Hanover-Caroline Soil and Water Conservation District
Emily Horsley, USDA – Farm Service Agency
Dr. Kendall Tyree, Virginia Association of Soil and Water Conservation Districts
Greg Wichelns, Culpeper Soil and Water Conservation District

ESTABLISHMENT OF A QUORUM

With seven (7) members of the Board present, a quorum was established.

APPROVAL OF MINUTES FROM MAY 23, 2017 AND JUNE 27, 2017

Ms. Kennedy moved that the minutes of the May 23, 2017 meeting and the June 27, 2017 meeting be approved as submitted by staff. Mr. Street seconded and the motion carried.

DIRECTOR'S REPORT – *Rochelle Altholz, Deputy Director of Administration and Finance*

Deputy Director Altholz thanked Chairwoman Jamison for chairing another meeting. She advised that the Board would be receiving nominations for the Area IV appointment at this meeting. Appointments for the three vacancies are anticipated prior to the November 16 meeting. She noted that Mr. Glover would be reviewing details for the DuPont Settlement, which also provided funds for the Virginia Land Conservation Foundation.

UPDATE ON STAKEHOLDER ADVISORY GROUPS ON WQIF AND RMP – *Christine Watlington, Senior Policy and Planning Analyst*

Ms. Watlington gave an update regarding the Water Quality Improvement Fund Stabilization and the Resource Management Plan Stakeholder Advisory Groups (SAG). Legislation for these two studies was introduced in the 2017 General Assembly Session. Each group met a total of three times, beginning in May 2017.

The studies were to look at how to stabilize funding for Agricultural BMPs and how to increase implementation for Resource Management Plans (RMP).

The WQIF Stabilization SAG evaluated methods to stabilize funding. The members reached a general consensus with regard to stabilizing the funding but not how to adequately fund the practices. The WQIF report is due to the General Assembly by November 15.

The RMP SAG report looks at how to increase implementation of RMPs. The draft report was presented to the SAG at the September 15, 2017 meeting and is due to the General Assembly by October 1, 2017. The group recognized that there are a limited number of planners which impacts how the RMPs can be implemented. The group looked at developing a communications and marketing plan, and also believes that it will be helpful to continue to meet to focus on these issues.

DAM SAFETY AND FLOODPLAIN MANAGEMENT DIVISION REPORT

Update on Consulting Committee's evaluation of the use of HydroTurf™. – *Christine Watlington*

Ms. Watlington stated that at the April meeting the Board passed a motion to establish a consulting committee that would review and evaluate the use of HydroTurf™ for overtopping dams. The committee has been established and the first meeting set for September 28-29, 2017 at the DCR offices in Richmond.

Recommendations and findings of the subcommittee will be presented at the November meeting with the intent to provide a draft guidance document for Board approval at the December meeting.

Update on Phase 1 of the Dam Safety Database – James Martin, Conservation Data Specialist

Mr. Martin provided an overview and demonstration of the Dam Safety Database. The goal of the database is to increase dam safety management capabilities. The database includes the ability for users to attach records and files to each dam record, including engineering reports and emergency action plans. The database is still in development stages.

The Board suggested that it would be helpful for Mr. Martin to make this presentation to the Annual Meeting of the Association of Soil and Water Conservation Districts in December.

SOIL AND WATER CONSERVATION DISTRICT REPORT

Division Update – Darryl Glover, Division Director

Mr. Glover gave prepared remarks. A copy of his report is included as Attachment A.

Small Dam Repair Project Approval - Amanda Pennington, District Engineering Services Manager

Ms. Pennington noted that at the December 2016 meeting, the Board approved a total of \$474,938 in funding through the Soil and Water Conservation District Dam Maintenance, Repair, and Rehabilitation Fund. With that approval, \$40,500 remained in the contingency fund.

Of the approved funding, \$100,000 was dedicated to gate valve projects. An engineering firm proposal came back at \$124,000. DCR negotiated and asked for a reduced estimate; however, that reduced estimate would create scheduling issues and would not allow for any variances.

Ms. Pennington asked that the Board consider authorizing an additional \$24,000 from the contingency fund to be directed toward the gate valve project, thus increasing the fund total to \$124,000. She advised that the hope would be to start the project in October, but it may be delayed until spring. She noted that the project is for assessment only and did not include the actual repairs.

BOARD ACTION

Mr. Marten moved that the Board approve \$24,000 from the contingency fund of the Soil and Water Conservation District Dam Maintenance, Repair, and Rehabilitation Fund bringing the total for the gate valve project to \$124,000. Mr. Lohr seconded and the motion carried.

Update on Engineering Job Approval Authority - Amanda Pennington, District Engineering Services Manager

Ms. Pennington presented an update regarding engineering job approval authority. The document entitled *DCR's Engineering Job Approval Authority Justification* is attached (Attachment B).

Ms. Pennington advised that DCR staff met with the Department of Professional and Occupational Regulation's (DPOR) regarding the authority. Consensus was that the practices DCR employs for Agricultural Cost-Share management are exempt from DPOR regulations.

Draft guidance will be presented to the Board at the December meeting.

Agricultural Needs Assessment Overview – Darryl Glover

Mr. Glover reviewed the following information from the Division Report (Attachment A).

The Environmental Protection Agency’s Chesapeake Bay Program (EPA) is about to finalize the Phase 6 Bay Model. This new model will be used to make potentially significant revisions to nitrogen, phosphorus, and/or sediment reduction targets for each of the states within the Chesapeake Bay watershed to achieve by 2025. The revised pollution reduction targets (expected in March – April, 2018), along with the new Chesapeake Assessment Scenario Tool (CAST), and any local goals in the Phase III Chesapeake Bay TMDL Watershed Implementation Plan (WIP), are due in draft form by December 2018, and will all be used to develop future bi-annual agricultural needs assessments.

Consequently, only minor modifications were made to last year’s Agricultural Needs Assessment for 2017. The most significant change is further adjustments for additional implemented livestock stream exclusion (SL-6) practices. Excluding remaining pending SL-6 projects, which are summarized below, the projected average need statewide, for cost-share alone during the FY 2019 - 2020 biennium is \$65 million/year. The projected average need, statewide for re-benchmarked base operations and technical assistance funding for SWCDs during the FY 2019 - 2020 is an average of \$21.75 million per year.

Budget Template Results Overview – Wendy Howard-Cooper, Business and Administration Manager

Ms. Howard-Cooper gave an overview of the Budget Template. The document reflects each of the funding categories, the amount appropriated by the Board for FY2018, and historical appropriations since 2014 when the template was first implemented.

Proposed Training Curriculum for Districts – Carl Thiel-Goin, Conservation Planning and Training Coordinator

Mr. Thiel-Goin presented the draft list of Soil and Water Conservation District Personnel Training Topics and Courses. Many of these courses will be available through the Commonwealth of Virginia Learning Center (<https://covlc.virginia.gov/Default.aspx>). The following list of available trainings will be shared with Districts at the December Association meeting.

	District Directors	District Administrative Staff	District Technical Staff
Mandatory	<ul style="list-style-type: none"> New Director Training I & II Provided by DCR (in person) FOIA (if FOIA Officer) – DLS – Freedom of Information Act – FOIA (COVLC or in Person) COIA – 2017 OAG Conflict of Interest Act Training (COVLC) 	<ul style="list-style-type: none"> FOIA Officer – FOIA Training – DLS – Freedom of Information Act – FOIA (COVLC or in Person) Introduction to the Attachment E, Accounting Tips – Provided by DCR (in Person) IT Security Course Library of VA Record Retention (in Person or online resources) 	<ul style="list-style-type: none"> IT Security Course VACS Program Manual – Periodically provided by DCR (in Person) RMP Module Access – Provided by DCR (in Person) VACS Program Update – Provided by DCR (in Person)
Recommended	<ul style="list-style-type: none"> VASWCD Trainings (in Person) Basic Parliamentary Procedures (in Person) Personnel Management MVP Enhancing Employee 	<ul style="list-style-type: none"> COIA – 2017 OAG Conflict of Interest Act Training (COVLC) Driver Safety – DGS Fleet Driver Safety and Policy Lesson (COVLC) 	<ul style="list-style-type: none"> Conservation Planning Certification (online and in Person classes) Engineering workshops – Provided by

	Performance Modules I-IV I. Introduction to Supervision II. Managing the Work Process III. Delegation IV. Motivation for Improved Performance (COVLC) <ul style="list-style-type: none"> • MVP Conflict Management Skills (COVLC) • VACS Program Update – Provided by DCR 	<ul style="list-style-type: none"> • VACS Program Update – provided by DCR (in Person) • Ag BMP Tracking Program – provided by DCR (in Person) • VASWCD Trainings (in Person) • VACDE Trainings (in Person) • Conservation Selling Skills – Periodically provided by DCR (in Person) 	DCR/NRCS (in Person) <ul style="list-style-type: none"> • Driver Safety – DGS Fleet Driver Safety and Policy Lesson (COVLC) • Ag BMP Tracking Program – provided by DCR (in Person) • JEDs – provided by DCR in person • VACDE Trainings (in Person) • COIA – 2017 OAG Conflict of Interest Act Training (COVLC) • Effective Presentation & Instruction (in Person) • Conservation Selling Skills Periodically provided by DCR (in Person)
--	---	---	---

Soil and Water Conservation District Annual Assessment Results – Stephanie Martin

Ms. Martin reviewed the District annual assessment results and provided an overview of the process. The Conservation District Coordinator creates the assessment which is reviewed at the District Board meeting. It is submitted to DCR and the data is aggregated into the report card.

Ms. Martin noted that the deliverables are from the grant agreement that the Board approved in the spring of 2017. She advised that any report of a District receiving a grade of “C” would be forwarded to the Audit Subcommittee to determine next steps and to discuss a Performance Improvement Plan (PIP) to correct the deficiencies. For this report, only one District received a grade of “C”, and has already prepared a corrective action plan and submitted that information to the Audit Subcommittee.

Mr. Street advised that this could be addressed at the November 16 meeting of the Audit Subcommittee.

District Director Resignations and Appointments – Stephanie Martin

Ms. Martin presented the District Director Resignations and Appointments. She noted a clarification with the information presented. The Soil and Water Conservation Board does not have to approve a resignation at the District level. This is a change in procedure from previous meetings, but does not change the actual appointment process.

Daniel Boone

- Resignation of Jerry L. Ingle, Lee, County, effective July 14, 2017, elected director position (term of office expires 1/1/20).
- Appointment of Monroe Rasnake, Lee County, to fill the unexpired term of Jerry L. Ingle, (term of office expires 1/1/20).

Pittsylvania

- Resignation of Samuel M. Giles, Pittsylvania County, effective August 21, 2017, elected director position (term of office expires 1/1/20).
- Appointment of Steve Cassada, Pittsylvania County, to fill the unexpired term of Samuel M. Giles, (term of office expires 1/1/20).

Thomas Jefferson

- Resignation of Deloris Bradshaw, City of Charlottesville, effective May 31, 2017, elected director position (term of office expires 1/1/20).
- Appointment of Clement Tingles, City of Charlottesville, to fill the unexpired term of Deloris Bradshaw (term of office expires 1/1/20).

Three Rivers

- Resignation of Roland B. Geddes, at-large appointed director, effective July 1, 2017 (term of office expires 1/1/19).
- Resignation of Lloyd B. Mundie, Essex County, effective September 26, 2017, elected director position (term of office expires 1/1/20).
- Appointment of Lloyd B. Mundie, Essex County, to fill the unexpired term of Roland B. Geddes, at-large appointed director position (term of office expires 1/1/19).
- Appointment of Benjamin B. Ellis, Jr. Essex County, to fill the unexpired term of Lloyd B. Mundie (term of office expires 1/1/20).

Virginia Dare

- Appointment of Russell Malbone, City of Virginia Beach, to fill the unexpired term of Daniela Cossu (term of office expires 1/1/20).

BOARD ACTION

Mr. Lohr moved for the approval of the District Director Appointments as submitted by staff. Mr. Marten seconded and the motion carried.

Timberlake Watershed Improvement Update – Matthew Gooch, Office of the Attorney General

Mr. Gooch provided an update regarding the Timberlake Watershed Improvement District (WID). He reminded the Board that at the May meeting trustees from the WID presented a program regarding their desire to dredge the lake and to incur a certain form of indebtedness to cover the associated costs. Since that time, the Campbell County District Attorney advised that the WID does not formally exist as there is no court order establishing the organization.

The landowners have chosen to apply for recertification as a WID. They have filed a new petition with the Robert E. Lee Soil and Water Conservation District. The matter will be brought before the Soil and Water Conservation Board at the appropriate time.

OLD BUSINESS

Audit Subcommittee

Mr. Street reported that the Audit Subcommittee met with three districts at their last meeting. The next meeting is scheduled for the morning of November 16, 2017 prior to the full Board meeting. The subcommittee will be following up with those districts at their next meeting and will address corrective action measures and procedures.

NEW BUSINESS

Virginia Association of Soil and Water Conservation Districts – Dr. Kendall Tyree

Dr. Tyree presented recommended names for appointment to the Board vacancy in Area IV. The names presented were:

Adam Wilson	Charles P. Shorter
346 Woodlands Court	4595 Long Shop Road
Lebanon, VA 23266	Blacksburg, VA 24060

BOARD ACTION

Mr. Coyner moved that the Virginia Soil and Water Conservation Board accept the nominations as presented by the Virginia Association of Soil and Water Conservation Districts and that staff be directed to forward this information to the Secretary of the Commonwealth. Mr. Lohr seconded and the motion carried.

Dr. Tyree also provided the following updates:

- The Virginia State Fair is scheduled to begin on Friday, September 29. The Association, along with other partners, will be exhibiting in the Natural Resources Area.
- The Association is working with the Colonial Soil and Water Conservation District to host the Senate Finance Committee Retreat on October 5-6.
- The Association Annual Meeting will be held December 3-5, 2017 at the Portsmouth Renaissance Hotel in Portsmouth. The Soil and Water Conservation Board will meet on Wednesday, December 6 at the conclusion of that meeting.

Virginia Cooperative Extension – Dr. Bobby Grisso

Dr. Grisso reported that VCE is again in the hiring process for extension agents.

Robert Mills of Pittsylvania County has been recognized as the VCE Farmer of the Year. Mr. Mills will be going to Georgia in October to compete with other farmers. Mr. Mills is on the Board of the Virginia Department of Agriculture and Consumer Services as well as on the Board of Visitors at Virginia Tech.

NEXT BOARD MEETINGS

REVISED: 11/17/2017 10:15 AM

- November 16, 2017, 10:00 a.m., Department of Forestry, Charlottesville, Virginia
- December 6, 2017, 9:00 a.m., Portsmouth Renaissance, Portsmouth, Virginia

Chairwoman Jamison recessed the meeting at 2:00 p.m.

AGRICULTURAL STEWARDSHIP ACT APPEAL ADMINISTRATIVE PROCEEDING – ASA COMPLAINT #978

Chairwoman Jamison reconvened the meeting at 3:00 p.m. for the purpose of the Agricultural Stewardship Act Appeal Administrative Proceeding in the matter of Cullers, LLC vs. Department of Agriculture and Consumer Services. She called on Ms. McGee to provide an overview of the appeal.

Ms. McGee stated that the matter before the Board was an appeal of the decisions issued by the Commissioner of the Department of Agriculture and Consumer Services (VDACS), Sandra J. Adams, related to Agricultural Stewardship Act (ASA) Complaint #978. The matter comes before the Soil and Water Conservation Board pursuant to §3.2-405 of the *Code of Virginia*. Specifically, Cullers, LLC petitioned to appeal the final decision issued on July 24, 2017 as to the findings of the Agricultural Stewardship Act Complaint investigation.

Ms. McGee advised the Board that it was within the Board’s authority at the conclusion of the hearing to render a decision to uphold or affirm the decision(s) of the Commissioner or to reverse the decision(s) of the Commissioner and remand the case back to VDACS for further review.

Chairwoman Jamison advised that the Soil and Water Conservation Board was authorized to conduct an appeal of the findings and decision of the VDACS Commissioner with a quorum of the Board present. She noted that the proceedings of the hearing were being recorded.

Soil and Water Conservation Board Members present:

Daphne Jamison, Chair
Richard A. Street, Vice Chair
Gray Coyner
Janette Kennedy
Stephen Lohr
Barry Marten
Cindy Smith
Dr. Bobby Grisso, Virginia Cooperative Extension, Invitee

Chairwoman Jamison noted that with seven (7) members of the Board present, a quorum was established.

Virginia Department of Agriculture and Consumer Services:

Darrell Marshall, Agricultural Stewardship Program Manager
Tim Hicks, Agricultural Stewardship Program Coordinator
Kevin Schmidt, Director, Office of Policy, Planning and Research
Sara Bottenfield, Shenandoah Valley Soil and Water Conservation District
Justin Bell, Office of the Attorney General

REVISED: 11/17/2017 10:15 AM

Virginia Department of Conservation and Recreation:

Michael Fletcher, Board and Constituent Services Liaison
Darryl Glover, Director, Division of Soil and Water Conservation
Lisa McGee, Director of Policy and Planning
Christine Watlington, Senior Policy and Planning Analyst
Matthew Gooch, Office of the Attorney General

The following members of the public were present:

Arielle Brown, Virginia Farm Bureau Federation
Dr. Kendall Tyree, Virginia Association of Soil and Water Conservation Districts

Ms. McGee advised that Cullers, LLC would not be present at the hearing and that their issues of appeal had been provided to the Board in writing.

The members of the Board reviewed all documents submitted by Cullers, LLC.

Mr. Bell, Counsel for VDACS, provided an opening statement and presented the Commonwealth's case. The Board heard testimony from Mr. Marshall, Mr. Higgs, and Ms. Bottenfield.

Mr. Bell provided a closing statement and asked that the Board deny the appeal and support the decision of the Commissioner.

After reviewing the case file, the documents received from Cullers, LLC, and hearing the testimony from VDACS, Chairwoman Jamison called for Board discussion.

BOARD ACTION

Mr. Gray moved that the Virginia Soil and Water Conservation Board affirm the decision of VDACS Commissioner Sandra J. Adams with regard to Cullers, LLC and Agricultural Stewardship Act Complaint #978. Ms. Smith seconded and the motion carried.

Chairwoman Jamison advised that the Board needed to address a revised timeline for the Agricultural Stewardship Plan. Mr. Marshall proposed the following adjustments.

- Cullers, LLC is given sixty (60) days from the date of the Board decision to submit an Agricultural Stewardship Plan to VDACS;
- Implementation of the plan to begin no later than March 26, 2018; and
- The plan must be completed no later than March 2019.

Mr. Gooch noted that the order should state that cost-share funding may be available to the operator.

BOARD ACTION

Mr. Lohr moved that the Board approve the extension of the deadlines as outlined by Mr. Marshall and that the operator be advised that cost-share funding may be available through DCR or the Natural Resources Conservation Service. Mr. Coyner seconded and the motion carried.

ADJOURN

There was no further business and the meeting of the Virginia Soil and Water Conservation Board adjourned at 4:13 p.m.

Respectfully submitted,

Daphne W. Jamison
Chair

Clyde E. Cristman
DCR Director

Attachment A

Division of Soil and Water Conservation
Division Director's Report

September 26, 2017

Presented by Darryl M. Glover;

Director, Division of Soil and Water Conservation

Madam Chairwoman, members of the Virginia Soil and Water Conservation Board, please accept this Soil and Water Conservation Division Report.

Livestock Stream Exclusion Update

As of September 1, 2017, the backlog in SL-6 practices that remain in pending status (i.e. awaiting funding) was further reduced to approximately \$13 million, consisting of \$3.5 million in the Chesapeake Bay watershed and \$9.5 million in the Southern Rivers/Outside the Chesapeake Bay. \$69 million of SL-6 practices have been completed statewide and another \$25 million have been approved by local Soil and Water Conservation Districts (Districts) and are awaiting completion. Through September 1st, roughly 1,900 completed SL-6 practices have resulted in 7 million linear feet of streambank protected and over 89,000 animal units excluded. A few Districts have retired all of their SL-6 backlog.

The Department is awaiting approval of a modification of its US Department of Agriculture (USDA), Regional Conservation Partnership Program (RCPP) stream exclusion grant be modified to shift \$171,534 in technical assistance, which the Chesapeake Bay Foundation has elected to not request, into additional financial assistance for farmers. This number is lower than previously reported due to \$57,138 of the original request being withheld for technical assistance to the Natural Resources Conservation Service (NRCS). If approved, financial assistance to producers for livestock exclusion from this grant would total \$1,621,534.75. With match from the Department, these best management practices will be funded at or near 100%.

Signup for Conservation Reserve Enhancement Program (CREP) in Virginia has resumed. The Department has committed match for all CREP applications submitted to the Farm Service Agency (FSA) prior to the suspension of the program on March 1, 2017. All CREP applications approved by FSA prior to March 1, 2017, have received 50% state match. Those not yet approved, including any new applications in FY 2018, will receive the historical rate of 25% state match.

To better achieve an early warning in the future, FSA and the Department are working together to ensure CREP signup through FSA is shared much earlier in the approval process than it had previously. However, since initial CREP cost estimates are not fully itemized, the Department will need to over-estimate state match in order to ensure available state match is not exhausted.

BMP Verification

The Department has completed development of a web application that will facilitate the more detailed documentation that will be required for BMP verification spot checks in the Chesapeake Bay watershed,

beginning in calendar year 2018, in accordance with the state's BMP Verification Plan. This project includes a mobile application with which to conduct BMP verification spot checks. These data application enhancements are available to all Districts statewide.

The Department will offer supplemental (separate) grant agreements in late October to affected Districts in the Chesapeake Bay watershed to recertify structural BMPs whose contractual lifespans end from 2016 - 2019 in order to continue to receive pollution reduction credit from the U.S. Environmental Protection Agency. Payment for each completed inspection will be increased, as compared to the previous project to re-verify practices, from \$125 to \$150. Adequately documented unsuccessful efforts to conduct an inspection will be paid \$50 each. Modifications to the Ag BMP Tracking System will be completed soon to help the Department administer this project.

DuPont Settlement

The DuPont settlement is applicable to portions of Headwaters, Shenandoah Valley, and Lord Fairfax Soil and Water Conservation Districts. There are several "pots" of settlement funds, including \$10 million for water quality. Both agricultural best management practices (BMPs), and urban stormwater practices, and certain projects by the City of Waynesboro, are among those that are eligible for "water quality" funding. Other "pots" of this settlement can fund land conservation, song bird habitat restoration, administrative expenses, etc. The Department has made a request for administrative funds to support an additional Professional Engineer and for other expenses related to the settlement.

Eligible Districts may substitute settlement funds, to replace or to augment state agricultural BMP cost-share, provided the local District Board has not yet approved it (i.e. Part 2 of the Cost-Share contract has not yet been signed). Under certain conditions, Districts may also piggyback settlement funds on submitted, but not yet approved, federal incentive program applications, e.g. CREP, or EQIP.

Districts can include a 12% technical assistance request as part of their package of agricultural BMPs they apply for. The application deadline is October 10. Individual producers cannot apply for this funding. The Department will help to evaluate District proposals but no settlement funds will pass through the Department to the applicable Districts. These funds will come directly from U.S. Fish and Wildlife Service, who is one of the settlement trustees, along with the Virginia Secretary of Natural Resources, Molly Ward.

Virginia Agricultural Cost-Share practices that are eligible to apply for DuPont settlement funds are certain buffer, livestock stream exclusion, animal waste, and related practices, namely: CR-FR3, CR-SL6, FR-1, FR-3, SL-6, SL-7, SL-9, WP-1, WP-2A, WP-4, WP-4B, WP-4C, WP-6, and WQ-1. Of these, only the livestock stream exclusion and animal waste practices will be at 100% cost reimbursement with no cap. The majority of the other practices are at 90% with a \$70,000 cap. Annual state cost-share caps will not affect any settlement award, nor will they be affected by participating in the settlement.

Dam Rehabilitation

David Warriner, joined the Department as the Dam Rehabilitation Engineer on August 10 to work on the Dam Rehabilitation Report. He is a graduate of Virginia Military Institute and is a licensed Professional Engineer in the Commonwealth of Virginia. A second dam rehabilitation staff member is now under recruitment.

Nutrient Management

Department records show that nearly 300 golf courses have obtained a nutrient management plan; however, a few dozen others had neither submitted a nutrient management plan nor contacted one of our contractors about getting a plan prepared as required by State law as of the June 30, 2017 deadline to do so. As a result, the Department notified the operators of those golf courses who had not begun the process of obtaining a nutrient management plan that these golf courses may be subject to a civil penalty if they do not take prompt action to obtain a plan. A number of them have since begun to do so.

Shoreline Erosion Advisory Service

The Department, working with the Virginia Department of Environmental Quality the Virginia Marine Resources Commission, and the Virginia Institute of Marine Science, have begun work on a project to reviewing shoreline management projects permitted by the Virginia Marine Resource Commission since 2008, in order to calculate sediment and nutrient reduction credits for Chesapeake Bay Program approved shoreline management types, including living shorelines, breakwaters, and revetments. Bulkheads are not eligible. This project will result in additional sediment and nutrient reduction credits towards the targets the Commonwealth will be required to meet.

In June, Department staff participated in a Virginia Conservation Assistance Program (VCAP) technical training on Living Shorelines at VIMS in Gloucester Point. VCAP, a program of the Virginia Department of Environmental Quality and the Virginia Association of Soil and Water Conservation Districts (VASWCD), is an urban cost-share program that provides technical assistance and financial incentives to property owners installing eligible Best Management Practices in the Chesapeake Bay watershed. The purpose of this training was to provide District staff with the fundamental knowledge necessary to guide the proper siting, selection, design, installation, and maintenance of Living Shorelines as they implement VCAP.

Conservation Planning

NRCS has invited a representative from the Department (Carl Thiel-Goin), and from Soil and Water Conservation Districts (Charlie Wooten – Piedmont SWCD), to represent Virginia on a national committee formed to advise the NRCS Conservation Planning and Technical Assistance Division (CPTAD) on a path forward to assist in implementing the NRCS Conservation Planning Policy, which was amended in January 2017. Virginia and other selected states were asked to join this advisory committee "...to explore the barriers and potential successes in implementing the (national) Conservation Planning Policy, and to assist in defining the areas where resources are needed and available to support conservation planners throughout the Partnership during the transition period..."

The DCR Conservation Planning and Certification Stakeholder Advisory Group will meet on October 3 at Pocahontas State Park in Chesterfield County. The Farm Summary and Resource Guide sheet, initial certification courses, and recertification requirements will be finalized at this meeting.

Horse Stewardship Workshops

Working with Dr. Bridgette McIntosh (Virginia Cooperative Extension), the horse stewardship project, "Healthy Land for Healthy Horses," was completed for FY 2017 on June 5. The project focused on small lot owners in Fairfax, Prince William, Loudoun, and Fauquier counties. The workshops included six

sessions on consecutive Monday nights with an additional bus tour and was designed to help small horse farm owners protect water quality. The sessions included a short lecture on topics such as pasture management and manure management, followed by field visits to various best management practices at the Middleburg Agricultural and Research and Extension (MARE) Center. Approximately 50 individuals participated and roughly 90 percent of the respondents on evaluations indicated, because of the program, they would modify some part of their operation to improve water quality. The Department has dedicated EPA Chesapeake Bay Program grant funding to conduct a similar project in 2018.

In addition, a letter has been received, dated August 30, 2017, from Jim Gehlsen, representing VASWCD Area II, requesting that “either the eligibility language for owners of equines found in the tax credit program guidance be added to the cost-share program guidance, or the creation of a cost-share fund to address these operations.” This letter also proposes, as an alternative, “to handle funds for recreational equines as a separate funding source with the VACS program. Districts would receive a regular allocation for our traditional producers and a second allocation to be used for recreational equines.”

Given that the suggestions in the letter from Area II would result in a major change to the agricultural cost-share program, and might also require a change to the statutory definitions of “agricultural activity” and/or “farmer” in state law (Title 3.2, Chapter 4, Sections 3.2-300 and 3.2-400; Chapter 5, Section 3.2-500), the Department wishes to refer this matter to the Agricultural Technical Advisory Committee (TAC) for their deliberation. The next meeting of the TAC is scheduled for October 26.

Training for Districts

The Department has scheduled a “Conservation Selling Skills” class, November 1 – 2, in Lynchburg. Accounting and bookkeeping training for both beginners and advanced District Administrative staff was conducted in June. This training was introduced in 2016 and will be offered regularly. Annual training on the Virginia Agricultural Cost-Share (VACS) Program training was also conducted, at several locations, in June. The Department is working with the Department of Human Resource Management on a training session on the Commonwealth’s on-line Learning Center. This training will be offered at the Association’s Annual Meeting this December. District staff and Directors will then be able to request their own Learning Center account, which will enable them to take administrative and other training on-line, at no cost. In order to prepare for the launch of this opportunity in December, the Department seeks input from Districts, by October 13, on the attached list of classes. Please note that while most of the training listed will be on-line, there are also a few classes that will be offered in person, e.g. the aforementioned accounting and book keeping training.

Legislative Stakeholder Advisory Groups

Both the legislatively called for Water Quality Improvement Fund (WQIF) Stabilization and Resource Management Plan Implementation Stakeholder Advisory Groups (SAGs) met over the course of the summer. Each SAG last met on September 15. Both the Association and the Virginia Soil and Water Conservation Board, are represented on each of these SAGs.

The RMP SAG’s report is due October 1. Item 364 Q of the 2017 Acts of the Assembly, directed this SAG to “examine the funding, training, and resource needs, as well as explore new incentives, for additional implementation of Resource Management Plans (RMPs)...”

The RMP SAG meetings, and a survey of producers who have had approved RMPs for a period of time but have not yet achieved RMP certification, demonstrated a need for greater education of producers, RMP developers, and Districts, about the process, roles, and responsibilities related to RMP certification. Each of the SAG's member organizations can play a part by informing their associates about the process for obtaining RMP certification and its benefits. The RMP SAG noted that financial incentives need to be created, especially for Districts, but also for RMP Developers, to work with producers well after RMP approval, to help them achieve RMP certification. This SAG discussed options to better ensure that best management practices within RMPs receive cost-share funding and agreed to continue to periodically meet even after its upcoming report is completed, in order to continue to monitor the progress of the RMP Program.

Districts in Area III have advocated for a RMP signup period in FY 2018. This will allow producers with RMPs to actively work with their District in advancing already recognized BMP needs specified in approved RMPs. This should also make the opportunity to obtain a RMP available to a broader group of farmers and also better enable Districts to educate additional farmers about the RMP Program before they sign up. The Department has developed RMP ranking criteria for Districts to use in FY2018 in order to establish priorities for RMP development funding. Districts in the Chesapeake Bay watershed should submit these RMP sign up lists to the Department for use in developing the next round of RMP contracts in the Chesapeake Bay, which will be in spring 2018.

The Department anticipates a significant increase in RMPs that will need certification during FY2018. We shall be working even more closely with RMP plan developers and affected Districts to help them manage the workload the resulting onsite reviews will create. Some remaining RMP set-aside funding has been prioritized for RMP certification. Further, as a pilot initiative, the Department has offered to conduct "pre-inspections" of RMPs, in Hanover-Caroline SWCD, that are reportedly ready for an official certification inspection. Finally, contracts the Department issues in FY 2018 will include some for RMP certification in the Chesapeake Bay.

The WQIF SAG has a report due on November 15. Discussions by this SAG have focused on both the consistency of funding amounts for agricultural best management practices, and also its adequacy to meet Chesapeake Bay Watershed Implementation Plan as well as local Total Maximum Daily Load goals. The WQIF SAG has supported \$35 million per year, for best management practices, with both operations/administration and technical assistance funding for SWCDs in addition to this figure. This SAG has not yet reached consensus around any of several potential funding mechanisms, including the second half of the real estate recordation fee (which is currently being recommended to go to the Reserve), or at what level the WQIF reserve should be capped (present suggestion of \$50 M).

Agricultural Needs Assessment

The Environmental Protection Agency's Chesapeake Bay Program (EPA) is about to finalize the Phase 6 Bay Model. This new model will be used to make potentially significant revisions to nitrogen, phosphorus, and/or sediment reduction targets for each of the states within the Chesapeake Bay watershed to achieve by 2025. The revised pollution reduction targets, along with the new Chesapeake Assessment Scenario Tool (CAST), and any local goals in the Phase III Chesapeake Bay TMDL Watershed Implementation Plan (WIP), are due in draft form by December 2018, and will all be used to develop future bi-annual agricultural needs assessments.

Consequently, only minor modifications were made to last year's Agricultural Needs Assessment for 2017. The most significant change is further adjustments for additional implemented livestock stream exclusion (SL-6) practices. Excluding remaining pending SL-6 projects, which are summarized below, the projected average need statewide, for cost-share alone during the FY 2019 - 2020 biennium is \$65 million/year. The projected average need, statewide for re-benchmarked base operations and technical assistance funding for SWCDs during the FY 2019 - 2020 is an average of \$21.75 million per year.

Engineering

Department staff met with the Department of Professional Occupational Regulation (DPOR) Board on September 14, 2017 to discuss DCR's plan to delegate Engineering Job Approval Authority (EJAA) to Virginia's 47 Soil and Water Conservation Districts (Districts). In that meeting, staff noted applying both the agricultural exemption and the exemption for political subdivisions of the Commonwealth to the DPOR Board. No objections to DCR moving forward were raised; however, they advised us that every Professional Engineer, whether private sector or at any level of government, must sign and seal every engineering design they produce in Virginia, regardless of whether or not it is for an exempted activity. This will not affect any District staff with delegated DCR EJAA unless they are also a Professional Engineer. The first round of the Department's EJAA reviews of District staff will be completed soon and DCR will soon advertise for a second Agricultural BMP Professional Engineer to help administer DCR EJAA. A guidance document on the administration of DCR EJAA will be developed for consideration by the Soil and Water Conservation Board at their December meeting.

Appointments to the VSWCB

Previously submitted candidates for appointments to the Virginia Soil and Water Conservation Board (Board), for Areas V and VI, are being held, pending the Association's recommendations for an appointment to represent Area IV as well. Nominations for all three areas, pending the concurrence by the Board on the nominations for Area 4, will be acted upon as a group by the Governor's Office. It is anticipated that these appointments will be made, and new Board Directors will also receive orientation, in time to hold Board elections at a special meeting on November 16.

Attachment B

DCR's Engineering Job Approval Authority Justification

Summary:

The purpose of this document is to confirm that no license is required for Soil and Water Conservation Districts (District) to implement agricultural best management practices (practices) and further that having the Department of Conservation and Recreation (DCR) Agricultural BMP Professional Engineer use their license to delegate engineering work to Districts via an Engineering Job Approval Authority (EJAA) arrangement presents no issues from the Department of Professional and Occupational Regulation's (DPOR) standpoint. These BMPs may include:

- Hardened stream crossings for livestock
- Livestock watering systems
- Livestock waste storage facilities
- Livestock mortality composting facilities

More specifically, DCR is requesting the DPOR Board's interpretation of the following exemption and its applicability to the work Districts do. Districts are considered political subdivisions of the Commonwealth of Virginia:

- **Licensure exemption 1-Farm Structures**
§ 54.1-402 Further exemptions from license requirements for architects and professional engineers.
 - No license as an architect or professional engineer shall be required pursuant to §54.1-406 for persons who prepare plans, specifications, documents and designs for the following, provided any such plans, specifications, documents or designs bear the name and address of the author and his occupation:
 - **Licensure exemption 2-Political Subdivisions**
§ 54.1-402 Further exemptions from license requirements for architects and professional engineers.
 - 10. No license as an architect or professional engineer shall be required pursuant to §54.1-406 for persons who prepare plans, specifications, documents and designs for the following, provided any such plans, specifications, documents or designs bear the name and address of the author and his occupation:
 - 10. Construction by a state agency or political subdivision **not exceeding \$75,000 in value keyed to the January 1, 1991, Consumer Price Index (CPI)** and not otherwise requiring a licensed architect, engineer, or land surveyor by an adopted code and maintenance by that state agency or political subdivision of water distribution, sewage collection, storm drainage systems, sidewalks, streets, curbs, gutters, culverts, and other facilities normally and customarily constructed and maintained by the public works department of the state agency or political subdivision.

Introduction:

The DCR's Division of Soil and Water Conservation, in partnership with Virginia's Soil and Water Conservation Districts, awards millions of dollars for agricultural conservation practices every year. From cropland to pastureland practices, many of these projects include engineered components such as livestock watering systems, sod waterways, and culvert stream crossings. DCR is actively working to

establish a training and certification procedure to allow Districts to move forward with the work they are mandated to do. The proposed DCR EJAA certification will enable District staff to receive proper training and guidance from DCR, while allowing District employees the autonomy to get conservation on the ground in a timely fashion to best serve the agricultural community.

Background:

Historically, District staff designed and certified engineered agricultural conservation practices under the guidance and supervision of the United States Department of Agriculture (USDA) Natural Resources Conservation Services (NRCS) State Conservation Engineer. On October 1, 2013, the NRCS State Conservation Engineer declared that Virginia NRCS would no longer delegate engineering job approval authority to District employees. Virginia NRCS interpreted this work to be governed by state licensure requirements and therefore, District staff were operating outside the required “direct control and personal supervision” of the NRCS State Conservation Engineer. In response to this decision, Districts sought clarification from both the DPOR as well as the Office of the Attorney General to determine the necessary requirements for DCR under the Code of Virginia. Additionally, DCR hired a Professional Engineer to assume responsibility for the engineering support services provided to Districts.

Conclusion:

The agricultural engineering work of Districts is largely exempt from licensure regulations. The Code grants a licensure exemption for any farm structure used primarily in the production, handling or storage of agriculture products or implements, DCR requested a formal opinion from the Office of the Attorney General. Confirmation of exemption from engineering licensing laws and regulations has been received from DCR’s counsel.

In excluding District staff from the NRCS EJAA Program, NRCS was apparently following an internal policy addressing their concerns related to providing “direct engineering oversight” and not one supported by State Code. While NRCS has reportedly suggested that Districts are required to be licensed to practice engineering, it appears from our independent official consultation with the Attorney General’s Office that this is largely not the case pursuant to the Code exemption.

Despite most agricultural-related engineering work by Districts being exempt from state licensure regulations, Districts and DCR, acknowledge the merit of oversight and a strong quality control structure. DCR’s EJAA certification will combine a robust continuous training program, a rigorous certification procedure, and a thorough work review procedure including all phases of project implementation, including inventory and evaluation, design, and construction certification. While not fully regulated by state engineering licensure requirements, EJAA benefits DCR, Districts, and the agricultural community to have an engineering program operating at the highest level of integrity dedicated to ensuring consistent, high quality work across the Commonwealth.