

**Virginia Soil and Water Conservation Board**  
**March 27, 2013**  
**West Reading Room, Patrick Henry Building**  
**Richmond, Virginia**

**Virginia Soil and Water Conservation Board Members Present**

Herbert L. Dunford, Chair	Daphne W. Jamison, Vice-Chair
Thomas M. Branin	C. Frank Brickhouse, Jr.
Susan Taylor Hansen	Gary Hornbaker
Jerry L. Ingle	Richard A. Street
Wanda J. Thornton	
David A. Johnson, DCR Director, Ex Officio	
John A. Bricker, NRCS, Ex Officio	

**Virginia Soil and Water Conservation Board Members Not Present**

Joan DuBois	Stephen Lohr
Raymond L. Simms	

**DCR Staff Present**

Jeb Wilkinson, Chief Deputy Director  
Robert Bennett  
Su Bulbulkaya  
James Davis-Martin  
David C. Dowling  
Michael R. Fletcher  
Stephanie Martin  
John McCutcheon  
Gary Moore  
Joan Salvati  
Ginny Snead  
Michelle Vucci  
Matthew Gooch, Office of the Attorney General

**Others Present**

David Bernard, Sierra Club, Coastal Canoeists  
Cindy Berndt, DEQ  
Sara Benghauser, Office of the Secretary of Natural Resources  
Allen Brockenbrough, DEQ  
Preston Bryant, McGuire Woods Consulting  
Jason Clark, Virginia Cattlemen  
Katie Frazier, Virginia Agribusiness Council  
Doug Fritz, GKY and Associates

Jack Frye, Chesapeake Bay Commission  
Drew Hammond, DEQ  
Katie Hellebush, VGPA, VWC  
Ann Jennings, Chesapeake Bay Foundation  
Adrienne Kotula, James River Association  
Larry Land, VACO  
Grace LeRose, City of Richmond  
Roy Mills, VDOT  
Anthony Moore, Deputy Secretary of Natural Resources  
Chris Moore, Chesapeake Bay Foundation  
Doug Moseley, GKY and Associates, Inc.  
Chris Pomeroy, Virginia Municipal Stormwater Association  
Jacob Powell, Virginia Conservation Network  
Scott Rae, Gloucester County  
Dennis Slade, Dominion Resources  
Wilmer Stoneman, Virginia Farm Bureau Federation  
Bill Street, James River Association  
Kendall Tyree, Virginia Association of Soil and Water Conservation Districts  
Michelle Virts, City of Richmond  
Greg Wilchels, Culpepper SWCD

**Call to Order**

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

**Approval of Minutes from March 27, 2013**

MOTION: Ms. Thornton moved that the Virginia Soil and Water Conservation Board approve the minutes from the February 26, 2013 meeting as submitted by staff.

SECOND: Ms. Hansen

DISCUSSION: None

VOTE: Motion carried unanimously

## **Regulatory Action**

### **Resource Management Plan Regulations**

Mr. Dowling gave the following presentation:

#### **Resource Management Plan Regulations: Final Stage Action Virginia Soil and Water Conservation Board**

March 27, 2013 Meeting

Patrick Henry Building, West Reading Room

Richmond, Virginia

**(by David Dowling, Policy and Planning Director)**

### **Introductory Remarks and Overview**

Before you today for consideration and action is a final stage regulatory action advancing for the Board's consideration new Resource Management Plan regulations. (Version dated Wednesday, March 27, 2013)

From a background perspective on this action, particularly for those relatively new to the Board, Chapter 781 of the 2011 Virginia Acts of Assembly (HB1830) authorized the Virginia Soil and Water Conservation Board to establish regulations that would specify the criteria to be included in a resource management plan. The concept was to encourage farm owners and operators to voluntarily implement a high level of BMPs on their farmlands in order to be protective of water quality and for them to then benefit from the following legal provision stating that “notwithstanding any other provision of law, agricultural landowners or operators who fully implement and maintain the applicable components of their resource management plan, in accordance with the criteria for such plans set out in § 10.1-104.8 and any regulations adopted thereunder, shall be deemed to be in full compliance with (i) any load allocation contained in a total maximum daily load (TMDL) established under § 303(d) of the federal Clean Water Act addressing benthic, bacteria, nutrient, or sediment impairments; (ii) any requirements of the Virginia Chesapeake Bay TMDL Watershed Implementation Plan; and (iii) applicable state water quality requirements for nutrients and sediment”. The law continued with the following additional provisions that “[t]he presumption of full compliance provided in subsection A shall not prevent or preclude enforcement of provisions pursuant to (i) a resource management plan or a nutrient management plan otherwise required by law for such operation, (ii) a Virginia Pollutant Discharge Elimination System permit, (iii) a Virginia Pollution Abatement permit, or (iv) requirements of the Chesapeake Bay Preservation Act (§ 10.1-2100 et seq.)”.

Based on this legislative direction, on March 10, 2011, the Virginia Soil and Water Conservation Board authorized the Department to develop the Resource Management Plan regulations and as part of the regulation development process, the Board further directed the establishment of a stakeholder group to make recommendations to the Director and the Board on the contents of the proposed regulations. Pursuant to the law, the Board stipulated that the stakeholder group shall include representation from agricultural and environmental interests as well as Soil and Water

Conservation Districts and the regulations shall be developed in consultation with the Department of Agriculture and Consumer Services and the Department of Environmental Quality.

In accordance with the Board's direction, a nineteen member RAP composed of stakeholder organizations within the agricultural and environmental community, representatives from the Soil and Water Conservation Districts and the Association, as well as those with technical expertise in agricultural planning was assembled. The RAP and the Department were provided technical support from Natural Resources Conservation Service, Farm Service Agency, Virginia Tech, Virginia Department of Agriculture and Consumer Services, Virginia Department of Forestry, and the Virginia Department of Environmental Quality.

Between June 29, 2011 and February 14, 2012, the RAP held five meetings, and the RAP's three subcommittees met a total of six times. Additionally, two of the subcommittees held a joint meeting. The RAP was charged with helping to develop a set of regulations that would meet the following overarching guidelines:

- Must be protective of water quality
- Must be simple so it doesn't deter operators from participating
- Must be technically achievable
- Must take into consideration the economic impact to the agricultural landowner or operator

(These are the same elements that we believe the final regulations achieve.)

Proposed regulations that generally reflected the discussions of the RAP and that set out a process by which farmers may voluntarily implement a high level of BMPs that are protective of water quality and that may be applied towards nutrient and sediment reductions associated with the Chesapeake Bay Watershed Implementation Plan and other TMDLs were approved by the Board at the March 29, 2012 meeting. At the meeting, the Board further authorized that the proposed regulations be released for the required 60-day public comment period. That comment period ran from July 16, 2012 through September 14, 2012. We also held three public hearings on the regulations during the comment period.

We received 92 comments (68 from a conservation organization action alert) during the comment period and had 8 people officially speak at the public hearings (with an additional 10 unofficial questions asked). It should be noted that a large proportion of the comments received were not regarding recommended changes to the proposed regulations, but instead involved inquiries regarding whether the regulations would adequately address the agricultural reductions under the Chesapeake Bay TMDL and were related to the fiscal and manpower resources necessary for the proper implementation of the regulations, both of which we will discuss further, later in these remarks.

Today, following our close review of the comments received, we bring to you a final set of regulations for your consideration. In response to the comments received, we made a handful of refinements to the regulations that we shared with you in the Board mailing and that I will highlight later in this presentation. The majority of these changes have been made to better track the authorities provided in the law and that we suggest are not substantive in nature. A few

additional clarifying and grammatical refinements were made since the mailing and are highlighted in yellow in the recommended draft before you this morning.

This final regulatory action is very important to the Department and the Administration, and we believe that the recommended regulations represent a reasonable program that will be utilized by and be beneficial to the farm community and address Virginia's water quality objectives.

As part of the draft Phase II Virginia Chesapeake Bay TMDL Watershed Implementation Plan it is noted "that the implementation of Resource Management Plans and voluntary data collection at the local level will significantly advance the agriculture strategies offered by local governments and SWCDs". Accordingly, I want to emphasize that these regulations are the Commonwealth's mechanism to encourage new practices be implemented on agricultural lands and for us to capture information on voluntary practices that are already being utilized and as such need to be documented.

As you will note in the presentation, key elements of the regulations include:

- Establishment of minimum standards of a resource management plan;
- Processes for the development and approval of a resource management plan;
- Processes to ensure the implementation of a resource management plan and for issuance of a Certificate of Resource Management Plan Implementation;
- Processes associated with conducting inspections and ensuring RMP compliance after Certificate issuance; and
- Procedures for the review of duties performed by local Soil and Water Conservation Districts.

However, from a procedural perspective, we recognize that once the Board authorizes these regulations, that additional time is necessary in order to enable the appropriate implementation of this regulation. Accordingly, the attached motion will request the Board to set a delayed effective date of six-months for these final regulations from the date of publication (likely November 6, 2013) understanding that the Department will actively work during this time period on necessary implementation actions in preparation for the effective date.

### **Legal Framework for Action**

Chapter 781 of the 2011 Virginia Acts of Assembly (HB1830) authorized the Virginia Soil and Water Conservation Board to establish regulations that would specify the criteria to be included in a resource management plan and sets out the regulatory process by which they shall be promulgated. The final regulations meet the intent of § 10.1-104.7 and remain true to the regulatory criteria framework set out in § 10.1-104.8. The regulatory process we are following is in accordance with § 10.1-104.9. A copy of the Resource Management Plan law (§ 10.1-104.7 et seq.) was provided to you in your Board mailing and is provided in today's Board packet.

## **Regulatory Action Process**

### **Actions taken to date:**

- **March 10, 2011**, the Board authorized and directed the development of the Resource Management Plan Regulations and establishment of a regulatory advisory panel (RAP).
  - Regulatory Advisory Panel  
A RAP was assembled to assist the Department with the development of the proposed regulations. The RAP met on 5 occasions.
    - June 29, 2011**; West Reading Room, Patrick Henry Building
    - November 9, 2011**; VCU Rice Center, Charles City
    - December 16, 2011**; Virginia Farm Bureau Federation Office
    - January 3, 2012**; Virginia Farm Bureau Federation Office
    - February 14, 2012**; West Reading Room, Patrick Henry Building
  - Three subcommittees which met individually or in joint session on 7 occasions were assembled to address the following key areas of the regulations:
    - Assessment – Who does it? What does it look like?
    - Plan development – Who writes it? What does it look like?
    - Compliance and auditing process – What makes it certifiable? Who does that?
  - Plan Development Subcommittee
    - August 12, 2011**; Dept. of Environmental Quality Piedmont Regional Office
    - September 30, 2011**; Virginia Farm Bureau Federation Office
  - Compliance Subcommittee
    - August 15, 2011**; Dept. of Environmental Quality Piedmont Regional Office
    - September 28, 2011**; Dept. of Environmental Quality Piedmont Regional Office
  - Assessment Subcommittee
    - August 19, 2011**; Dept. of Environmental Quality Piedmont Regional Office
    - September 30, 2011**; Virginia Farm Bureau Federation Office
  - Joint meeting of Assessment and Plan Development Subcommittees
    - September 30, 2011**; Virginia Farm Bureau Federation Office
- Throughout this period multiple drafts were circulated and opportunities for comment by members provided. The regulation has also benefitted from the review of the Deputy Secretary of Natural Resources and the Deputy Secretary of Agriculture and Forestry.
- **March 29, 2012**, The Virginia Soil and Water Conservation Board advanced a “**Motion to approve, authorize and direct the filing of proposed regulations**”.

- **April 30, 2012**, The required regulatory forms and analyses were posted to the Regulatory Town Hall initiating a DPB 45-day review. DPB completed its economic analysis on June 15, 2012.
- **June 25, 2012**, The proposed regulations were submitted to the Registrar for publication.
- **July 16, 2012 - September 14, 2012**, The proposed regulation was published on July 16<sup>th</sup> in Volume 28: Issue 23 initiating a 60-day public comment period. Three public hearings were held as follows:
  - August 13, 2012 in Wytheville (Bland Hall, Room 104, Wytheville Community College, 1000 East Main Street, 7 p.m.)
  - August 14, 2012 in Verona (Smith Transfer Room West, Augusta County Government Center, 18 Government Center Lane, 7 p.m.)
  - August 15, 2012 in Williamsburg (James City County Community Center, Community Room A, 5301 Longhill Road, 7 p.m.)
- **September 2012 – March 2013**, DCR analyzed the comments received, prepared the comment summary/response, and developed the final regulation.

**Remaining Actions:**

- **March 27, 2013**, Virginia Soil and Water Conservation Board will consider a “**Motion to approve, authorize and direct the filing of a final regulation**”.
- **April 17, 2013**, DCR will likely file a final exempt action for publication in the Virginia Register of Regulations.
- **May 6, 2013**, Final regulations are published; Volume 29: Issue 18 (target date).
- **November 6, 2013**, Regulation to become effective (delayed effective date of 6 months from the date of publication) (target date).

**Attorney General’s Office**

The Attorney General’s Office has reviewed this final regulation and has stated that “I have reviewed the above-referenced regulations regarding Resource Management Plans. It is my opinion that the Virginia Soil and Water Conservation Board has authority to adopt these regulations based upon applicable law, including Article 1.1 of Chapter 1 of Title 10.1 of the Code of Virginia. It is my view that pursuant to Va. Code § 10.1-104.9, these regulations are partially exempt from the requirements of the Administrative Process Act, Virginia Code § 2.2-4000 *et seq.*”

**NOTE**

On the next page is the general RMP process that our dear friend Mark Meador prepared for the Board last year. It still provides a good general overview.

**Resource Management Plan – Simplified Process Overview**

Flowchart Cross-reference  
(See next page)

1) Owner or Operator expresses interest in RMP process and contacts an RMP developer

Step #1

2) RMP developer prepares (or updates) plan and certifies (4VAC-50-70-50)

Step #2

3) Owner or Operator certifies the RMP will be implemented (4VAC50-70-50) and submits for review (4VAC50-70-70)

Step #7

4) Review authority considers RMP (4VAC-50-70-70)

Steps #8 and #9

5) Review authority Approves RMP

Step #13

6) Owner or operator implements RMP

Step #14

7) Owner or operator requests review authority verification of implementation (4VAC50-70-80)

Step #15

8) Review authority affirms adequacy and implementation of RMP (4VAC50-70-80)

Step #17

9) Department issues 9-year Certificate of RMP Implementation (4VAC50-70-80)

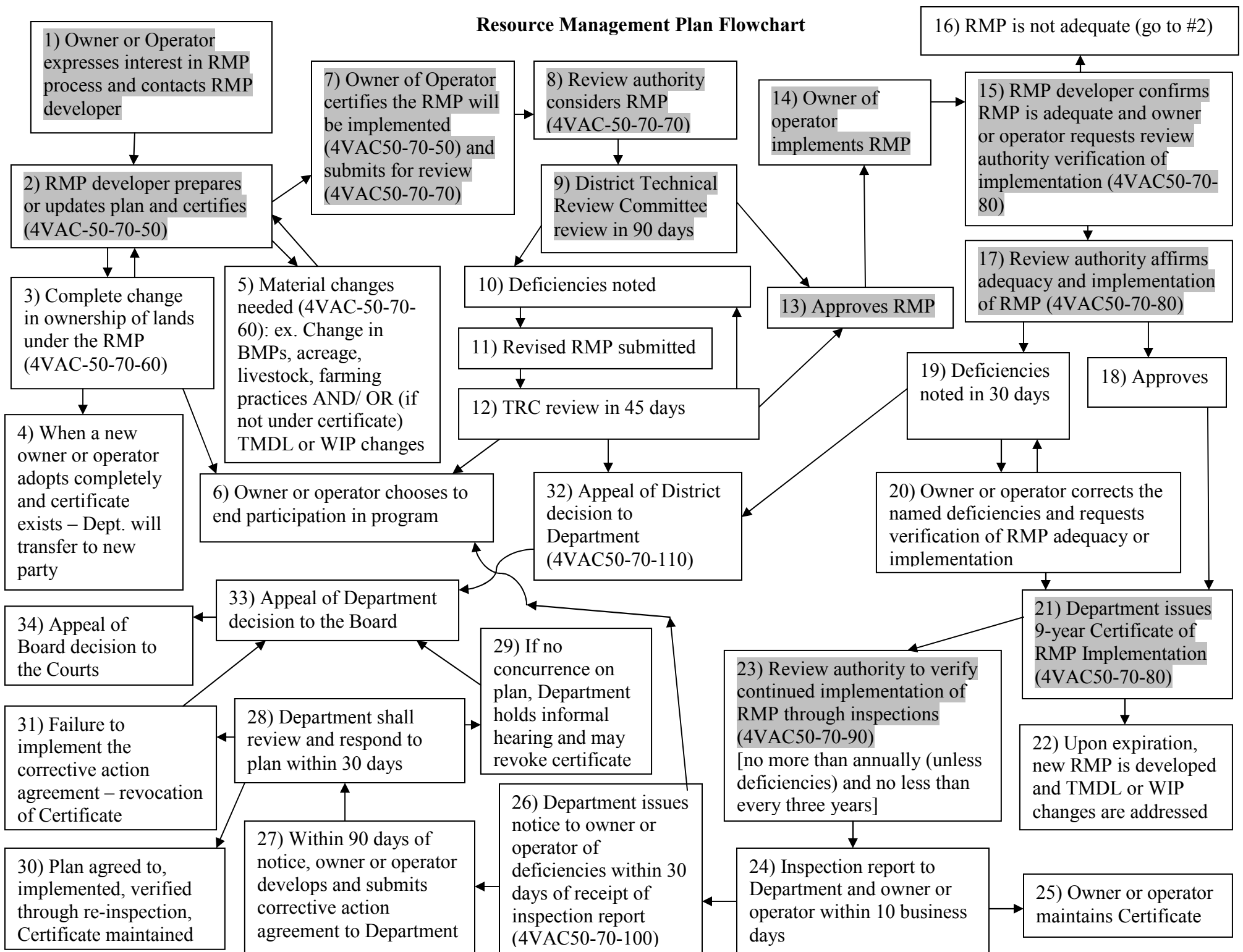
Step #21

10) Review authority verifies continued implementation of RMP through inspections (4VAC50-70-90)  
[no more than annually (unless deficiencies) and no less than every three years]

Step #23



## Resource Management Plan Flowchart



## **Resource Management Plan Regulations: Final Stage Action – Key Elements**

Let me take a few minutes and highlight for you changes made between the proposed and final regulations. Again, we do not believe that any substantive changes have been made.

[Note: Changes made between Proposed and Final Regulations are highlighted in grey.]

- A global grammatical update was made to change “a RMP” to “an RMP”.
- Establishes a new section (4VAC50-70-10) that sets out **definitions** to be utilized within the new Chapter. These include “Assessment”, “Best management practice”, “Board”, “Corrective action agreement”, “Department”, “Management unit”, “NRCS”, “Operator”, “Owner”, “Person”, “Resource management plan”, “Review authority”, “RMP developer”, “Soil and water conservation district”, “Technical Review committee”, and “Total maximum daily load”.
  - A definition for “Perennial stream” was added.
  - The definition for “Review authority” was amended to reflect the increased role the Department may have in RMP review in specified situations. This applies when the District is the RMP developer for a given plan.
- Establishes a new section (4VAC50-70-20) that outlines the **purpose and authority** for the chapter and specifies that “these regulations are adopted to clarify and specify the criteria that must be included in a resource management plan and the processes by which a Certificate of RMP Implementation is issued and maintained”.
  - No changes were made.
- Establishes a new section (4VAC50-70-30) that stipulates the **applicability of other laws and regulations** and specifies that “[n]othing in this chapter shall be construed as limiting the applicability of other laws, regulations, or permits, including but not limited to, a Virginia Pollutant Discharge Elimination System Permit, a Virginia Pollution Abatement Permit, a nutrient management plan otherwise required by law, any requirements of the Chesapeake Bay Preservation Act, and any requirements of the Agricultural Stewardship Act”.
  - The section was amended to reflect that “[n]othing in this chapter shall be construed as limiting the applicability or preventing or precluding the enforcement of other laws, regulations, or permits”.
- Establishes a new section (4VAC50-70-40) that sets out the **minimum standards of a resource management plan**. Depending on land use and whether the BMP requirements are applicable to the management unit and needed based on an on-farm assessment, the following requirements will apply:
  - For all cropland or specialty crops:
    - § A nutrient management plan;
    - § A forest or grass buffer between cropland and perennial streams with a minimum width of 35 feet;

- § A soil conservation plan that achieves a maximum soil loss rate to “T”;
- and
- § Cover crops, when needed to address nutrient management and soil loss requirements.
- For all hayland:
  - § A nutrient management plan;
  - § A forest or grass buffer between cropland and perennial streams with a minimum width of 35 feet; and
  - § A soil conservation plan that achieves a maximum soil loss rate to “T”.
- For all pasture:
  - § A nutrient management plan;
  - § A pasture management plan or soil conservation plan that achieves a maximum soil loss rate of “T”; and
  - § A system that limits or prevents livestock access to perennial streams.

The section also outlines how other BMPs may applied to achieve the minimum standards. Additionally, the section specifies that the department shall evaluate the minimum standards to determine their adequacy in addressing TMDL requirements.

- Under cropland, it was clarified that cover crops are required if they are needed to address nutrient management “or” soil loss requirements, “or both”.
  - Under pastures, the requirement for a 35-foot buffer was removed as it was not specified in the law (just limit or prevent livestock access to perennial streams). Although not required, we believe that through the cost-share program we will see implementation of this practice.
  - In accordance with the law, language was added to specify that additional BMPs approved by the Board, identified in the Chesapeake Bay Watershed Model, or identified in the Chesapeake Bay TMDL Watershed Implementation Plan may be utilized in the RMP if they are evaluated and found to achieve the minimum standards.
  - Language was added to specify that the minimum standards would be reviewed no later than the end of 2017 as part of the Chesapeake Bay mid-point assessment.
- Establishes a new section (4VAC50-70-50) regarding **components of a resource management plan** that outlines:
    - The information to be collected by the RMP developer when developing the RMP,
    - Specifies the components to be included in a resource management plan such as the BMPs that are necessary to achieve the minimum standards set out in 4VAC50-70-40 and a schedule for the implementation of those BMPs, and
    - Includes RMP developer and owner or operator certifications.
      - § The RMP developers certify whether “the RMP is true and correct in their professional judgment”.
      - § The owner or operator attests that they are the “responsible individual to be implementing the RMP in its entirety” and “shall adhere to the RMP”.
      - § The owner or operator is also allowing “the review authority to conduct inspections of properties within the management unit as needed to ensure the adequacy of the RMP in accordance with 4VAC50-70-70” and

agreeing to contact the RMP developer regarding “potential material changes” and the review authority regarding “a complete change in owner or operator of the management unit(s) under a RMP”.

- Language was added that clarifies that the owner or operator is certifying their intent to adhere to the RMP components necessary to meet the minimum standards.
- Establishes a new section (4VAC50-70-60) that outlines processes associated with making **revisions to a resource management plan**.
  - Upon notification of the RMP review authority of a change in owner or operator of the management unit with a signed RMP where it involves the complete transfer of one or more RMPs and any Certificate of RMP Implementation:
    - § The review authority shall contact the new owner or operator within 60 days of the new owner or operator assuming control of the management unit regarding implementation of the RMP and any necessary revisions.
    - § The new owner or operator, following consultation with the review authority may elect to:
      - Implement and maintain the provisions of the existing RMP;
      - Request a RMP developer revise the RMP; or
      - Choose not to continue implementing a RMP.
  - Upon notification of the RMP developer by the owner or operator with a signed RMP that changes in the management unit or implementation of the RMP may create needs for revision, the RMP developer shall review the RMP (within 30 days) to determine if material changes to the management unit require a revision of the RMP.
  - The section provides a listing of the material changes to the management unit that may require a revision of the RMP.
  - A RMP developer will determine if revision of the RMP is required.
    - § When the RMP developer determines that revision of the existing RMP is not necessary, the RMP developer shall provide such determination to the requesting owner or operator in writing.
    - § When the RMP developer determines that revision of the existing RMP is necessary, the owner or operator may elect to:
      - Request the RMP developer revise the RMP as necessary to fulfill RMP requirements; or
      - Choose not to continue implementing a RMP whereupon the RMP for the management unit shall no longer be valid.
  - The section specifies that when a new or modified watershed implementation plan is issued for the Chesapeake Bay or a new or modified local approved TMDL is issued which assigns a load to agricultural uses, a RMP covering land with waters that drain to such TMDL shall be deemed sufficient when the RMP has been revised to address the new or modified TMDL and the owner or operator agrees to implement the revised RMP, except when the owner or operator already holds a Certificate of RMP Implementation.

- § When an owner or operator holds a Certificate of RMP Implementation that has not expired, the owner or operator may continue operation of the RMP without such revisions for the lifespan of the Certificate of RMP Implementation so long as the owner or operator is deemed to be fully implementing the RMP.
- When an owner or operator with a revised RMP fulfills all RMP and Certificate requirements, and the owner or operator holds a Certificate of RMP Implementation that has not expired for the management unit addressed by the revised RMP, the owner or operator may request that the department revoke the existing Certificate of RMP Implementation and issue a new Certificate of RMP Implementation. Upon verification that all requirements have been satisfied, the department shall issue a new Certificate of RMP Implementation in a timely manner.
- Revision of a RMP by a RMP developer requires:
  - § If a Certificate of RMP Implementation has not been issued, the revised RMP shall be provided to the review authority and shall be subject to all specified review requirements.
  - § If a Certificate of RMP Implementation has been issued by the department and its duration has not expired, such existing Certificate of RMP Implementation shall remain valid for the balance of time remaining since it was originally issued by the department or a new Certificate of RMP Implementation may be issued where appropriate.
  - § An existing or new owner or operator shall sign a revised RMP.
  - § When a valid Certificate of RMP Implementation has been issued by the department for the management unit, the RMP developer shall provide the review authority and the department with a copy of a revised RMP.
- Fixed two incorrect citations (changed subsection D references to subsection F) to ensure the proper administrative processes associated with RMP revisions is followed.
- Establishes a new section (4VAC50-70-70) that outlines the processes associated with **review of a resources management plan**. The process shall include the following:
  - Upon completion of a new or revised RMP, the owner or operator, or the RMP developer on behalf of the owner or operator, shall submit the RMP to the review authority.
  - Each soil and water conservation district shall establish a Technical Review Committee that will ensure the RMP fully meets the minimum standards of a RMP and the components of a RMP. The section also specifies the timelines for conducting the review and how the review will be handled if multiple districts are involved.
  - RMPs received by the department where no local soil and water conservation district exists must fully meet minimum standards of a RMP and the components of a RMP and shall be reviewed by the department. The section also specifies the timelines for conduction the review.
  - When a RMP is determined by the review authority to be insufficient to meet minimum standards set forth in 4VAC50-70-40 and the components specified in

- 4VAC50-70-50 such review authority shall work with the owner or operator and the RMP developer to revise the RMP.
- Where a RMP is deemed sufficient the notification issued to the owner or operator and the RMP developer by the review authority shall include approval of the plan and its implementation.
  - When an owner or operator is aggrieved by an action of the review authority, the owner or operator shall have a right to appeal.
  - In order to eliminate the perceived conflict of interest that may potentially arise should a District serve as the both the RMP developer and the review authority, the section was amended to specify that when the District serves as the RMP developer, the Department would then be the review authority for that specific plan.
- Establishes a new section (4VAC50-70-80) establishing the process for the **issuance of a Certificate of Resource Management Plan Implementation**. The process shall include the following:
    - Prior to issuance of a Certificate of RMP Implementation for a management unit, confirmation shall be made by the RMP developer that no revision of the RMP is required and as such is adequate, and verification of the full implementation of the RMP shall be completed.
    - The owner or operator shall request the verification of RMP implementation by the review authority in a format provided by the department. Such verification submittal shall include a complete copy of the RMP including any referenced plans and authorizations for the review authority and the department as specified to conduct onsite inspections.
    - When the local soil and water conservation district has determined the RMP to be adequate and fully implemented, the lead soil and water conservation district board shall affirm such adequacy and implementation, and submit the required documentation to the department for action. Upon receiving such documentation supporting that the plan is adequate and has been fully implemented, the department shall issue a Certificate of RMP Implementation.
    - Where the department is the review authority, the department shall determine adequacy and full implementation of the RMP. If the RMP is determined to be adequate and fully implemented, the department shall affirm such implementation by issuing a Certificate of RMP Implementation.
    - If the resource management plan is not adequate or has not been fully implemented, the review authority shall provide the owner or operator with written documentation that specifies the deficiencies of the RMP. The owner or operator may correct the named deficiencies and request verification of RMP adequacy or implementation at such time as the shortcomings have been addressed.
    - A Certificate of RMP Implementation shall be valid for a period of nine years.
    - Upon the expiration of the Certificate of RMP Implementation, a new RMP may be prepared by a plan developer for the management unit upon request by the owner or operator. The RMP must conform with all existing TMDL implementation plans applicable to the management unit to include the

Chesapeake Bay and any local approved TMDL, which assign a load to agricultural uses and impact any portion of the management unit. The plan developer shall ensure the new RMP also complies with the current minimum standards of a RMP.

- The department shall maintain a public registry on the agency's website of all current Certificates of RMP Implementation in accordance with confidentiality provisions specified in an exemption to the Freedom of Information Act.
  - Clarifying language was added to ensure that the owner or operator is authorizing onsite inspections associated with the "current" RMP which would include any revised RMP's.
- Establishes a new section (4VAC50-70-90) outlining how periodic **inspections** of a management unit that has been issued a Certificate of RMP Implementation shall be performed. The section specifies that:
    - Inspections may be performed by the review authority or the department.
    - Onsite inspections shall occur no less than once every three years but not more than annually on lands where an active Certificate of RMP Implementation has been issued provided that no deficiencies have been noted that require more frequent inspections or re-inspections.
    - Upon the completion of the inspection, an inspection report shall be completed in a format provided by the department, to document the implementation of the RMP on the management unit and shall identify any identified deficiencies that may need to be addressed through revision of the RMP.
    - Where deficiencies are noted it authorizes the department to proceed pursuant to the section on compliance.
    - All inspections or re-inspections conducted in accordance with this chapter shall occur only after 48 hours of prior notice to the owner or operator unless otherwise authorized by the owner or operator.
    - Language was added that clarifies that the inspections are related to the RMP components necessary to meet the minimum standards.
    - Language was added that ensures that the onsite inspection is related to the implementation of the "current" RMP which would include any revised RMP's.
  - Establishes a new section (4VAC50-70-100) regarding **compliance** and outlines how deficiencies identified through an inspection shall be provided to the owner or operator and how a corrective action agreement shall be developed, reviewed, and subsequently agreed to unless otherwise revoked through inability to reach an agreement, failure of the owner or operator to fully implement the agreed upon corrective action agreement, or upon a request from the owner or operator. Timelines for every step of the process are provided in the section.
    - No changes were made.
  - Establishes a new section (4VAC50-70-110) on **appeals** that sets out the process for an owner or operator that has been aggrieved by any action of a soil and water conservation

district and any party aggrieved by and claiming the unlawfulness of a case decision of the department or of the board upon an appeal to it.

- Only grammatical changes were made.
- Establishes a new section (4VAC50-70-120) on **reporting** and specifies when BMP data collection shall occur and how this information is reported in the Virginia Agricultural BMP Tracking Program or any subsequent automated tracking systems made available to soil and water conservation districts by the department. The section also specifies timelines for reporting data and the protections offered to specified data in accordance with the Freedom of Information Act. It also specifies what the department may do with the reported information.
  - Only grammatical changes were made.
- Establishes a new section (4VAC50-70-130) that speaks to the **review of duties performed by soil and water conservation districts**. The section specifies that:
  - The department shall periodically conduct a comprehensive review of the RMP duties performed by each soil and water conservation district to evaluate whether requirements set forth by this chapter have been satisfactorily fulfilled.
  - The department shall develop a schedule for conducting periodic reviews and evaluations.
  - Each district shall receive a comprehensive review at least once every five years; however, the department may impose more frequent, partial, or comprehensive reviews with cause.
  - The section also speaks to how programmatic deficiencies will be addressed.
  - Language was added to clarify that only “RMP allocated” funding may be delayed or withheld in response to the program reviews conducted pursuant to this section.
- Establishes a new section (4VAC50-70-140) that sets out the **RMP developer qualifications and certification** process. The section also outlines certification revocation procedures.
  - Only grammatical changes were made.
- Establishes a new section (4VAC50-70-150) that **advances the adoption of RMPs** by directing the department and districts to encourage and promote the adoption of RMPs among the agricultural community.
  - No changes were made.

### **Issues raised during the public comment period that merit additional explanation**

As mentioned previously, during the public comment period we received nearly 100 comments. After careful review, we made a handful of changes to the regulations in response to the comments received that we just outlined for you. However, the primary focus of the comments was not truly on the wording of the regulations, but was more related to the implementation and



potential effectiveness of the regulations. I would like to take a few minutes and delve into these two areas of comment and to provide the Board with additional information on each.

### **Implementation of the regulations**

Program implementation was one of the key issues we heard during the public comment period. As I mentioned earlier in my discussion of the timeline, we are requesting a six-month delay in the effective date of these regulations from the date of publication to enable program development, training, and implementation.

The Department is actively working towards filling two Resource Management Plan Specialist positions that will work closely with Agency management to assemble and implement the essential elements of an effective program. During the six-month delayed effective date period, based on the approved regulations, the Department of Conservation and Recreation will be developing necessary implementation and reporting forms and formats, guidance, and initiating RMP developer certifications. DCR will also be working with the local Soil and Water Conservation Districts and the RMP developers to develop information delivery strategies as part of program outreach to farm operators and owners. Additionally, DCR will be working with the Districts on standardized RMP review and site inspection procedures as well as developing its RMP final certification review procedures and District program review methodologies. We will also be working on cost-share practice development, technical assistance strategies, and service delivery fee considerations as part of our resolution of the funding and workload challenges that implementation of these regulations represent.

### **Modeling Results**

The other primary request received during the public comment period was for the Department to provide additional assurance that the minimum standards of the resource management plan regulations (4VAC50-70-40) and the BMP's that may be utilized to collectively meet them, adequately address the load allocation for agriculture within the Chesapeake Bay TMDL and the requirements of the Chesapeake Bay TMDL WIP. We believe that this has been adequately addressed but does merit additional explanation to the Board.

For that explanation, Mr. James Davis-Martin from our Stormwater Management Division will now provide a presentation regarding the assessments conducted to demonstrate the substantial and adequate progress the RMP minimum standards will make towards addressing WIP nitrogen, phosphorus, and sediment reductions when implemented at specified levels.

Mr. Davis-Martin gave a presentation regarding the assessment of RMP minimum standards.

Chesapeake Bay Watershed Model Evaluation of Final Regulations for Resource Management Plans					
A	B	C	D	E	F
Land Use Base Data (LU, Septics and Animal #s)	2011	2011	2011	2011	2010
BMP	Model RMP Final Regs March 2013	Model RMP Final Regs Change CC mix	Model RMP Final Regs Change PasBuf	Model RMP Final Regs Change both	Model WIP II
Interim NM-crop, hay, pasture	95%	95%	95%	95%	WIP II
Conservation till (percent of acres)	95%	95%	95%	95%	WIP II
GrassBuffer-Crop	14%	14%	14%	14%	WIP II
Cover crop	50% CCC-LDW	50% mix	50% CCC-LDW	50% mix	WIP II
Conservation Plans-above fall line	95%	95%	95%	95%	WIP II
Conservation Plans-below fall line	2011 Progress	2011 Progress	2011 Progress	2011 Progress	WIP II
GrassBuffer-Hay	6%	6%	6%	6%	WIP II
GrassBuffer-Pasture	6%	6%	6%	6%	WIP II
Pasture Fence	95%	95%	95%	95%	WIP II
Prescribed Graze	95%	95%	95%	95%	WIP II
Streamside GrassBuffers-Pasture	0%	0%	95%	95%	WIP II
<b>Crop, Hay and Pasture Delivered Nitrogen</b>	<b>13,448,331</b>	<b>12,855,709</b>	<b>13,276,720</b>	<b>12,684,496</b>	<b>12,611,023</b>
<b>Crop, Hay and Pasture Delivered Phosphorus</b>	<b>2,695,098</b>	<b>2,690,481</b>	<b>2,680,287</b>	<b>2,675,847</b>	<b>2,799,890</b>
<b>Crop, Hay and Pasture Delivered Sediment</b>	<b>1,640,184,444</b>	<b>1,638,324,392</b>	<b>1,618,818,710</b>	<b>1,617,119,904</b>	<b>1,564,760,800</b>
<b>Crop, Hay and Pasture Delivered N %</b>	<b>86%</b>	<b>96%</b>	<b>89%</b>	<b>99%</b>	<b>100%</b>
<b>Crop, Hay and Pasture Delivered P %</b>	<b>110%</b>	<b>110%</b>	<b>111%</b>	<b>111%</b>	<b>100%</b>
<b>Crop, Hay and Pasture Delivered S %</b>	<b>90%</b>	<b>91%</b>	<b>93%</b>	<b>93%</b>	<b>100%</b>
<b>With 3:1 N and P balancing and WIP II Excess credits applied</b>					
<b>Crop, Hay and Pasture Delivered Nitrogen</b>	<b>12,797,287</b>	<b>12,797,287</b>	<b>12,797,287</b>	<b>12,684,496</b>	<b>12,797,287</b>
<b>Crop, Hay and Pasture Delivered Phosphorus</b>	<b>2,912,113</b>	<b>2,709,955</b>	<b>2,840,098</b>	<b>2,675,847</b>	<b>3,116,641</b>
<b>Crop, Hay and Pasture Delivered Sediment</b>	<b>1,640,184,444</b>	<b>1,638,324,392</b>	<b>1,618,818,710</b>	<b>1,617,119,904</b>	<b>1,975,016,118</b>
<b>Crop, Hay and Pasture Delivered N %</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>102%</b>	<b>100%</b>
<b>Crop, Hay and Pasture Delivered P %</b>	<b>126%</b>	<b>152%</b>	<b>135%</b>	<b>156%</b>	<b>100%</b>
<b>Crop, Hay and Pasture Delivered S %</b>	<b>188%</b>	<b>189%</b>	<b>194%</b>	<b>195%</b>	<b>100%</b>

Mr. Davis-Martin said that the chart showed the types of load reductions that might be expected with implementation of the program.

Mr. Davis-Martin said that the minimum standards for resource management plans were laid out in the regulations for cropland, hayland, and pasture. He said that the challenge for staff was to take those levels of implementation actions and translate them into BMPs that are acceptable in the Chesapeake Bay model and then run a scenario that assumed a high level of implementation of that collection of practices to determine whether the load reductions that were produced would be adequate to meet the Chesapeake Bay TMDL target loads.

Mr. Davis-Martin indicated that to do that, a number of assumptions were made. He said that the model has a collection of assumptions related to its development. Then assumptions were made related to this specific scenario.

He said that on the chart there were four different model scenarios with different levels of implementation for a few of the practices that are listed in the regulations for resource management plans.

Mr. Davis-Martin referenced the first scenario listed in Column B of the chart. He said that this was the first attempt to take the most conservative approach to a collection of BMPs that will represent broad implementation of resource management plans. He said that it called for nutrient management to be applied as required in the regulations on crop, hay, and pasture lands. He said that in this scenario, 95% implementation was used. He said that it also called for conservation tillage to be applied at 95% on cropland.

He noted that conservation tillage would be one of the practices potentially needed to meet T on cropland.

Mr. Davis-Martin said that grass buffers on cropland were specified, as forest or grass buffers are required between croplands and perennial streams in the regulations. He said that the 14% implementation level was the amount of cropland that is assumed to fall within 35 feet of a perennial stream.

Mr. Davis-Martin said that cover crops were entered into the scenario at 50%. He said that in the model, cover crops have a number of different varieties based on soil variables, the type of grain planted, the time of planting and the planting method, as well as whether that cover crop is going to be killed or harvested in the spring. He said that the efficiency of the cover crops is highly variable, ranging for nitrogen from 5 or 6% percent to somewhere around a 40% reduction. He said that there is a wide range in the types of cover crops.

Mr. Davis-Martin said that to be conservative in the assumption in this scenario, one of the least efficient varieties of cover crop was used. He said that was the commodity cover crop, late drill wheat, meaning that it is planted after first frost. It is allowed to be fertilized after March and harvested in the spring. It is planted through a drilling method. It has efficiencies of only 6 or 7% depending on where this cover crop is located in the Chesapeake Bay watershed for nitrogen reductions and provides zero in reductions for phosphorus and sediment, according to the model.

He indicated that the scenario also called for conservation plans above the fall line at 95% and below the fall line maintaining the level of implementation that existed in 2011.

Mr. Davis-Martin said that for hayland, staff simulated the grass buffer requirements. He said that the conservation plans and nutrient management plans would also apply to hayland.

Mr. Davis-Martin said that in the pasture, stream fencing was assumed. He said that stream side grass buffers were set to zero. He said that this was in accordance with the change that was made to the final regulations that took the grass buffer that appeared in the draft off of the pasture land.

Mr. Davis-Martin said that this scenario also called for a high level of implementation of prescribed grazing. He said that this is the practice assumed to be one of the mechanisms to achieve T on pasture land. He noted that the exact mix of BMPs that are going to result from the implementation of an RMP are not going to be known until those long term assessments are conducted. He said that once they were done there would be a much better idea of what this collection of implementation measures might be.

Mr. Davis-Martin said that the implementation measures would be revisited annually to look at new practices. He said that in 2017 as the Chesapeake Bay model changes there would be a full reassessment of the minimum standards.

Mr. Davis-Martin said that the results of the scenario were shown in pounds of nitrogen, phosphorus and sediment. He said that the percentages shown were the percent of the reductions that would be achieved directly from that scenario. He said that when the scenario is run through the model it comes up slightly short on nitrogen and slightly short on sediment. However, he noted that the Chesapeake Bay program and EPA do allow, when the load targets for phosphorus are exceeded, to exchange that phosphorus in a ratio specific to the watershed basins on average in Virginia of 3:1. For each pound exceeded in phosphorus goals, three pounds of nitrogen can be offset. He said if that scenario is applied, as well as a portion of the excess credits achieved in the WIP II scenario which exceeded the TMDL planning targets were utilized, then Virginia is able to meet the water quality goals and have reductions to meet the TMDL and the planning targets used for the Phase II WIP.

Mr. Davis-Martin said that to see the effect of increasing the mix of cover crops to a little more aggressive although still conservative amount, a second scenario was developed which was represented in Column C on the chart. He said that scenario changed the cover crop mixture from all commodity cover crop late drill wheat to a combination of commodity cover crops and standard cover crops. The commodity cover crop was also changed to a slightly more efficient variety and the standard crop was changed to a more efficient cover crop.

He said that the cover crop mixture used in this scenario was about the middle range of efficiencies of cover crops available but that this was still a conservative assumption based on actual cover crop varieties implemented in Virginia through the cost share program.

Mr. Davis-Martin said that the results in this scenario still show more progress with regard to nitrogen directly. He said this scenario resulted in 96% of the required reductions.

He explained that the first scenario meets the standards and that this scenario meets the standard when adding in the excess credits from the Phase II WIP and the 3:1 trading ratio for nitrogen from phosphorus.

Mr. Davis-Martin said the final two scenarios duplicate the first two but add back in the requirement for grass buffers in the streamside pasture areas. The 35 ft. buffer would push the fence from a minimum offset of 10 ft. to a 35 ft. offset from the top of the bank.

Mr. Davis-Martin said those scenarios got closer to meeting the nitrogen and sediment directly but do not meet the loads achieved in the WIP II scenario. But he said that with the nitrogen for phosphorus exchange and the WIP II credits these scenarios meet the standards.

Mr. Davis-Martin said that based on these model results, the final regulations for Resource Management Plans are indeed protective of water quality and are sufficient to achieve the Chesapeake Bay TMDL loads for agriculture.

Mr. Dowling continued with his presentation.

In closing, I must again note, that the regulations before you are both progressive and aggressive. They have been crafted to provide a strong voluntary tool for the Commonwealth to seek significant nutrient and sediment reductions while still being economically feasible and technically achievable for the farmer. It truly is integral to the success of the WIP that these regulations advance. The success of our WIP implementation is dependent on the implementation of this RMP Program and the capture of voluntary BMP information through this Program as well. Absent these regulations, the Commonwealth has limited tools to address the allocated agricultural reductions. We also believe that Program participation would suffer should the stringency of the regulations be further increased. We firmly believe that the reductions being suggested through the various models that James just spoke of are adequate and certainly within the margin of error of the models and that water quality will be best served by advancing these regulations today, requiring annual implementation and progress reports, and re-evaluating the minimum criteria in 2017 when various components of the WIP are also reconsidered. As such, with the explanations offered above, and the recommended delayed effective date and annual reporting commitment, we affirm that the final regulations being recommended to you today by the Department reflect a reasonable balance and a sound and lawful process and the Department recommends that the Board approve and authorize for filing the final regulations as presented.

With that overview of the regulations and the process, we are happy to answer any questions, or turn it back to you Mr. Chairman for public comment and Board action. A motion for your consideration is provided on the next page.

Ms. Thornton clarified that the program was completely voluntary.

Mr. Dowling said that it was.

Ms. Thornton asked about the nine-year time frame.

Mr. Dowling said that if a farmer complies with the program, a certificate would be given for nine years. He said that there may be other legal requirements through other programs.

Ms. Thornton asked if the agriculture community was aware of these regulations. She said that she did not envision a high level of participation.

Mr. Dowling said that the agriculture community had been informed. He said that the hope is that greater participation would be driven through cost-share and other incentives.

Ms. Hansen said that with regard to the safe harbor provision, that farmers could participate and remove themselves from being subject to some changing programs that may come on board. She said that she was concerned that the change to remove the 35 ft. buffer comment was removed after the end of the last public comment period and without the benefit of collaboration from the agriculture and environmental community. She said that she understood the variables. She said

that she would favor more public feedback. She said that she was troubled by a significant change from the last version that was viewed by all the stakeholder groups. She said she would like to hear from those who participated in the process before proposing a reaction to the change.

Mr. Dowling said that he appreciated the comment and that it had been raised within the conservation community. He said that the change was made as a result of the public comment. He said that DCR believed it to be a just and proper recommendation and not a substantive change. He said that the model does achieve the necessary WIP reductions and that there will likely be a very aggressive set of cost-share practices established. He said that DCR was following the law in the removal of the buffer. He said that was the direct point that was brought to staff attention through the public comment period that under cropland and hayland that the law very clearly articulates that a buffer is required, but under the pasture land that is not the case.

Mr. Dowling said that this model does achieve the required numbers as Mr. Davis-Martin pointed out. He said that there needed to be a careful balance in the regulations. He said that the intent was to increase participation and not make the requirements so difficult as to limit participation by farmers.

Ms. Hansen said that if the thought was that participation would go down, even with the cost-share, she would like to hear from Mr. Bricker regarding how the buffer was addressed at the federal level.

Mr. Dowling said that the intent was not to require this by law under the RMP regulations, but that it could be driven by the cost-share practices.

Ms. Hansen said that she did not understand the rationale for removing the requirement.

Mr. Dowling said that DCR did not believe that the requirement was consistent with the law. He said the law did not articulate that a buffer is required in that situation. He said that it is required under cropland and hayland. He said that it was not required as a minimum standard for pasture land.

Ms. Hansen asked if that analysis happened after the close of the public comment period.

Mr. Dowling reiterated that it was brought to staff attention through the public comment period.

Mr. Bricker noted that NRCS does require a 35 ft. buffer through the federal cost share program. He asked if the Chesapeake Bay model gave credit for anything less than 35 ft.

Mr. Davis-Martin said that the Chesapeake Bay model does not credit anything less than a 35 ft. buffer as a buffer. He said that in the case of a fencing practice installed less than 35 ft. from the top of the bank that would exclude cattle, eliminate wear and tear of the bank, and eliminate direct deposition of manure into the stream it would receive credit while recognizing that it would not provide the same benefit of a buffer for anything less than 35 ft.

Mr. Dowling noted that there are practices in the TMDL that allow a 10 ft. setback. He said that practice was being utilized. He said that the question came with regard to farmers who have utilized the 10 ft. set back if they would be required to tear out the fences and implement the 35 ft. buffer. He said that if the pasture land buffer requirement was included the regulations that would be required. He said that would be a factor in driving down participation.

Mr. Street asked if there would be technical guidance.

Mr. Davis-Martin said that would be part of the conservation planning tools that are developed.

Mr. Street said that in the guidance the 35 ft. buffer could be included as an option.

Mr. Davis-Martin said that was an option as were a number of other BMPs. He said that the difficulty of the model was the attainment of T. He said that there were a number of mixtures of BMPs that could be used to achieve T. The difficulty was figuring out which ones to specify. He said that all of the BMPs are options that the conservation planner should be able to consider to balance the needs of the producer with the requirements of the regulations. He said the difficulty of requiring the 35 ft. buffer was that in some parts of the state where the pasture areas are not as large it would almost force the land to be taken out of production.

Ms. Jamison said that she had questions about Soil and Water Conservation Districts. She asked in Section 100 regarding compliance, if SWCDs had any role in this section if they were the review authority.

Mr. Dowling said that if the District was the review authority they would be doing the inspections, but that the actual enforcement would be handled by the Department.

Ms. Jamison clarified that the District had no role in suspending someone's certificate.

Mr. Dowling said that was the Department's responsibility.

Ms. Jamison noted that regarding appeals that a District might be involved in litigation between the Department and the land owner. She asked if there were other places in the Code of Virginia where SWCDs were subject to this sort of process.

Mr. Gooch said that he was not certain. He said there may be places where the District might be involved in informal fact finding proceedings.

Ms. Jamison said that as she read this, the Department would be reprimanding Soil and Water Conservation Districts.

Mr. Dowling said that he thought that was a misread. He said that the language provides an opportunity for the Districts to appeal a Department decision. It allows the owner or operator to appeal. But the appeals are to the Department or potentially the Board. The appeals aren't to the District.

Ms. Jamison asked what the role of the Board was. She said that she had concerns about the District making an appeal to the Department.

Mr. Dowling said that in that situation there was a provision for the Board to hold an informal fact finding proceeding similar to proceedings under the Agriculture Stewardship Act.

Ms. Jamison asked about reporting in Section 120. She said that whether or not the SWCD wrote the plan they would have to input the data.

Mr. Dowling said that it would be the reviewer that entered the data. He said that was a logistics issue that needed to be addressed.

Ms. Jamison inquired whether the Department would conduct a review of the Districts.

Mr. Dowling said that with changes in the law, with regard to the Board having oversight of the Districts, that would be done in conjunction with the Board.

Ms. Jamison asked if a District decided they did not want to participate in the RMP program how that would be addressed.

Mr. Dowling said that would be an issue that would need to be addressed with the Board. He said that the hope was that every district would want to participate.

Mr. Hornbaker asked if a credit was given for phosphorus reduction whether it would also be given for sediment.

Mr. Davis-Martin said typically the answer would be yes, but that phosphorus and sediment are not specifically linked in the models. He said that sediment was the weakest link of the pollutants with an estimated margin of error that could be as high as 30 to 40%.

Mr. Hornbaker said that there was no clear definition of livestock when livestock exclusions are mentioned. He noted that there should be a clear definition of livestock and asked whether equine or poultry would be allowed access to a stream but cattle would not.

Mr. Dowling said that would need to be addressed through guidance. He said that over the next six months staff would find areas where there need to be refinements. He said that this was something staff could research.

Mr. Hornbaker asked if in the future BMPs would be tied directly to resource management plans. He said that he would like to see the most effective use of the BMPs regardless of whether there was a resource management plan.

Mr. Dowling said that would be a conversation to have over the next six months. He said that staff would be looking at cost-share, technical assistance, and service delivery fees. He said that some guidance on this matter may be coming out in policies being developed.



Mr. Hornbaker asked if there was an estimate of the number of certified nutrient management writers in the Commonwealth.

Mr. Dowling said that Ms. Martin had reviewed the database regarding District personnel. He said that of District personnel there were around 20 that meet the RMP requirements. He said there were also some planners in the private sector. He said that he thought that would be sufficient to start the program.

Ms. Martin said that she looked at how many Soil and Water Conservation District employees have conservation planning certification and cross referenced that with how many employees have nutrient management certification. She said the number was between 30-35. She said that DCR gets an update from NRCS every six months regarding employees who reach that certification. She said that she did not have information regarding those individuals who are certified nutrient management planners who are not district employees.

Mr. Dowling said that he understood the apprehension but that DCR was comfortable that there was a core of individuals who meet the qualifications and that more would come into the pipeline as the program begins.

Mr. Hornbaker asked how long certification took and what the cost was for the training.

Ms. Martin said that the nutrient management section held at least one training per year and one test per year. She said that once the test is taken and passed then it could happen within the one-year window. It would depend on the testing schedule and the individual's qualifications.

Mr. Hornbaker asked what it would cost local Soil and Water Conservation Districts. He asked if there would be additional allocation from the state to cover these costs.

Mr. Dowling said that was one of the reasons for asking for the six month delay. He said that would be addressed during that time frame. He said that the team would be doing District training. He said there were avenues to address the training issues.

Ms. Martin said that the RMP review committee could be made up of Extension and NRCS and other technical experts. She said that the District makes up the technical review committee.

Mr. Johnson said that DCR was in the process of identifying staff that would give full time attention to the RMP issue.

Mr. Hornbaker asked if six months was long enough to develop the implementation process.

Mr. Johnson said that the patron of the bill was particularly anxious to get this done. He said that the goal was aggressive. He said that the program would not be launched any earlier than six months.

Ms. Thornton asked how much it would cost a farmer to hire someone to write a resource management plan.

Mr. Dowling said that in looking at cost estimates presented in the economic analysis that the number was around \$2,000 per resource management plan but each individual plan would vary based on acreage and other parameters.

Ms. Jamison noted the Department would be doing the review if the District does the plan. She asked if the Department staff would be up to speed. She said that her District was on hold for getting things done waiting for DCR or NRCS to get things done where the District did not have the certification. She asked if DCR would be hiring staff for this process.

Mr. Johnson said that at this point until the amount of participation was determined that it would not be prudent to hire in anticipation. He said that DCR was putting together staff for the initial implementation.

Ms. Thornton noted that in her area much of the farm land was rented. She asked if the cost of the plan would be \$2,000 per parcel.

Mr. Dowling said that he could not address how the market would handle this but that an RMP could cover multiple parcels. He said that the cost estimates received were fairly consistent.

Mr. Dunford called for public comment.

#### Public Comment

Mr. Dunford turned the chair to Vice Chairman Jamison for the purpose of receiving public comments.

Ms. Jamison noted that each person wishing to speak would be limited to three minutes.

*Jason Clark, Virginia Cattlemen*

On behalf of the Virginia Cattlemen's Association I do want to say that we do support cost-share programs. We think they're important for cattle producers to invest in these programs so that they buy into conservation.

We do have concerns of all things of course at different levels, but we see this as a tool that will be appealing, that certain producers can take advantage of.

We support the way the final regulations have been demonstrated at this time. We do feel like a 35 ft. buffer particularly as originally proposed does present potential economic considerations and hardships for producers because of the land extensive nature of cattle production. The stocking rates do become critical when they define the sustainability of the operation.

We fear sometimes that stipulations go along with conservation practices particularly when the stipulations become mandatory as opposed to voluntary and put economic hardships on cattle operations that can make them unsustainable. And again I refer to the land intensive nature of cattle production.

I also want to point out that a large portion of land in cattle production is rented and leased. That also incurs some lack of control by cattle producers over the decisions they can make implementing conservation actions on those properties.

Long-term cost-share opportunities or conservation practices are appealing, but acquiring long term rental agreements to accompany those programs in addition to owner buy in can also be very prohibitive.

So I just wanted everyone to appreciate the fact that due to the nature of cattle production particularly that there are limitations some cattle producers are faced with regardless of how much they may want to implement a conservation program.

The last thing I'll address is the 35 ft. buffer in relation to pasture size. I don't have figures anymore than anyone else as far as how many pastures that are currently in grazing now can't stand the 35 ft. buffer and may become unusable for cattle production. Stocking rates and usable grass is very important in determining the sustainable land that can be used for cattle production. Thirty-five feet is significant and it puts a significant amount of burden on water frontage on that property.

Thank you.

*Katie Frazier*  
*Virginia Agribusiness Council*

Good morning, thank you Mr. Chairman and members of the Board. I'm Katie Frazier with the Virginia Agribusiness Council.

I just wanted to briefly touch on some of the questions that you raised today and some of the comments that your staff have made.

First I want to clarify that we have been long supporters of resource management plans as an innovative and ground breaking approach. This legislation was originally brought to the General Assembly at the request of the Virginia Farm Bureau and the Virginia Agribusiness Council. It was because our members were asking us for safe harbor that would provide them flexible whole farm provisions to be able to meet the Chesapeake Bay water quality goals.

We believe that while no regulation, no law, is ever perfect, this represents a compromise and a move in the right direction and we would urge you to support this measure and allow us to move forward with these regulations so folks could begin to implement them.

With the questions that are out there we can move forward with guidance documents or cost share incentives for those types of programs that we believe will help to drive the affordability of this program.

We do support the changes that were made in the proposed regulations that you have before you today regarding clarifying the specific legislative intent.

I wanted to just speak with you about the 35 ft. buffer that has been the source of some questions and discussions. The legislation does not, as your staff pointed out, specify that on pasture land it requires any type of grass buffer beside streams. The reason for that was that we didn't want to get into the situation where, as you just heard Mr. Clark say, that in some situations you would specify a 35 ft. buffer but in some situations a 10 ft. buffer may be what is needed for a producer. Depending on the size of the property and the layout of the property they may need to do other conservation practices to offset that.

So we believe that by giving flexibility within the regulations to allow that, it allows the plan writer to meet the water quality requirements that are on that farm so that we can continue to make water quality progress. By allowing that flexibility to work with the farmer's individual operation this regulation will meet our water quality goals.

Finally, I wanted to stress that we do concur that funding for District and for cost-share practices will be critically important to make this a reality. We've been committed to that from the get go. We just need someone to help us identify how much money is actually needed.

We hope that not only through the efforts of the Department but also through the efforts of the study on District funding needs that we'll be able to take that information to the legislature to advocate for additional funding.

Thank you.

*Katie Hellebush*

*Virginia Grain Producers Association, Virginia Wine Council*

Good morning, I'm Katie Hellebush with The Alliance Group. I'm representing the Virginia Grain Producers Association and the Virginia Wine Council.

I just wanted to echo the comments of my colleagues that we are very supportive of the cost share and voluntary provisions of the RMP. Certainly the flexibility that is provided in that safe harbor is important to the industry. Providing funding for the Districts and participation will help encourage participation and achieve our water quality goals and support the industry.

I think one point that everyone touched on is flexibility and that is very important.

Thank you very much.

*Jacob Powell*

*Virginia Conservation Network*

Thank you for this opportunity to comment on the final draft regulations for the resource management plan program. My name is Jacob Powell. I represent the Virginia Conservation Network, a network of conservation and non-profit community groups across Virginia. Our network has a vested interest in promoting agriculture and ensuring its viability.

As a member of the regulatory advisory panel, I'd like to commend the efforts of the staff of the Department of Conservation and Recreation and other members of the panel that served over the past few months.

Although I have serious concerns about the program, many aspects are strong and that's thanks to their efforts.

Our first concern is regarding funding. Soil and Water Conservation Districts will be tasked with implementing this program. The Districts and their programs are already underfunded and if we're going to actually achieve the goals articulated in the statute, the Districts will need resources to deliver them. As it stands now, our fear is that this the situation puts an acceptable program out of reach.

Secondly, the goal of the resource management plan is to provide certainty to the farming community that if sufficient voluntary investments are made to sustain the water quality, that the farming community will not be penalized with additional regulations in the future.

The statute correctly establishes that certainty in achieving water quality goals and certainty about future requirements are two sides of the same coin.

Unfortunately, this regulation fails to establish a program that ensures water quality to a level that is prescribed in the statute. The minimum standards contained within the final proposed regulations will exceed allocations identified by the Chesapeake Bay Watershed Implementation Plan.

An analysis of the minimum standards contained in the proposed regulations left considerable questions as to whether or not they could meet the prescribed goals. This current draft with the elimination of the required 35 ft. buffer on pasture as has been discussed removes that question and it now clearly falls short.

I would also note that the initial analysis that was provided by EPA was only made available on 9/14/12 and that was the final date of the comment period. It's unfortunate that we regulatory advisory panel members never had the opportunity to really discuss these analyses and the assumptions that went into them or the alternatives available so that we could achieve the goals.

In conclusion, I am disappointed to report that the Virginia Conservation Network cannot support the regulations.

Given the opportunity, we would gladly continue to work with the other stakeholders and the Department to find a solution we could enthusiastically support and allocate the necessary resources to.

Thank you.

*Kendall Tyree*

*Virginia Association of Soil and Water Conservation Districts*

Good morning, I will be very brief. I have worked with many of you over the last year and with local Districts regarding RMPs and how your local staff will be impacted.

I've had the privilege to speak with many of you and I'm really glad to hear the questions you're asking today. In going around your Districts, staff are asking the same questions. One of the biggest questions is how are we going to implement this.

One of the biggest concerns is the process piece. I will say a number of Districts actually did hold meetings and discuss these concerns and some of the changes were a direct result of those meetings.

I have to give a lot of credit to DCR as they listened to our concerns. There was a lot to be recommended over the past year from many of your own fellow directors.

While we still have concerns there's a lot of merit in the regulations.

The issue of funding is of great importance to the Association Board and District Directors.

*David Bernard*  
*Sierra Club, Coastal Canoeists*

I'm David Bernard. I represent Coastal Canoeists and the Virginia Chapter of the Sierra Club.

We are very concerned specifically about the deletion of the stream buffer for pasture. We certainly have thought that everyone recognizes that livestock in stream is a problem and wants to address that. We certainly support the cost-share program and along with the other speakers believe it is inadequately funded.

We do believe that farmers should be adequately compensated for a lot of these programs.

To the extent that the gentleman from the Cattleman's Association pointed out that there is land being lost from production if these regulations are implemented, I think it is very fair for farmers to be compensated not just for the cost of the BMPs but for the loss of that land.

Another point specifically about the pasture, the existing 10 ft. rule certainly could have been addressed in the revised regulations and people who had an existing 10 ft. buffer could have been credited and allowed up until the typical 15-year lifespan of events.

I also want to point out that the closer a fence is to a stream the more likely that fence is to be severely damaged by a flood. You are going to have water born wood slamming into the fence. It is going to be a big cost to the farmer or perhaps to the public in restoring that. So I think that we should see to it that a 35 ft. buffer as a minimum is kept.

Also I want to ask that in A.3.C, that the provisions for stream crossings, prohibit any permanent structure that precludes travel on a stream. The fences that prohibit livestock from crossing a stream are a potential lethal obstruction to traveling the stream.

*Ann Jennings*  
*Chesapeake Bay Foundation*

Mr. Chairman, Members of the Board. Thank you for this opportunity to comment. I'm Ann Jennings. I'm the Virginia Director of the Chesapeake Bay Foundation.

I am sincere in saying that I regret that the Chesapeake Bay Foundation cannot support the new RMP program. We are disappointed that the Department removed the requirement for a buffer on pasture which we believe is a significant revision following the close of the comment period.

More importantly though, we believe that the analysis shows that the revision means that the regulation does not comply with state law.

We had hoped to be here to stand in full support with the agricultural community. We have long supported this concept as a unique opportunity to accelerate implementation of best management practices and help Virginia to achieve its Bay restoration goals; standing out away from some others in the environmental community particularly in Maryland.

We have consistently supported this concept of safe harbor with the provision that the suite of best management practices would indeed meet the load allocation defined in the Bay TMDL.

But due to the removal of the buffer requirement we believe that it no longer achieves that goal.

The analysis that James went over, we are appreciative of the opportunity to review it, albeit late in the process, we believe it shows that we fall short on nitrogen and sediment.

They have shown you a balancing of nitrogen and phosphorus, but we believe based upon guidance from the EPA that it is inappropriate to do that in this circumstance. That balance or exchange between nitrogen and phosphorus was only applicable to the full development of the Watershed Implementation Plan that Virginia did back in 2010.

We think the Code is very clear. We think it sets a mandatory program with criteria that shall include agricultural best management practices sufficient to implement the Virginia Chesapeake Bay TMDL Watershed Implementation Plan and other local TMDL water quality requirement of the Commonwealth.

We believe the data shows that removing the grass 35 ft. buffer on pasture means that it isn't sufficient.

As noted it was unfortunate that this change was made post the public comment period. Every single version of the regulations that the RAP reviewed included that provision.

We believe that the RMP does serve as a cornerstone of the agricultural communities' responsibility as outlined in our WIP. Failure to meet the load allocation for nitrogen and sediment will mean that Virginia cannot achieve its reductions in 2017 or in 2025 unless additional reductions are sought in other sectors, the implications of which include practicability, cost and fairness, just to name a few.

We would ask that you use your ability in state Code to provide for another public comment period. We believe that opportunity exists for you.

Again, we regret that we are unable to support the RMP program.



I thank you for this opportunity to comment. I would like to leave for the record a copy of the letter we provided to the Board.

*Jack Frye*  
*Chesapeake Bay Commission*

First, I want to thank the DCR staff and Administration and everyone who worked so diligently for a number of years to get us to this point. The comment was made earlier that Virginia is leading the nation and that certainly is very true. We are not only being watched but we're being emulated. Much of what is in Maryland law is modeled by what is done in Virginia. Virginia is having an impact. I'm proud of the state as we move forward on this.

The problem has always been the implementation of Best Management Practices in the agriculture community. The cost-share program has been the main implementation tool. It really was an education and demonstration program and even to this day I think it primarily is.

The real need here is the longer term tracking and implementation of best management practices and in the tracking, the reporting.

This resource management plan concept is our first step in that direction and hopefully it will take us much farther than we think it will. Otherwise, we're going to need something else or something more.

I do hope that the agriculture community as well as DCR will fully embrace this concept and help promote this or otherwise it will fail. Hopefully, it will not just be something for early adopters to be able to embrace.

Having said that, I understand all of the interaction that went on in the spreadsheet we saw. Having had some experience in that regard, I think our primary concern is that if there are adjustments needed down the road to make sure that they are meeting our Watershed Implementation Goals that they are made.

Longer term, we are concerned that there are some differences that exist between what Virginia requires as a baseline for nutrient trading. It requires 35 ft. buffers. In the Phase I WIP it is recognized and says that the Commonwealth believes that grass and buffer on pastures can be achieved by farmer participation in financial incentive programs.

We are supportive of the regulations. We don't necessarily think the change is that great but we do believe that it is a major step forward for implementation and that reasonable assurances are necessary.

*Bill Street*  
*James River Association*

Good morning, Mr. Chairman and members of the Board. Thank you for this opportunity.

The James River Association has been involved in the development of this program working in the legislature in drafting the statute and providing input there in drafting the statute and in participating in the RAP.

The most critical piece of this legislation for the conservation community is the requirement that the minimum standards set meet the Chesapeake Bay Watershed Implementation Plan requirements.

The analysis that was presented showed that the practices themselves do not achieve that goal and that is a critical concern for us.

We also question whether the implementation that is required by these regulations would rise to the level of what was put forth in the scenarios.

I would note that there was a number of times that staff mentioned that based on past experience they anticipate higher levels of enrollment. I would suggest if I was a farmer and looking at this resource management plan I would certainly want to minimize it if that was what I was going to be held to for nine years. So I don't think the past level of participation and enrollment will necessarily indicate what the resource management plan will include going forward.

The law does not limit the practices that are needed for resource management plans to those listed. In the drafting of the statute as we were up in the General Assembly, we didn't have the benefit of analysis. The underlying requirement is that it meets these goals. So removing the buffers and making changes to other practices is I think inconsistent with the law. I think we need to strengthen the practices so that everyone has confidence that these resource management plans will in fact meet our goals.

Unfortunately, based on those concerns, we still have strong reservations whether these minimum practices will achieve the reductions we need so we cannot support the regulations as proposed.

I agree with Jack Frye that setting a different bar for this program to what is the baseline for nutrient trading could create confusion. I think that's a critical piece that needs to be addressed as well.

Also by lowering the bar for this program it's going to shift the burden to other sectors.

So, again we cannot support the regulations in their proposed form. We would encourage you to send them back to the RAP to reconcile these issues.

Thank you very much.

*Wilmer Stoneman*  
*Virginia Farm Bureau Federation*

Members of the Board, my name is Wilmer Stoneman and I represent the Virginia Farm Bureau Federation.

I have the dubious honor of probably being the first one to utter the words resource management plan. I was sitting before a General Assembly commission and they were asking how agriculture was going to provide the assurance that they were meeting the goals of the TMDL.

My proposal was that rather than a practice approach where you require certain practices that may or may not work, the suggestion was a systems approach – the resource management plan.

Certainly we've had the discussion about buffers. A lot of my agriculture colleagues have indicated the discussion about the buffer. It is nothing new in the discussion. From the first day the bill was introduced in the General Assembly we debated the buffer. We were trying to recognize that a lot good work in the Shenandoah Valley, certainly with producers that are known to the Bay Foundation and work with the Bay Foundation have 10 ft. buffers that are working. So the recognition was that the practice that was most important for livestock was excluded.

We're here today with basically the place to lean upon using what the General Assembly prescribed to us. That was no buffer for livestock exclusion. It doesn't mean it won't be there. The fence will be put there and it will be appropriate for what is there.

This program is designed for flexibility.

Certainly with respect to the discussion of what this will cost, I want to turn you to the idea of the BMP because there was a great discussion about whether these things were included. The TMDL requires the nutrient management plan or calls for a nutrient management plan. That's two thirds of what will be in an RMP.

Certainly when we talk about an RMP and soil loss, soil loss is decades old. I did soil loss equations 20 years ago when I worked for the Hanover-Caroline and Henricopolis Soil and Water Conservation Districts. That is nothing new.

When you combine the two together you are aggressively treating sediments and nutrients. The rest of the BMPs will follow as they think are appropriate to the farm.

We've proven over and over again that a farmer will implement what they choose, what they believe.

With respect to trading, if we don't provide flexibility through the resource management plan, especially regarding this buffer, there will be virtually nothing for a farmer to trade.

Err on the side of what the law says. Err on the side of flexibility.

I want to conclude by asking you to pass the regulations as they are.

Thank you very much.

This ended the public comment period. There were no additional speakers

Mr. Dunford thanked everyone for their comments.

Mr. Dowling referenced the motion in the original handout to the Board.

Ms. Hansen said that she would like to propose a delay to give additional time for public comment as to whether there were inconsistencies, whether the offset exchange was appropriate, and the impact on enrollment of deleting the 35 ft. buffer requirement on pasture.

Ms. Hansen said that after such a collaborative process she was dismayed that several major players were not willing to endorse the regulations. She said she would like to propose another 30-day comment period and if necessary an additional RAP meeting to address those factors and then have the issue brought back to the Board.

MOTION: Ms. Hansen moved that the Board delay the approval of the regulations and provide for an additional comment period and an additional RAP meeting if needed to discuss the removal of the buffer for pastureland in the final regulations and other concerns as noted.

SECOND: Mr. Street seconded for the purpose of discussion.

Mr. Branin clarified that Ms. Hansen was asking to postpone the adoption of the regulations.

Ms. Hansen said that the process was nearly there but that there was such discord on this particular issue. She said that since that change was made after the RAP process and after the public comment period that it merited more discussion.

Mr. Branin asked Mr. Dowling how long staff had been working on these regulations.

Mr. Dowling said that staff had been working on the RMP regulations for about two years.

Ms. Thornton asked to clarify that Ms. Hansen's motion would just be a 30-day delay in the implementation.

Ms. Hansen said that her motion was to specifically extend the public comment period.

Ms. Jamison asked how that would fit into the timeline of the May Board meeting.

Ms. Hansen said that she would encourage staff to move forward with implementation.

Ms. Jamison asked if that would preclude the Board from voting on the motion to approve.

Mr. Dowling said that this was a substitute motion.

Ms. Jamison asked if action would then be taken at the May meeting.

Mr. Dowling said that the delay in the action would actually be months. He said that the regulations would have to go out for public comment again, the public comment would have to be addressed and staff would have to review answers and responses. Then the regulations would come back to the Board possibly in September or at a special meeting. He said that there may be other alternatives to consider. But the motion as provided, would not allow for the regulations to be considered at this meeting.

Ms. Hansen asked if it would be more expeditious to have a single RAP meeting with public attendance to give comments at that meeting rather than a public comment period.

Mr. Dowling said that would abbreviate the process.

Ms. Hansen said her concern was that this was a new issue.

Mr. Dowling said that the change had been in response to public comment.

Mr. Branin asked if the regulations were approved at this meeting and were implemented if problems arose and issues needed to be cleaned up if the regulations could be amended.

Mr. Dowling said that yes, if the Board had issues brought to their attention there would need to be a regulatory process to amend or to clarify through guidance but that there were avenues to address.

Mr. Branin said that to delay the regulations at this meeting that full implementation could be up to a year later depending on the process for more discussion and more changes. He asked if it wouldn't be prudent to approve and address issues as they arise.

Mr. Dowling said that was the Board's discretion. He said that the motion provided was DCR's recommendation to move forward.

Ms. Jamison asked when guidance documents would be developed.

Mr. Dowling said that once the regulations were approved and filed then staff would begin drafting guidance documents at that time.

Ms. Jamison asked what would happen on November 6. Would that be the day Soil and Water Conservation Districts begin working on the issue?

Mr. Dowling said that the regulations would become effective six months after publication of the regulation. He said that would be when DCR would work with Districts to implement.

Ms. Jamison asked about education for District Directors. She noted that directors were volunteers. She suggested a good time for the education process would be at the Association annual meeting.

Mr. Dowling said that staff would prioritize the issues regarding outreach to Districts. He said that issues of concern would be brought back to the Board. He said that the effective date does not mean that the conversations regarding the regulations would end. He said that this was the beginning of a long process.

Ms. Hansen said that she would hate to see the program stumble at the beginning due to lack of resources.

Mr. Dunford called for the vote on Ms. Hansen's motion.

VOTE:                   The motion to delay the approval of the regulations for the purposes of an additional comment period failed.

MOTION:               Mr. Branin moved the following motion:

**Motion to approve, authorize and direct the filing of final regulations related to the Board's Resource Management Plan regulations (4VAC50-70-10 et seq.)**

The Board approves these final regulations and authorizes the Director of the Department of Conservation and Recreation and the Departmental Regulatory Coordinator to submit on the Virginia Regulatory Town Hall the new proposed Resource Management Plan Regulations and any other associated documents to the Registrar of Virginia for publication.

Further, the Board sets a delayed effective date of seven-months from the date of publication for these final regulations to enable the Department to actively work during this time period on necessary implementation actions in preparation for the effective date.

The Department shall follow and conduct actions in accordance with the modified Administrative Process Act procedures set out in § 10.1-104.9 of the Code of Virginia, the Virginia Register Act, the Board's Regulatory Public Participation Procedures where applicable, the Governor's Executive Order 14 (2010) on the "Development and Review of Regulations Proposed by State Agencies" where applicable, and other applicable technical rulemaking protocols.

This authorization extends to, but is not limited to, the posting of the approved action to the Virginia Regulatory Town Hall and the filing of the proposed regulations and documents with the Virginia Registrar's Office, as well as the coordination necessary to gain approvals from the Virginia Registrar of Regulations.

The Board further instructs the Agency to provide a semi-annual report to the Board, in coordination with other water quality reporting responsibilities, that entails progress made on Program implementation including nutrient and sediment reduction results.

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

SECOND: Mr. Dunford

DISCUSSION: Mr. Street said that he would like to see the issue of buffers addressed in guidance even if not required by the regulations.

Ms. Thornton asked if the effective date could be changed to December.

The motion was amended to set the effective date for seven months from final publication and to provide for a semi-annual report to the Board. The above motion text reflects those changes.

VOTE: The motion carried unanimously

*Virginia Stormwater Management Program (VSMP) Permit Regulations (4VAC50-60): Part XV  
General Permit for Discharges from Small Municipal Separate Storm Sewer Systems.*

Ms. Vucci gave the overview of the Final MS4 General Permit regulations.

**VIRGINIA SOIL AND WATER CONSERVATION BOARD**  
March 27, 2013 Meeting  
West Reading Room, Patrick Henry Building  
Richmond, Virginia  
**Michelle Vucci, DCR Policy and Planning Assistant Director**

**General Permit for Discharges of Stormwater from Small Municipal Separate  
Storm Sewer Systems (MS4s) Action**

**Action to Advance a Final Set of Proposed Regulations**

**Introduction and Regulatory Overview**

Before you today for consideration and action is a final stage regulatory action that advances for the Board's consideration amendments to the General Permit for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems or MS4s as they will be characterized throughout this presentation. The regulation version before you for consideration and that is also in your packets, is dated March 26, 2013 contains additional updates. These updates are included in the last page of this document and are largely editorial and clarifying in nature and these updates will be brought to your attention during this presentation.

As we discussed back in September of 2012 when these regulations came before you in the proposed phase, the purpose of this action is to promulgate a new MS4 General Permit. Regulations developed under the federal Clean Water Act (33 USC §1251 et seq.) and the Stormwater Management Act (§10.1-603.2 et seq. of the Code of Virginia) require that state permits be effective for a fixed term not to exceed five years. The existing 5-year General Permit became effective on July 9, 2008; thus necessitating the regulatory promulgation of a new General Permit before the July 8, 2013 expiration date. Your action today is especially critical so that MS4 operators can proceed with preparing registration materials needed in order to be in compliance with a July 1, 2013 implementation date.

As was previously shared with you, DCR used a Regulatory Advisory Panel (RAP) to craft this regulation in order to balance impacts on the regulated community and the public in general with the important water quality issues that require our attention. You approved the proposed regulations at your September meeting, and following that approval, DCR proceeded with the following steps:

- The regulations were filed on the Regulatory Town Hall.



- A 60-day public comment period, ending on January 4, 2013, took place.
- A notice was placed in 13 newspapers across the state to solicit public comment and to inform citizens that three public hearings would be held at the following venues:
  - December 3, 2012 at the Virginia Department of Alcoholic Beverage Control Hearing Room, 2901 Hermitage Road, Richmond, Virginia
  - December 5, 2012 at the Roanoke City Council Chambers, Noel C. Taylor Municipal Building, 215 Church Avenue Southwest, Roanoke, Virginia;
  - December 7, 2012 at the Spotsylvania County Public Schools' Administration Board Room, 8020 River Stone Drive, Fredericksburg, Virginia
- The draft regulations were sent to the U.S. Environmental Protection Agency (EPA) for review. DCR staff have had extensive negotiations with the EPA. In a letter dated March 26, 2013, EPA indicated that it has no objections to the permit as drafted.
- All public comments received were reviewed and incorporated where appropriate.
- A final Fact Sheet (also approved by EPA) was drafted at the same time the final regulations were prepared.

### **Framework of Stormwater Regulations**

This regulatory action amends Part I and Part XV of the body of stormwater regulations as well as updates associated forms (highlighted items).

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

##### **Part I: Definitions, Purpose, and Applicability**

##### Part II: Administrative and Technical Criteria for Land-Disturbing Activities

##### Part II A: General Administrative Criteria for Regulated Land-Disturbing Activities

##### Part II B: Technical Criteria for Regulated Land-Disturbing Activities

##### Part II C: Technical Criteria for Regulated Land-Disturbing Activities:

##### Grandfathered Projects and Projects Subject to the Provisions of 4VAC50-60-47.1

##### Part III: General Provisions Applicable to Stormwater Program Administrative Authorities and to Local Stormwater Management Programs

##### Part III A: Programs Operated by a Stormwater Program Administrative Authority

##### Part III B: Department of Conservation and Recreation Procedures for Review of Local Stormwater Management Programs

##### Part III C: Virginia Soil and Water Conservation Board Authorization Procedures for Local Stormwater Management 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 – Effective July 1, 2009

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

- Department of Conservation and Recreation Permit Fee Form, DCR 199-145 (10/09).
- VSMP General Permit Registration Statement for Stormwater Discharges From Small Municipal Separate Storm Sewer Systems (VAR04), DCR 199-148 (07/08).

The regulations that we present to you today include a number of technical issues. These technical issues were covered in the September meeting but at this point, I will ask Ginny Snead, the Regulatory Programs manager for DCR's Stormwater Division, to briefly cover these issues with you again before we discuss specifically what has changed between the proposed and final regulations.

Ms. Snead gave the following presentation:

#### Small (Phase II) MS4 General Permit Final Regulations

##### *Municipal Separate Storm Sewer Systems (MS4s) in Virginia*

- Phase I MS4s
  - Served populations greater than 100,000 as of the 1990 Census
    - § Arlington, Chesapeake, Chesterfield, Fairfax County, Hampton, Henrico, Newport News, Norfolk, Portsmouth, Prince William County, Virginia Beach
  - Regulated by individual permits beginning in the 1990s. Permits issued during this cycle will be the third round of 5-year permits.
- Phase II MS4s

- Located in Urbanized Areas as determined by the latest decennial US Census
- Regulated under the General Permit for Discharges from Small MS4s
- Current Permit Expires July 2013

*Current MS4 Program*

- Multiple Ongoing Efforts
  - Phase I Individual Permits Reissuance
  - Phase II GP Reissuance
- Program Goals
  - Phase I and II Consistency
  - Program Consistency
  - Measurable Goals
  - § Clarify How to Comply
  - § Flexibility and “Implementable.”

*WQBEL Relevance*

- WQBELs Application to MS4s not supported by Clean Water Act
  - Standard is Maximum Extent Practicable
  - WQBELs not a control
- WQBELs Not Relevant for MS4s
  - Monitoring Variability
  - § Flow
  - § Pollutant Concentration
  - Low Flow Conditions
  - Discharge Control

*Phase II MS4 GP Reissuance*

- March 2011 – NOIRA
- Regulatory Advisory Panel
  - 5 RAP Meetings June, July, August, September
  - Stakeholders: MS4s, VAMSA, VML, CBF, JRA
  - [http://www.dcr.virginia.gov/laws\\_and\\_regulation/s/lr3e.shtml](http://www.dcr.virginia.gov/laws_and_regulation/s/lr3e.shtml)
- Changes in MS4 Phase II Permit
  - Special Condition for TMDLs other than Chesapeake Bay
  - Special Condition for Chesapeake Bay TMDL
  - § WIP: 5% Total Reduction Goals this Permit Cycle

- § 2017 and Bay Program Evolution
- Measurable Goals

*Public Comment*

- October 2012 through January 4, 2013
- EPA Negotiations
- Issues Raised
  - Special Condition: Chesapeake Bay TMDL
  - DCR Review of TMDL Action Plans
  - VDOT coverage
  - Mapping of Outfalls
  - This Permit Term Requirements
  - Editorial

With that programmatic overview, I now wish to take a minute and outline the process that your final action on this regulation.

**Process (Modified Administrative Process Act Procedures)**

As we discussed in September, the regulatory action before you today uses a modified Administrative Process Act (APA) process set out in §2.2-4006 subsection A8 of the Code of Virginia. Regulatory actions are typically comprised of three primary steps: the Notice of Intended Regulatory Action, the Proposed Regulations, and the Final Regulations. Routinely under the Administrative Process Act (APA) this takes about 2 years.

However, amendments to this General Permit are exempt from the full APA (§2.2-4006 subsection A8 of the Code of Virginia). As such, an abbreviated APA process is required. We still go through the NOIRA, Proposed, and Final regulatory steps, **public input processes remain**; however, the administrative review process is reduced.

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

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

8. General permits issued by the (a) State Air Pollution Control Board pursuant to Chapter 13 (§ 10.1-1300 et seq.) of Title 10.1 or (b) State Water Control Board pursuant to the State Water Control Law (§ 62.1-44.2 et seq.), Chapter 24 (§ 62.1-242 et seq.) of Title 62.1 and Chapter 25 (§ 62.1-254 et seq.) of Title 62.1, **(c) Virginia Soil and Water Conservation Board pursuant to the Virginia Stormwater Management Act (§ 10.1-603.1 et seq.) of Title 10.1,** and (d) the development and issuance of general wetlands permits by the Marine Resources Commission pursuant to subsection B of § 28.2-1307, if the respective Board or Commission (i) **provides a Notice of Intended Regulatory**

**Action in conformance with the provisions of § 2.2-4007.01, (ii) following the passage of 30 days from the publication of the Notice of Intended Regulatory Action forms a technical advisory committee composed of relevant stakeholders, including potentially affected citizens groups, to assist in the development of the general permit, (iii) provides notice and receives oral and written comment as provided in § 2.2-4007.03, and (iv) conducts at least one public hearing on the proposed general permit.**

Accordingly the General Permit shall be exempt from portions of the APA if the Board:

- Provides a Notice of Intended Regulatory Action (NOIRA).
- Forms a regulatory advisory panel composed of relevant stakeholders to assist in the development of the General Permit (following the passage of 30-days from the publication of the NOIRA)
- Provides notice in the Virginia Register of Regulations and receives oral and written comment.
- Conducts at least one public hearing on the proposed General Permit.
- Publishes in the Register both the proposed and final regulations.
- At least two days in advance of the Board meeting where the regulation will be considered, a copy of the regulation shall be provided to members of the public that request a copy.
- A copy of that regulation shall be made available to the public attending the Board meeting.

The permits are also subject to additional federal NPDES requirements relevant to the promulgation of general permits. These include:

- Development of a fact sheet. (This is included for informational purposes in your packets.)
- EPA formal 90-day review of the proposed General Permit regulation and fact sheet. (This step has taken place.)
- Mailing of the draft permit, public notice document describing commenting procedures and hearings, and fact sheet to:
  1. Members of the RAP
  2. All current general permit coverage holders
  3. Neighboring states
  4. State and federal agencies (incl. DEQ, VDH, DHR, VIMS, DGIF, Corps, USFWS)
  5. All individuals and entities requesting to be placed on a list to be notified
  6. All localities that contain an MS4
 (All of these steps have been taken.)
- Publishing a public notice twice in newspapers with statewide coverage more than 30-days in advance of the close of the public comment period (This step has taken place.)
- EPA concurrence with the final General Permit regulation. (This step has taken place.)

**Remaining Timeline (MS4 GP)**

- March 27, 2013, take final regulation to Board.

- § April 3, 2013, file on the Town Hall and with Registrar.
- § April 22, 2013, published in the Virginia Register of Regulations.
- § May 22, 2013, public comment period ends 30 days following publication
- § July 1, 2013, effective date.

### **Attorney General's Office**

I have reviewed the above-referenced final regulations regarding amending and reissuing the General Virginia Stormwater Management Program (VSMP) Permit for Discharges of Stormwater from Small MS4 Systems. It is my opinion that the Virginia Soil and Water Conservation Board has authority to approve these final regulations based upon applicable law, including Article 1.1 of Chapter 6 of Title 10.1 of the Code of Virginia. Based upon your agency's representations, it is my view that these regulations are exempt as a General Permit under Article 2 of the Administrative Process Act, Virginia Code § 2.2-4006(A)(8)(c).

### **Regulation Summary**

At the September meeting, we discussed the key elements of the proposed regulation. I will build on that discussion today and let you how the regulations have changed between the proposed phase and the final regulation.

Global changes in this permit include:

- 1) Changes in terminology used throughout the permit such as "regulated small MS4s" becoming "small MS4s" for brevity.
- 2) Clarifying that the general permit governs discharges to surface waters and not state waters as is the case for federal National Pollutant Discharge Elimination System (NPDES) permits for MS4's in section 1220.

There have been no changes to these global issues in the final regulations.

- 3) Virginia 305(b)/303(d) Water Quality Integrated Report – Proposed Regulations: The proposed regulations require operators to identify surface waters listed in this 2012 report. Final Regulations: The final regulations change the version of this report from 2012 to 2010. This report is issued by the Virginia Department of Environmental Quality (DEQ) once approved by the EPA. It has been brought to the Department's attention that the 2012 has not yet been finalized. The Board can consider this issue in its motion on these final regulations.

The key elements of the permit amendments are as follows:

- Section 10 (Definitions):

**Proposed Regulations -** Updating definitions for "Best management practice", "Hydrologic Unit Code", "Illicit discharge", and "Stormwater Pollution Prevention Plan" and adding a new

definition for “Total maximum daily load Action Plan”. Updating TMDL language that currently refers to “a State Water Control Board established and EPA approved” TMDL to “an approved” TMDL and in section 1210.

**Final Regulations** - The definitions noted above have not changed. However, the definition of “Minimize” has been added (line 290) and the proposed definition of “TMDL Action Plan” (lines 650 and 651) has been amended to state that such plans may be implemented in multiple phases over more than one permit cycle. These changes have been made in response to EPA comment.

- Section 1200 (Definitions Specific to the General Permit)

**Proposed Regulations** - Updating the definition for “Physically connected” and adding new definitions for “Municipality”, “Operator”, and “Public”.

**Final Regulations** –The definitions related to “Physically connected” and “Operator” remain but the definitions of “Municipality” (line 746) and “Public” (line 754) have been removed. In discussions with EPA, it has been determined that the definition of “Municipality” was duplicative and the term “Public” (line 1415) is now a note related to the Minimum Control Measures in this general permit.

- Section 1210 (Purpose; Delegation of Authority; Effective Date of the State Permit)

**Proposed Regulations** – Minor editorial changes were made to this section.

**Final Regulations** – It was determined that much of the language (lines 764 through 816) contained in this section was duplicative of language contained in 4VAC50-60-400 (Small municipal separate storm sewer systems). Therefore, the language has been removed for clarity.

- Section 1220 (Authorization to Discharge)

**Proposed Regulations** – The proposed regulations clarify the processes for operators to receive authorization through the filing and acceptance of a registration statement and the payment of permit fees.

**Final Regulations** – The final regulations further clarify the processes by referring to the submittal of a complete and accurate registration statement (line 826). Furthermore, this section now contains specific language regarding the continuation of permit coverage (lines 885 through 891) for operators covered under the 2008 permit. This language mirrors language that is contained in the proposed Construction General Permit regulation.

- Section 1230 (State Permit Application [Registration Statement])

**Proposed Regulations** – Minor changes for clarification have been made. The proposed regulations clarify registration statement requirements for operators.

**Final Regulations** – The final regulations further clarify registration statement requirements for operators that previously held coverage under the 2008 and operators applying for initial coverage (lines 925 to 932). Of note is the updated hyperlink listing to any TMDL wasteloads allocated to the small MS4. (line 921)

- Section 1240 (General Permit) – This section of the regulations contains three parts, which are: 1) Section I – Discharge Authorization and Special Conditions; 2) Section II – Municipal Separate Storm Sewer System Management Program; and 3) Section III – Conditions Applicable to All State Permits.

a. **MS4 Program Plan Update**

**Proposed Regulations:** Insertion of a Table 1 into the regulation that clarifies the timing for various required elements of Program Plan updates and helps to differentiate the staged timing for operators that previously held a VSMP General Permit.

**Final Regulation:** Based upon EPA and other public comment, Table 1 (page 23) has been reorganized to clarify specific references to certain minimum control measures and to set out the chronological order of MS4 Program Plan updates. Also, language in the draft regulations further clarifies that Table 1 applies to operators that previously held MS4 state permit coverage. (lines 1002-1008)

The reference in Table 1 to TMDL Action Plans for impaired waters with an approved TMDL after June of 2013 has been removed. All approved TMDLs addressed in this permit must be in existence at the time the permit is put in place. TMDLs created after the finalization of these regulations must be addressed in subsequent permit cycles.

Section I – Discharge Authorization and Special Conditions

b. **Special Conditions for Approved Total Maximum Daily Loads (TMDL) Other than the Chesapeake Bay TMDL**

**Proposed Regulations:** Stipulation of detailed strategies and processes to address approved TMDLs other than the Chesapeake Bay TMDL. TMDL Action Plans that identify the best management practices and other steps to be implemented are required to be developed for all TMDLs.

**Final Regulation:** The final regulations continue to stipulate these detailed strategies. Language has also been clarified stating that pollutant discharges must be in “a manner consistent with the assumptions and requirements of the specific TMDL wasteload...” (line 1132). Based on EPA comment, this special condition also references interim milestones related to best management practices (lines 1135 and 1143) and language has been added to specify that TMDL Actions Plans become effective and enforceable 90 days after the date received by the Department (lines 1154 to 1156).



In the final regulation, language has been clarified regarding facilities of concern (lines 1171 to 1178) and TMDL Action Plans must demonstrate “representative and adequate” water quality monitoring (line 1181). Also, in response to EPA comment, language has been added stating that operators need to provide information regarding an estimated end date for achieving wasteload allocations (for planning purposes) as part of a reapplication package (lines 1210 to 1212).

The final regulations also remove language requiring the update of MS4 Program Plans that address TMDL wasteload allocation approved after the issuance of this permit. Like the change noted in Table 1, TMDL wasteload allocations approved after the effective date of these regulations cannot be addressed in this permit term but must be addressed in subsequent permit cycles.

c. Special Condition for the Chesapeake Bay TMDL

**Proposed Regulation:** Stipulation of detailed strategies and processes to the Chesapeake Bay TMDL to account for implementation of the required reductions. This revision also includes the addition of calculation sheets for estimating existing source loads for pollutants of concern in each of the major river basins in the Chesapeake Bay Watershed of Virginia (Tables 2a-d) and then estimating the total reduction required during this permit cycle (Tables 3a-d). TMDL Action Plans that identify the best management practices and other steps to be implemented are required to be developed for all TMDLs.

**Final Regulation:** Language has been added to address Virginia’s commitment to the Phase I and Phase II Chesapeake Bay Watershed Implementation Plans (WIPs), “affording MS4 operators up to three full five-year permit cycles to implement necessary reductions.” (lines 1213 to 1220) The regulations also stipulate that the Department must “review and accept” an approvable Chesapeake Bay TMDL Action Plan from an operator (line 1235) and language has been added to specify that TMDL Actions Plans become effective and enforceable 90 days after the date received by the Department (lines 1236 to 1238).

The final regulations also change the date of the 2009 progress run from June 30, 2008 to June 30, 2009, which was an oversight in the proposed regulations (line 1249). Based on comments from the EPA, the calculations sheets (Tables 2 and 3) now contain a notation regarding the Chesapeake Bay watershed model phase and dates have been clarified in these tables. Furthermore, the final regulations now further clarify how the pollutant source loads will be calculated for Tables 2a-d, which are the calculation sheets for each of the major rivers basins in the Chesapeake Bay.

Based on EPA comment, the final regulations clarify that operators must address a draft second phase Chesapeake Bay TMDL Action Plan that reduces pollutant loads using the appropriate version of Table 3 in the regulations coupled with sources identified either in the 2000 or 2010 census of urbanized areas. The draft second phase Action Plan also addresses reductions in new sources developed between 2009 and 2014 under certain land use cover conditions (lines 1278 to 1392).

This section of the regulations now contains language stating that BMPs installed after June 30, 2009 as part of a retrofit program could be applied towards meeting required load reductions so long as baseline reductions are not included. (line 1326).

## Section II – Municipal Separate Storm Sewer System Management Program

- d. Minimum Control Measures (MCMs) – Clarifying and expanding minimum criteria within the General Permit associated with the six MCMs. This has resulted in complete rewrites of each of the minimum control measures that now contain much more specific, and where possible, quantitative strategies that must be addressed in the operator’s MS4 Program Plan and progress to be reported in their annual reports:

i. MCM 1 – Public Education and Outreach (lines 1429 to 1516)

**Proposed Regulation:** The strategies within the Program Plan now need to be designed with consideration of three key goals:

- Increasing target audience knowledge about the steps that can be taken to reduce stormwater pollution, placing priority on reducing impacts to impaired waters and other local water pollution concerns;
- Increasing target audience knowledge of hazards associated with illegal discharges and improper disposal of waste, including pertinent legal implications; and
- Implementing a diverse program with strategies that are targeted towards audiences most likely to have significant stormwater impacts.

**Final Regulation:** Only minor editorial changes have been made since the proposed phase.

i. MCM 2 – Public Involvement/Participation (lines 1517 to 1571)

**Proposed Regulation:** Requires the operator to provide public access to the MS4 Program Plan and annual reports on the operator’s webpage, provide public notice and public comment opportunities on the proposed MS4 Program Plan, and to provide a minimum of four local activities annually that the public may participate in aimed at reducing stormwater pollutant loads and improving water quality.

**Final Regulation:** Language has been clarified regarding updates to the MS4 Program Plan being made in conjunction with the annual reports and the posting of information on an operator’s webpage. The final regulations also provide examples of local public participation activities.

ii. MCM 3 – Illicit Discharge Detection and Elimination (lines 1572 to 1729)

**Proposed Regulation:** Requires the operator to maintain an accurate and complete storm sewer system map and information table; effectively prohibit nonstormwater discharges into the storm sewer system; develop and implement written procedures to detect, identify, and address nonstormwater discharges including developing field screening methodologies and prioritized schedules; and conducting public reporting of illicit discharges into or from the MS4s.

**Final Regulation:** Only minor editorial changes have been made since the proposed phase. Duplicative language has also been removed.

iii. MCM 4 - Construction Site Stormwater Runoff Control (lines 1730 to 1877)

**Proposed Regulation:** Requires a MS4 to use its powers to address discharges entering the MS4 from specified land-disturbing activities and requires program compliance with the Erosion and Sediment Control Law and attendant regulations including implementation of appropriate compliance and enforcement strategies.

**Final Regulation:** Only minor editorial changes have been made since the proposed phase.

iv. MCM 5 - Post-construction Stormwater Management in New Development and Development on Prior Developed Lands (lines 1878 to 2047)

**Proposed Regulation:** Requires a MS4 to use its powers to address post-construction stormwater runoff that enters the MS4 from specified land-disturbing activities and requires program compliance with the Virginia Stormwater Management Act and attendant regulations including implementation of water quality and quantity design criteria; inspection, operation and maintenance verification strategies for stormwater management facilities; and stormwater management facility tracking and reporting mechanisms.

**Final Regulation:** Only minor editorial changes have been made since the proposed phase.

v. MCM 6 - Pollution Prevention/Good Housekeeping for Municipal Operations (lines 2048 to 2272)

**Proposed Regulation:**

- Requires the operator to develop and implement written procedures designed to minimize or prevent pollutant discharge from: (i) daily operations such as road, street, and parking lot maintenance; (ii) equipment maintenance; and (iii) the application, storage, transport, and disposal of pesticides, herbicides, and fertilizers.
- Requires the operator to identify all municipal high-priority facilities and to develop and implement specific stormwater pollution prevention plans for all

high-priority facilities identified as having a high potential for the discharge of chemicals and other materials in stormwater.

- Additionally, the operator shall identify all applicable lands where nutrients are applied to a contiguous area of more than one acre and within 60 months of state permit coverage, the operator shall implement nutrient management plans on all lands where nutrients are applied to a contiguous area of more than one acre.
- Also, the operator shall develop an annual written training plan including a schedule of training events that ensures implementation of the specified training requirements.

**Final Regulation:** Language has been added to this MCM regarding the identification of municipal high-priority facilities. Specific criteria related to the identification of such facilities has been added (lines 2019 to 2138.) Also, the regulations now state that SWPPPs must include information regarding: 1) the date of incidents; 2) materials discharged, released, or spilled; and 3) quantity discharged, released, or spilled. Other minor edits have also been made, including addressing “turf and landscape” nutrient management plans.

- e. Program Plan Modifications - **Proposed Regulation:** Providing additional clarity on what is not considered an MS4 Program modification that would require a permit modification as well as a discussion of how modifications may be requested by the Department. **Final Regulations:** Only minor editorial changes have been made since the proposed phase.

Section III – Conditions Applicable to All State Permits – The proposed and final regulations contain only minor edits for clarity or to update hyperlinks to pollution response program information.

- Forms - The proposed regulations updated forms, such as the Department of Conservation and Recreation MS4 Operator Permit Fee Form. Upon further review, the Department has determined that form updates are no longer required and can be updated without the need of incorporating such forms in the regulations. This reduces administrative burden.
- Documents Incorporated by Reference. The proposed regulations strike three documents previously referenced in the MS4 regulations. No changes have been made to the final regulations.

Ms. Vucci said that concluded her presentation.

Mr. Dunford called for public comment.

### Public Comment

*Chris Pomeroy*  
*VAMSA*

Mr. Chairman, Members of the Board. My name is Chris Pomeroy. I represent the Virginia Municipal Stormwater Association, an Association of about 30 localities statewide that supports stormwater management based on sound science and good public policy with a balanced approach for environmental and fiscal sustainability.

Many VAMSA members own MS4s as well as many have individual permits.

I would like to thank DCR management and staff for a very significant and thoughtful effort they put into the draft permit before you today. It is a tough, extensive permit that will set a strong tone for the next permit generation here in Virginia.

I'm not here really to share any comments about that aspect of the permit but to highlight and ask your future attention to one very serious issue that really hasn't been addressed and that is sediment.

We had a great primer just this morning in the RMP regulations regarding sediment. James Davis-Martin explained for us that it is the weakest length in the entire TMDL process. It may have a 30 or 40% margin of error.

The Senate Finance committee has studied the cost of stormwater. You're talking about a 10 billion dollar program for Virginia.

We would ask you to take a close look at sediment, not in this permit but having your staff work with EPA in the years ahead to get it right.

Much of this began with the signing of the Chesapeake Bay 2000 Agreement. It was late in the process before anyone saw any sediment allocations.

The whole removal concept was that sediment allocation was essentially back-calculated from the same controls to meet phosphorus. You heard a little bit about that this morning.

The Bay TMDL says that the point of sediment allocation was to determine a sediment load from each section that could be expected to result from the controls to meet the phosphorus allocations but which had the co-benefits of reducing sediment.

We're concerned about the independent limits for sediment in the TMDL program. We would ask that there be a scientific effort to look at the sediment issue prior to the next permit cycle.

*Adrienne Kotula*  
*James River Association*

Good afternoon. Thank you for taking the time to hear our comments.

The James River Association served on the advisory panel for the last year. We want to thank DCR staff for the effort they put forward throughout the process.

The proposed regulations provide a significant step forward for stormwater management in the state of Virginia as urban stormwater is the only growing pollution source in the state.

Throughout the entire process JRA worked to ensure that this permit has measurable and enforceable provisions.

There are two issues that remain in the permit. First delaying the 5% reduction in the newly urbanized areas is a concern for us. And additionally, the proposed 48 months to allow mapping for outfalls, we would request that you look at that issue.

Overall we do support this permit.

Also, if I may share, JRA is releasing a report on effective stormwater management. As part of the report a case study was completed in the City of Richmond using the permit requirements in the proposed regulations. It shows that pollution reduction could be accomplished by using the suite of best management practices available.

Ms. Kotula distributed copies of the report.

*Chris Moore*  
*Chesapeake Bay Foundation*

Good afternoon, my name is Chris Moore. I'm a senior scientist for the Chesapeake Bay Foundation. Thank you for allowing me to make some comments today.

I want to thank DCR staff for a very thoughtful process. DCR was very helpful in moving that process along and listening to our comments.

Stormwater is the pollution source for the Chesapeake Bay that this permit will help reduce and make sure that Virginia does meet the goals. We are enthused about that.

Two issues we still have. We believe that although staff worked very hard to make this inclusive of VDOT, we believe that VDOT is best served by going to an individual permit approach.

In addition, we agree with the James River Association that the 5% reduction in the newly urban areas could be done in this permit cycle.

Finally adoption of this permit is a great step forward.

Thank you.

*Roy Mills*  
*VDOT*

Good afternoon. I'm Roy Mills from VDOT. I was going to invoke the adage that silence is golden and not say a word today, but our name was brought up so I guess I'll make a couple of comments.

We have worked extensively with DCR on this MS4 permit language both through the RAP and behind the backdrop. I think while, as with other MS4s, there is probably language we don't like there's nothing we can't live with and I think we can meet the requirements of the permit.

The other comment, with regard to EPA wanting VDOT to be an individual permit holder or co-permittee with some of the MS4s we are very comfortable under the general permit. We worked long and hard to get the language flexible. We would have serious concerns about any attempt to pull us out from under the general permit.

I'm not sure about the EPA reasoning behind that. We are comfortable with the MS4s general permit. We are not comfortable with the construction permit at this time.

Thank you very much.

At this time the Board recessed for lunch prior to taking action on the General Permit regulations.

Following lunch, Mr. Dunford asked if Board members had additional comments.

Mr. Street said that he wanted to make sure that the concerns regarding sediment were addressed.

Ms. Snead said that sediment was a Chesapeake Bay Program issue. She said that DCR would be working with sediment at the state level.

Mr. Davis-Martin said that the next Permit would align with the watershed model. He said that was one of the concerns that was being addressed.

Mr. Branin asked why there was a delay with EPA signing off on the regulations.

Ms. Snead said that it was mainly due to the process for reviewing TMDL action plans and a concern that DCR work with the permittees. She said that there was not necessarily a long history for MS4s to draw upon.

Ms. Vucci read the following motion:

**VIRGINIA SOIL AND WATER CONSERVATION BOARD**

March 27, 2013 Meeting

West Reading Room, Patrick Henry Building  
Richmond, Virginia

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

The Board approves these exempt final regulations and authorizes the Director of the Department of Conservation and Recreation and the Departmental Regulatory Coordinator to submit the final amendments to Part XV of the Board’s Virginia Stormwater Management Program Permit Regulations [titled “**General Virginia Stormwater Management Program (VSMP) Permit for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems**”] and other approved sections, including but not limited to, Part I definitions to the Virginia Regulatory Town Hall, the Virginia Registrar’s Office, and the U.S. Environmental Protection Agency.

The Board further authorizes the Department to work with the Registrar of Regulations to change the reference in the final regulations from the 2010 Virginia 305(b)/303(d) Water Quality Integrated Report to the 2012 Virginia 305(b)/303(d) Water Quality Integrated Report prior to publication in the Virginia Register should EPA approve the 2012 report.

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 A8, the Virginia Register Act, and other technical rulemaking protocols that may be applicable. The Department shall also implement all necessary public notification and review procedures specified by Federal Regulation regarding General Permit reissuance.

The Department shall follow and conduct actions in accordance with the exemption processes within the Administrative Process Act, the Virginia Register Act, the Board’s Regulatory Public Participation Procedures, and the Governor’s Executive Order 14 (2010) on the “Development and Review of Regulations Proposed by State Agencies”.

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 Town Hall, and the filing of the final regulations 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 Virginia Registrar of Regulations, and the U.S. Environmental Protection Agency.

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

MOTION: Ms. Hansen moved that the Virginia Soil and Water Conservation Board approve the motion to approve, authorize, and direct the filing of final regulations related to Part XV of the Board’s Virginia Stormwater



Management Program (VSMP) Permit Regulations and other related sections as read by staff.

SECOND: Mr. Street

DISCUSSION: None

VOTE: The motion carried unanimously

Mr. Branin said that he would like to commend staff for their work in this regard.

### **Director's Report**

Mr. Johnson gave the Director's Report. He said that he would like to echo Mr. Branin's comment with regard to staff work on the regulations.

Mr. Johnson said that DCR had a very aggressive schedule this quarter and that the work had been very taxing on staff in order to meet the deadlines of July 1, 2013.

Mr. Johnson said that quite a bit had happened since the last Board meeting. He said that the General Permit and RMP regulations were critical issues.

Mr. Johnson said that the RMP program was being looked at nationally and that Virginia was on the leading edge.

Mr. Johnson said that DCR and DEQ were fully engaged in the transition process. He said that within the next few weeks final determinations would be made regarding staffing and placement. He said that the stormwater regulatory staff would likely move to DEQ in June.

Mr. Johnson said that with regard to the move to new office space, the projected move date was now June.

Mr. Johnson introduced Rick Weeks, Chief Deputy at the Department of Environmental Quality. He said that Mr. Weeks who would be assuming the role of Director of the Division on Stormwater Management effective April 10. Mr. Bennett will return as Division Director to Dam Safety and Floodplain Management.

Mr. Weeks noted that he had been with DEQ for 24 years and as a Deputy for about 10 years. He said that he was looking forward to this opportunity. He said that he was also looking forward to working with Districts.

Mr. Hornbaker asked about the July 1 transition and how that would directly affect Districts.

Mr. Johnson said that much would stay the same with regard to Districts.

Ms. Jamison noted that the Board has previously had input with regard to contracts with Districts and that Districts were currently developing their budgets. She said that she hoped the Board could address District funding issues in May.

Mr. Dowling said that the hope was to bring the contract information to the Board in May but that might not be possible.

Mr. Johnson said that with the General Assembly Session some things were delayed.

Mr. Dowling said that staff would bring two policies to the Board: one for cost-share and technical assistance and the other for administration and operations. He suggested that perhaps the administration and operations funding policy could be brought to the Board in May and the cost-share and technical assistance policy in June.

Mr. Hornbaker said that as drafts are developed it would be helpful to have the information in time to discuss with Districts.

### **Stormwater Management**

Mr. Bennett gave the report for the Division of Stormwater Management.

He said that DCR had received approval to hire several new employees. This is a significant step.

DCR provided \$2.1 million in grants to localities to help with the delegation of Stormwater Management programs. The second round will be about \$1.9 million.

Mr. Bennett said that the 2013 General Assembly established \$30 million in the local stormwater assistance fund.

### *Chesapeake Bay Preservation Act Programs*

### **Recognition of Gloucester County's Chesapeake Bay Preservation Act**

Ms. Salvati gave the background for Gloucester County.

Staff conducted a compliance evaluation condition review of Gloucester County's Chesapeake Bay Preservation Act Program on June 20, 2011 and found the County's Program compliant with one condition. Since that time, the one outstanding condition has been addressed and now all of the required program elements are acceptable. Therefore, staff recommends that the Virginia Soil and Water Conservation Board find Gloucester County's Chesapeake Bay Preservation Act Program fully compliant with §§ 10.1-2109 and 2111 of the Chesapeake Bay Preservation Act and §§4 VAC 50-90-240 and 260 of the Chesapeake Bay Preservation Area Designation and Management Regulations.

MOTION: Ms. Hansen moved that the Virginia Soil and Water Conservation Board commend Gloucester County for successfully amending the County's Chesapeake Bay Preservation Act Program to be fully compliant with the requirements of the Chesapeake Bay Preservation Act and Regulations, thereby providing better protection for Virginia's soil and water resources.

SECOND: Ms. Jamison

DISCUSSION: None

VOTE: Motion carried unanimously

Colonial Beach Corrective Action Agreement Review

Ms. Salvati gave the report for the Town of Colonial Beach.

Staff conducted a compliance evaluation of the Town of Colonial Beach's Chesapeake Bay Preservation Act Program on March 19, 2012 and found that the Town's program did not fully comply with the Act and Regulations. The Chesapeake Bay Local Assistance Board established a condition requiring that the Town adopt a valid Erosion and Sediment Control ordinance, develop and Erosion and Sediment Control program consistent with State requirements, and submit the program for review to the Virginia Soil and Water Conservation Board by December 31, 2012, or land disturbing activities must be reviewed, approved and inspected in accordance with Westmoreland County's Erosion and Sediment Control ordinance.

The Town adopted a valid Erosion and Sediment Control (ESC) ordinance on November 8, 2012, and the Town intended to hire a new environmental planner in January 2013 who would obtain the Combined Administrator certification in one year. However, the Town Council voted to delay the hire until the start of the new fiscal year in July of 2013. Therefore the Town has not developed an Erosion and Sediment Control program consistent with State requirements, and the program cannot be submitted for review to the Virginia Soil and Water Conservation Board.

MOTION: Mr. Hornbaker moved that the Virginia Soil and Water Conservation Board grant the Town of Colonial Beach an extension until September 30, 2013 to complete the adoption of its ESC program.

SECOND: Ms. Jamison

DISCUSSION: None

VOTE: Motion carried unanimously

*District Director Resignations and Appointments*

Ms. Martin presented the list of District Director Resignations and Appointments.

Big Sandy

Resignation of Landon T. Davis, Buchanan County, effective 2/20/13, elected director position (term of office expires 1/1/16).

Recommendation of Joshua Brown, Buchanan County, to fill unexpired term of Landon T. Davis (term of office to begin on 4/27/13 – 1/1/16).

Blue Ridge

Recommendation of Roger B. Holnback, Roanoke County, to fill unexpired term of Aaron B. Lyles (term of office to begin on 4/27/13 – 1/1/16).

Colonial

Recommendation of Danny Harrison, Carroll County, to fill unexpired term of Betty Whittaker (term of office to begin on 4/27/13 – 1/1/15).

New River

Recommendation of Danny Harrison, Carroll County, to fill unexpired term of Betty Whittaker (term of office to begin on 4/27/13 – 1/1/15)

MOTION: Ms. Jamison moved that the list of District Director Resignation and Appointments be approved as submitted by staff.

SECOND: Mr. Ingle

DISCUSSION: None

VOTE: Motion carried unanimously

*Lake Barcroft Watershed Improvement District*

Ms. Martin noted that the budget request from the Lake Barcroft Watershed Improvement District had been mailed to members. She provided the following Code language.

§ 10.1-626. Levy of tax or service charge; when district in two or more counties or cities; landbooks certified to treasurers.

A. On or before March 1 of each year, the trustees of the watershed improvement district shall make an estimate of the amount of money they deem necessary to be raised for the year in such district (i) for operating expenses and interest payments and (ii) for amortization of debt, and after approval by the directors of the soil and water conservation district or districts, and the Virginia Soil and Water Conservation Board, shall establish the tax rate or service charge rate necessary to raise such amount of

money. The tax rate or service charge rate to be applied against the amount determined under subsection C or D of this section shall be determined before the date fixed by law for the determination of the general levy by the governing body of the counties or cities in which the district is situated.

MOTION: Ms. Hansen moved that the Virginia Soil and Water Conservation Board approve the Lake Barcroft Watershed Improvement District FY 2014 budget as submitted by the Northern Virginia SWCD and presented by DCR staff.

SECOND: Mr. Hornbaker

DISCUSSION: None

VOTE: Motion carried unanimously

### **VASWCD Report**

Ms. Tyree said that the Association had not yet made recommendations concerning appointments to the Board but would have recommendations to present at the May meeting.

Ms. Tyree said that the Association had held four area meetings to date. The remaining two were scheduled.

Ms. Tyree said that the Association Board would be meeting at the office of the Old Dominion Electric Cooperative in Glen Allen the following week. She invited members to attend.

Ms. Tyree thanked the Board for the allocation of funding for District IT needs.

### **Dam Safety and Floodplain Management**

Mr. Wilkinson said that dam safety training would be held in Lynchburg in May and in Wise County in July. He said there had been good attendance at the training at the Virginia Lakes and Watershed Association meeting.

DCR will conduct dam first aid training with engineers at Staunton River State Park on May 1.

Mr. Wilkinson said that at the June meeting staff will bring forward recommendations for grants to dam owners for Board approval.

Mr. Wilkinson said that DCR had been able to hire three new employees in Dam Safety and Flood Plain Management.

### **Public Comment**

There was no further public comment.

**New Business**

There was no additional new business.

**Meeting Schedule**

- Thursday, May 9, 2013
- Thursday, June 6, 2013

Ms. Jamison asked about the possibility of moving the June meeting to June 4 or June 5. Staff agreed to poll members and see if the request could be accommodated.

**Adjourn**

There was no further business and the meeting was adjourned.

Respectfully submitted,

Herbert L. Dunford  
Chair

David A. Johnson  
DCR Director