

# Virginia Commission on Energy and Environment

Monday, November 22, 2010, 1:00 p.m.  
Senate Room A, General Assembly Building  
Richmond, Virginia

## Agenda

---

### **I. Welcome & Call to Order**

Senator Whipple called the meeting to order and introduced the members. In addition to Senator Whipple, those present included Delegate Poindexter, Delegate Ed Scott, Delegate Sickles, Mr. Bolstad, Mr. Skiffington for Mr. Walz, Mr. Paylor, Mr. Montgomery, Dr. Hatcher, Dr. Schulz, and Mr. Wallmeyer. Presentations made to the Commission can be found on the Commission's website at <http://dls.virginia.gov/GROUPS/energy/MEETINGS.HTM>.

### **II. Development and Status of Virginia's Watershed Implementation Plan**

The Honorable Anthony Moore, Assistant Secretary of Natural Resources, provided the Commission with an overview of the historical timeline on efforts to clean the Chesapeake Bay and the process being followed to develop the Total Maximum Daily Load (TMDL). The administration's goal is to allow flexibility in implementation to ensure that cost-effective practices are given priority and to take into consideration the current economic conditions and the economic impacts of the TMDL. The U.S. Environmental Protection Agency (EPA) will be relying on input from each of the states in the Chesapeake Bay Watershed provided through a Watershed Implementation Plan (WIP). Mr. Moore states that the revised WIP meets 2017 target loads for all basins through management actions, plus use of existing nutrient credits achieve those target loads; proposes a broad expansion of the existing nutrient credit exchange; and includes a plan for the James River to provide an additional study of the current chlorophyll standard.

A primary feature of the revised WIP is the expansion of the nutrient credit exchange program. Mr. Moore suggests that the administration will request that the proposed expansion be studied over the next year and expects that such a study request will be introduced in the General Assembly. Senator Whipple asked about the timing of the legislative study on Virginia's responsibility to meet the upcoming two-year goals since such a study would not be completed, at the earliest, until late 2011. Other primary features of the revised WIP include a strategy to address the chlorophyll criteria for the James River, offsets for new small wastewater facilities and dischargers, tax credits and other incentives to reduce nitrogen from septic systems, implementation of resource management plans for agricultural areas, stormwater retrofits, and a ban on phosphorus in fertilizer.

Senator Whipple and Delegate Scott inquired about the process of resource management plans and voluntary practices in the agricultural sector as it relates to milestones. Mr. Moore stated that there would be sufficient time to determine whether such voluntary practices have become effective prior to the implementation of mandatory regulations.

### **III. Federal Role in the Chesapeake Bay Restoration Efforts**

Mr. Jeff Corbin, Environmental Protection Agency, discussed the process at the EPA for reviewing the WIPs and developing the TMDL. Mr. Corbin noted the numerous meetings and communications between the EPA and stakeholders in Virginia. In particular, he reviewed the

problems noted in the initial WIP submitted by Virginia and the consequences if such deficiencies are not resolved. For stormwater, the EPA had a number of concerns including the lack of contingency actions if the new regulations are not adopted on schedule, the lack of strong performance standards, the lack of a strong, detailed retrofit program with aggressive performance standards, and the vague assurances regarding the operations of the expanded nutrient credit exchange program. For agriculture, the EPA's concerns included the lack of assurance that there would be increased implementation or priority practices, insufficient detail on the procedures for ensuring compliance, failure to address the additional need on water quality impacts from animal feeding operations, and a limited commitment to address high phosphorus content in soils and related excess manure. If such deficiencies are not resolved, the EPA might seek certain "backstops" or federal actions intended to mitigate the lack of assurance by the state. The backstops are restricted to those actions over which the federal government exercises jurisdiction and might include additional reductions from regulated point sources, finer-scale allocations for headwater states, expanded NPDES permit coverage to currently unregulated sources, increased permit oversight, increased federal enforcement, conditioned or redirected federal grants, and adoption of local nutrient standards.

Delegate Scott commended Mr. Corbin on the outreach and communications between EPA and stakeholders in Virginia. However, he expressed concern about the lack of transparency demonstrated by the EPA's evaluation of the WIPs.

#### **IV. Chesapeake Bay Watershed Model and the Chesapeake Bay Water Quality and Sediment Transport Model—Estimates and Accuracy**

Dr. Carl Hershner, Director of the Center for Coastal Resources Management at the Virginia Institute of Marine Science, discussed the scientific model used to develop the TMDL. The model is actually a suite of models that measure and predict numerous hydrologic forces. As an overall tool and as it is currently used, the model is robust and a leading example of a large scale demonstration of the influences on the Bay's health and the ability to predict how our actions impact the Bay. However, the model is not a suitable tool to provide precise information on a fine scale as might be required in the future. Dr. Hershner noted that many of the backstop actions at the disposal of the EPA will lead to a concrete effect on water quality. However, a number of the actions discussed as best management practices for nutrient management, such as stream buffers, have not yet shown measureable water quality improvements. As previously suggested by Mr. Moore, the process over the next decade will be adaptive and require an ongoing cost-benefit review of practices and policies.

Mr. Paylor, Dr. Hatcher, and Delegate Scott asked further about the limitations of the study and its ongoing usefulness as the process continues. Dr. Hershner continued to stress the importance of measuring and modeling the effectiveness of practices that are adopted. Delegate Poindexter asked further about the results of studies on agricultural best management practices. Dr. Hershner said research and monitoring shows that there are no absolute determinations on the success of such practices, which are in effect interdependent in each case on factors such as the slope of the land, the quality of the soils, and the skill of the farmer.

Mr. Michael S. Rolband, Wetland Studies and Solutions, Inc., reviewed the analysis of impervious surfaces in the model. The determination of those surfaces that are impervious and pervious are critical because loads attributed to the urban sector are directly related to the impervious surface area. Consequently, EPA backstops are based on retrofitting a percentage of impervious area and, as such, the cost to do so. Mr. Rolband observed that the current

stakeholder process is beginning to resemble sector warfare. He suggests that the WIP is modified through an upgrade of all significant discharger wastewater treatment plants, the establishment of urban fertilizer regulations, the expansion of the five-year on-site septic pump out requirement, the improvement of erosion and sediment control training and specifications, the establishment of a “Nutrient Trading Fund” for non-best available technology septic users and development offsets, new construction with on-site sewage disposal that exceeds NSF/ANSI standards, and development exceeding the allowable WIP loads that is allowed to contribute to the nutrient trading fund.

#### **V. Panel Discussion: Stakeholder Response**

Mr. Wilmer Stoneman, Virginia Farm Bureau, spoke of the agricultural role in the process to develop the WIP. He expressed his concern about stretching the model to its limits and the role of the EPA in any potential enforcement actions. He stressed the financial impact to agriculture and the cost of those practices that farmers might be required to implement. For instance, the cost to fence streams on an average farm with livestock in Virginia would be \$40,000. Overall, the Virginia Farm Bureau estimates that the cost of implementation, not including critical technical assistance, will reach into the billions for farmers in Virginia. Mr. Stoneman noted his confidence of current programs, such as the Agricultural Stewardship Act (a voluntary reporting and complaint program), in providing a check on enforcement.

Mr. Philip F Abraham, Vectre Corporation, for the Virginia Association for Commercial Real Estate, spoke to his concerns about the short time frames for development of the WIP and for public comment on those documents. He hopes that there is a one-year delay in the adoption of the TMDL to provide a better scheme for regulation. He has concerns about the availability of offsets to private developers and hopes that the administration’s goal of expanding the nutrient trading program is achieved. He further emphasizes the staggering costs associated with urban retrofits, especially as compared to wastewater treatment, and that the same set of persons, urban residents, will pay in both scenarios. Mr. Abraham supports banning phosphorus in residential fertilizers. He also stressed that policymakers should review any mandates requiring certain percentages of open space and weigh the impact on redevelopment projects as compared to sprawl.

Mr. Joseph Lerch, Virginia Municipal League, expressed his concern with the James River strategy. His organization strongly supports the nutrient credit exchange program. Mr. Lerch asks that any legislative proposals impacting the costs of local government operation be referred to the Commission on Local Government.

Ms. Ann Jennings, Chesapeake Bay Foundation, shared the poll results with the members that show the vast majority of Virginians feel strongly about clean water and disagree that cleaning the Chesapeake Bay would prevent the state's economic recovery. She expresses her disappointment that despite the popularity of such positions, the Chesapeake Bay has remained polluted for 30 years. She hopes that the process is not disrupted by unfounded complaints and that Virginia does not put forth an inadequate WIP requiring the EPA to implement unpopular backstop efforts. Ms. Jennings also discussed the cost of a polluted Chesapeake Bay in contrast to the costs of restoring the Chesapeake Bay. Ms. Jennings recommended that the legislature review measures to reduce phosphorus content in fertilizer and to permit farmers to transfer tax credits earned for best management practices.

Senator Whipple asked Mr. Stoneman about the effectiveness of the Agricultural Stewardship Program and whether farmers have been turning their colleagues in. Mr. Stoneman replied that there were a fair amount of complaints, but that more resources were needed for publication of the program and follow-up enforcement. Senator Whipple and Mr. Rolband discussed the importance of training available for erosion and sediment control efforts and enforcement.

Dr. Schulz spoke to the panelists about courage and asked if each could recommend a bold step that would represent a courageous act on their constituents' behalf. Mr. Stoneman stated that farmers should be operating with a nutrient management plan and that is a policy of member organizations. He qualified his support for this effort by noting that the conservation plans should be achievable and economically feasible, where appropriate. He states that boldness, without a reasonable plan for accomplishment could prove empty. Mr. Lerch suggested that a clean up is not always the best thing to do and that perhaps doing a study prior to spending the funds for a clean up is necessary. Mr. Abraham noted that his organization would accept a 15 percent reduction in phosphorus runoff and an 11 percent reduction in nitrogen runoff. Ms. Jennings noted that the conservation community might consider an approach that would hold a farmer harmless if the farmer has a conservation plan with clear performance measures and if that farmer is otherwise in compliance with state laws.

Delegate Poindexter asked about how legislators should balance the efforts to clean the Bay with their responsibility to keep taxes low. Ms. Jennings noted that many communities and sectors have already paid with their livelihoods as a result of a polluted Bay. Furthermore, cleaning the Bay itself will generate jobs.

**VI. Discussion of Potential Legislative Initiatives**

Due to the late hour of the day, the Commission decided to review the list of potential legislative initiatives privately and request drafts directly from staff. The Commission will review such drafts at a final meeting prior to the General Assembly 2011 Session.

**VII. Public Comment**

There was no public comment at the meeting.