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January 27, 2020

The Honorable David Bulova
Virginia House of Delegates
Pocahontas Building
900 E. Main St.
Richmond, Virginia 23219
Online Submission

The Stormwater Equipment Manufacturer's Association (SWEMA) represents a diverse group of innovative stormwater solution providers, as well as other associate and professional members. Our membership is extremely vested in, and affected by, actions taken by the State Legislature to improve water quality in Virginia. SWEMA wants to see Virginia's waterways protected by allowing the citizens of Virginia to choose from a full range of tools available for improving stormwater quality. SWEMA also seeks to foster an environment that stimulates innovation in stormwater treatment.

SWEMA appreciates the members of the Virginia legislature using House Bill 882 (HB882) to refine the definition of reciprocity for proprietary Best Management Practices (BMPs). SWEMA is excited to see the subject receiving much needed attention and hopes to work with you to address two specific concerns our membership has with language in HB882 as proposed and amended:

- 1) HB882 seeks to amend and reenact §62.1-44.15:28 with a specific definition of reciprocity as it relates to proprietary Best Management Practices. Language in HB882 currently states: "12. Provide for the use of a proprietary Best Management Practice only if another state, regional, or national certification program has verified and certified its nutrient or sediment removal effectiveness."

This language does not necessarily limit reciprocity to qualified BMP evaluation programs and the use of the words "verified" and "certified" could be problematic since at least one well-recognized BMP evaluation program does not use that terminology.

In May 2019, DEQ proposed issuing guidance that would only allow reciprocity for filtration systems approved by the State of Washington for total phosphorus reduction and for hydrodynamic settling systems certified by the State of New Jersey. These states currently operate the most robust and respected evaluation programs in the country. SWEMA, as well as many engineers and regulators in Virginia supported this version of reciprocity.

Hence, SWEMA proposes the following amended language for HB882:

"Provide for the use of a proprietary hydrodynamic separation system certified for total suspended solids removal by the New Jersey Department of Environmental Protection or filter system that maintains a General Use Level Designation for Total Phosphorus removal through



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the Washington State Department of Ecology, or a future regional or national certification program that has verified its nutrient or sediment removal effectiveness."

Ultimately, SWEMA feels that a comprehensive national BMP verification program is necessary, but Virginia should incorporate the suggested language above and pass this legislation in the meantime.

- 2) HB882 also includes the clause: *"2. That the provisions of this act shall not affect any proprietary best management practice (BMP) included on the Virginia Stormwater BMP Clearinghouse website prior to July 1, 2020."*

If approval of a BMP considered prior to July 1, 2020 is "grandfathered" as this provision appears to allow, a two-tiered system will result and will create inequity and potentially compromise water quality. SWEMA suggests striking this language entirely or replacing it with an 18- to 24-month sunset provision to allow all manufacturers to transition to the new standard at the same time. This allows a manufacturer with a less robustly tested technology time to retest and creates consistency in the type of applications received by DEQ.

We appreciate you taking time to hear our concerns and look forward to your response to these issues.

Sincerely,

A handwritten signature in blue ink, appearing to read "J. Dorman", is written over a light blue horizontal line.

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A handwritten signature in blue ink, appearing to read "Jay Holtz", is written over a light blue horizontal line.

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