



July 21, 2025

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Secretary Taillon
Department of Environmental Quality
Office of Environmental Impact Review
P.O. Box 1105
Richmond, VA 23218

Subject: Public Comment – Opposition to WSRF In-Lieu Fee Prospectus (May 16, 2025)

Dear Secretary Taillon and Members of the Interagency Review Team:

On behalf of the National Environmental Banking Association (NEBA), I respectfully submit these comments in opposition to the proposed Wetland and Stream Replacement Fund (WSRF) In-Lieu Fee (ILF) Prospectus. Utilizing the detailed evaluations conducted by the U.S. Army Corps of Engineers, the 2015 DEQ ILF Initial Evaluation Letter, the 2008 Federal Mitigation Rule, and recent academic findings (including the Duke University ILF Report), we find that the Prospectus fails to justify creation of this new ILF program and poses significant risks to the Commonwealth of Virginia’s citizens and environment.

Key Areas of Opposition

- **Unnecessary Duplication of Existing Mitigation Programs**
Private mitigation banks and established offsets already deliver high-quality, science-based environmental outcomes at scale. There is no demonstrated need for a parallel DEQ ILF program in light of these mature private-sector capabilities. Virginia’s longstanding Wetland and Stream Replacement Fund (VARTF) ILF program remains operational; the new Prospectus offers no rationale why this existing mechanism cannot continue to meet current and projected mitigation demands .
- **DEQ Regulating Itself—Perception of Fairness**
Under the Prospectus, DEQ would simultaneously establish, operate, and regulate this new ILF program. Such a structure places DEQ in the position of both prosecutor and judge, eroding public confidence in impartial oversight. At a minimum, the appearance of

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self-regulation undermines the transparency and fairness essential to a credible compensatory mitigation framework.

- **Increased Risk, Uncertainty, and Taxpayer Liability**

The Duke University ILF Report highlights that nascent ILF programs suffer from advance-credit exhaustion and project implementation delays, exposing public funds to default and remediation liabilities. The WSRF Prospectus does not adopt the Report’s safeguards—such as reserved-credit transparency, three-year implementation deadlines, or adaptive-management audit triggers—which would protect taxpayers from unfunded project failures.

Without stronger financial assurance provisions calibrated for accelerated credit release, DEQ risks having insufficient funds to complete funded projects if sponsors default.
- **Financial Assurance Relies on Alternative Credit Pricing**

Both the Norfolk District and VA DEQ currently base their financial-assurance requirements on the VARTF price schedule for ILF credits. If the proposed WSRF ILF is positioned to backstop failed mitigation banks or unsuccessful ILF projects, it effectively becomes an “alternative credit” market itself. Offering standby ILF credits at below-market or static rates creates a clear disincentive for private sponsors to resolve defaults and invites gaming of the system—or at minimum the perception thereof.
- **Added Layers of Cost and Bureaucracy**

The Prospectus burdens project applicants with yet another fee schedule and administrative requirements, on top of the fees and oversight already imposed under existing ILF and mitigation-banking instruments. This layering of costs and duplicative government controls will discourage private-sector participation and slow timely project delivery.

Static fee tables lack market responsiveness; absent an IRT-led fee-adjustment mechanism, DEQ will face ongoing pressure to reconcile fixed fees with fluctuating bank-credit prices—an unresolved governance challenge.
- **Failure to Address 2015 IRT Concerns**

The 2015 DEQ ILF Initial Evaluation Letter (Norfolk IEL) identified eight critical items—public-notice comment responses, implementation timelines, code referencing, funding segregation, and definitions of alternative mitigation—that remain unaddressed in the 2025 Prospectus .

By omitting these procedural and definitional clarifications, DEQ undermines the credibility of the Prospectus and fails to demonstrate any meaningful improvements over its prior proposal.
- **Operational Inconsistency: Regulatory Authority vs. Program Implementation**

The Prospectus offers no explanation why DEQ continues to exhibit protracted review times and credit-release delays for private mitigation banking



instruments—averaging years per the Dam Removal Report—yet now proposes to manage its own ILF credit acquisitions, project development, and compliance enforcement simultaneously .

Absent a streamlined DEQ–USACE MOA and PEEP-tracking integration for rapid decision-making (as recommended in the Dam Removal Report), the new ILF program is poised to repeat the very inefficiencies it purports to remedy .

Conclusion

For these reasons, the WSRF ILF Prospectus should be withdrawn or substantially revised to incorporate:

1. **Independent Oversight:** Separate program operations from DEQ’s regulatory functions to restore transparency and public confidence.
2. **Robust Financial Safeguards:** Calibrated assurance levels tied to market-based credit pricing and explicit standby-ILF provisions that do not disadvantage taxpayers.
3. **Streamlined Process Controls:** A formal DEQ–USACE MOA, PEEP milestone tracking, clear implementation deadlines, and audit triggers.
4. **Response to Past Critiques:** Direct incorporation of the 2015 IRT recommendations and Dam Removal Report findings, plus transparent conflict-of-interest and self-regulation analyses.

In its current form, the Prospectus imposes undue risk, cost, and complexity without delivering clear environmental or public interest benefits. We urge DEQ to engage further with stakeholders and adopt the comprehensive reforms outlined above prior to any approval of a new ILF instrument.

Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink that reads 'Jeffrey R. Oyen'.

Jeff Oyen

Chair

National Environmental Banking Association

Cc: U.S. Army Corps of Engineers, Norfolk District
Virginia Interagency Review Team