



# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF ENVIRONMENTAL QUALITY

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Douglas W. Domenech  
Secretary of Natural Resources

David K. Paylor  
Director

(804) 698-4020  
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### MINUTES STATE WATER CONTROL BOARD

Monday, June 25, 2012  
General Assembly Building, House Room C  
Richmond, Virginia

#### Board Members Present:

W. Shelton Miles, III, Chair  
William B. Bott  
Heather L. Wood

Robert L. Dunn, Vice-Chair  
Roberta A. Kellam  
Thomas V. Van Auken

#### Board Member Absent:

William A. Pruitt

#### Department of Environmental Quality:

David K. Paylor, Director

Cindy M. Berndt

#### Attorney General's Office:

David C. Grandis, Assistant Attorney General

- 1) The attached minutes summarize activities that took place at this Board Meeting.
- 2) The meeting was convened on Monday, June 25, 2012, at 9:33 a.m., recessed at 11:41 a.m., reconvened at 11:55 a.m. and adjourned at 12:00 p.m.

[Note: The second day, June 26, 2012, was cancelled.]

Approved Minute No. 1  
September 27, 2012



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### EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON JUNE 25, 2012

#### MINUTE NO. 1 - Minutes

The Board approved the minutes from the April 5, 2012, meeting as contained in the Board book.

  
Cindy M. Berndt



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## EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON JUNE 25, 2012

### MINUTE NO. 2 – LEGISLATIVE UPDATE

Ms. Angela Jenkins, DEQ's Policy Director, provided the Board with an update of legislation resulting from the latest General Assembly Session (2012 and 2012 Special Session I). Ms. Jenkins updated the Board on:

- House Bill No. 176 & Senate Bill No. 77, Nutrient Credit Trading;
- House Joint Resolution No. 243, 404 Permitting Program Assumption Study;
- House Bill No. 1158, Water Supply Planning and Permitting;
- Senate Bill No. 425, Interbasin Transfers of Water Resources;
- House Bill No. 1218, Stream Mitigation Banks;
- Senate Bill No. 504, Energy Efficiency Projects;
- House Bill No. 302 & Senate Bill No. 52, Lab Certification Exemption;
- House Bill 1291 & Senate Bill 678, Government Reorganization; and
- House Bills 1300 and 1301, Budget

Ms. Jenkins also provided an overview of the bills affecting DEQ's other media programs.

A handwritten signature in cursive script that reads "Cindy M. Berndt".

Cindy Berndt  
Director, Office of Regulatory Affairs



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### EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON JUNE 25, 2012

#### MINUTE NO. 3 – Amendments to 9VAC25-820 General VPDES Watershed Permit Regulation for Total Nitrogen and Total Phosphorus Discharges and Nutrient Trading in the Chesapeake Bay Watershed in Virginia

This proposed regulation amends the watershed general permit for nutrient discharges to the Chesapeake Bay watershed. Allan Brockenbrough from the Office of VPDES Permits presented to the Board proposed amendments to this general permit made in response to legislative changes approved in SB 77/HB 176 (2012). Amendments include (1) provisions to allow non-significant dischargers to generate compliance credits, (2) the elimination of a redundant annual reporting requirement, (3) provisions to allow new or expanding facilities to offset increased nutrient loads with compliance credits and (4) a provision recognizing the planned development of nonpoint source credit certification regulations by the Department of Conservation and Recreation

#### **Board Decision:**

Based on the briefing material and the staff presentation, the Board voted 5 to 0 to adopt the proposed amendments to the General VPDES Watershed Permit for Total Nitrogen and Total Phosphorus Discharges and Nutrient Trading in the Chesapeake Bay Watershed in Virginia (9VAC25-820). Ms. Wood recused herself from consideration of the agenda item.

A handwritten signature in blue ink that reads 'Melanie D. Davenport'.

Melanie D. Davenport  
Director, Water Division



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### EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING OF JUNE 25, 2012

#### MINUTE NO. 4 Regulations- Proposed Facility and Aboveground Storage Tank Regulations 9VAC25-91-10 et seq.

Prior to the meeting the board was provided with proposed amendments to the Facility and Aboveground Storage Tank Regulations (9VAC25-91-10 et seq.) These amendments were proposed by staff in response to Chapter 884 of the 2011 Acts of Assembly and after several meetings with a Regulatory Advisory Committee between December 2011 and April 2012.

Melissa Porterfield gave the staff presentation and recommendation. The board was requested to proceed to notice of public comment and hearing on proposed amendments to the Facility and Aboveground Storage Tank Regulations (9VAC25-91-10 et seq.). Ms. Porterfield also requested the board to withdraw a NOIRA for the Facility and Aboveground Storage Tank Regulations (9VAC25-91-10 et seq.) that was published August 26, 2002 in the Virginia Register.

#### Board Decision

Based on the briefing materials and the staff presentation, the board voted unanimously to accept the staff recommendation to proceed to notice of public comment and hearing on the proposed amendments. The board also voted unanimously to withdraw a NOIRA for the Facility and Aboveground Storage Tank Regulations (9VAC25-91-10 et seq.) that was published August 26, 2002 in the Virginia Register.

A handwritten signature in blue ink, reading "Jeffery A. Steers", written over a horizontal line.

Jeffery A. Steers  
Division of Land Protection and Revitalization Director



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### EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON JUNE 25, 2012

#### MINUTE NO. 5 – Bull Run Tier III - Withdrawal

Alex Barron - DEQ Watershed Program, presented to the Board a brief summary of the National Park Service (NPS) petition to designate the section of Bull Run which borders the Manassas Battlefield Park as an Exceptional State Water ("Tier 3"). A brief overview was given on the purpose of Exceptional State Water designations and the resulting prohibition on new or increased discharges that a Tier 3 designation would require. At the August 5, 2011 meeting, the Board had directed DEQ staff to initiate a rulemaking to consider designating a portion of the main stem of Bull Run as a Tier 3 water, in response to the NPS petition.

Following the Board's directive, a Notice of Intended Regulatory Action (NOIRA) was issued, comments received and a Regulatory Advisory Panel (RAP) formed, which met on March 7, 2012. The RAP participants included the counties of Fairfax and Prince William, the National Park Service, Virginia Department of Transportation (VDOT) and DEQ staff. The Counties and VDOT expressed concerns that a Tier 3 designation and the resulting prohibition on new or expanded discharges could pose significant difficulties for future development and bridge construction. The concerns centered around the need to deal with the possibility of increased storm water runoff and sediment loading as a result of future bridge construction and other activities upstream of the segment of Bull Run and the lack of flexibility in dealing with these issues should a Tier 3 designation be adopted for this midsection of Bull Run. VDOT has plans for a new highway bypassing the National Park which will result in a new bridge crossing Bull Run just upstream of the proposed designated segment and potential restrictions or prohibitions on storm water runoff would pose difficulties for this project. The Counties and the NPS are in favor of the bypass.

The general consensus among the RAP was that they did not want to jeopardize the ability to pursue construction of this highway bypass, or to limit the flexibility of VDOT and the Counties to deal with future storm water controls in the upstream portion of Bull Run. As a result, the NPS has reconsidered their needs and asked to withdraw their nomination of this section of Bull Run as a Tier 3 water. The NPS plans on pursuing a Scenic Rivers designation as being more appropriate to the Park Service's needs.

After questions, answers and a discussion among the Board members the DEQ staff offered a staff recommendation.

**Board Action** - The staff recommended that the Board withdraw the Notice of Intended Regulatory Action to designate a portion of Bull Run as an Exceptional State Water.

On a vote of five to one, Ms. Kellam voting no, the Board approved the staff recommendation.

  
Melanie D. Davenport  
Director, Water Division



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### EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON JUNE 25, 2012

#### MINUTE NO. 6 – Water Quality Management Plan Regulation Amendments

Craig Lott, DEQ-Watershed Programs, presented three Total Maximum Daily Load (TMDL) reports for Board approval, along with the associated Waste Load Allocations (WLAs) for adoption as amendments to the Water Quality Management Planning Regulation (9 VAC 25-720).

The TMDL reports were for the following waterbodies (with the associated WLA pollutant):

- North Fork Holston River (mercury)
- Albemarle Canal/North Landing River (total phosphorus)
- Northwest River (total phosphorus)

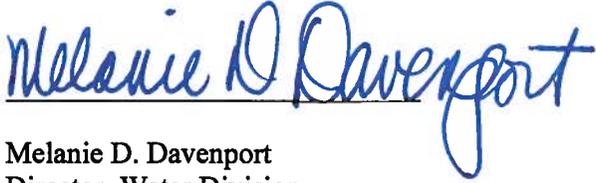
Staff presented background information on the development of the TMDL reports, the public participation process and dates when EPA approved each report. The TMDL equation for each was also provided, showing the Waste Load Allocation, Load Allocation and Margin of Safety.

Following the staff presentation several questions were asked by the Board seeking clarification, which were answered appropriately. The Board was also informed that the Attorney General's Office had certified the Board's authority to take the proposed action to amend 9 VAC 25-720, and further that the action was exempt from Article II of the APA pursuant to Va. Code § 2.2-4006(A)(4)(c).

#### **Board Action - The staff recommended the following:**

- 1) Approve the following three TMDL Reports:
  - North Holston River and Tributaries, Mercury TMDL Report
  - Albemarle Canal/North Landing River Total Phosphorus TMDL Report
  - Northwest River Total Phosphorus TMDL Report
- 2) Adopt the following three Waste Load Allocations (WLA) as amendments to the Water Quality Management Planning (WQMP) Regulation:
  - Mercury WLA of 11.9 g/yr in the WQMP Regulation, 9 VAC 25-720-90.A., for the North Fork Holston River.
  - Total Phosphorus WLA of 989.96 kg/yr in the WQMP Regulation, 9 VAC 25-720-100.A., for the Albemarle Canal and North Landing River.
  - Total Phosphorus WLA of 3,262.86 kg/yr in WQMP Regulation, 9 VAC 25-720-100.A., for the Northwest River.

The Board voted unanimously to approve the staff recommendations.



Melanie D. Davenport  
Director, Water Division



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### EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON JUNE 25, 2012

#### MINUTE NO. 7 – Report on Facilities in Significant Noncompliance

Kathleen O'Connell, Water Enforcement Program Manager, reported to the Board that there were two regulated parties to be reported as being in significant noncompliance for the quarter ending December 31, 2011. The first party, the Coeburn Norton Wise Treatment Authority, had experienced violations of a permit effluent limitation for Ammonia as Nitrogen. Ms. O'Connell reported that the Authority is in the process of upgrading and expanding its wastewater treatment plant and, in the interim, has modified plant operations with the result that Ammonia violations have ceased to occur. Ms. O'Connell reported that the staff of the Southwest Regional Office was evaluating whether formal enforcement action would be necessary to ensure continued compliance. Ms. O'Connell reported that the second party, Dupont Teijin Films, had experienced violations of a permit effluent limitation for Biochemical Oxygen Demand and informed the Board that these violations were addressed by a consent special order which was to be presented to Board for its approval at the June Board meeting.

The Board accepted the report.

  
Kathleen F. O'Connell  
Water Enforcement Program Manager  
Division of Enforcement



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### EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON JUNE 26, 2012

#### MINUTE NO. 8 – VPDES Program Consent Special Orders

Kathleen O'Connell, Water Enforcement Program Manager, presented to the Board the Consent Special Orders for:

1. Hampton Roads Sanitation District and the Cities of Chesapeake, Hampton, Newport News, Poquoson, Portsmouth, Suffolk, Virginia Beach and Williamsburg, the Counties of Gloucester, Isle of Wight and York; the James City Service Authority and the Town of Smithfield
2. Bundick Well and Pump Company
3. City of Chesapeake, Lake Gaston Water Treatment Plant
4. Coastal Precast Systems, LLC
5. City of Martinsville
6. Fairfax Co. School Board, Gunston Elementary School
7. McGill Environmental Systems of N.C., Inc.

The Board unanimously approved the Orders and further authorized the Department's Director to execute the Orders on the Board's behalf and to refer violations of the Orders to the Office of the Attorney General for appropriate legal action.

A handwritten signature in blue ink that reads "Kathleen F. O'Connell".

Kathleen F. O'Connell  
Water Enforcement Program Manager  
Division of Enforcement



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### EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON JUNE 26, 2012

#### MINUTE NO. 9 – VWP Program

Kathleen O'Connell, Water Enforcement Program Manager, presented to the Board the Consent Special Orders for:

1. City Of Newport News
2. VA Timberline, LLC, Lawnes Point Subdivision
3. Warren E. Beery-Dry River Impacts
4. Yimmer, LLC.

The Board unanimously approved the Orders and further authorized the Department's Director to execute the Orders on the Board's behalf and to refer violations of the Orders to the Office of the Attorney General for appropriate legal action.

  
Kathleen F. O'Connell  
Water Enforcement Program Manager  
Division of Enforcement



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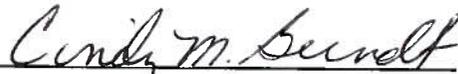
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### EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON JUNE 25, 2012

#### MINUTE NO. 10 – Public Forum

No one appeared during the public forum.

  
Cindy M. Berndt



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### EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON JUNE 25, 2012

#### MINUTE NO. 11 – Division Director's Report

Melanie Davenport notified the Board of upcoming action by the DEQ Director, under delegated authority from the Board, to approve five Total Maximum Daily Load (TMDL) reports, five TMDL modifications and eight TMDL implementation plans. The TMDLs presented have no waste load allocations (WLAs) that require Board adoption as part of the Water Quality Management Planning Regulation.

#### **Delegated TMDL Report and Modification Approvals:**

##### James River Basin

1. Bacteria TMDL for the Hoffer Creek Watershed (Portsmouth and Chesapeake)
2. Bacterial TMDL for the James River Tributaries (City of Richmond)
3. Bacteria TMDL for the Bear Garden Creek Watershed (Buckingham Co.)
4. Fecal Coliform Bacteria TMDL in Moore's Creek (Albemarle Co.)

##### Rappahannock River Basin

5. Shellfish Bacteria TMDL for Upper Rappahannock Tidal River, Unsegmented Estuaries in E23, Little Carter Creek, Jugs Creek, Piscataway Creek, Mark Haven Beach, and Garrett's Marina (Essex, Richmond, Westmoreland and Northumberland Counties)

##### Tennessee-Big Sandy River Basin

6. E. coli TMDLs in the Upper Clinch River Watershed (Tazewell Co.)

##### Chowan River Basin

7. E. coli TMDL for Unnamed Tributary to Nebletts Mill Run and Hatcher Run (Sussex and Dinwiddie Counties)
8. E. coli TMDL for Assamoosick Swamp and Tributaries (Sussex and Southampton Counties)

##### Chesapeake Bay/Small Coastal/Eastern Shore Basin

9. Indian, Tabbs, Dymer, and Antipoison Creeks TMDL for Shellfish Condemnation Areas Listed Due to Bacteria Pollution (Lancaster Co.)
10. Parker Creek TMDL Benthic (Accomack Co.)

**Delegated TMDL Implementation Plan Approvals:**

Tennessee-Big Sandy River Basin

1. Lewis Creek Sediment TMDL (Russell County)

Potomac/Shenandoah River Basin

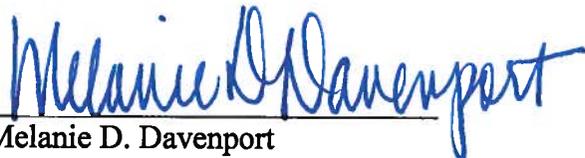
2. South River and Christians Creek TMDL (Augusta County) - Bacteria and Sediment in South River and Christians and Total Phosphorus in South River

James River Basin

3. Hays, Moffatts, Walter and Otts Creeks TMDL (Augusta and Rockbridge Counties) - Bacteria
4. Ivy Creek, Fishing Creek, Blackwater Creek, Tomahawk Creek, Burton Creek, Judith Creek, Beaver Creek and a portion of the James River (Lynchburg, as well as Amherst, Bedford and Campbell Counties) - Bacteria
5. Mill Creek and Powhatan Creek (James City County) - Bacteria
6. Slate River and Rock Island Creek (Buckingham County) - Bacteria

Rappahannock River Basin

7. Craig Run, Browns Run, and Marsh Run Bacteria TMDL (Fauquier County)
8. Little Dark Run and Robinson River (Madison and Culpeper Counties) - Bacteria

  
\_\_\_\_\_  
Melanie D. Davenport  
Director, Water Division



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### EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON JUNE 25, 2012

#### MINUTE NO. 12 – Future Meetings

The Board confirmed September 27-28 and December 6-7, 2012, as the dates of their future meetings.

  
Cindy M. Berndt