



# COMMONWEALTH of VIRGINIA

W. Tayloe Murphy, Jr.  
Secretary of Natural Resources

*DEPARTMENT OF ENVIRONMENTAL QUALITY*  
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Robert G. Burnley  
Director

(804) 698-4000  
1-800-592-5482

MINUTES  
STATE WATER CONTROL BOARD  
November 21, 2005 - House Room D  
General Assembly Building  
9<sup>th</sup> & Broad Streets  
Richmond, Virginia

Board Members Present:

Carol C. Wampler, Chair  
W. Shelton Miles, III  
Michael McKenney

Komal K. Jain Vice-Chairman  
E. Bryson Powell  
Thomas D. C. Walker

Board Members Absent:

Vacant

Staff Present:

Robert G. Burnley, Director  
Department of Environmental Quality

Cindy M. Berndt  
Department of Environmental Quality

Attorney General's Office:

Albert B. Albiston, Assistant Attorney General

- 1) The attached minutes summarize activities that took place at this Board Meeting.
- 2) The meeting was convened at 9:07 a.m. on Monday, November 21, 2005. The Board voted to go into closed session at 9:10 a.m. and reconvened in open session and the closed session certified at 9:30 a.m. The meeting was adjourned at 10:45 a.m.

Approved Min. No. 2  
March 15, 2006



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## EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON NOVEMBER 21, 2005

### **Minute No. 1 – Condolence Letter – Mr. John Bryan**

The Board asked Mr. Robert G. Burnley, Director of the Department, to relay to the family of Mr. Bryan the Board members' condolences on the recent passing of Mr. Bryan.

  
\_\_\_\_\_  
Cindy M. Berrdt



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## EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON NOVEMBER 21, 2005

### **Minute No. 2 – Decision – Dinwiddie County Water Authority – VPDES Permit No. VA0081779**

The Board, on a motion by Ms. Jain, voted to go into closed session for consultation with legal counsel and briefings by staff members pertaining to actual or probable litigation, and consultation with legal counsel regarding specific legal matters requiring the provision of legal advice by counsel, concerning the Dinwiddie County Water Authority VPDES Permit No. VA0081779.

The Board, on a motion by Ms. Jain, unanimously ended the closed session and certified that, to the best of each member's knowledge, (1) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the closed meeting to which this certification applies, and (2) only such public business matters as were identified in the motion convening the closed meeting were heard, discussed or considered by the board.

Upon ending the closed session, the Board, on a motion by Ms. Jain, unanimously adopted the findings of fact and conclusions of law as follows:

1. Dinwiddie County Water Authority is a public body formed pursuant to Virginia law, and operates the Dinwiddie Courthouse Sewage Treatment Plant in Dinwiddie County, Virginia.
2. On February 24, 2005, the Department of Environmental Quality reissued Dinwiddie VPDES Permit No. VA0081779. Under the reissued Permit, a new provision was added in Part I.C.8.d of the Permit consistent with *Virginia Code* § 62.1-44.21, 9 VAC 25-31-190 H and 9 VAC 25-31-190 L.4.a.
3. Guidance Memo No. 04-2020, "Significant Figures for Discharge Monitoring Reports," requiring permittees to report DMR data to the accuracy of the testing method, was issued on October 29, 2004, to assure consistent implementation of statutory and regulatory reporting requirements.

4. Within thirty days of the Permit's issuance, Dinwiddie contested the Permit by filing a Petition for Formal Hearing pursuant to *Virginia Code* § 62.1-44.25. The Petitioner raised the issue of reporting significant figures.

5. DEQ published a Notice of Formal Hearing on August 2, 2005. And, by letter dated September 14, 2005, DEQ notified Dinwiddie of the intent to conduct a formal hearing on September 28, 2005, pursuant to *Virginia Code* §§ 62.1-44.19 and 62.1-44.25.

6. On September 28, 2005, the Board conducted a formal hearing pursuant to the Notice.

7. Dinwiddie failed to submit evidence or raise arguments that the issuance of Guidance Memo No. 04-2020 was in violation of the Virginia Administrative Process Act and usurped the rulemaking powers of the State Water Control Board.

Based on the adopted findings of fact and conclusions of law, the Board, on a motion by Mr. McKenney, unanimously decided:

That: The Department of Environmental Quality acted within its authority to issue Dinwiddie County Water Authority's Permit No. VA0081779 in accordance with Virginia Code § 62.1-44.21 and 9 VAC 25-31-190.H, further clarified by Guidance Memo No. 04-2020.

That: the Department of Environmental Quality's action is reasonable.

That: the assertion of Dinwiddie County Water Authority that the issuance of Guidance Memo No. 04-2020 is in violation of the requirements of the Virginia Administrative Process Act (Virginia Code § 2.2-4000 et seq.) is rejected for failure of Dinwiddie County Water Authority to carry their burden of proof as required by Virginia Code § 2.2-4020.C.

That: Dinwiddie's Permit No. VA0081779 as issued by the Department of Environmental Quality is upheld as issued.

Finally, the Board, on a motion by Mr. Miles, unanimously authorized the Chair to sign a writing based on these motions on behalf of the Board.

  
Cindy M. Berndt

**BEFORE THE VIRGINIA STATE WATER CONTROL BOARD**

Dinwiddie County Water Authority, )  
Petitioner and Permittee )  
 )  
Virginia State Water Control Board )  
Virginia Department of Environmental Quality )  
 )  
In re: VPDES Permit No. VA0081779 )  
 )  
Formal Hearing September 28, 2005 )  
\_\_\_\_\_ )

STATEMENT OF THE CASE

This cause came before the State Water Control Board as a formal hearing arising from Petition Dinwiddie County Water Authority’s (Dinwiddie) challenge to the Department of Environmental Quality’s (DEQ) imposition of a VPDES permit that states:

Part I.C.8.d. Monitoring results report on the Discharge monitoring Report (DMR) shall be reported to the accuracy of the test...Rounding the results to the number of significant digits in the permit, where the test method is sensitive enough to report more, is not acceptable and shall not be allowed... .

The State Water Control Board had to consider whether or not DEQ was authorized and had a reasonable basis for inserting this reporting requirement, and whether the permit should stand as issued or be amended.

FINDINGS OF FACT

1. Dinwiddie County Water Authority is a public body formed pursuant to Virginia law, and operates the Dinwiddie Courthouse Sewage Treatment Plant in Dinwiddie County, Virginia.
2. On February 24, 2005, DEQ reissued Dinwiddie VPDES Permit No. VA0081779 (Permit). Under the reissued Permit, a new provision was added in Part I.C.8.d of the Permit consistent with *Virginia Code* § 62.1-44.21, 9 VAC 25-31-190 H and 9 VAC 25-31-190 L.4.a.
3. Guidance Memo No. 04-2020, “Significant Figures for Discharge Monitoring Reports” (Guidance), requiring permittees to report DMR data to the accuracy of the testing method, was issued on October 29, 2004, by DEQ to assure consistent implementation of statutory and regulatory VPDES reporting requirements.
4. Within thirty days of the Permit’s issuance, Dinwiddie contested the Permit by filing a Petition for Formal Hearing pursuant to *Virginia Code* § 62.1-44.25. The Petitioner raised the issue of reporting significant figures for DMR data, as required under Part I.C.8.d of the Permit.

5. DEQ published a Notice of Formal Hearing on August 2, 2005. And, by letter dated September 14, 2005, DEQ notified Dinwiddie of the intent to conduct a formal hearing on September 28, 2005, pursuant to *Virginia Code* §§ 62.1-44.19 and 62.1-44.25.
6. On September 28, 2005, the Board conducted a formal hearing pursuant to the Notice.
7. Dinwiddie failed to submit evidence or raise arguments that the issuance of Guidance Memo No. 04-2020 was in violation of the Virginia Administrative Process Act (*Virginia Code* § 2.2-4000 et seq.) and usurped the rulemaking powers of the State Water Control Board.

#### CONCLUSIONS OF LAW

1. *Virginia Code* § 62.1-44.21 provides in part that “The Board may require every owner to furnish when requested such plans, specifications, and other pertinent information as may be necessary to determine the effect of the wastes from his discharge on the quality of state waters, or such other information as may be necessary to accomplish the purposes of this chapter.”
2. 9 VAC 25-31-190.H provides in part that “The board may require the permittee to furnish, upon request, such plans, specifications, and other pertinent information as may be necessary to determine the effect of the wastes from his discharge on the quality of state waters, or such other information as may be necessary to accomplish the purposes of the law.”
3. 9 VAC 25-31-190.L.4.a provides “Monitoring results must be reported on a Discharge Monitoring Report (DMR) or forms provided or specified by the department for reporting results of monitoring of sludge use or disposal practices.”
4. Pursuant to *Virginia Code* § 62.1-44.21 and 9 VAC 25-31-190.H and 9 VAC 25-31-190.L.4.a, Dinwiddie and other permittees are required to furnish upon request pertinent information as may be necessary to determine the effect the wastes from their discharges on the quality of state waters and are specifically required to report actual monitoring results on DMRs. Guidance Memo No. 04-2020, “Significant Figures for Discharge Monitoring Reports,” directing staff to include permit conditions that require Dinwiddie and other permittees to report DMR data to the accuracy of the testing method where appropriate is a reasonable interpretation and application of these statutory and regulatory requirements.

#### DECISION

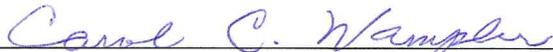
The Board based on the above Findings of Fact and Conclusions of Law decides that:

1. The Department of Environmental Quality acted within its authority to issue Dinwiddie County Water Authority’s Permit No. VA0081779 in accordance with *Virginia Code* § 62.1-44.21 and 9 VAC 25-31-190.H, further clarified by Guidance Memo No. 04-2020.
2. The Department of Environmental Quality’s action is reasonable.

3. The assertion of Dinwiddie County Water Authority that the issuance of Guidance Memo No. 04-2020 is in violation of the requirements of the Virginia Administrative Process Act (*Virginia Code* § 2.2-4000 et seq.) is rejected for failure of Dinwiddie County Water Authority to carry their burden of proof as required by *Virginia Code* § 2.2-4020.C.

4. Dinwiddie's Permit No. VA0081779 as issued by the Department of Environmental Quality is upheld as issued.

Entered this 21st day of November, 2005.



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Carol C. Wampler, Chair, State Water Control Board  
On behalf of the State Water Control Board



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### EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT IT'S MEETING ON NOVEMBER 21, 2005

**MINUTE NO. 3** – Amendments to 9 VAC 25-720, Water Quality Management Planning Regulation: Nutrient Waste Load Allocations for Certain Dischargers in the James River Basin (Section 720-60), and the York River Basin (Section 720-120).

John Kennedy/DEQ Chesapeake Bay Program made the staff presentation on the proposed amendments, and provided background on the rulemaking process, including:

- Board approval at their 6/28/05 meeting of the final amended regulation along with the suspension of the effective date to allow for a second 30-day public review and comment period.
- A summary of the key public comments received during the reopened review period, and further revisions made since 6/28/05 to the final regulation for the Board's consideration.
- A summary of the key public comments received during review of additional modeling results for the York and James River Basins, which simulated various point source nutrient reduction scenarios and resulting compliance with new tidal water quality standards.

The Board members were provided with one revised page of 9 VAC 25-720-120.C., which deleted a footnote referencing the Totopotomoy WWTP and a schedule for facility expansion. During the reopened public comment period, Hanover County provided documentation with a reasonable assurance that their planned upgrade/expansion of the plant will proceed according to schedule, and modeling results indicate water quality standards compliance is achieved with the plant at the requested higher design flow.

Prior to the staff recommendations, the Board heard statements from 6 persons who had participated in the rulemaking process. Following is a brief summary of their statements:

- Chris Pomeroy, VAMWA Legal Counsel: Thanked the Board for additional modeling work and consideration for less stringent treatment at York and James significant dischargers. Stated that he was not aware of any individual VAMWA members intending to challenge the Board's expected approval of the staff recommendations.
- Tom Frederick, Rivanna Water and Sewer Authority: supported the expected Board approval of amendments, noting 4 important factors to keep in mind:
  - Point sources are taking a major responsibility for nutrient load reductions, despite being a minor contributor to total basin loads.
  - Need broad support and advocacy to implement necessary nonpoint source controls.
  - Opposes concentration-based total nitrogen and total phosphorus limits in permits.
  - Need cost-effective solutions for plant upgrades under the Water Quality Improvement Fund.
- Frank Harksen, Hanover County Utilities: Noted that Hanover County supported the allocations assigned to their facilities, but on behalf of Bear Island Paper Co. he raised the issue of the phosphorus allocation for the Doswell STP (BIPCo shares the discharge outfall with Hanover), and yielded the balance of his time their legal counsel. Melanie Davenport/Troutman Sanders explained

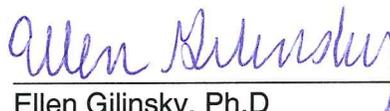
differences between other paper mills and the process used at BIPCo, causing higher total phosphorus (TP) levels in their discharge which are difficult to reduce. Requested that BIPCo's portion of the TP waste load allocation at Doswell STP be based on an effluent level of 2.0 mg/l, rather than 1.0 mg/l, due to treatment limitations.

- Bill Street, James River Association: Commended the Board and DEQ staff for work on the regulations, and supported their adoption.
- Jeff Corbin, Chesapeake Bay Foundation: Thanked the Board and DEQ staff for the effort to-date on Bay-related regulations. Also commended the Governor and Secretary of Natural Resources for the final product which embodies the original intent of the Governor's directive to the Board to develop and adopt point source nutrient discharge control regulations. Noted CBF's belief that implementation will result in water quality improvements.
- Dudley Pattie, Rapidan Service Authority: Thanked the Board for recent modifications to waste load allocations, and looks forward to working with the State and VAMWA on implementing this very challenging nutrient reduction initiative.

**Board Decision** - The staff recommended the following:

1. Adopt the amendments to the **Water Quality Management Planning Regulation**, 9 VAC 25-720, Sections 720-60 (James Basin) and 720-120 (York Basin) as proposed today.
2. Authorize the Director to receive any petition requesting amendment of the adopted nitrogen or phosphorus waste load allocations on the Board's behalf.
3. Authorize the Director, upon completion of the public comment period on the petition, to proceed to initiate a rulemaking on any petition received.

The motion to accept the staff recommendations was accepted unanimously.



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Ellen Gilinsky, Ph.D  
Director, Division of Water Quality Programs



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### EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON NOVEMBER 21, 2005

MINUTE NO. 4 – Water Quality Standards (9 VAC 25-260) Amendments to Special Standards 9 VAC 25-260-310 for Numerical Water Quality Criteria for Chlorophyll *a* in the James River and Dissolved Oxygen in the Mattaponi and Pamunkey Rivers with references in the River Basin Tables 9 VAC 25-260-410 and 530

Eleanor Daub, Environmental Program Specialist from the Office of Water Quality Programs, explained the need for chlorophyll criteria, the basis of the criteria, the sequence of regulatory events and the corresponding analysis of alternative nutrient loading scenarios and chlorophyll concentrations, the public comments received and the staff responses to those comments. The adjustments to the numerical criteria, which are based on public comment and the results of the alternative analysis, were also described. The Mattaponi and Pamunkey special dissolved oxygen criteria are also part of this adoption.

Richard Batuik, Assistant Director of the EPA Chesapeake Bay Program Office, spoke in support of the amendments and agreed that science and attainability could be considered in the development of these criteria. This event marked an unprecedented agreement between the municipal and environmental groups. All the Bay states have been working for consistent regulations between the states and this marks the final action for Virginia.

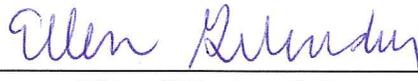
William Street, Executive Director for the James River Association addressed the Board in support of these criteria and thanked the Board and staffs for providing an enforceable and accountable mechanism to provide our nation's' founding river the same protection that all the other rivers have. These will lead to clean up of the river and as science improves will lead to refinements of the criteria.

Jeff Corbin, Deputy Director and Senior Scientist for the Chesapeake Bay Foundation addressed the Board in support of the amendments.

Chris Pomeroy, legal counsel for the Virginia Association of Municipal Wastewater Agencies addressed the Board to express their appreciation of the additional time and study the Board allowed which resulted in a much improved product.

**Decision (All in favor):**

**Adopt the amendments in sections 310, 410 and 530 of 9 VAC 25-260 – Virginia Water Quality Standards which includes site specific special standards for chlorophyll *a* for the tidal James River and dissolved oxygen for the tidal Mattaponi and Pamunkey Rivers.**



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Ellen Gilinsky, Ph.D

Director

Division of Water Quality Programs



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## EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON NOVEMBER 21, 2005

### Minute No. 5 – Resolution

The Board asked Mr. Robert G. Burnley, Director of the Department, to draft a resolution from the Board to members of the General Assembly regarding the need for continued funding for the Chesapeake Bay program.

  
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Cindy M. Berndt