



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

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L. Preston Bryant, Jr.
Secretary of Natural Resources

David K. Paylor
Director

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

MINUTES STATE WATER CONTROL BOARD

December 4, 2007
House Room C
General Assembly Building
9th & Broad Streets
Richmond, Virginia

Board Members Present:

W. Shelton Miles, III, Chair
R. Michael McKenney
W. Jack Kiser
Robert H. Wayland, III

Komal K. Jain, Vice-Chair
Thomas D. C. Walker
John B. Thompson

Staff Present:

David K. Paylor, Director
Department of Environmental Quality

Cindy M. Berndt
Department of Environmental Quality

Attorney General's Office:

Alfred B. Albiston, Assistant Attorney General

- 1) The attached minutes summarize activities that took place at this Board Meeting.
- 2) The meeting was convened at 9:37 a.m. on December 4, 2007, recessed at 11:04 a.m., reconvened at 11:15 a.m., recessed at 12:00 p.m., reconvened at 1:00 p.m. and adjourned at 3:30 p.m.

Approved Apr. 10, 2008
minute # 1



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EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON DECEMBER 4, 2007

MINUTE NO. 1 – Minutes

The Board approved the minutes from the meeting on September 25, 2007, with revision of Minute No. 7 on the Virginia Water Protection Permit Number 05-0852, Cumberland County's Cobbs Creek Reservoir. The revision added language clarifying that the amendment to the staff recommendation regarding the mitigation plan was based on the Board's expressed concern about the adequacy of the mitigation for project impacts.


Cindy M. Berndt
Cindy M. Berndt



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EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON DECEMBER 4, 2007

MINUTE NO. 2 - Virginia Water Protection Permit Program Regulation and VWP General Permit Regulations – Conform to State Statute

The Board was provided with the revisions to the Virginia Water Protection Permit Program regulation and the four VWP general permit regulations as the result of statute changes enacted by the 2007 General Assembly. David L. Davis, Director of the Office of Wetlands & Water Protection, summarized the citations changes and insertion of permit application review time provisions that are being proposed to the regulations. He asked the board members for their approval of the proposed revisions to the above regulations.

Board Decision

Based on the briefing material and the staff presentation, the Board voted unanimously to allow the Department to finalize the proposed revisions to the regulations (9VAC25-210, 9VAC25-660, 9VAC25-670, 9VAC25-680, and 9VAC25-690), as presented by the staff.

A handwritten signature in cursive script, reading 'Ellen Gilinsky'.

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 OF DECEMBER 4, 2008

MINUTE NO. 3 - Final Regulations: VPDES General Permit for Noncontact Cooling Water Discharges

Prior to the meeting the Board was provided with a revised draft of the VPDES general permit regulation for noncontact cooling water discharges (VAC 25-196). The only change from the previous draft of the regulation was the correction of one minor typo. Burton Tuxford gave the staff presentation and recommended that the Board adopt the amended regulation as final.

Board Decision

Based on the briefing material and the staff presentation, the Board voted unanimously to adopt the amendments to the General VPDES Permit for Cooling Water Discharges, 9 VAC 25-196. This action was taken with the assertion that the Board will receive, consider and respond to petitions by any person at any time with respect to reconsideration or revision of the regulation.

A handwritten signature in cursive script, reading "Ellen Gilinsky".

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 OF DECEMBER 4, 2008

MINUTE NO. 4 - Final Regulations: VPDES General Permit for Petroleum Contaminated Sites, Groundwater Remediation, and Hydrostatic Tests

Prior to the meeting the Board was provided with a draft of the VPDES general permit regulation for discharges from petroleum contaminated sites and hydrostatic tests (9 VAC 25-120). There were no changes from the previous draft of the regulation. Burton Tuxford gave the staff presentation and recommended that the Board adopt the amended regulation as final.

Board Decision

Based on the briefing material and the staff presentation, the Board voted unanimously to adopt the amendments to the General VPDES Permit for Discharges From Petroleum Contaminated Sites and Hydrostatic Tests, 9 VAC 25-120. This action was taken with the assertion that the Board will receive, consider and respond to petitions by any person at any time with respect to reconsideration or revision of the regulation.

A handwritten signature in cursive script, appearing to read "Ellen Gilinsky".

Ellen Gilinsky, Ph.D.

Director, Division of Water Quality Programs



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EXCERPT FROM THE PROCEEDINGS OF THE BOARD AT ITS MEETING ON DECEMBER 4, 2007

MINUTE NO. 5 – 9VAC25-740 WATER RECLAMATION AND REUSE REGULATION

Valerie Rourke, Office of Land Application Programs, recommended that the Board:

1. Adopt the final Water Reclamation and Reuse Regulation (9VAC25-740) with amendments presented at the meeting, except for 9VAC25-740-105; and
2. For only 9VAC25-740-105, defer adoption and direct DEQ staff to reconvene the technical advisory committee for further discussion of this section and return to the Board at a future meeting with recommendations.

Board Decision

The Board voted unanimously to adopt the final Water Reclamation and Reuse Regulation with the amendments presented, except for 9VAC25-740-105. The Board also voted unanimously to amend the second recommendation to establish a deadline of June 2008 for submission of further recommendations by DEQ staff regarding 9VAC25-740-105, and subsequently voted unanimously to approve the amended recommendation.

A handwritten signature in cursive script that reads 'Ellen Gilinsky'.

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 DECEMBER 4, 2007 MEETING

MINUTE NO. 6 – Proposed Rulemaking to Amend 9 VAC 25-720-50.C. (Water Quality Mgmt. Planning Regulation, Potomac-Shenandoah River Basin Nutrient Waste Load Allocations)

Alan Pollock/DEQ Office of Water Quality Programs made the staff presentation on proposed amendments to revise the total nitrogen (TN) and total phosphorus (TP) waste load allocations (WLAs) for two dischargers in the Shenandoah- Potomac River Basin. The subject facilities are Frederick-Winchester S.A.-Opequon WWTP (VA0065552) and Merck (VA0002178), and their current WLAs in the Water Quality Management Planning Regulation were adopted by the Board in September 2005. Staff presented background information on the requested amendments, explaining the dischargers' justification for the proposed changes and the magnitude of the WLA increases, as follows:

FWSA-Opequon

- Justification: plant being expanded from 8.4 to 12.6 MGD; expect CTO by 12/31/10; request that increased design flow be used as basis for WLAs with TN = 3 mg/L; TP = 0.3 mg/L.
- SWCB-approved WLAs: TN = 102,331 lbs/yr; TP = 7,675 lbs/yr.
- Requested amendments: TN = 115,122 lbs/yr (12,791 lb. increase); TP = 11,506 lbs/yr (3,831 lb. increase).

Merck

- Justification: concentration bases (TN = 4 mg/L; TP = 0.3 mg/L) for current WLAs not technically feasible to achieve; request that concentration levels be based on "treatability" study and pilot project results (TN = 12 mg/L; TP = 1.2 mg/L), reflecting level-of-effort comparable to requirements being placed on Shenandoah POTWs.
- SWCB-approved WLAs: TN = 14,619 lbs/yr; TP = 1,096 lbs/yr.
- Requested amendments: TN = 43,835 lbs/yr (29,216 lb. increase); TP = 4,384 lbs/yr (3,288 lb. increase).

At their March 2007 meeting, the Board approved a staff recommendation to initiate the rulemaking process to consider appropriate WLAs for these facilities. Actions taken thus far:

- NOIRA published on 8/20/07
- Public Comment Period closed 9/24/07
- A Technical Advisory Committee (TAC) was formed and met on 11/14/07

The Board was informed that several TAC members were concerned about meeting water quality standards, especially since the assigned Shenandoah-Potomac basin TN allocation is exceeded (existing point source allocations plus Tributary Strategy for non-point sources). The staff response is that nutrient

allocations to be established in the Bay-wide TMDL (scheduled for development and EPA approval by 2011) must achieve water quality standards, and include loadings for both point and non-point sources.

The TAC was receptive to FWSA's request but could not reach consensus on Merck's proposal. Several options were discussed for Merck, ranging from keeping WLAs unchanged up to amending them based on TN = 12 mg/L; TP = 1.2 mg/L. DEQ staff proposed a 'middle ground', to set WLAs based on pilot studies to-date, which appeared to support TN = 9.5 mg/L; TP = 0.7 mg/L as technically feasible. Merck responded with concerns about use of short-term pilot study results alone and stated that the original basis for the request was still valid, to be tested by full-scale operation of the upgraded treatment plant.

Several questions and comments were raised by the Board, most notably on the issue of increasing Shenandoah-Potomac nutrient WLAs and maintaining water quality standards. It was explained that the Bay-wide TMDL process beginning in earnest next year will use an updated, enhanced modeling framework to test standards compliance under the expected nutrient loadings, with the point source loads being the approved WLAs. The Board noted that they will be looking closely at the public comments received during this rulemaking and the staff recommendations when this matter comes before them for final approval.

BOARD DECISION - The staff recommended the following:

That the Board give approval to proceed to public hearing and comment on amendments to the Water Quality Management Planning Regulation, 9 VAC 25-720-50.C, as proposed:

1. For Frederick-Winchester S.A. Opequon:

VA Water Body ID	VPDES	Total Nitrogen WLA (lbs/yr)	Total Phosphorus WLA (lbs/yr)
B08R	VA0065552	402,334	7,675
		115,122	11,506

Notes: (10) Opequon WRF – waste load allocations (WLAs) based on a design flow of 12.6 MGD. If plant is not certified to operate at 12.6 MGD design flow by 12/31/10, the WLAs will decrease to TN = 102,331 lbs/yr; TP = 7,675 lbs/yr, based on a design flow of 8.4 MGD.

2. For Merck:

VA Water Body ID	VPDES	Total Nitrogen WLA (lbs/yr)	Total Phosphorus WLA (lbs/yr)
B37R	VA0002178	14,619	1,096
		43,835	4,384

Notes: (11) Merck-Stonewall – waste load allocations will be reviewed and possibly modified based on "full-scale" results showing the treatment capability of the 4-stage Bardenpho technology at this facility.

The motion to accept the staff recommendation was accepted unanimously.



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 DECEMBER 4, 2007

MINUTE NO. 7 – Tier III Canoeable Waters

Alan Pollock, manager of the Office of Water Quality Programs, advised the Board that a fast track rulemaking would be appropriate for Exceptional State Waters designation of a segment of Little Stony Creek in Scott County and the North River in Augusta County, both of which flow through U.S. Forest Service land. The amendment to the Water Quality Standards regulation is expected to be non-controversial because the U.S. Forest Service, the only impacted riparian landowner, supports these designations. No comment was received from the Forest Service or potentially impacted localities during the 60 day opportunity for comment previously authorized by the Board.

Mr. Pollock then reviewed the findings of the required staff site visit to the nominated waters for confirmation that the candidate waters met the exceptional state waters eligibility criteria. From the site visit of the North River, staff determined that the nominated segment met the exceptional environmental setting and the exceptional recreational opportunity criteria necessary for designation. Staff concluded that the nominated segment of Little Stony Creek provided opportunities for outstanding outdoor recreational activities but expressed concern that litter and graffiti observed in areas easily accessible to the public detracted from otherwise attractive surroundings. Board member Walker stated his disappointment that the federal government had not done more to control litter and abuse of the area. Mr. Pollock responded that recent communication with the Forest Ecology Group Leader for the George Washington and Jefferson National Forests indicates efforts are underway to improve conditions on Little Stony Creek, including the local government setting a higher priority for litter removal in the watershed.

Mr. Pollock informed the Board that the nominated segment of North River is currently assessed as impaired for aquatic life use due to violations of the pH criterion and the source of the impairment is thought to be atmospheric acid deposition. Although this section of the North River currently has a special standard for a pH range of 6.5-9.5 established for limestone streams, the Forest Service has informed staff that this special pH standard is misapplied to this segment of the North River since it has no limestone bedrock. The pH range for this segment is proposed for amendment during the current triennial review of the Water Quality Standards regulation for correction to 6.0 – 9.0 which may result in the segment being delisted as impaired during subsequent assessments. However, even if the river is not removed from the impaired waters list, it is still eligible for Exceptional State Waters designation due to both its exceptional environmental setting and recreational opportunities.

Board Decision:

Based on the briefing materials and the staff presentation, the Board approved the following recommendations by unanimous vote:

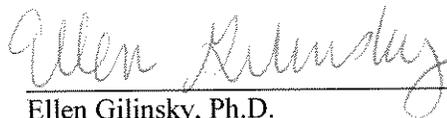
1. That the Board authorize the Department to promulgate the following amendment to **9 VAC 25-260-30.A.3.c** for public comment using the fast-track process established in § 2.2-4012.1 of the Administrative Process Act for regulations expected to be non-controversial.

Little Stony Creek in Scott County from Bark Camp Lake dam to its confluence with Bakers Branch.

North River in Augusta County from the Staunton Reservoir dam to the first crossing with National Forest lands boundary (near Girl Scout Camp May Flather).

The Board's authorization should also be understood to constitute its adoption of the regulation at the end of the public comment period provided that (i) no objection to use of the fast-track process is received from 10 or more persons, or any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, and (ii) the Department does not find it necessary, based on public comments or for any other reason, to make any changes to the proposal.

2. That the Board authorize the Department to set an effective date effective upon filing notice of Environmental Protection Agency approval with the Registrar of Regulations after close of the 30-day public comment period provided (i) the proposal completes the fast-track rulemaking process as provided in § 2.2-4012.1 of the Administrative Process Act and (ii) the Department does not find it necessary to make any changes to the proposal.
3. Should the proposal fail to complete the fast-track rulemaking process as provided in § 2.2-4012.1 of the Administrative Process Act or changes to the proposal be needed, it is recommended that the Board authorize the Director to make the decision under 9 VAC 25-10-30.C. concerning the use of the participatory approach or alternatives.



Ellen Gilinsky, Ph.D.

Director, Division of Water Quality Programs



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Thomas L. Henderson
Regional Director

EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON DECEMBER 4, 2007

MINUTE NO. 8 – Virginia Water Protection (VWP) Permit No. 07-1108 - Proposed Cumberland County Landfill

Bob Goode, South Central Regional Office Water and Solid Waste Permits Manager, provided a presentation for the issuance of VWP Permit No. 07-1108. This permit addresses the proposed impacts to streams and wetlands for the proposed municipal solid waste landfill to be located in Cumberland County, Virginia and operated by Cumberland County Development, LLC (a subsidiary of Allied Waste North America). The proposed landfill site encompasses 557 acres, with a 315 acre waste management unit boundary and a 242 acre landfill footprint. The total wetland and stream impacts for this proposed facility amount to 1.30 acres [0.69 acres of forested wetlands and 0.61 acres of stream - 9305 linear feet of impact]. This matter was presented to the Board due to controversy surrounding the proposed permit action and the decision to hold a public hearing on November 5, 2007.

A brief background was provided followed by a summary of the public hearing record, which included a number of comments relative to the solid waste permitting process. A change to the draft permit was also provided which included additional on-site mitigation based on discussions with the applicant subsequent to the public hearing. Following Mr. Goode's presentation, two citizens provided comments in support of the landfill. The Board Chairman noted for the record that only the issues related to the VWP permit could be considered.

Upon request from the Board, Mr. Goode provided the staff recommendation that the Board approve Virginia Water Protection No. 07-1108, as public noticed and subsequently amended, based on the submitted change to the proposed compensation plan.

Board Decision

By unanimous vote, the Board authorize the issuance of VWP Permit No. 07-1108, as recommended by the staff.

A handwritten signature in black ink, appearing to read 'T. Henderson', written over a horizontal line.

Thomas L. Henderson
Regional Director
South Central Regional Office



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EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON DECEMBER 4, 2007

MINUTE NO. 9 – Report on Facilities in Significant Noncompliance

Kathleen O'Connell, Water Enforcement Program Manager, presented to the Board the Report on Facilities in Significant Noncompliance for the quarter ending June 30, 2007. The facilities, their owners, and the reported instances of noncompliance were:

1. Town of Fredericksburg, Fredericksburg Wastewater Treatment Facility – Failure to meet Total Suspended Solids and Total Kjeldahl Nitrogen permit effluent limits. (Violations addressed by Consent Special Order approved at Board meeting.)
2. Arlington County, Arlington County Water Pollution Control Facility – Failure to meet Ammonia Nitrogen permit effluent limit and failure to submit sampling data. (No action necessary, the facility is currently being upgraded as required by a consent special order and the sampling data oversight has not been repeated.)

The Board accepted the report.

A handwritten signature in cursive script 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 DECEMBER 4, 2007

MINUTE NO. 10 - Consent Special Orders

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

The City of Fredericksburg
Oak Grove Mennonite Church
Hy-Mark Cylinders, Inc.
Nelson County Service Authority
Harrisonburg Rockingham Regional Sewer Authority
VA Timberline, LLC
Lewis Kennett
Russell Co. Development Group, LLC
I.A.S. of Virginia, Inc.

The Board unanimously approved the Orders and further authorized the Department's Director, or his designee, 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 cursive script, reading "Kathleen F. O'Connell".

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



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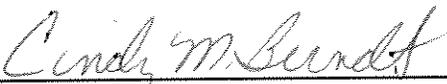
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EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON DECEMBER 5, 2007

Minute No. 11 – 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 DECEMBER 4, 2007

MINUTE 12 – FY 2008 VCWRLF Loan Authorizations

Mr. Walter Gills, Program Manager of the Department's Construction Assistance Program, made a presentation to the Board based on a memorandum dated November 9, 2007. The memorandum identified the staff's recommended loan amounts, terms, and interest rates for 21 projects recommended for FY 2008 Virginia Clean Water Revolving Loan Fund assistance.

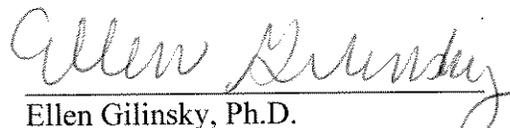
Mr. Gills began his presentation by summarizing the actions taken by the Board at its September 2007 meeting, of targeting 19 projects for FY 2008 assistance and directing the staff to present the Board's tentative list for public comment. He relayed that a public meeting was held on November 8, 2007 and that all public comments received were in support of the projects targeted for funding. Mr. Gills explained that he had met with all the potential FY 2008 loan recipients to verify the financial data used to evaluate the local impact and that the staff had completed its user charge impact analyses for the targeted recipients.

Based on the initial meetings with the applicants and comments received during the public comment period, the staff recommended three modifications to the previously-approved funding list. The Town of Luray had requested that their \$2,200,000 loan request (which had been deferred) be added to the list based on an accelerated implementation schedule. The Fauquier County Water and Sanitation Authority requested a decrease to their Marshall application and also that their Remington application (which had been inadvertently mixed in with their Marshall request) be added to the list. Mr. Gills indicated that the staff supported all three requests. These changes resulted in a revised total loan amount of \$227,043,051 for the 21 projects.

Mr. Gills explained that program policy calls for the program's ceiling rate to be set at 1% below the municipal revenue bond market. Since the program will have to leverage this year and sell bonds to fund these projects, the staff recommended that the FY 2008 ceiling rate not be set until after those bonds are sold in the spring.

Board Decision: After brief discussion, the Board voted unanimously to authorize the execution of the 21 loans at the amounts, rates, and terms listed below. Loan closings are subject to the receipt of favorable financial capability analysis reports and supporting recommendations from VRA. In addition, the Board agreed that the ceiling rate would be set at 1% below the all inclusive true interest cost on the leverage bonds once they are sold.

	Locality	Loan Amount	Rates & Loan Terms
1	City of Lynchburg	\$12,350,000	0%, 30 years
2	Harrisonburg-Rockingham RSA	\$20,000,000	C, 20 years
3	Town of Colonial Beach	\$2,970,000	0%, 20 years
4	City of Richmond	\$13,000,000	0%, 20 years
5	City of Richmond	\$9,000,000	0%, 20 years
6	Western Virginia Water Authority	\$1,969,000	C, 20 years
7	Alleghany County	\$7,608,595	0%, 20 years
8	Maury Service Authority	\$6,075,000	0%, 20 years
9	HRSD/York STP	\$25,000,000	C, 20 years
10	Prince William County SA	\$35,000,000	C, 20 years
11	Alexandria Sanitation Authority	\$15,000,000	C, 20 years
12	Town of Broadway	\$3,433,536	C, 20 years
13	Arlington County	\$50,000,000	C, 20 years
14	Stafford County/Little Falls Run	\$5,315,755	C, 20 years
15	Tazewell County PSA	\$8,000,000	0%, 30 years
16	Town of Big Stone Gap	\$3,051,000	0%, 20 years
17	Fauquier County WSA/Marshall	\$694,320	C, 20 years
18	Fauquier County/Remington	\$2,175,845	C, 20 years
19	City of Newport News	\$3,200,000	C, 20 years
20	Town of Luray	\$2,200,000	0%, 20 years
21	Cafferty/ARC Property	\$1,000,000	3%, 10 years
	Total Request	\$ 227,043,051	C= Ceiling Rate


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



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MINUTE NO. 13 – Water Supply Planning Program Briefing

Scott Kudlas, Water Supply Planning Program Manager, presented an overview of the program goals, regulatory requirements, and current status of local and regional planning activities.

Board Decision:

The Board requested that staff investigate the potential to hold a water resources conference and to report back to the Board regarding the advisability, content, suggested audience and timing of such a conference at a future Board meeting.

A handwritten signature in black ink, appearing to read "Terry Wagner", written over a horizontal line.

**Terry Wagner, Director
Division of Water Resources**



COMMONWEALTH of VIRGINIA

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L. Preston Bryant, Jr.
Secretary of Natural Resources

David K. Paylor
Director

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EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON DECEMBER 5, 2007

Minute No. 14 – Water Quality Division Report

Dr. Ellen Gilinsky updated the Board on recent activities of the Water Quality Division.



Cindy M. Berndt



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EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON DECEMBER 4, 2007

MINUTE NO. 15 – Future Meetings

The Board tentatively set April 10-11, 2008, as the date of their next regular meeting.


Cindy M. Berndt
Cindy M. Berndt