



# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF ENVIRONMENTAL QUALITY

Street address: 629 East Main Street, Richmond, Virginia 23219

Mailing address: P.O. Box 1105, Richmond, Virginia 23218

TDD (804) 698-4021

[www.deq.virginia.gov](http://www.deq.virginia.gov)

L. Preston Bryant, Jr.  
Secretary of Natural Resources

David K. Paylor  
Director

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

### MEMORANDUM

**TO:** Members of the State Water Control Board

**FROM:** David K. Paylor *DKP*

**DATE:** November 19, 2009

**SUBJECT:** Minutes

Attached are the minutes from your meeting on October 26<sup>th</sup> and 27<sup>th</sup>, 2009. Staff will seek your approval of the minutes at your next regular meeting.

If you have any questions, please contact Debra Miller at (804) 698-4206 or [Debra.Miller@deq.virginia.gov](mailto:Debra.Miller@deq.virginia.gov).

*Approved - Minute #1  
SWCB Mtg 12/14/09  
DAM*



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## MINUTES STATE WATER CONTROL BOARD

October 26-27, 2009  
House Room C  
General Assembly Building  
9<sup>th</sup> & Broad Streets  
Richmond, Virginia

### Board Members Present:

W. Shelton Miles, III, Chair  
Lou Ann Jessee Wallace  
Robert H. Wayland, III  
Roberta A. Kellam

Komal K. Jain, Vice-Chair  
John B. Thompson  
William B. Bott

### Staff Present:

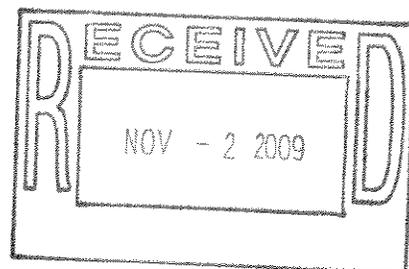
David K. Paylor, Director  
Department of Environmental Quality

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 on October 26, 2009, at 9:35 a.m., recessed at 11:05 a.m., reconvened at 11:15 a.m., recessed at 12:08 p.m., reconvened at 1:03 p.m., recessed at 3:35 p.m., reconvened at 3:45 p.m. and adjourned at 4:50 p.m. On October 27, 2009, the meeting was convened at 9:36 a.m., recessed at 10:55 a.m., reconvened at 11:04 a.m. and adjourned at 12:05 p.m.



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### EXCERPT FROM THE PROCEEDINGS OF THE BOARD AT ITS MEETING ON OCTOBER 26-27, 2009

#### MINUTE 2- Development of Virginia's FY 2010 Clean Water Revolving Loan Funding List

Mr. Walter Gills of the Department's Construction Assistance Program, made a presentation to the Board based on a staff memorandum dated September 30, 2009 pertaining to the development of Virginia's Clean Water Revolving Loan Project Priority List and the Intended Use Plan for FY 2010.

Mr. Gills began by referencing the attachments included with the staff's memorandum providing the Board with a description of the projects being considered and presenting the FY 2010 applicants in priority funding order. The 2010 application pool was very large at \$293.5 million. He noted that there would be approximately \$110 million in base funds available and that there had been several detailed discussions with the Virginia Resources Authority about leveraging those funds in the bond market to create additional capacity to fund projects in the \$200 million range.

Mr. Gills summarized the staff's activities in regards to the review of the applications, including an evaluation of the project schedules, in order to achieve the greatest water quality benefits with available resources. He noted that two of the loan requests and a portion of a third were not ready to proceed and could be deferred to a later funding cycle. Mr. Gills also pointed out that three projects could be phase funded to meet cash flow needs without disrupting construction schedules. Also, two of the projects had received partial funding through the American Recover and Reinvestment Act (ARRA) and their loan need was reduced accordingly. He stated that, through a leveraged loan program, the Board would have sufficient revenue available to fund the \$202 million for requests that provide direct water quality benefits and are ready to proceed.

Following discussions, the Board voted unanimously to:

1. Target the following applicants for loan assistance from available and anticipated funds and authorize the staff to present the Board's proposed FY 2010 loan project priority list for public comment.

HRSD/Army Base	\$50,000,000
Town of New Market	\$2,980,000
City of Richmond	\$20,000,000
City of Lynchburg	\$13,100,000
Town of Cape Charles	\$6,316,037
City of Norfolk	\$8,000,000
Arlington County	\$35,000,000
Wise County PSA	\$1,748,000
Town of Richlands	\$2,351,293
City of Covington	\$4,033,320
HRSD/Williamsburg	\$9,400,000
HRSD/Boat Harbor	\$8,400,000
City of Newport News	\$3,200,000
City of Charlottesville	\$7,000,000
Rivanna Water & Sewer Authority	\$30,200,000
Town of Mineral	\$60,000
Meadowview Biological Research Station	290,000
<b>FY 2010 VCWRLF Total</b>	<b>\$202,078,650</b>



**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 October 26-27, 2009

#### MINUTE NO. 3 - Reissuance of Virginia Pollutant Discharge Elimination System (VPDES) Permit Number VA0091316, Middlesex Courthouse WWTP

The staff made a presentation on this individual permit, discussing the application process, public hearing and addressing comments raised during and after the public comment period. After the staff presentation, Board asked for any other speakers to come forward:

*Charles Culley, County Administrator:* Requested approval of the permit.

*Janet Smith, Peter Mansfield, Ann Jennings, Marion Agnew, John Zeugner, Robert Montague, Robert Burnley, Roger Martin, Jim Knupp and Stan Coloff:* Opposed the permit; while the specific issues raised by the speakers varied, most of the speakers touched on one or more of the following issues:

- 1. The additional nutrient load to be discharged by the proposed facility will be harmful to the receiving stream and to the Chesapeake Bay; if the permit is approved, the County should be required to offset all of the nutrients discharged.**

Staff noted that the original Certificate to Construct for this facility (with a 0.040 MGD design flow) was issued prior to the effective date of the nutrient trading legislation; as such, this facility is considered an "existing facility", and offsets would not be required as long as the discharged nutrient loads did not exceed the facility's "permitted design capacity" (nutrient loads calculated using the design flow and wastewater treatment technology in the original CTC). Should the permittee choose to expand the facility at a later time, installation of improved nutrient removal technology (e.g., biological nutrient removal) or reclamation and reuse would serve to mitigate the increased hydraulic capacity of the plant, and the actual nutrient load discharged could be maintained at currently permitted levels.

Some comments were made that the facility is being permitted at a flow of 0.0399 MGD to avoid the requirements of the nutrient trading program; while the lower design flow relieves the permittee of some operational and reporting requirements, the status as "existing facility" relieves the permittee from the requirements of the Watershed General Permit until the facility expands past 0.040 MGD, irrespective of whether the current permit is for 0.0399 or 0.040 MGD.

**MINUTE NO. 3 - Reissuance of Virginia Pollutant Discharge Elimination System (VPDES)  
Permit Number VA0091316, Middlesex Courthouse WWTP  
Page 2 of 3**

- 2. DEQ has not considered the possible effects of sedimentation and erosion within the receiving stream.**

Staff noted that while the design flow of the facility corresponds roughly to the capacity of the existing stream channel, most wet weather events would send far more water into the stream; by comparison to these, the effects of erosion and sedimentation from the facility would be negligible.

- 3. There is existing life within the receiving stream, which will be affected during low flow periods from the additional flow of the proposed WWTP.**

The effluent limits contained in the permit are intended to support water quality standards and their underlying beneficial uses at the point of discharge, assuming no dilution by the receiving waters.

- 4. There is a request for a Tier 3 designation of the creek.**

Should Urbanna Creek be designated Tier 3 waters, it would not affect the reissuance of this permit or its successors, assuming that an expansion of this facility is not proposed by the permittee.

- 5. The discharge will inhibit the restoration of Urbanna Creek, particularly with recreational activities and the harvesting of shellfish.**

Nearly all of Urbanna Creek is already subject to some degree of condemnation regarding the taking of shellfish, notwithstanding this proposed discharge. If this discharge replaced the discharges from the Urbanna STP and the Middle Peninsula Jail (which discharges to another unnamed tributary of Urbanna Creek) the current condemnation areas would be reduced; even if no wastewater facilities discharged to the Urbanna Creek watershed, the presence of the marinas in Urbanna Creek would dictate some degree of condemnation.

- 6. Nothing in the permit prevents the facility from discharging well in excess of its design flow; if issued, the permit should contain a flow limit.**

Staff noted that unlike industrial facilities, which can control their water usage and thereby limit their wastewater flow, municipalities are subject to whatever is flushed their way by their customers, and a flow limit would be difficult for them to comply with. The permit contains a 95% flow requirement; if the flow influent to the facility exceeds 95% of design flow for three consecutive months, the permittee shall submit a plan of action to either correct inflow/infiltration or propose expansion of the facility.

**The response by the commenter was that the 95% flow requirement was not enforceable in the same way that an effluent limit is.**

Staff then stated that the permit contains effluent concentration and loading limits for Carbonaceous Biochemical Oxygen Demand (CBOD), Total Suspended Solids (TSS) and Total

**MINUTE NO. 3 - Reissuance of Virginia Pollutant Discharge Elimination System (VPDES)  
Permit Number VA0091316, Middlesex Courthouse WWTP  
Page 3 of 3**

Kjeldahl Nitrogen (TKN). The loading limits serve as a de facto limit on flow through the plant, since there would be a point beyond which reductions in effluent concentrations of CBOD, TSS and TKN would not compensate for the increased flow.

In response to concerns that the permittee might attempt to operate at or above a daily average flow of 0.040 MGD without seeking modification of the permit, staff recommended modifying the Certificate to Construct condition, found in Part I.B.11 of the permit, thus:

**“CTC, CTO Requirement:** The permittee shall, in accordance with the DEQ Sewage Collection and Treatment Regulation (9VAC 25-790), obtain a Certificate to Construct (CTC), and a Certificate to Operate (CTO) from the DEQ prior to constructing wastewater treatment works and operating the treatment works, respectively. An application for a CTC shall be accompanied by notification that the County will issue necessary approvals and design data verifying that downstream capacity is available to adequately convey and treat the design flows in accordance with the Sewage Collection and Treatment Works, 9VAC 25-790-10 et seq. Non-compliance with the CTC or CTO shall be deemed a violation of the permit.”

**Board Decision**

The Board voted unanimously to approve reissuance of the permit with the modified condition.



**Kyle Ivar Winter, P.E.**  
**Deputy Regional Director, Piedmont Regional Office**



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### EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON OCTOBER 26-27, 2009

#### MINUTE NO. 4 – Large-Scale Agricultural Operations on the Eastern Shore

Melanie D. Davenport, Director of the Division of Enforcement, summarized for the Board the status and history of the November 2008 petition for rulemaking regarding certain agricultural activities on the Eastern Shore. Ms. Davenport informed the Board that negotiations were still ongoing with the tomato growers and therefore the staff was not in a position to present a Memorandum of Agreement (MOA) at the meeting. Ms. Davenport also noted that in accordance with the Board's directive from its July 23, 2009, meeting, staff had provided to the Board a proposed Notice of Intended Regulatory Action (NOIRA) in response to the petition.

The Board asked numerous questions and discussed the content and timing of the negotiations of the MOA and the regulatory process. In addition, the Board heard from Steve Sturgis, representing the Virginia Agricultural Council, Ms. Katie Frazier, representing the Agribusiness Council, and Mr. Wilmer Stoneman, representing the Virginia Farm Bureau.

Based on the staff presentation and answers to questions, comments from the public and Board discussion, the Board, by a vote of 6 to 1, directed staff to (1) proceed with processing the NOIRA but to hold its publication until after the December 2009 Board meeting; and (2) present a signed MOA or evidence of significant progress in negotiating an MOA to the Board by December 1, 2009.

  
\_\_\_\_\_  
Melanie D. Davenport  
Director  
Division of Enforcement



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### Excerpt from the proceedings of the State Water Control Board at its meeting on October 26-27, 2009

#### MINUTE NO. 5 - Issuance of Virginia Pollution Abatement (VPA) Permit Number VPA00806, Nutri-Blend operation in Goochland County

The staff made a presentation on this individual permit, discussing the application process, public hearing and addressing comments raised during the public comment period. After the staff presentation, Board asked for any other speakers to come forward:

*Mary Powell, representative of Nutri-Blend:* Requested approval of the permit.

There were no other speakers.

In response to concerns that the underlying permit regulation was currently under development and that a ten-year permit term was a long period of time for a permit to not conform to its enabling regulation, staff recommended modifying the reopener condition, found in Part I.E.1. of the permit, thus:

The Board will ~~may~~ modify or revoke and reissue this permit, as appropriate and necessary, to incorporate changes to any applicable standard or requirement for the use or disposal of biosolids, industrial wastewater sludge, or septage promulgated under Section 405(d) of the Clean Water Act, State Water Control Law, or the VPA Permit Regulation (9VAC25-32).

#### Board Decision

The Board voted unanimously to approve issuance of the permit with the modified condition.

A handwritten signature in black ink, appearing to read "Kyle Ivar Winter".

**Kyle Ivar Winter, P.E.**

**Deputy Regional Director, Piedmont Regional Office**



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### EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON OCTOBER 26, 2009

#### MINUTE NO. 6 – Final Amendments to the Virginia Pollution Abatement General Permit Regulation for Poultry Waste Management

Betsy Bowles with the Office of Land Application Programs presented the final amendments to the Virginia Pollution Abatement General Permit Regulation for Poultry Waste Management. The Board was asked to adopt the final amendments to the Virginia Pollution Abatement General Permit Regulation for Poultry Waste Management.

The following members of the public addressed the Board: Ann Jennings, Jeff Kelble, David Sligh, and Hobey Bauhan.

A discussion by the board followed the staff presentation.

#### **Board Action:**

Based upon the information provided by staff, the Board voted unanimously to accept the staff recommendations:

1. Adopt the final amendments to the Virginia Pollution Abatement General Permit Regulation for Poultry Waste Management as presented with the addition of the following change to Subsection D of Section 80.

D. Poultry waste end-users or poultry waste brokers shall maintain the records demonstrating compliance with the requirements of [ ~~Part III A~~ subsections B through and ] C for at least three years and make them available to department personnel upon request.

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

Ellen Gilinsky, PhD.  
Director, Water Division



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### EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON October 26, 2009

MINUTE NO. 7 -- Regulation Amendment: Discharge of Sewage & Other Wastes from Boats

David Lazarus with the Office of Watershed Programs presented the regulation amendment of 9 VAC 25-71-70, Regulations Governing the Discharge of Sewage and Other Wastes from Boats. The Board was asked to amend the Water Quality Management Planning regulation to include Broad Creek, Jackson Creek and Fishing Bay Watersheds and their boundaries to the listing in the regulation (EPA approved No-Discharge Zone Designations). No public comments were received.

In accordance with the Board's delegation, the Board was notified of upcoming actions by the DEQ Director to approve six TMDLs, nine TMDL modifications, and to authorize updating the appropriate Water Quality Management Plans.

No questions followed the staff presentation.

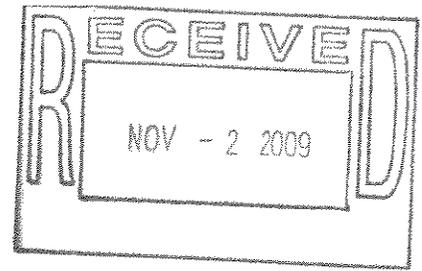
#### **Board Action:**

***Based upon the information provided by staff, the Board voted unanimously to accept the staff recommendation:***

Amend the Regulation Governing the Discharge of Sewage and Other Wastes from Boats 9 VAC 25-71-70, described in Tab E, to include the Broad Creek, Fishing Bay and Jackson Creek Watersheds and their boundaries to the No Discharge Zone listing in the regulation.

A handwritten signature in cursive script, appearing to read 'Ellen Gilinsky', written over a horizontal line.

Ellen Gilinsky, PhD.  
Director, Water Division



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### EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON OCTOBER 26 & 27, 2009

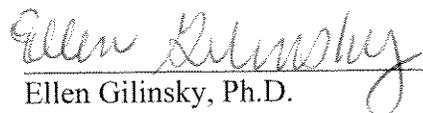
#### Minute 8 – Water Division Director Report

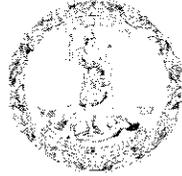
Ellen Gilinsky, Water Division Director, informed the Board that under the authority delegated to him by the SWCB in Dec 2004, Director Paylor will be asked to approve 6 TMDL reports and 9 TMDL report modifications that do not include wasteload allocations because they are bacterial TMDLs. The public comment period on these TMDLs closes November 10<sup>th</sup>.

The Board was given a brief update on the schedule for the Chesapeake Bay TMDL being conducted by EPA with assistance from the Bay states. The final TMDL is scheduled for completion by December 21, 2010, with a draft TMDL to be produced by July 2010. There will be extensive public involvement, with DEQ recently hosting a Bay TMDL webinar that reached over 400 participants. A series of public meetings at four locations within the Virginia Bay watershed will be held in mid-December.

The Board was informed of the success of our citizen monitoring program in overshooting the goal of having 3,000 miles monitored by citizen groups.

Finally the Board was updated on the current status of the King William Reservoir Project. On October 13, 2009 the Newport News City Council passed a resolution that terminates the KWR project. They have until November 12<sup>th</sup> to request a consent termination of their permit pursuant to that action; we are working with them on some assurances that terminating the permit does not affect issues related to wetland credits, intergovernmental agreements, and approved plans (eco-monitoring, salinity monitoring, conservation).

  
Ellen Gilinsky, Ph.D.  
Director, Water Division



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### EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS OCTOBER 26-27, 2009 MEETING

**MINUTE NO. 9** – Petitions to Extend Conditional Nutrient Waste Load Allocations in 9 VAC 25-720 (Water Quality Management Planning Regulation).

#### Staff Presentation

John Kennedy/OWQP-Chesapeake Bay Program made the staff presentation on petitions to extend the deadline for completing plant expansions needed to secure conditional nutrient Waste Load Allocations (WLAs) in the WQMP Regulation. The Board was authorized by 2009 legislation to accept petitions through 7/10/09 and conduct an expedited rulemaking process involving plants with "footnoted" WLAs, for extensions up to 12/31/15. Owners submitting a petition are still required to comply with their nutrient allocations as of 1/01/11. The Board must approve or deny these petitions and adopt any resulting regulation amendments within 180 days of the petition deadline (by 1/06/10). Before making a final decision on the petitions, the Board shall provide an opportunity for public comment.

Seven plants submitted petitions by the deadline: Cape Charles, Culpeper County-Mountain Run, Fauquier Co. W&SA-Remington, Fauquier Co. W&SA-Vint Hill, Harrisonburg-Rockingham S.A.-North River, Onancock, and Shenandoah Co.-N. Fork Regional. The petitioners' comments and requested extensions were summarized for the Board, and it was noted whether or not the owner had proceeded to construction, as DEQ was "reasonably assured" when the conditional WLAs were originally assigned.

The current status of the rulemaking was also summarized:

- Agency posted petitions on DEQ webpage shortly after 7/10/09 receipt deadline.
- Comment period ran from 7/24 – 8/28/09.
- Two sets of comments received.

The Chesapeake Bay Foundation and the Piedmont Environmental Council both opposed granting extensions for reasons explained to the Board, with CBF against all 7 and PEC opposing Culpeper County.

It was then explained that the principal reason for assigning nutrient WLAs in 2005 was the future achievement and maintenance of newly adopted water quality standards for Chesapeake Bay and its tidal tributaries. The conditional WLAs were not intended to grandfather future capacity needs of the dischargers, and the primary factor used to assess requests for "footnotes" was whether or not a "reasonable assurance" that the CTO would be secured by the 12/31/10 deadline was documented. Consideration was given to plants with an imminent need for additional capacity and actively involved in expansion. The staff's opinion was that dischargers with footnoted WLAs that had made a good-faith, bona fide effort to complete construction by the deadline merited consideration for modest extensions due to extenuating circumstances. This rationale would apply to the petitions from HRRSA-North River, FCW&SA-Vint Hill and Onancock. While DEQ is sympathetic to petitioners facing a tough economy and

dependent on new development to finance expansions, their situation is not unique – all VA localities are impacted by the recession, including the 15 dischargers denied “footnoted” WLAs in 2005.

### Citizen Comments

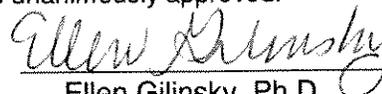
Two speakers then addressed the Board:

- Chris Pomeroy/AquaLaw, legal council for 2 petitioners – thanked the Board for the expected favorable consideration of HRRSA-North River and FCW&SA-Vint Hill. Requested that potential denial of the FCW&SA-Remington petition be reconsidered.
- Mike Gerel/Chesapeake Bay Foundation – restated CBF’s reasons for objecting to all 7 petitions, and expected that only under exceptional conditions would extensions be granted. When asked by the Board Chair what the “exceptional conditions” would be, explained that a shortage of design engineers, qualified construction contractors, or construction materials were the type of circumstances that might merit an extension – not other factors that seemed to be within the owners’ control.

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

1. That the Board approve amendments to 9 VAC 25-720, Water Quality Management Planning Regulation, extending the deadline for securing a CTO for expanded design flow and associated nutrient waste load allocations, for the following dischargers.
  - a. In 9 VAC 25-720-50. Potomac, Shenandoah River Basin, Section C:  
NOTE: (2) **Harrisonburg-Rockingham Regional S.A.-North River STP**: waste load allocations (WLAs) based on a design flow capacity of 20.8 million gallons per day (MGD). If plant is not certified to operate at 20.8 MGD design flow capacity by ~~12/31/10~~ 12/31/11, the WLAs will decrease to TN = 194,916 lbs/yr; TP = 14,619 lbs/yr, based on a design flow capacity of 16.0 MGD.
  - b. In 9 VAC 25-720-50. Potomac, Shenandoah River Basin, Section C:  
NOTE: (8) **Fauquier Co. W&SA-Vint Hill STP**: waste load allocations (WLAs) based on a design flow capacity of 0.95 million gallons per day (MGD). If plant is not certified to operate at 0.95 MGD design flow capacity by ~~12/31/10~~ 12/31/11, the WLAs will decrease to TN = 5,482 lbs/yr; TP = 548 lbs/yr, based on a design flow capacity of 0.6 MGD.
  - c. In 9 VAC 25-720-110. Chesapeake Bay - Small Coastal - Eastern Shore River Basin, Section C:  
(2) **Onancock STP**: waste load allocations (WLAs) based on a design flow capacity of 0.75 million gallons per day (MGD). If plant is not certified to operate at 0.75 MGD design flow capacity by ~~12/31/10~~ 12/31/11, the WLAs will decrease to TN = 3,046 lbs/yr; TP = 228 lbs/yr, based on a design flow capacity of 0.25 MGD.
2. Deny the deadline extension petitions for Culpeper County-Mountain Run, Fauquier County Water & Sanitation Authority-Remington, Shenandoah County-North Fork Regional, and Cape Charles.
3. Adopt, as final regulation amendments to 9 VAC 25-720, Water Quality Management Planning Regulation, the deadline extensions for Harrisonburg-Rockingham Regional S.A.-North River STP, Fauquier Co. W&SA-Vint Hill STP, and Onancock STP.

The motion to accept the staff recommendation was unanimously approved.



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

11/3/09

Date



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## EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS OCTOBER 26-27, 2009 MEETING

### MINUTE NO. 10 – Water Quality Standards-Remaining Triennial Review Issues

Alan Pollock, Manager of the Office of Water Quality Programs, summarized proposed amendments to the Water Quality Standards regulation which would employ a conversion factor with the lead water quality criteria for the protection of aquatic life to express the criteria as dissolved concentrations of lead, and to propose new water quality criteria for cadmium in freshwater.

Mr. Pollock briefly reviewed for the Board that at the October 2008 meeting the Board directed staff to reconvene the Triennial Review Advisory Committee to investigate six issues that had been separated out from the Triennial Review for further investigations. These issues involved whether or not there were sufficient new information available to justify modifying or replacing the water quality criteria for lead, cadmium, ammonia, copper or cyanide and whether there should be a regulatory prohibition of mixing zones for persistent bioaccumulative toxic substances. Mr. Pollock then briefly summarized the findings of the Triennial Review Advisory Committee's further investigations.

For the lead criteria, it was determined that the conversion factor recommended by EPA for adjusting the criteria values to dissolved measurements would also be appropriate for the Virginia lead criteria because the laboratory conditions were the same in the important toxicity studies that influence both the EPA and Virginia criteria. Staff recommended that DEQ proceed to public comment on a proposal to apply the EPA conversion factor to the Virginia lead criteria.

For the cadmium criteria, a 2006 report by the U.S. Geological Survey was found to provide the most comprehensive and up-to-date reassessment of the toxicity data available for cadmium and was suitable for updating the water quality criteria for cadmium in freshwater. Staff recommended that DEQ proceed to public comment on a proposal to revise the freshwater criteria for cadmium based on the 2006 U.S. Geological Survey report.

No regulatory action was recommended on the other four issues at this time. For ammonia and copper, the issues investigated involved how to use new toxicity data for freshwater mussels to adjust the current water quality criteria if it appeared that additional protection was needed. EPA is currently investigating the same issues in a reassessment of the ammonia criteria and will be making recommendations by early 2010 on how to incorporate toxicity data for freshwater mussels into the development of water quality criteria for ammonia. DEQ expects that changes to ammonia criteria will be warranted after EPA provides their reassessment. Many of the same issues involving freshwater mussel toxicity data are also important to the reassessment of the copper criteria. DEQ plans to review EPA's recommendations so that any proposed changes to the ammonia and/or copper criteria are addressed in a consistent manner.

A report on cyanide from the Water Environment Research Foundation (WERF) was reviewed that proposed adjusting the criteria. The potential for adjustment of the criteria for cyanide in freshwater was less than  $\pm 8\%$  and this was not considered not enough potential change to warrant revising the established criteria. For saltwater; the WERF report calculated an acute criterion that was five times higher than the current EPA criterion. This was caused by adding new toxicity data for Pacific Ocean crab species and from tests conducted at cold temperatures. No data were available for the blue crab. These data were not considered particularly applicable for Virginia waters.

The feasibility of prohibiting mixing zones for persistent, bioaccumulative toxic compounds was explored, but a regulatory action at this time was not recommended. DEQ is investigating possible changes to address mixing zones through permit guidance.

Board Decision:

The staff then recommended that the Board grant approval to proceed to public hearing and comment on the proposed amendments to the water quality criteria for lead and cadmium contained in 9 VAC 25-260-140, Criteria for Surface Water, Table of Parameters attached to the Board memo.

The motion to accept the staff recommendation was unanimously approved.



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Ellen Gilinsky, Ph.D.  
Director, Water Division



# COMMONWEALTH of VIRGINIA

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## EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS OCTOBER 26-27, 2009 MEETING

**MINUTE NO. 11** – Town of Culpeper STP - Petition to Amend Nutrient Waste Load Allocations in 9 VAC 25-720-70.C. (Water Quality Management Planning Regulation, Rappahannock Basin).

### Staff Presentation

John Kennedy/OWQP-Chesapeake Bay Program made the staff presentation on Town of Culpeper's petition for increased nutrient waste load allocations (WLAs) in the WQMP Regulation. Culpeper's existing nutrient WLAs, petition values, and requested increases are as follows:

	Design Flow (MGD)	TN Conc. (mg/l)	Total Nitrogen WLA (lbs/yr)	TP Conc. (mg/l)	Total Phosphorus WLA (lbs/yr)
Existing*	4.5	4.0	54,820	0.30	4,112
Petition	6.0	4.0	73,058	0.30	5,479
Difference	+ 1.5	No Change	+ 18,238	No Change	+ 1,367

Plant expansion is the petition driver and this is the second time that the Town has requested WLAs for 6.0 MGD; the Board denied this request under the original rulemaking in 2005. It was explained that the current 4.0 MGD plant is being upgraded/expanded to raise the capacity to 6.0 MGD along with state-of-the-art nutrient reduction technology (NRT), and is scheduled for completion on or before 12/31/10.

In late 2005, when nutrient WLAs were originally adopted, Culpeper STP was rated at 3.0 MGD and a plant expansion to 4.5 MGD was claimed to be imminent. This would accommodate high flows, caused in large part by excessive I&I and subject to a Consent Order. Culpeper provided a reasonable assurance the expansion would be complete by 12/31/10, and was assigned conditional WLAs based on 4.5 MGD. If a CTO for the expanded plant is not secured by the 12/31/10 deadline, the WLAs will drop to values based on 3.0 MGD. Culpeper completed an interim expansion to 4.0 MGD along with solids handling system improvements (no NRT installed) and received a CTO on 6/12/08 for this facility.

During the re-opened public comment period (July-August 2005) on the nutrient WLA rulemaking, the Town requested a further increase in the design flow to 6.0 MGD. The staff memorandum to the Board for their September 2005 meeting summarized the agency's position:

*Town of Culpeper STP – WLAs currently based on 4.5 MGD; request increase based on 6.0 MGD. Basis for WLAs remains unchanged. No expectation of CTO for expanded design flow by 2010, based on information provided. Town of Culpeper's request for increased capacity included an expectation to accommodate flows from surrounding portions of Culpeper County. As noted in response to comments from Culpeper County, the County has documented their intention to provide service to these areas, thus removing the need for this capacity in the Town's plant.*

It was further explained that since nutrient WLAs were adopted in 2005 it has become difficult to assess the capacity needs and allocation requests from the Town and Culpeper County in isolation – the localities must be considered together. The County's planned Mountain Run STP also received conditionally increased nutrient WLAs (from 1.5 to 2.5 MGD) to serve "a large commercial and mixed use development... projected to produce approximately 0.75 MGD. Mountain Run plant will also incorporate two currently permitted plants (Airpark plant and Elkwood plant), with plans for 2.5 MGD capacity to be on-line by 2010."

It was noted the Town received a 2007 WQIF grant for the 6.0 MGD upgrade/expansion project, with eligibility for all NRT components pro-rated to 90% due to design flow in excess of what was deemed "reasonable and necessary" (4.5 MGD) for a 20 year design life. The reduced grant eligibility recognized excessive I&I and the apparent duplication of areas claimed to be served by both the Town and County.

The current status of the rulemaking was also summarized:

- Agency Response to Petition for Rulemaking published in the Virginia Register on 8/3/09.
- Public Comment Period closed 8/24/09; two sets of comments received (Chesapeake Bay Foundation and Piedmont Environmental Council both opposed the petition).

It was then discussed that an important factor when considering amendments to nutrient WLAs is to avoid further nutrient discharge increases to impaired waters whenever possible to aid in maintaining water quality standards. The Town has the capability to meet its TN WLA by operating the upgraded NRT, now being installed, at its design intent up to 6.0 MGD. The TP WLA can be achieved at 6.0 MGD through operation at 0.22 mg/l annual average, which is possible using available technology.

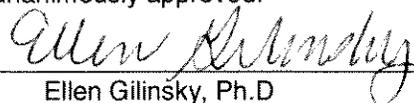
Staff is concerned that with the County's 1.5 MGD design flow WLAs, at a minimum, for Mountain Run STP and their stated intention to build a 2.5 MGD plant (P&S approved, Certificate to Construct issued but project not yet bid), granting an additional 1.5 MGD capacity and associated WLA to the Town may be excessive for the area and the Rappahannock basin.

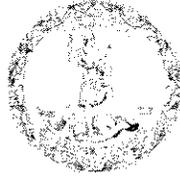
There also appears to be an opportunity for a shared, regional approach to address the capacity needs of the Town and the County for future service areas that has not been fully explored. A Memorandum of Understanding has been signed and discussions have taken place between the localities on this and other issues facing the region, but no final solution has been agreed upon yet. Conditions are essentially the same as when the Board adopted the original "footnoted" WLAs for the Town based on 4.5 MGD, in terms of justifying additional design flow.

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

1. That the Board not initiate a rulemaking to increase nutrient WLAs for the Town of Culpeper, since the Town's request for the increased WLAs due to a plant expansion to 6.0 MGD under the original rulemaking was not recommended by the staff, and the Board adopted conditional WLAs for the Town based on a design flow of 4.5 MGD.
2. Direct staff to assist the Town, as needed and requested, in securing any shared WLA that may result from a regional approach with the County that consolidates allocations for the area.

The motion to accept the staff recommendation was unanimously approved.

  
\_\_\_\_\_  
Ellen Gilinsky, Ph.D  
Director, Division of Water Quality Programs  
11/3/09  
\_\_\_\_\_  
Date



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### EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS OCTOBER 26-27, 2009 MEETING

**MINUTE NO. 12** – Louisa Co.-Zion Crossroads STP - Petition for Nutrient Waste Load Allocations in the Water Quality Management Planning Regulation, 9 VAC 25-720.

#### Staff Presentation

John Kennedy/OWQP-Chesapeake Bay Program made the staff presentation on Louisa County's petition for nutrient waste load allocations (WLAs) in the WQMP Regulation for their Zion Crossroads plant.

When nutrient WLAs were adopted in late 2005 for "significant dischargers", this included POTWs with a design flow of 0.5 MGD or greater discharging to non-tidal waters in the Bay watershed. At that time, the Zion Crossroads STP (a discharger in the non-tidal York basin) was certified to operate at 0.1 MGD; thus, the plant was not identified as a significant discharger and was not assigned nutrient WLAs. Nutrient loads from "non-significant dischargers" are addressed in the 2005 Nutrient Credit Exchange law, by allowing for "permitted design capacity" (PDC) based on the facility's discharge as of 7/1/05. This action effectively "held the line" on the non-significant dischargers' nutrient loads, but did not assign WLAs in the WQMP Regulation. The law assigns a PDC load that cannot be exceeded, for a non-significant discharger that expands in the future, based on the plant's certified design flow as of 7/1/05 and assumed concentrations of 18.7 mg/l nitrogen and 2.5 mg/l phosphorus.

The rulemaking to assign WLAs did give consideration to some plants that were actively expanding from "non-significant" to "significant" status, conditioned on having a CTO for the expansion by 12/31/10. Plants receiving conditional allocations informed DEQ during the rulemaking of their intention to expand and provided reasonable assurance that the CTO would be secured by the deadline. Louisa County did not provide such notification at the time and has now petitioned for allocations for a proposed expansion to 0.7 MGD.

The current status of the rulemaking was summarized:

- By letter dated 4/10/07, Louisa County petitioned for nutrient WLAs in the WQMP Regulation for their Zion Crossroads facility. The discharge permit contains flow tiers of 0.1 and 0.7 MGD. The plant currently has a CTO at 0.1 MGD and the County intends to expand to the higher flow tier, claiming the expansion will be completed and a CTO issued by 12/22/10. The PDC allowing nutrient loads to be discharged from the existing 0.1 MGD facility is:
  - TN = 5,695 lbs/yr (2,905 lbs/yr delivered load to tidal waters)
  - TP = 609 lbs/yr (365 lbs/yr delivered load)

The requested amendments are:

- TN = 12,785 lbs/yr; a 7,090 lbs/yr increase (delivered load inc. by 3,615 lbs/yr)
- TP = 1,492 lbs/yr; an 883 lbs/yr increase (delivered load inc. by 530 lbs/yr)

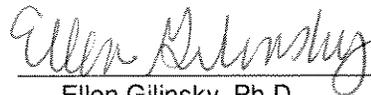
- The "Agency Response to Petition" was published in the Virginia Register on 5/28/07; public comment period ended 6/18/07, with two sets of comments received. The Chesapeake Bay Foundation opposed the petition; Louisa County Board of Supervisors supported the petition.
- The NOIRA was published in the Virginia Register on 2/4/08, a public meeting was held 3/7/08, and the public comment period ended 3/10/08. Summary of comments received:
  - Louisa County Board of Supervisors supported the requested amendments.
  - Twelve individuals submitted similar comments opposing the requested amendments.
  - The Historic Green Springs, Inc., Chesapeake Bay Foundation, and The Environmental Law Group opposed the requested amendments.
- VPDES permit reissuance was ongoing during the same period as the NOIRA process. It was apparent at the NOIRA public meeting there was confusion and concern about permit limits and the perceived overlap with the rulemaking for WLAs. Therefore, DEQ decided in April 2008 to interrupt the rulemaking to allow time for the SWCB to act on VPDES permit reissuance.
- SWCB approved the reissued permit on 12/4/08 (citizen group filed notice of appeal after Board action; court decision pending).
- NOIRA Technical Advisory Committee formed and TAC meeting held on 6/4/09.
  - Concerns were raised by some members about whether or not there was a compelling, imminent need for plant expansion. The County was given an opportunity to provide additional details and information about the expansion status and justification for increased design flow after the TAC meeting. County staff provided an updated project schedule, showing:
    - Design submitted for DEQ review/approval 7/24/09 (P&S not yet been submitted).
    - DEQ approval of design 9/23/09.
    - Commence construction 11/5/09; substantial completion by 12/22/10 with CTO issuance.
    - Final completion 3/23/11.
  - Concerns were also raised about past plant performance and violations; potential for water quality impacts downstream due to increased flow and pollutant loads.
  - It was noted the reissued VPDES permit was written without reliance on the requested nutrient WLA increase.
  - It was also noted that a nearby golf course is a potential and likely customer for reclaimed wastewater to be used for irrigation.
  - The TAC discussed the possibility of Louisa County meeting its nutrient WLAs by "bubbling" the Zion Crossroads discharge with the County's capacity at the Louisa County Regional wastewater plant (jointly owned with the Town of Louisa). After the TAC meeting, the County stated that the facilities are not commonly owned (Zion Crossroads plant is owned by the Louisa County Water Authority) and the Town of Louisa doesn't wish to bubble its permitted design capacity from Louisa Regional.
  - TAC members were briefed on the upcoming Chesapeake Bay TMDL, scheduled to be produced by EPA by December 2010.

It was then discussed that an important factor when considering amendments to nutrient WLAs is to avoid further nutrient discharge increases to impaired waters whenever possible to aid in maintaining water quality standards. Louisa County did not pursue the increased WLAs due to a plant expansion under the original rulemaking adopted by the Board in 2005. The County has the capability to meet its TN WLA by operating available state-of-the-art nutrient reduction technology up to a flow of 0.62 MGD. At a design flow of 0.7 MGD, the County would need to acquire 700 lbs/yr of TN offsets under the Nutrient Credit Exchange Program. The TN offset could also be achieved through reclamation/reuse, thus reducing the surface water discharge. The TP WLA can be achieved at 0.7 MGD design flow through operation at 0.29 mg/l annual average, which is possible using available technology.

In addition, Louisa County has not provided a reasonable assurance that the CTO for the expanded plant will be secured by 12/31/10. Design documents were not submitted by the date shown on the County's revised schedule (due 3 months ago), and the project does not have an approved Preliminary Engineering Report (PER; a precursor to design plans and specifications). The Zion Crossroads upgrade/expansion project PER was submitted 9/10/07, revised 2/26/08, commented on by DEQ 3/27/08, and returned to the County 11/13/08; current review status is "inactive".

**Board Decision** - The staff then recommended that the Board deny the petition from Louisa County requesting amended nutrient waste load allocations in 9 VAC 25-720, the Water Quality Management Planning Regulation, for their Zion Crossroads plant.

The motion to accept the staff recommendation was unanimously approved.



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

11/13/09

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Date



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## EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON OCTOBER 26 AND 27, 2009

### MINUTE NO. 13 – Report on Facilities in Significant Noncompliance

Kathleen O'Connell, Water Enforcement Program Manager, reported to the Board that there were no regulated parties to be reported as being in significant noncompliance for the quarter ending March 31, 2009.

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 OCTOBER 26 AND 27, 2009

#### MINUTE NO. 14 – VPDES Consent Special Orders

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

1. The Town of Appomattox
2. Rappahannock County Water and Sewer Authority, Sperryville STP
3. Hopewell Regional Waste Treatment Facility and Sanitary System
4. Standex Engraving LLC
5. Tyson Foods, Inc.
6. Strata Mine Services, Inc.
7. Lyon Shipyard, Inc.
8. Sandy Bottom Materials, 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 cursive script, reading "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 OCTOBER 26 AND 27, 2009

### MINUTE NO. 15 - VWP Consent Special Orders

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

1. Pro-Line Performance, Inc.
2. NVP, Inc. for Ewell's Mill Development Project
3. West Neck Properties, 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 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 OCTOBER 26 and 27, 2009

### MINUTE NO. 16 – VWP Enforcement Policy

The Board unanimously directed staff to ensure that all Orders meet the requirements of no-net-loss of wetland acreage and no-net-loss of function in all surface waters as described in 9 VAC 25-210-116.

A handwritten signature in cursive script, reading "Lee M. Crowell", written over a horizontal line.

Lee M. Crowell  
Wetlands Enforcement Program Manager  
Division of Enforcement



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### EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON OCTOBER 27, 2009

#### MINUTE NO. 17 - VWP Consent Special Orders

Lee M. Crowell, Wetlands Enforcement Program Manager, presented to the Board the Consent Special Order for:

1. Centerville II, 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.

A handwritten signature in cursive script that reads "L. M. Crowell".

Lee M. Crowell  
Wetlands Enforcement Program Manager  
Division of Enforcement



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### EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON OCTOBER 26 AND 27, 2009

#### MINUTE NO. 18 – Other Program Consent Special Orders

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

1. Isle of Wight County
2. Town of Front Royal
3. Donnie C. Campbell, Sr.
4. Kevin Lucas

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 cursive script, reading '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 OCTOBER 26 AND 27, 2009

#### MINUTE NO. 19 – Oil Consent Special Orders

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

1. HMR, LLC
2. Miller Oil, Inc.
3. Highlands Petroleum Oil Corp.
4. Bay Bridge Enterprises, 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.

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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### EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON OCTOBER 26-27, 2009

#### Minute No. 20 – Public Forum

No one appeared during the public forum.

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

\_\_\_\_\_  
Cindy M. Berndt



# COMMONWEALTH of VIRGINIA

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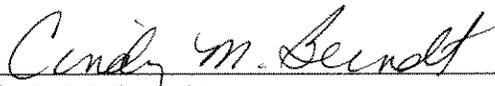
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### EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON OCTOBER 26-27, 2009

#### Minute No. 21 – Alternatives Analysis

After some discussion, the Board unanimously requested that the Department initiate a rulemaking to establish requirements for alternatives analysis for applicants seeking discharge permits.

  
Cindy M. Berndt



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### EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON OCTOBER 26-27, 2009

#### Minute No. 22 – Future Meetings

The Board confirmed December 14-15, 2009, as the date of the next meeting.

  
\_\_\_\_\_  
Cindy M. Berndt