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
Fax: 804-698-4019 - TDD (804) 698-4021
www.deq.virginia.gov

Douglas W. Domenech
Secretary of Natural Resources

David K. Paylor
Director

(804) 698-4020
1-800-592-5482

MINUTES
STATE WATER CONTROL BOARD

September 27-28, 2010
House Room C
General Assembly Building
9th & Broad Streets
Richmond, Virginia

Board Members Present:

W. Shelton Miles, III, Chair
Lou Ann Jessee Wallace
Roberta A. Kellam
William A Pruitt
Robert H. Wayland, III,, Vice-Chair
Robert L. Dunn
William B. Bott

Staff Present:

David K. Paylor, Director
Department of Environmental Quality
Cindy M. Berndt
Department of Environmental Quality

Attorney General's Office:

John Butcher, Special Assistant Attorney General

1) The attached minutes summarize activities that took place at this Board Meeting.

2) The meeting was convened on June 27, 2010, at 9:30 a.m., recessed at 10:50 a.m., reconvened at 11:05 a.m., recessed at 12:00 p.m., reconvened at 1:00 p.m., closed session at 1:25 p.m., recessed at 2:45, reconvened and open session at 2:55, recessed for the day at 3:36, reconvened on June 27, 2010 at 9:30 a.m., recessed at 10:55 a.m., reconvened as11:05 a.m., recessed at 12:20 p.m., reconvened at 1:15 p.m. and adjourned at 2:58 p.m.

Approved Minute No. 1
Dec 9, 2010

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EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON SEPTEMBER 27-28, 2010

MINUTE NO. 1 - <u>Introduction of New Members</u>

Messrs. William A Pruitt and Robert L. Dunn were introduced.

Cindy M. Berndt

Cindy M. Berndt

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EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON SEPTEMBER 27-28, 2010

MINUTE NO. 2 – Minutes

The Board approved the Minutes from the June 21-22, 2010, meeting as contained in the Board book with a revision to Minute No. 10 distributed at the meeting.

Cindy M. Berndt

Cindy M. Berndt

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EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON SEPTEMBER 27-28, 2010

MINUTE NO. 3 – <u>Election of Vice-Chair</u>

The Board unanimously elected Robert H. Wayland, III, as Vice-Chair of the Board.

Cindy M. Berndt

Cindy M. Berndt

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EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON SEPTEMBER 27-28, 2010

MINUTE NO. 4 - General Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation for Coin Operated Laundries, 9VAC25-810

The staff recommended that the board amend the existing 9VAC25-810, General VPDES Permit Regulation for the Coin Operated Laundries. The staff also recommended that the board receives, consider or respond to petitions by any interested person at any time with respect to reconsideration or revision of this regulation.

Board Decision

Based on the briefing material and the staff presentation, the Board voted unanimously to amend the existing 9VAC25-810, General VPDES Permit Regulation for Coin Operated Laundries. The Board also voted to receive, consider and respond to petitions at any time with respect to reconsideration or revision of this regulation.

Ellen Gilinsky

Ellen Gilinsky, Ph.D.
Director, Water Division

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EXCERPT FROM THE PROCEEDINGS OF THE
STATE WATER CONTROL BOARD
AT ITS MEETING ON
September 27, 2010

MINUTE NO. 5 – 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.

No members of the public addressed the Board.

No questions 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 Regulation and General Permit for Poultry Waste Management as presented.

Ellen Gilinsky, PhD.
Director, Water Division

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EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON SEPTEMBER 27-28, 2010

MINUTE NO. 6 - General Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation for Total Nitrogen and Total Phosphorus Discharge and Nutrient Trading in the Chesapeake Bay Watershed in Virginia, 9VAC25-820

The staff recommended that the board authorize a notice of public comment period and public hearing on the draft General VPDES Watershed Permit Regulation for Total Nitrogen and Total Phosphorus Discharge and Nutrient Trading in the Chesapeake Bay Watershed in Virginia that was presented in the board meeting package. The staff also recommended that the board authorize the staff to serve as hearing officer at the public hearing.

Board Decision

Based on the briefing material and the staff presentation, the Board voted unanimously to authorize a notice of public comment period and to hold public hearing for the General VPDES Watershed Permit Regulation for Total Nitrogen and Total Phosphorus Discharge and Nutrient Trading in the Chesapeake Bay Watershed in Virginia. The Board also voted unanimously to authorize the staff to serve as hearing officer at the public hearing.

Ellen Gilinsky

Ellen Gilinsky, Ph.D.
Director, Water Division

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EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON SEPTEMBER 27-28, 2010

MINUTE NO. 7 - General Virginia Pollutant Discharge Elimination System (VPDES) Permit Discharges Resulting from the Application of Pesticides to Surface Waters, 9VAC25-800

The staff recommended that the board authorize a notice of public comment period and public hearing on the draft General VPDES Watershed Permit Regulation for Discharges Resulting from the Application of Pesticides to Surface Waters that was presented in the board meeting package. The staff also recommended that the board authorize the staff to serve as hearing officer at the public hearing.

Board Decision

Based on the briefing material and the staff presentation, the Board voted unanimously to authorize a notice of public comment period and to hold public hearing for the General VPDES Watershed Permit Regulation for Discharges Resulting from the Application of Pesticides to Surface Waters. The Board also voted unanimously to authorize the staff to serve as hearing officer at the public hearing.

Ellen Gilinsky

Ellen Gilinsky, Ph.D.
Director, Water Division

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Street address: 629 East Main Street, Richmond, Virginia 23219
Mailing address: P.O. Box 10009, Richmond, Virginia 23240
Fax (804) 698-4500 TDD (804) 698-4021
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Secretary of Natural Resources

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EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON SEPTEMBER 27-28, 2010

MINUTE NO. 8 – Report on Facilities in Significant Noncompliance

Kathleen O'Connell, Water Enforcement Program Manager, reported to the Board that there were three regulated parties, Arlington County, New Kent Count and the Town of Warrenton, to be reported as being in significant noncompliance for the quarter ending March 31, 2010. She additionally reported that Arlington's compliance issues were addressed in a consent special order to be presented at the September meeting, that enforcement action would not be proposed in Warrenton's case as its compliance issues appear to have been related to start up of its upgraded wastewater treatment plant and they have ceased and that enforcement action was being evaluated in the case of New Kent County.

The Board accepted the report.

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

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Mailing address: P.O. Box 10009, Richmond, Virginia 23240
Fax (804) 698-4500 TDD (804) 698-4021
www.deq.virginia.gov

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Secretary of Natural Resources

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1-800-592-5482

EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON SEPTEMBER 27-28, 2010

MINUTE NO. 9– VPA Consent Special Orders

Kathleen O'Connell, Water Enforcement Program Manager, presented to the Board the Consent Special Order for George W. Kemper, IV.

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

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

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EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON SEPTEMBER 27-28, 2010

MINUTE NO. 10 – VPDES Consent Special Orders

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

1. Lunenburg County, Administrative Complex Sewage Treatment Plant
2. Halifax County Service Authority, Maple Avenue Wastewater Treatment Plant
3. Roanoke Electric Steel, d/b/a Steel Dynamics
4. Arlington County, Arlington County Water Pollution Control Plant
5. Dominion Campground, Inc.
6. Town of Alberta, Alberta Wastewater Treatment Plant
7. BFI Waste Systems of Virginia LLC
8. Town of Cape Charles, Cape Charles Wastewater Treatment Plant
9. KmX Chemical Corp.
10. Metro Used Auto Parts, Inc.
11. Town of Monterey, Monterey Sewage Treatment Plant

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

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

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MINUTE NO. 11 - VWP Consent Special Orders

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

1. Samuel Aman (with a revised Appendix A)
2. Courtney Development, 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.

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 SEPTEMBER 27-28, 2010

MINUTE NO. 12 - Consent Special Order, Other

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

1. Mr. Mike Leech, M&M Grocery
2. Laburnum, LLC
3. Rahim Corp.
4. Eagle Transport of Virginia, Inc.
5. IMTT-Virginia, Chesapeake Terminal
6. North Carolina & Virginia Railroad Co., LLC

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

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

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EXCERPT FROM THE PROCEEDINGS OF THE BOARD AT ITS MEETING ON
September 27-28, 2010

MINUTE 13- Development of Virginia's FY 2011 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 August 26, 2010 pertaining to the development of Virginia's Clean Water Revolving Loan Project Priority List and the Intended Use Plan for FY 2011.

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 2011 applicants in priority funding order. The 2011 application pool was large at $183.4 million. He noted that there would be approximately $100 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 $175 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 one of the loan requests was not ready to proceed and could be deferred to a later funding cycle. He stated that, through a leveraged loan program, the Board would have sufficient revenue available to fund the $173.1 million for all the requests that provide direct water quality benefits and are ready to proceed.

Following discussions, the Board voted unanimously to:

1. Target the following 34 applicants for loan assistance from available and anticipated funds and authorize the staff to present the Board's proposed FY 2011 loan project priority list for public review and comment.

1	Rivanna Water & Sewer Auth.	5,200,000
2	City of Lynchburg	10,100,000
3	Upper Occoquan Service Auth.	20,624,210
4	Alexandria Sanitation Authority	4,900,000
5	City of Covington	5,733,300
6	City of Norfolk	9,300,000
7	Craig-New Castle PSA	365,200
8	Rivanna Water & Sewer Auth.	4,048,000
9	Rivanna Water & Sewer Auth.	6,900,000
10	City of Charlottesville	3,647,680
11	Western VA Water Authority	12,602,500
12	Western VA Water Authority	1,500,000
13	Western VA Water Authority	4,375,000
14	Western VA Water Authority	6,872,000
15	Town of Crewe	6,794,399
16	Northampton County	10,920,746
17	Augusta County	2,562,400
18	Wythe County	1,742,000
19	City of Lynchburg	9,000,000
20	Washington County Service Auth.	1,604,126
21	Washington County Service Auth.	1,793,607
22	Washington County Service Auth.	1,024,613
23	Scott County PSA	590,361
24	Town of Pulaski	1,284,290
25	Coeburn Norton Wise RWTA	11,225,575
26	Town of Abingdon	2,124,000
27	City of Danville	2,000,000
28	Shenandoah County	2,095,642

29	Upper Occoquan Service Auth.	1,876,150
30	HRSD	4,518,000
31	Upper Occoquan Service Auth.	2,499,330
32	Botetourt County	2,700,000
33	Trust for Public Land	8,000,000
34	The Nature Conservancy	2,660,000
		$173,183,129

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 ON SEPTEMBER 27-28, 2010

Minute 14 – Water Division Director Report

Ellen Gilinsky, Water Division Director, gave the Board a status report on the draft Chesapeake Bay Watershed Implementation Plan (WIP) and EPAs draft Chesapeake Bay TMDL. The WIP was developed by DEQ, DCR and other state agencies with significant input from a stakeholders workgroup, and sets forth the map for how Virginia is going to meet the target nitrogen phosphorus and sediment load allocations in the Bay TMDL by 2025, with 60% of the reduction achieved by 2017. The Virginia WIP relies on trading between the wastewater, stormwater, agriculture and onsite sectors to achieve the TMDL loads. EPA's initial comments were that the Virginia plan does not meet reasonable assurance as it does not contain specific legislative proposals for rulemakings for expansion of regulatory programs, particularly for agriculture and stormwater, nor does it lay out the specific drivers for trading between sectors. DEQ will be working with EPA to finalize the WIPs as part of the finalized Bay TMDL to be produced in December 2010 following a public comment period through mid November.

Ms. Gilinsky also reported that in accordance with the Board's delegation, the Board was notified of upcoming actions by the DEQ Director to approve 21 TMDLs, four TMDL modifications, and to authorize updating the appropriate Water Quality Management Plans.

Ellen Gilinsky, Ph.D.
Director, Water Division

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EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON SEPTEMBER 27-28, 2010

MINUTE NO. 15 – Public Forum

Mr. John Martin appeared to advise the Board of his concerns regarding the Charlottesville area water supply plan.

Cindy M. Berndt

Cindy M. Berndt

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EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON SEPTEMBER 27-28, 2010

Minute 16 – 305(b) (Water Quality Assessment) Report

Darryl Glover, Office of Water Monitoring and Assessment, presented a summary of the 2010 Draft 305(b)/303(d) Water Quality Assessment Integrated Report. This report was released on August 23, 2010. Public comment was accepted through September 24.

It was reported that monitoring has been achieved at some time within 98% of the watersheds in Virginia since the 2002 report. Out of 7,600 stations data providing data in 2010, over 1,200 were from citizen monitoring organizations. Citizen data contributed over 3,000 river/stream miles and almost 29,000 lake acres in the 2010 report.

Although nearly 1,400 new river/stream miles are being reported as impaired, over 1,500 miles are candidates for either full or partial delisting (removal) from the Impaired Waters List. In total, over 600 (units of) waters are candidates for either full or partial delisting, which is a record number. Just over 1,000 others have been approved to date. Roughly 400 of the combined 1,600 delistings are attributed to point source permitting.

Sixty percent of Virginia's 1,247 watersheds have only 0 – 2 impairments each. The remaining forty percent have 3 or more impairments. Bacteria remain the number one impairment in our rivers/streams, while PCBs are the most widespread in both lakes and estuaries (followed by submerged aquatic vegetation and dissolved oxygen in estuaries). However, trends for bacteria and phosphorus since 1985 show decreasing levels of both. Trends for nitrogen over the same time period are generally inconclusive. There are 64 fish consumption advisories in the 2010 report, 10 more than in the 2008 report. Most of them are for PCBs as well.

The Chesapeake Bay and its tributaries are showing improvements in dissolved oxygen levels in the Potomac embayments, upper Rappahannock, lower York, middle James, and Chickahominy, while the mainstem Bay is barely in non-attainment for dissolved oxygen. A few parts of the James show chlorophyll to be in attainment also. Submerged aquatic vegetation levels are about the same in both 2008 and 2010.

Ellen Gilinsky

Ellen Gilinsky, Ph.D.
Director, Water Division

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EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON SEPTEMBER 27-28, 2010

MINUTE NO. 17 – Closed Session

Pursuant to § 2.2-3711(a)(7) of the Code of Virginia the Board met in 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, where such consultation or briefing in open meeting would adversely affect the negotiating or litigating posture of the public body concerning:

Frederick-Winchester Service Authority v. State Water Control Board and Department of Environmental Quality, Case No. CL09000407-00,

Recyc Systems, Inc. v. State Water Control Bd., regarding VPA Permit No. 00054, and

Synagro Technologies, Inc. v. State Water Control Board regarding VPA Permit No. 03004.

Pursuant to § 2.2-3712 (D) of the Code of Virginia, the Board, by roll call vote, unanimously certified that only those matters identified above, which are lawfully exempted from the requirements of the Freedom of Information Act, were considered during Closed Session.

Cindy M. Berndt

Cindy M. Berndt

COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
VALLEY REGIONAL OFFICE
4411 Early Road, P.O. Box 3000, Harrisonburg, Virginia 22801
(540) 574-7800 Fax (540) 574-7878
www.deq.virginia.gov

Douglas W. Domenech
Secretary of Natural Resources

David K. Paylor
Director

Amy Thatcher Owens
Regional Director

EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON SEPTEMBER 27 - 28, 2010

MINUTE NO. 18 - Issuance of Virginia Pollution Abatement (VPA) Permit Number VPA01579, Recyc Systems, Inc. – Shenandoah County

DEQ Staff made a presentation for the issuance of the proposed Virginia Pollution Abatement Permit for the land application of biosolids in Shenandoah County by Recyc Systems, Inc. The presentation included a discussion of the project, a summary of the comments and discussion of the proposed changes to the draft permit. One proposed change to the draft permit concerned adding Condition I.C.3, Change of Ownership. The text of the proposed addition follows:

> In the event that land upon which biosolids has been applied changes ownership with 38 months of the date of land application, the permit holder shall notify the new landowner of the public access and crop management restrictions and the dates and amounts of biosolids land application. This notification, including notice to DEQ, shall occur within 90 days of the change in land ownership and no later than 2 weeks following the permit holder becoming aware of the change in ownership.

The second proposed change to the draft permit concerned amending Condition I.E.1, Permit Reopener. The text of the proposed change follows:

> The Board ~~may~~ will 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).

After the staff presentation and questions by the Board, the Board received comment from the public. Appearing before the Board were: Susan Trumbo with Recyc Systems, Inc., Chris Peot, Henry Staudinger, Leslie Mitchell-Watson, Doug Walker, Robert Clark, Denis Atwood, Jeff Kelbe, and Kim Hafner.

The Board then approved the staff recommendation that based on the agency permit files, the comments received during the public comment period and any explanation of comments previously received during the public comment period made at the Board meeting, the Board:

1. Find that:
   a. the permit has been prepared in conformance with all applicable statutes, regulations and agency practices;

b. the limits and conditions in the permit have been established to ensure that pollutant management and
land application is performed in a manner that will protect public health and the environment and that the
escape, flow or discharge of pollutants into state waters is prevented.; and
c. all public comments relevant to the permit have been considered;

2. Approve the permit and conditions as presented today, adding the change of ownership language as follows:

Condition I.C.3, Permit Reopener
In the event that land upon which biosolids has been applied changes ownership with 38 months of the date of land application, the permit holder shall notify the new landowner of the public access and crop management restrictions and the dates and amounts of biosolids land application. This notification, including notice to DEQ, shall occur within 90 days of the change in land ownership and no later than 2 weeks following the permit holder becoming aware of the change in ownership.

3. Approve the permit and conditions as presented today, amending the reopener language as follows:

Condition I.E.1, Permit Reopener
The Board ~~may~~ will 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).; and

4. Authorize the Director to issue the permit as approved by the Board.

The vote was 6 to 1 (Ms. Kellam voted no).

Amy T. Owens
Regional Director, Valley Regional Office

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

Douglas W. Domenech
Secretary of Natural Resources

David K. Paylor
Director

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

EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON SEPTEMBER 27 AND 28, 2010

MINUTE NO. 19 - Plasticulture

Melanie D. Davenport, Director of the Division of Enforcement, updated the Board on the meetings that had occurred among the parties since its June 2010 meeting. Ms. Davenport reported that each of the growers and the Eastern Shore Soil and Waster District had signed a revised Memorandum of Agreement ("MOA") which addressed many of the issues that the Board had raised in discussions at its previous meetings.

The following speakers spoke in support of the signed MOA: the Honorable Todd Haymore, Ms. Robin Rich-Coates, Mr. Travis Hill and Ms. Katie Frazier. Mr. Darrell Marshall of the Virginia Department of Agriculture and Consumer Services gave a short presentation to the Board on implementation of the Agricultural Stewardship Act. Mr. John Daniel and Mr. Pete Terry (the petitioner) spoke against the Board accepting the MOA in place of moving forward with a regulatory action.

By unanimous vote, the Board voted to (1) withdraw its proposed regulatory action on regulating large scale agriculture on the Eastern Shore, (2) direct staff to report to the Board on the status of implementation of the MOA at the Board's Spring and Fall 2011 meetings, and (3) recommend that the staff research the feasibility of sampling and analyzing tomato field runoff to determine if there are impacts to surface waters from these operations. In its vote, the Board noted that it has the authority to reinitiate a regulatory action based on its ongoing evaluation of the implementation of the MOA.

Melanie D. Davenport

Melanie D. Davenport
Director
Division of Enforcement

COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
NORTHERN REGIONAL OFFICE
13901 Crown Court, Woodbridge, Virginia 22193
(703) 583-3800 Fax (703) 583-3821
www.deq.virginia.gov

Douglas W. Domenech
Secretary of Natural Resources

David K. Paylor
Director

Thomas A. Faha
Regional Director

EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON SEPTEMBER 27 - 28, 2010

MINUTE NO. 20 - Issuance of Virginia Pollution Abatement (VPA) Permit Number VPA00053, Agri-Services Corp– Fauquier County

Staff made a presentation for the issuance of the proposed Virginia Pollution Abatement Permit for the land application of biosolids in Fauquier County by Agri-Services Corp. The presentation included a discussion of the project, a summary of the comments and discussion of the proposed changes to the draft permit. One proposed change to the draft permit concerned adding Condition I.C.3, Change of Ownership. The text of the proposed addition follows:

> In the event that land upon which biosolids has been applied changes ownership with 38 months of the date of land application, the permit holder shall notify the new landowner of the public access and crop management restrictions and the dates and amounts of biosolids land application. This notification, including notice to DEQ, shall occur within 90 days of the change in land ownership and no later than 2 weeks following the permit holder becoming aware of the change in ownership.

The second proposed change to the draft permit concerned amending Condition I.E.1, Permit Reopener. The text of the proposed change follows:

> The Board ~~may~~ will 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).

After the staff presentation and questions by the Board, the Board received comment from the public. Appearing before the Board were: Claiborne Taylor with Agri-Services Corp., and Dr. Ed Kondis.

The Board then approved the staff recommendation that based on the agency permit files, the comments received during the public comment period and any explanation of comments previously received during the public comment period made at the Board meeting, the Board:

1. Finds that:
   a. the permit has been prepared in conformance with all applicable statutes, regulations and agency practices;
   b. the limits and conditions in the permit have been established to ensure that pollutant management and land application is performed in a manner that will protect public health and the environment and that the

escape, flow or discharge of pollutants into state waters is prevented.; and

c. all public comments relevant to the permit have been considered;

2. Approve the permit and conditions as presented today, adding the change of ownership language as follows:

   Condition I.C.3, Permit Reopener
   In the event that land upon which biosolids has been applied changes ownership with 38 months of the date of land application, the permit holder shall notify the new landowner of the public access and crop management restrictions and the dates and amounts of biosolids land application. This notification, including notice to DEQ, shall occur within 90 days of the change in land ownership and no later than 2 weeks following the permit holder becoming aware of the change in ownership.

3. Approve the permit and conditions as presented today, amending the reopener language as follows:

   Condition I.E.1, Permit Reopener
   The Board ~~may~~ will 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).; and

4. Authorize the Director to issue the permit as approved by the Board.

The vote was 6 to 1 (Ms. Kellam voted no).

Thomas A. Faha

Thomas A. Faha
Regional Director, Northern Regional Office

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

Douglas W. Domenech
Secretary of Natural Resources

David K. Paylor
Director

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

EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON SEPTEMBER 28, 2010

MINUTE NO. 21 – Frederick-Winchester Service Authority: Opequon Wastewater Treatment Facility

Alan Pollock, Manager of the Office of Water Quality Programs, presented the staff recommendations to the Board.

The Board discussed several issues, particularly what has changed since the Board decided in 2009 not to approve an increase to the nutrient allocations for the FWSA-Opequon facility. Staff responded that a concern in the past expressed by stakeholders was the basin exceeding its nutrient allocations under the Virginia Tributary Strategy. However, recent information, such as EPA's draft TMDL for the Shenandoah-Potomac, indicated that Virginia's Watershed Implementation Plan was under the basin allocations.

The Board approved by a vote of 5 – 2 [Miles and Kellam voted "no"] the following:

The staff recommends, based on advice of legal counsel, that the Board:

1. Approve settlement of Case No. CL090004007-00, Frederick-Winchester Service Authority v. State Water Control Board and Department of Environmental Quality establishing allocations for the Opequon Wastewater Treatment Facility based on 3 mg/l nitrogen and 0.3 mg/l phosphorus at 12.6 MGD which would result in an allocation of 115,122 lbs/year nitrogen, with an additional 6,729 lbs/year nitrogen for the landfill for a total of 121,851 lbs/year nitrogen, and a total of 11,512 lbs/year phosphorus;

2. Direct the Department to public notice the approved settlement;

3. Authorize the Department to review and summarize the public comments; and,

4. Direct the Department to provide the summary, along with a copy of the comments, to both the Frederick-Winchester Service Authority and to the Court.

Ellen Gilinsky

Ellen Gilinsky, PhD.
Director, Water Division

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

Douglas W. Domenech
Secretary of Natural Resources

David K. Paylor
Director

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

EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON September 28, 2010

MINUTE NO. 22 – James River TMDL

Mark Alling, from the Piedmont Regional Office, presented a summary of the "Bacteria Total Maximum Daily Load Development for the James River and Tributaries-City of Richmond". He highlighted the following issues: 1) Primary Contact use of Gillie Creek, 2) localized impacts from Gillie Creek on the James River (Rocketts Landing and Ancarrow's public access), 3) the lack of alternative stormwater scenarios for Gillie Creek, and 4) substantial economic impacts for Gillie Creek to reach attainment.

Alan Pollock, Office of Water Programs, presented the request from the City of Richmond, for the City to prepare a Use Attainability Analysis for Gillie Creek concurrent with the Implementation Plan currently under development.

The one public comment was received voicing concerns that the Implementation Plan should be completed and implemented to bring Gillie Creek into attainment.

Robert Steidel, City of Richmond, presented justification remarks to support a Use Attainability Analysis for Gillie Creek.

Following the staff presentation several questions were asked from the Board seeking clarification of the issues.

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

1) Approve the submittal of the "Bacterial Total Maximum Daily Load Development for the James River and Tributaries – City of Richmond" to EPA by the October 1, 2010 deadline; and,

2) Direct staff to proceed with the public notice requirements under §62.1-44.19:7 E for aggrieved parties wishing to conduct a Use Attainability Analysis; and,
3) Direct staff to return to the Board with a summary of public comments to assist the Board in its determination of whether the requested Use Attainability Study should be allowed.

Ellen Gilinsky

Ellen Gilinsky, PhD.
Director, Water Division

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
Fax: 804-698-4019 - TDD (804) 698-4021
www.deq.virginia.gov

Douglas W. Domenech
Secretary of Natural Resources

David K. Paylor
Director

(804) 698-4020
1-800-592-5482

EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON SEPTEMBER 27-28, 2010

MINUTE NO. 23 – Future Meetings

The Board confirmed December 9-10 as the date of their next meeting.

Cindy M. Berndt

Cindy M. Berndt