



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
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Douglas W. Domenech
Secretary of Natural Resources

David K. Paylor
Director

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MINUTES STATE WATER CONTROL BOARD

December 9, 2010
Senate Room B
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 December 9, 2010, at 9:35 a.m., recessed at 10:40 a.m., reconvened at 11:00 a.m., went into closed session at 11:00 a.m., reconvened and returned to open session at 11:38 a.m., recessed at 12:05 p.m., reconvened at 1:03 p.m. and adjourned at 3:12 p.m.

Approved Minutes No. 1
February 4, 2011



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EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON DECEMBER 9, 2010

MINUTE NO. 1 - Minutes

The Board approved the Minutes from the September 27-28, 2010, meeting as contained in the Board book.


Cindy M. Berndt



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MINUTE NO. 2 – Appalachian Power Company Claytor Hydroelectric Project VWP

Staff advised the Board that this agenda item had been deferred to a future meeting.


Cindy M. Berndt
Cindy M. Berndt



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Thomas A. Faha
Regional Director

EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON DECEMBER 9, 2010

MINUTE NO. 3 - Issuance of Virginia Pollution Abatement (VPA) Permit Number VPA00062, Synagro Central LLC- 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 Synagro Central LLC. The presentation included a discussion of the project, a summary of the comments and discussion of the proposed changes to the draft permit. The first proposed changes to the draft permit were in response to comments received by the Office of the Attorney General. These changes were suggested primarily to enhance clarity in the permit requirements, and staff incorporated these changes into this permit as well as the permit template that will be used to develop all future biosolids permits.

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).

The Board approved the staff recommendation based on the agency permit files, the comments received during the public comment period, and explanation of comments previously received during the public comment period. In so doing the Board:

1. Found that:
 - a. the permit was prepared in conformance with all applicable statutes, regulations and agency practices;
 - b. the limits and conditions in the permit were 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 had been considered;

2. Approved the permit and conditions with the reopener language amended as follows:

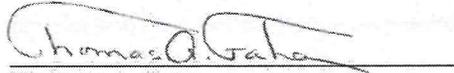
Condition I.E.1, Permit Reopener

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

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

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

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

Thomas A. Fahs
Regional Director, Northern Regional Office



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MINUTE NO. 4 - **General Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation for Seafood Processing Facilities, 9VAC25-115**

The staff recommended that the board adopt the amendments to the General VPDES Permit for Seafood Processing Facilities, 9VAC25-115. The staff also recommended that the board affirm that it will receive, consider and respond to petitions by any person at any time with respect to reconsideration or revision of this regulation, as provided by the administrative process act.

Board Decision

Based on the briefing material and the staff presentation, the Board voted six to one with Mr. William B. Bott voting no to adopt the amendments to the General VPDES Permit for Seafood Processing Facilities, 9VAC25-115. The Board also voted six to one with Mr. William B. Bott voting no to receive, consider and respond to petitions by any person at any time with respect to reconsideration or revision of this regulation, as provided by the administrative process act.

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

Ellen Gilinsky, Ph.D.
Director, Water Division



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MINUTE NO. 5 - **General Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation for Domestic Sewage Discharges Less Than or Equal to 1,000 Gallons per Day, 9VAC25-110**

The staff recommended that the board adopt the amendments to the VPDES General Permit for Domestic Sewage Discharges of Less Than or Equal to 1,000 Gallons per Day, 9VAC25-110. The staff also recommended that the board affirm that it will receive, consider and respond to petitions by any person at any time with respect to reconsideration or revision of this regulation, as provided by the administrative process act.

Board Decision

Based on the briefing material and the staff presentation, the Board voted unanimously to adopt the amendments to the VPDES General Permit for Domestic Sewage Discharges of Less Than or Equal to 1,000 Gallons per Day, 9VAC25-110. The Board also voted to receive, consider and respond to petitions by any person at any time with respect to reconsideration or revision of this regulation, as provided by the administrative process act.

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

Ellen Gilinsky, Ph.D.

Director, Water Division



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MINUTE NO. 6– Frederick-Winchester Service Authority Opequon Waste Load Allocation

Alan Pollock, Manager of the Office of Water Quality Programs, summarized a proposal for an Exempt Final Action to amend the Water Quality Management Planning Regulation to revise the Waste Load Allocation for the Opequon Water Reclamation Facility. The staff proposal was based on the court decree for Case No. CL090004007-00, Frederick-Winchester Service Authority v. State Water Control Board and Department of Environmental Quality that was approved by the Board, based on advice of legal counsel, at the September 28, 2010 meeting of the Board.

Mr. Pollock summarized for the Board a brief history of the allocation process that began with the Board's initial adoption of waste load allocations for Virginia's significant wastewater discharges in 2005. Mr. Pollock also described the court decree which orders 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 6,792 lbs/year nitrogen for the landfill for a total of 121,851 lbs/year nitrogen, and a total of 11,512 lbs/year phosphorus.

Decision:

The board adopted the amendment to the Water Quality Management Planning Regulation, 9VAC225-720-50 as presented, authorized its publication, and affirmed that the Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

A handwritten signature in blue ink that reads "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 DECEMBER 9, 2010

MINUTE NO. 7 – Chesapeake Bay Emergency Regulation

Alan Pollock, Manager of the Office of Water Quality Programs, summarized proposed amendments to the Water Quality Standards regulation to include the October 2007, September 2008 and May 2010 Chesapeake Bay Criteria Assessment Protocols Addenda.

Mr. Pollock explained that the staff proposal was for an emergency rulemaking as the amendment is required to meet the December 31, 2010 deadline for the completion for the Total Maximum Daily Loads for the Bay and its tidal rivers. The Board previously approved this amendment at their June 22, 2010 meeting as a fast track rulemaking. However, EPA is concerned that under that process the amendment would not be effective under Virginia law until several days after they issue the TMDL. Therefore, EPA has requested Virginia to use the emergency rulemaking procedure to ensure the amendments are effective prior to December 31, 2010.

Decision:

1. The Board adopted the amendment to **9 VAC 25-260-185** as shown in Attachment 1 to the Board memo as an emergency regulation based on the need to amend the Water Quality Standards Regulation (9VAC25-260-185) to include the October 2007, September 2008 and May 2010 Chesapeake Bay Criteria Assessment Protocols addenda in time to ensure the incorporation of the published protocols by the December 31, 2010 deadline.
2. The Board authorized the Department to stop the "emergency regulation" process for this amendment should the current "fast track" proposal complete the fast-track process in time to meet the December 31, 2010 deadline.

A handwritten signature in blue ink that reads "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 December 9, 2010

MINUTE NO. 8 – TMDLs

David Lazarus, Watershed Programs, presented 11 TMDL reports and 3 TMDL modifications for Board approval and amendments to the Water Quality Management Planning Regulation (WQMPR).

Following the staff presentations several questions were asked from the Board seeking clarification.

Board Actions:

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

- 1) Approve the portion of eleven TMDL reports and three TMDL modifications; and,
- 2) Authorize and update the WQMP; and,
- 3) Amend the WQMPR by adopting the forty-eight Waste Load Allocations.

9 TMDL reports and 3 modifications – unanimous

Mill Creek TMDL (speaker Granville Hogg)-unanimous

Little Calfpasture TMDL (when completed, DEQ to provide the Board with a briefing and opportunity to approve the Implementation Plan)-unanimous

By inclusion of attachments IV and V in the Board materials, notification was made of the pending Directors delegated approval of 3 TMDL reports, 2 TMDL modifications and 10 Implementation Plans

Ellen Gilinsky, PhD.
Director, Water Division



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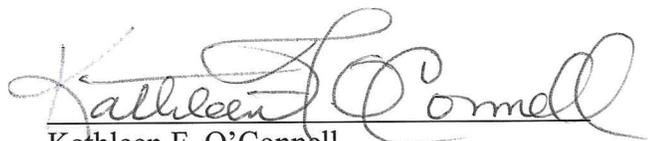
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EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON DECEMBER 9TH, 2010

MINUTE NO. 9 – Report on Facilities in Significant Noncompliance

Kathleen O'Connell, Water Enforcement Program Manager, reported to the Board that there were three regulated parties, the City of Hopewell, the City of Elkton and the Town of Fredericksburg, to be reported as being in significant noncompliance for the quarter ending June 30, 2010. She additionally reported that Elkton's and Fredericksburg's compliance issues were to be addressed in special orders which should be presented to the Board for approval at its April 2011 meeting and that staff of the Department's Piedmont Regional Office were still evaluating appropriate enforcement action in the case of Hopewell.

The Board accepted the report.


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



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EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON DECEMBER 8TH, 2010

MINUTE NO. 10– VPA Consent Special Order

Kathleen O’Connell, Water Enforcement Program Manager, presented to the Board the Consent Special Order for Loudoun County Sanitation Authority regarding its Courtland Rural Village Water Reclamation Facility.

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.

A handwritten signature in black ink, appearing to read "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 8TH, 2010

MINUTE NO. 11 – VPDES Consent Special Orders

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

1. B&J Enterprises, L.C.
2. Town of Clifton Forge
3. Dare to Care Charities, Inc.
4. Town of Kenbridge
5. Town of Culpeper
6. Greensville County Water & Sewer Authority
7. Henrico County
8. City of Richmond
9. Branscome, Inc.
10. Carrollton, Inc.
11. Harrisonburg-Rockingham Sewer Authority

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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MINUTE NO. 12- VWP Consent Special Orders

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

1. Bandy, LLC
2. Glenhaven South Subdivision/Winchester Homes, 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 black ink, appearing to read "Kathleen O'Connell", written over a horizontal line.

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



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MINUTE NO. 13 – UST/AST/Other Consent Special Orders

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

1. Getty Petroleum Marketing, Inc.
2. Henrico County, 911 Training Center
3. Lucky's Convenience Stores, Inc.
4. American Marine Groups, 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, appearing to read "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 9, 2010

MINUTE NO. 14 – 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 requiring the provision of legal advice by counsel concerning James River Petroleum Administrative Hearing

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



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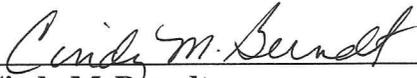
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MINUTE NO. 15 – Public Forum

Mr. John Martin appeared to follow up to an appearance at the September 2010 meeting and update the Board on his concerns regarding the Charlottesville area water supply plan.

Mr. Granville Hogg appeared to discuss his concerns with the emergency regulation amending the nutrient criteria assessment protocols for the Chesapeake Bay that was considered earlier in the meeting.


Cindy M. Berndt



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MINUTE NO. 16– James River Petroleum, Inc.

Justin L. Williams, Division of Enforcement, presented to the Board a proposed settlement reached in the matter of the State Water Control Board v. James River Petroleum, Inc. The proposed settlement was a civil penalty of \$28,850 to be paid over two years by James River Petroleum, Inc.

The Board unanimously approved the proposed settlement and further authorized the Department's Director to execute the settlement through an Order on the Board's behalf.

A handwritten signature in blue ink, appearing to read "Justin L. Williams", written over a horizontal line.

Justin L. Williams
Division of Enforcement



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MINUTE 17 – FY 2011 VCWRLF Loan Authorizations and Draft Stormwater Loan Program Guidelines

Mr. Walter Gills, Program Manager of the Department's Construction Assistance Program, made a presentation to the Board based on a memorandum dated November 30, 2010. The memorandum identified the staff's recommended loan amounts, terms, and interest rates for 34 projects being recommended for FY 2011 Virginia Clean Water Revolving Loan Fund assistance as well as draft Stormwater Loan Program Guidelines that the staff was recommending to be authorized for public review and comment.

Mr. Gills began his presentation by summarizing the actions taken by the Board at its September 2010 meeting, of targeting 34 projects for FY 2011 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 16, 2010 and that no adverse comments had been received. Mr. Gills explained that he had met with the potential FY 2011 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 in order to establish the interest rates in accordance with Board guidelines.

Based on the initial meetings with the applicants, the staff recommended no modifications to the previously-approved funding list, resulting in a total loan amount of \$173,183,129 for the 34 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 2011 ceiling rate not be set until after those bonds are sold in the spring.

Mr. Gills noted that Congress had still not finalized the federal SRF appropriation for FY 2011 so that staff was unsure as to whether the appropriation bill would include requirements similar to those newly established in FY2010 regarding green reserve project funding and principal forgiveness. He stated that staff believes that the energy and land conservation projects already included on this list will satisfy any green project reserve

requirement that might be included. The staff had also analyzed the projects with regard to the program's hardship criteria and was prepared to work with the Director on providing principal forgiveness to some projects as allowed by previous delegations if it is included in the federal appropriation language.

Mr. Gills then discussed the draft Stormwater Loan Program Guidelines the staff had developed in accordance with the legislation passed by the 2010 Virginia General Assembly. He indicated that they carried forward many of the same principals from the existing wastewater loan program including the application procedures/timeframe, eligibility, prioritization, and interest rate criteria, while addressing the specific priorities included in the state legislation and the recent federal requirements for green reserve projects and principal forgiveness. Additional incentives are provided for localities that adopt stormwater control programs that include dedicated revenue sources to help manage their programs. The staff consulted with the Department of Conservation and Recreation during the development process. He noted that the staff was seeking Board authorization to present the draft guidelines for public review/comment, with anticipation of returning to the Board in the spring for final adoption.

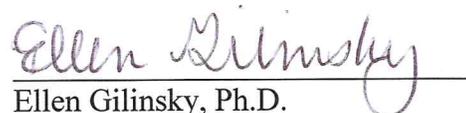
Board Decision: Board member Roberta Kellam abstained from discussing or voting on the Northampton County project, so it was decided to take up the staff recommendations on that project separately. After brief discussion, the Board voted unanimously to authorize the execution of 33 of the loans (excluding the Northampton County project) at the amounts, rates, and terms listed below as well as to authorize the staff to present the draft Stormwater Loan Program Guidelines for public review/comment.

Robert Meyers, Andrew Barbor, and Granville Hogg had all indicated an interest in speaking to the Board about the Northampton County project and the Board allowed them to do so. All three expressed opposition to the Board funding the project with their concerns including the application's inclusion of inaccurate and outdated information, the lack of data substantiating the need for the project, inadequacy of the environmental review, the project's high costs and availability of more cost effective alternatives, and the negative impacts on the sole source groundwater aquifer from the additional groundwater withdrawals that would result from growth generated by the project. Mr. Gills explained to the Board that the Preliminary Engineering Report, Environmental Assessment, and Plans/Specifications would all have to be reviewed and approved by DEQ before the project could proceed and that those reviews would address the concerns expressed by the speakers. Further, he stated that the environmental review process would provide two more opportunities for public review and comment on the project. After further discussion, the Board voted unanimously (with Ms. Kellam abstaining) to authorize the Northampton County project at the amount, rate and term 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.

FY 2011 Interest Rates and Loan Authorizations

	Locality	Loan Amount	Rates & Loan Terms
1	Rivanna Water & Sewer Auth.	5,200,000	C, 20 years
2	City of Lynchburg	10,100,000	0%, 30 years
3	Upper Occoquan Service Auth.	20,624,210	C, 20 years
4	Alexandria Sanitation Authority	4,900,000	C, 20 years
5	City of Covington	5,733,300	0%, 20 years
6	City of Norfolk	9,300,000	0%, 20 years
7	Craig-New Castle PSA	365,200	0%, 20 years
8	Rivanna Water & Sewer Auth.	4,048,000	C, 20 years
9	Rivanna Water & Sewer Auth.	6,900,000	C, 20 years
10	City of Charlottesville	3,647,680	C, 20 years
11	Western VA Water Authority	12,602,500	C, 20 years
12	Western VA Water Authority	1,500,000	C, 20 years
13	Western VA Water Authority	4,375,000	C, 20 years
14	Western VA Water Authority	6,872,000	C, 20 years
15	Town of Crewe	6,794,399	0%, 20 years
16	Northampton County	10,920,746	0%, 20 years
17	Augusta County	2,562,400	0%, 20 years
18	Wythe County	1,742,000	0%, 20 years
19	City of Lynchburg	9,000,000	0%, 20 years
20	Washington County Service Auth.	1,604,126	1%, 20 years
21	Washington County Service Auth.	1,793,607	1%, 20 years
22	Washington County Service Auth.	1,024,613	1%, 20 years
23	Scott County PSA	590,361	0%, 20 years
24	Town of Pulaski	1,284,290	0%, 20 years
25	Coeburn Norton Wise RWTA	11,225,575	0%, 20 years
26	Town of Abingdon	2,124,000	0%, 20 years
27	City of Danville	2,000,000	C, 20 years
28	Shenandoah County	2,095,642	C, 20 years
29	Upper Occoquan Service Auth.	1,876,150	C, 20 years
30	HRSD	4,518,000	C, 20 years
31	Upper Occoquan Service Auth.	2,499,330	C, 20 years
32	Botetourt County	2,700,000	C, 20 years
33	Trust for Public Land	8,000,000	0.25%, 10 years
34	The Nature Conservancy	2,660,000	0.25%, 10 years
Total Request		173,183,129	C= Ceiling Rate



Ellen Gilinsky, Ph.D.

Director
 Water Division



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

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Douglas W. Domenech
Secretary of Natural Resources

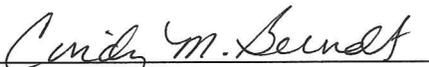
David K. Paylor
Director

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EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON DECEMBER 9, 2010

MINUTE NO. 18 – Division Director's Report

The Board received a report on the final Chesapeake Bay Watershed Implementation Plan that had been submitted to the U.S. Environmental Protection Agency by the Commonwealth from Mr. Alan Pollock of the Water Division.


Cindy M. Berndt



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EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON DECEMBER 9, 2010

MINUTE NO. 19 – Future Meetings

The Board set the following as the dates of their future meetings:

February 4 (inclement weather date of February 8)

April 14-15

June 20-21 (if needed)

September 22-23

December 8-9


Cindy M. Berndt