



# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF ENVIRONMENTAL QUALITY

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

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www.deq.virginia.gov

Molly Joseph Ward  
Secretary of Natural Resources

David K. Paylor  
Director  
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### MINUTES STATE WATER CONTROL BOARD

Wednesday, July 19, 2017  
Department of Environmental Quality  
Piedmont Regional Office  
4949-A Cox Road  
Glen Allen, Virginia

#### Board Members Present:

Robert L. Dunn, Chair  
Roberta A. Kellam  
Lou Ann Jessee-Wallace

Heather L. Wood, Vice-Chair  
Robert H. Wayland, III

#### Board Members Absent:

Thomas M. Branin

G. Nissa Dean

#### Department of Environmental Quality:

David K. Paylor, Director  
Debra A. Harris

Cindy M. Berndt

#### Attorney General's Office:

David C. Grandis, Assistant Attorney General

- 1) The attached minutes summarize activities that took place at this Board Meeting.
- 2) The meeting was convened at 9:31 a.m., recessed at 11:00 a.m., reconvened at 11:12 a.m., recessed at 12:35 p.m., reconvened at 1:30 p.m., recessed at 3:30 p.m., reconvened at 3:42 p.m., and adjourned at 5:15 p.m.

Approve December 6-7, 2017  
Minute No. 1



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## EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON JULY 19, 2017

### MINUTE NO. 1 - Minutes

The Board approved the minutes of the May 17, 2017, Board meeting with an amendment of Minute No. 1 to delete "were not" in the second line such that the sentence reads: Mr. Dunn advised the Board that the By-Laws agenda item was being deferred to a future meeting when all Board members are in attendance.

  
Cindy M. Berndt



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### EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON JULY 19, 2017

#### **MINUTE NO. 2 - Amendment of the Stormwater Management Regulations (9VAC25-870-150 A) related to Administration of the Program by Third-Party Professionals**

Prior to the meeting the Board was provided a briefing memorandum, Agency Background Document (TH-09), HB 2009 – Virginia Acts of Assembly Chapter 349, and the text of the amendments to the Virginia Stormwater Management Regulations (9VAC25-870-150 A). Frederick Cunningham from the Office of Water Permits presented a summary of the changes to the regulation.

Amendments to the Stormwater Management Regulations are necessary to comport with the legislative changes made by the 2017 General Assembly. These amendments clarify that a Virginia Stormwater Management Program (VSMP) authority may enter into contracts with third-party professionals who hold certificates of competence in the appropriate subject areas to carry out any or all of the responsibilities required of a VSMP authority, including plan review and inspection but not including enforcement.

#### **Board Decision**

Based on the briefing material and the staff presentation, the Board voted unanimously to adopt the amendments to the Virginia Stormwater Management Regulations. The Board also affirmed that they will receive, consider and respond to petitions by any person at any time with respect to reconsideration or revision of the regulations, as provided by the Administrative Process Act.

A handwritten signature in blue ink that reads 'Melanie D. Davenport'.

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**Melanie D. Davenport**  
Director, Water Permitting Division



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### EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON JULY 19, 2017

#### MINUTE NO. 3 – Regulations – Final Exempt – Water Quality Management Planning Regulation, 9 VAC 25-720-60 C

This exempt final action is for amendments to 9VAC25-720-60 C of the Water Quality Management Planning Regulation, involving the partial transfer of a total nitrogen wasteload allocation in the amount of 80,000 pounds/year from an existing significant discharger, Virginia Electric and Power Company, to a new proposed discharger, Tranlin/Vastly, Inc. Valerie Rourke presented to the Board final amendments to the regulation. Melanie Davenport, answered questions from the Board on the action. Two representatives from Tranlin/Vastly, Inc. provided comments supporting the action. Ms. Rourke concluded with recommendations to the Board.

#### Board Decision

Based on the briefing material and the staff presentation, the Board voted unanimously to adopt final amendments to the Water Quality Management Planning Regulation, 9VAC25-720-60 C, and to affirm that it will receive, consider and respond to petitions from any person at any time with respect to reconsideration and revision of the regulation, as provided by the Administrative Process Act.

A handwritten signature in blue ink that reads 'Melanie D. Davenport'.

**Melanie D. Davenport**  
Director, Water Permitting Division



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David K. Paylor  
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Craig R. Nicol  
Regional Director

### EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON JULY 19, 2017

#### **MINUTE NO. 4 – Issuance of Virginia Water Protection (VWP) Permit Number 15-0620, Big Woods Development Company, LLC – City of Poquoson**

Staff made a presentation regarding the issuance of a VWP permit for the Legacy of Poquoson mixed-use development in the City of Poquoson by Big Woods Development Company, LLC. The presentation included a discussion of the project, project plans, a summary of the comments received during the public comment period, and staff's responses to the comments. Staff did not recommend any changes to the permit in response to the comments.

After staff's presentation, the Board heard from Lamont Myers representing the Big Woods Development Company, LLC., W.E. Hunt, the Mayor of Poquoson, Benjamin Hahn, Peggy Moore, Carroll Moore, Donald Watkins, Russ and Jan Watkins, Judy Hahn, Janice Powell, Carroll Ann Martin, Wayne Martin, Randie Trestrail, Mary Kay Weston, Robert Weston, Glen Besa, Tyla Matteson, Margaret White, Tim Trant, and Steve Kast.

Following the citizens comments and staff answers to Board questions, staff recommended that the Board:

- Find the proposed activity consistent with the provisions of the Clean Water Act and State Water Control Law, and will protect instream beneficial uses,
- that the proposed permit addresses avoidance and minimization of wetland impacts to the maximum extent practicable,
- that the effect of the impact, together with other existing or proposed impacts to wetlands, will not cause or contribute to significant impairment of state waters or fish and wildlife resources,
- that proposed permit conditions address no net loss of wetland acreage and function through compensatory mitigation and adequately assess compensation implementation via reporting,
- that the draft permit reflects the required consultation with, and full consideration of the written recommendations of VMRC, VDH, DCR and DGIF, and
- Direct Staff to issue VWP Individual Permit Number 15-0620 as drafted.

Motions were then made by the Board to approve Phase I of the project and defer Phases 2 and 3 to allow for a project redesign to reduce wetland impacts, and impose a Time-of-Year Restriction on tree cutting from May 15<sup>th</sup> – July 15<sup>th</sup> of any year for songbirds. The Legacy of Poquoson discussion was tabled until after lunch to allow the applicant to consider the motions made by the Board.

When the Board reconvened, they heard from Channing Martin and Donald Davis representing Big Woods Development Company, LLC. The applicant agreed to a Time-of-Year Restriction and offered an increase in mitigation for wetland impact A2 from a 2:1 ratio to a 3:1 ratio. The applicant did not agree to the phasing of the project and the deferral of Phases 2 and 3.

Previous motions were withdrawn, and a new motion was made by Ms. Jessee-Wallace and seconded by Ms. Wood to accept the staff recommendations with permit modifications requiring increased mitigation for wetland impact A2 at a 3:1 ratio, and a Time-of-Year Restriction for tree cutting in wetlands from May 15<sup>th</sup> – July 15<sup>th</sup> of any year.

The Board then approved the project by a vote of three for (Dunn, Wood and Jessee-Wallace) and two against (Kellam and Wayland) with no abstentions.



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Craig R. Nicol



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### EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON JULY 19, 2017

#### MINUTE NO. 5 – Final Exempt – Amendments to the Underground Storage Tanks: Technical Standards and Corrective Action Requirements Regulation (9VAC25-580) and the Petroleum Underground Storage Tank Financial Responsibility Requirements Regulation (9VAC25-590)

Prior to the meeting, the Board was provided a briefing memorandum, Agency Background Document and the text of the amendments to the Underground Storage Tanks: Technical Standards and Corrective Action Requirements and Petroleum Underground Storage Tank Financial Responsibility Requirements regulations.

Betty Lamp, Office of Spill Response and Remediation, presented a final exempt regulatory action incorporating EPA's amendments to its Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks (UST) regulation (40 CFR Part 280). Ms. Lamp provided the Board with the background on EPA's 2015 amendments and presented a summary of the changes made to Chapters 580 and 590 incorporating EPA's changes. Ms. Lamp also noted that this amendment to the regulations was a final exempt regulatory action under the APA as the amendment is necessary to conform to the changes in the federal regulations (§2.2-4006). Ms. Lamp requested that the Board set an effective date of January 1, 2018 for the amendments. After the staff presentation, Mike O'Connor, representing the Virginia Petroleum Convenience and Grocery Association, spoke in front of the Board and requested that DEQ include his organization in the implementation guidance development process. Ms. Lamp agreed to do so.

#### BOARD DECISION

Based on the briefing material and staff presentation, the Board voted unanimously to adopt the amendments to 9VAC25-580 and 9VAC25-590 with an effective date of January 1, 2018. The Board also affirmed that they will receive, consider and respond to requests by any interested person at any time with respect to reconsideration or revision of the regulations, as provided by the Administrative Process Act.

  
Betty R. Lamp  
Office Director, Spill Response and Remediation



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### EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING OF JULY 19, 2017

#### MINUTE NO. 6 Regulation- Fast-track amendment to the Public Participation Guidelines (9VAC25-11 et seq.)

Melissa Porterfield presented the State Water Control Board (Board) with a fast-track amendment to the Public Participation Guidelines (9VAC25-11 et seq.) This fast track regulatory action makes the regulation consistent with state statute and the model public participation guidelines developed by the Department of Planning and Budget.

The Board was asked to approve the use of the fast-track process and to adopt the amendments to the Public Participation Guidelines (9VAC25-11 et seq.) as a final regulation.

#### Board Decision

Based on the briefing materials and the staff presentation, the Board voted unanimously to authorize the department to:

1. Promulgate the proposal for public comment using the fast-track process established in § 2.2-4012.1 of the Administrative Process Act for regulations expected to be non-controversial. The board's authorization should also be understood to constitute its adoption of the amendments to the Public Participation Guidelines (9VAC25-11) at the end of the public comment period provided that (i) no objection to use of the fast-track process is received from 10 or more persons, or any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, and (ii) the department does not find it necessary, based on public comments or for any other reason, to make any changes to the proposal.
2. Set an effective date 15 days after close of the 30-day public comment period provided (i) the proposal completes the fast-track rulemaking process as provided in § 2.2-4012.1 of the Administrative Process Act and (ii) the department does not find it necessary to make any changes to the proposal.

A handwritten signature in blue ink that reads "Cindy M. Berndt".

**Cindy M. Berndt**  
Director, Office of Regulatory Affairs





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## EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON JULY 19, 2017

### MINUTE NO. 7 - VPDES General Permit Regulation for Vehicle Wash Facilities and Laundry Facilities (9VAC25-194)

Prior to the meeting the Board was provided briefing materials which included a revised draft of the subject general permit regulation, the fact sheet for the general permit, the Agency Background Document (TH-09) which included the public comment and the agency response and the Technical Advisory Committee membership. Elleanore Daub from the Office of VPDES Permits presented a summary of significant changes from the proposed regulation.

#### Board Decision

Based on the briefing material and the staff presentation, the Board voted unanimously to adopt the amendments to the VPDES General Permit Regulation for Vehicle Wash Facilities and Laundry Facilities (9VAC25-194). The Board also affirmed that they will receive, consider and respond to petitions by any person at any time with respect to reconsideration or revision of the regulations, as provided by the Administrative Process Act.

A handwritten signature in blue ink that reads 'Melanie D. Davenport'.

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Melanie D. Davenport  
Director, Water Permitting Division



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### EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING OF JULY 19, 2017

#### MINUTE NO. 8 - VPDES General Permit Regulation for Discharges from Petroleum Contaminated Sites, Groundwater Remediation and Hydrostatic Tests Reissuance

Prior to the meeting the Board was provided with a draft of the amended regulation and a memorandum summarizing the proposed changes to the VPDES General Permit Regulation for Discharges from Petroleum Contaminated Sites, Groundwater Remediation and Hydrostatic Tests (9 VAC 25-120). Matt Richardson from the Office of VPDES Permits gave a brief overview of the proposed regulation amendments.

#### Board Decision

Based on the briefing material and the staff presentation, the Board voted unanimously to authorize the staff to advertise a public comment period and hold a public hearing on the draft regulation amendment for 9 VAC 25-120. The Board also authorized the staff to serve as hearing officer for the public hearing.

A handwritten signature in blue ink that reads "Melanie D. Davenport".

**Melanie D. Davenport**  
Director, Water Permitting Division



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### EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING OF JULY 19, 2017

#### MINUTE NO. 9 - VPDES General Permit for Noncontact Cooling Water Discharges of 50,000 Gallons per Day or Less Reissuance

Prior to the meeting the Board was provided with a draft of the amended regulation and a memorandum summarizing the proposed changes to the VPDES General Permit for Noncontact Cooling Water Discharges of 50,000 Gallons per Day or Less (9 VAC 25-196). Matt Richardson from the Office of VPDES Permits gave a brief overview of the proposed regulation amendments.

#### Board Decision

Based on the briefing material and the staff presentation, the Board voted unanimously to authorize the staff to advertise a public comment period and hold a public hearing on the draft regulation amendment for 9 VAC 25-196. The Board also authorized the staff to serve as hearing officer for the public hearing.

A handwritten signature in blue ink that reads "Melanie D. Davenport".

**Melanie D. Davenport**  
Director, Water Permitting Division



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### EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON JULY 19, 2017

#### MINUTE NO. 10 - Virginia Pollutant Discharge Elimination System General Permit for Potable Water Treatment Plants (9VAC25-860)

Prior to the meeting the Board was provided materials including a briefing memo which included a list of the technical advisory committee membership, the regulation showing proposed amendments, the proposed fact sheet and the town hall agency background document. Eleanore Daub, from the Office of VPDES Permits, presented a summary of the significant proposed changes to the regulation.

#### Board Decision

Based on the briefing material and the staff presentation, the Board voted unanimously to authorize a public comment period and public hearing for amendment and reissuance of the General VPDES Permit for Potable Water Treatment Plants, 9VAC25-860. The Board also authorized the staff to serve as hearing officer for the public hearing.

A handwritten signature in blue ink that reads "Melanie D. Davenport".

**Melanie D. Davenport**  
Director, Water Permitting Division



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## EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON JULY 19, 2017

### MINUTE NO. 11: Revised Proposed Certification of Nonpoint Source Nutrient Credits (9VAC25-900)

Debra Harris, Office of Regulatory Affairs, presented a regulation entitled *Certification of Nonpoint Source Nutrient Credits* as a revised proposed regulation for public comment to the Board. Ms. Harris noted that the regulation is required pursuant to § 62.1-44.19:20 of the State Water Control Law and provided information on the regulation development process to date. It was noted that the proposed regulation was approved for public comment by the Board on December 17, 2013, published for public comment on December 29, 2014, and the comment period closed on March 16, 2015. During the proposed regulation's comment period, 295 persons provided 152 comments. Of the 295 commenters, 277 commenters submitted comments due to a Chesapeake Bay Foundation action alert. Ms. Harris presented a list of the main issues noted by the commenters followed by a summary of the comments received and the Department's responses. The Board was informed that the Department reconvened the Regulatory Advisory Panel (RAP) to revise the regulation due to comments on: (i) stream/wetlands restoration; (ii) innovative practices; (iii) term nutrient credit limits; (iv) and, the permanence of perpetual credits. Ms. Harris provided an overview of the reconvened RAP process which resulted in substantive changes to the proposed regulation. An overview of the changes made to the regulation was provided and it was noted that changes were based on: (i) public comment; (ii) the reconvened RAP process; (iii) statutory changes; and (iv) the Department's programmatic experience. Afterwards, a review of the topics of non-consensus by the RAP was presented including the Department's response. Ms. Harris then presented the revised proposed regulatory process after which the Board was asked if they had any questions. The Board asked a couple of questions on innovative practices and land conversion credit release. Fred Cunningham of the Water Permitting Division provided responses to these questions. Ms. Harris then presented the staff recommendation to the Board for consideration.

### BOARD DECISION

Based on the Board Book briefing items and staff presentation, the Board, on motion by Ms. Kellam and seconded by Ms. Wallace, unanimously approved the revised proposed regulation, 9 VAC 25-900, for public comment.

A handwritten signature in blue ink, appearing to read "Debra A. Harris", written over a horizontal line.

Debra A. Harris  
Policy and Planning Specialist



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### EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON JULY 19, 2017

#### MINUTE NO. 12 – TOTAL MAXIMUM DAILY LOADS (TMDLS)

Mark Richards, Watershed Programs, presented four Total Maximum Daily Load (TMDL) reports, with fourteen new waste load allocations and nine revised waste load allocations for Board approval and amendment to the Water Quality Management Planning Regulation (WQMPR).

The proposed actions pertain to water bodies in the James River Basin, the Chowan River – Dismal Swamp River Basin, and the Chesapeake Bay – Small Coastal – Eastern Shore River Basin. The TMDL reports included the following:

1. E. coli TMDL Development for the James River and Tributaries near Lynchburg, VA.
2. Bacteria TMDL Development for Lower Chickahominy River Watershed Located in Charles City, James City, and New Kent Counties, VA.
3. Benthic Total Maximum Daily Load (TMDL) Development for the Kits Creek Watershed.
4. Bacteria Total Maximum Daily Loads for Nassawadox Creek and Tributaries and Westerhouse Creek in Northampton County, Virginia.

#### Board Decision:

Based on the briefing material and the staff presentation, the Board voted unanimously to:

1. Approve the four Total Maximum Daily Load (TMDL) reports for inclusion into the Water Quality Management Plan,
2. Adopt the corresponding fourteen new and nine revised TMDL Waste Load Allocations into the Water Quality Management Planning Regulation and affirm 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 "Jutta Schneider".

Jutta Schneider  
Director, Water Planning Division



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### EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON JULY 19, 2017


#### MINUTE NO. 13 – Significant Noncompliance Report

Kathleen O’Connell, Water Enforcement Program Manager, informed the Board that one permittee was reported to EPA on the Quarterly Noncompliance Report as being in significant noncompliance for the quarter ending December 31, 2016. The permittee, the facility and the instances of noncompliance were reported as follows:

1. Town of Lawrenceville, Lawrenceville Wastewater Treatment Plant, failure to demonstrate compliance with Total Kjeldahl Nitrogen VPDES permit effluent limitations for the months of September and December 2016.

Ms. O’Connell reported that the Town attributed the September violations to high influent flows resulting from extreme weather conditions (a single day, 4” rain event). The December violations were attributed to mechanical failure of the drive for the wastewater treatment plant’s clarifier weir plates. Ms. O’Connell further reported that staff of the agency’s Piedmont Regional Office had negotiated a penalty consent order addressing the violations.

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 JULY 19, 2017

#### MINUTE NO. 14 – VPDES Consent Special Order for Tyson Farms, Inc.

Kathleen O'Connell, Water Enforcement Program Manager, presented to the Board the Consent Special Order for Tyson Farms, Inc. Wastewater Treatment Plant. Staff had received public comment regarding the Consent Special Order from Board member Roberta Kellam as well as seven other individuals including Jay Ford, the Virginia Eastern Shorekeeper. At the meeting Mr. Ford spoke against the order and Mr. Doug Baxter, Tyson Area Environmental Manager spoke in favor of the order.

The Board disapproved the Order with a 4 to 1 vote (Ms. Wallace voting in favor and Mr. Branin and Ms. Dean being absent). The Board directed the staff to renegotiate the order with an increased penalty and with specific interim corrective action activities and dates.

  
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 July 19, 2017

#### MINUTE NO. 15 – VWP; Consent Special Order, Spotsylvania Courthouse Village II, LLC.

Lee M. Crowell, Petroleum & Wetlands Enforcement Manager, presented to the Board the Consent Special Order for Spotsylvania Courthouse Village II, LLC. The Board approved the Order in a 5-0 vote, 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 cursive script that reads "Lee M. Crowell".

Lee. M. Crowell  
Petroleum & Wetlands Enforcement Manager  
Division of Enforcement



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### EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON JULY 19, 2017

#### MINUTE NO. 16 – DIVISION DIRECTOR'S REPORT

Ms. Davenport gave the Board an overview of the Department of Environmental Quality's ongoing review and regulation of the proposed Mountain Valley and Atlantic Coast Pipelines currently being considered by the Federal Energy Regulatory Commission.

A handwritten signature in blue ink that reads "Melanie D. Davenport".

**Melanie D. Davenport**  
Director, Water Permitting Division



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### EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON JULY 19, 2017

#### MINUTE NO. 17 - Public Forum

Ms. Susan Mastyl and Joseph Betit appeared during the public forum to discuss concerns with large scale expansion of poultry houses on the Eastern Shore and the impact on water quality. In addition, the following persons appeared to discuss concerns with the Mountain Valley and Atlantic Coast natural gas pipeline projects: Sharon Ponton, Natalie Romero, Mara Robbins, Nancy Sorrells, Tina Smusz, Lynda Majors, Tammy Belinski, Eleanor Amidon and Roberta Bondurant.

  
Cindy M. Berndt

Cindy M. Berndt



# COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

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## EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON JULY 19, 2017

### MINUTE NO. 18 – Future Meetings

The Board confirmed December 11 as dates of future meetings and agreed to continue to hold October 16, 17 and 18 and November 1 and 2, 2017 for a two-day meeting.

  
Cindy M. Berndt  
Cindy M. Berndt