



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

Street address: 1111 East Main Street, Suite 1400, Richmond, VA 23219

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

www.deq.virginia.gov

Matthew J. Strickler
Secretary of Natural Resources

David K. Paylor
Director

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

STATE WATER CONTROL BOARD MEETING

TUESDAY, AUGUST 21, 2018

HOUSE COMMITTEE ROOM, FIRST FLOOR
POCAHONTAS BUILDING
900 EAST MAIN STREET
RICHMOND, VIRGINIA

Board Members Present:

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

Heather L. Wood, Vice-Chair
Robert H. Wayland, III
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 9:39 a.m., recessed at 10:50 a.m., reconvened at 12:35 p.m., and adjourned at 4:20 p.m.

Approved Minute # 2
December 13, 2018



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

Street address: 1111 East Main Street, Suite 1400, Richmond, Virginia 23219

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

www.deq.virginia.gov

Matthew J. Strickler
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 AUGUST 21, 2018

MINUTE NO. 1 - Minutes

The Board approved the minutes of the April 12, 2018, Board meeting. The vote was 6 to 0 with Ms. Wallace abstaining.


Cindy M. Berndt



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

www.deq.virginia.gov

Molly Joseph Ward
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 AUGUST 21, 2018

MINUTE NO. 2 – 9VAC25-890 General VPDES Permit for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems

Prior to the meeting the Board was provided materials including a briefing memo to the Board, the regulation showing amendments and the town hall agency background document. The current general permit expired on June 30, 2018. Allan Brockenbrough from the Office of VPDES Permits presented to the Board final amendments to this general permit made in response to public comments.

Board Decision:

Based on the briefing material and the staff presentation, the Board voted unanimously to adopt the General VPDES Permit for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems (9VAC25-890) and to affirm that it will receive, consider and respond to petitions by any person at any time with respect to reconsideration or 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



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

Street address: 1111 E. Main Street, Suite 1400, Richmond, Virginia 23219

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

www.deq.virginia.gov

Matthew J. Strickler
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 AUGUST 21, 2018

MINUTE 3 — Water Quality Standards Amendments: Bacteria, Cadmium and Human Health Criteria

Mr. John Kennedy, Director of the Office of Ecology, made a presentation to the Board regarding final recommended amendments to water quality criteria for several parameters in Virginia's Water Quality Standards Regulation (9 VAC 25-260). These parameters – bacteria, cadmium and 94 human health criteria – were originally part of the most recent water quality standards Triennial Review, but were separated from that rulemaking and addressed in a follow-up action, due to either the need for additional information from the U.S. Environmental Protection Agency or the significance of concerns raised by public comment. Mr. Kennedy summarized the proposed amendments for these parameters, along with a review of the key public comments received and agency response to those comments. All of the comments generated during the Notice of Public Comment period (from 9/18/17 to 12/8/17) and agency responses were presented in the Board materials.

Decision:

Based upon the information provided to the Board and the staff recommendation, the Board by a unanimous vote approved the following actions:

1. Adopt the proposed amendments to the bacteria criteria for recreational waters, 9 VAC 25-260-170, as provided in the Board materials.
2. Adopt the proposed amendments to the cadmium criteria for surface waters, 9 VAC 25-260-140, as provided in the Board materials.
3. Adopt the proposed criteria amendments for 94 human health parameters in surface waters, 9 VAC 25-260-140, as provided in the Board materials.
4. Defer action on the proposed amendments to 9 VAC 25-260-155, Ammonia Surface Water Quality Criteria, in consideration of Chapters 510 and 511 of the 2018 Acts of Assembly.

Handwritten signature of Jutta Schneider in blue ink.

Jutta Schneider, Director
Division of Water Planning

Handwritten date "August 24, 2018" in blue ink.

Date



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

Street address: 1111 E. Main Street, Suite 1400, Richmond, Virginia 23219

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

www.deq.virginia.gov

Matthew J. Strickler
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 AUGUST 21, 2018

MINUTE NO. 4 - Virginia Pollutant Discharge Elimination System General Permit Regulation for Discharges Resulting From the Application of Pesticide to Surface Waters (9VAC25-800)

Prior to the meeting the Board was provided materials including a briefing memo to the Board, which included a list of the technical advisory committee membership, the regulation showing proposed amendments, and the town hall agency background document. Peter Sherman, 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 VPDES Pesticide General Permit, 9VAC25-800. 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
Division of Water Permitting Director



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

Street address: 1111 East Main Street, Suite 1400, Richmond, VA 23219

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

www.deq.virginia.gov

Matthew J. Strickler
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 AUGUST 21, 2018

MINUTE NO. 5 – UPDATE ON EASTERN SHORE GROUNDWATER WITHDRAWALS

At the State Water Control Board (Board) meeting the Board received information from the Department regarding a number of consent special orders for poultry facilities and the groundwater withdrawal permitting process on the Eastern Shore.

Jutta Schneider provided the update on ongoing efforts to address unpermitted groundwater withdrawals by poultry houses on the Eastern Shore. Ms. Schneider advised the Board that the Department recently became aware of the overall amount of groundwater used by these facilities and that they exceed the permit threshold in many cases. As a result, the Department has proposed 57 consent special orders to facilitate the collection of data necessary to develop complete applications for withdrawal permits in the most efficient way possible. She provided information on the public comment process conducted for these orders. She said that a public information meeting was scheduled on the Eastern Shore on August 22 and an additional week of public comment was being provided. She told the Board that these orders would be presented to them at their September meeting. She also reviewed the groundwater withdrawal permit process that would follow the finalization of the orders. A number of questions from the Board were asked and answered.

A handwritten signature in blue ink that reads "Jutta Schneider".

Jutta Schneider



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

Street address: 1111 East Main Street, Suite 1400, Richmond, VA 23219

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

www.deq.virginia.gov

Matthew J. Strickler
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 AUGUST 21, 2018

MINUTE NO. 6 - ATLANTIC COAST PIPELINE AND MOUNTAIN VALLEY PIPELINE (INCLUDING NATIONWIDE PERMIT 12 COMMENT PERIOD, UPDATE IN RESPONSE TO APRIL 12 REQUESTS FROM BOARD AND PUBLIC FORUM)

At the State Water Control Board (Board) meeting on August 21, 2018, the Board received information from DEQ and comments from several members of the public regarding the Mountain Valley Pipeline (MVP) and Atlantic Coast Pipeline (ACP) projects. The areas discussed by the Board are described below.

Nationwide Permit 12 Comment Period: At this meeting, staff made several presentations to the Board in response to the Board's April 12, 2018, directives to provide a 30-day written public comment opportunity for the sole purpose of receiving crossing-specific technical information from interested persons on the sufficiency of the U.S. Army Corps of Engineers Nationwide Permit 12 (NWP 12) permit's general and regional conditions, the NWP 12 permit authorization for MVP and ACP, and the Commonwealth's § 401 water quality certification of NWP 12 for specific stream crossings of both the MVP and ACP projects; and to evaluate the comments and submit a summary of the relevant comments to the Board.

Ms. Melanie D. Davenport, Water Permitting Division Director, presented a general overview of the public comments, provided information on the comments within the scope of the Board's directive as well as comments out of scope of the directive, and provided several examples of comments received.

Mr. David Davis reviewed for the Board the conditions of NWP 12 in comparison to the conditions that would have been imposed through the Virginia Water Protection Permit (VWP) program. Ms. Jaime Robb and Mr. Benjamin Leach provided an overview of the erosion and sediment control requirements for wetlands and stream crossing, construction related crossing and pipe installation within a streambed. Mr. Stephen Hardwick showed several pictures of pipelines throughout the state. Ms. Davenport advised the Board that the majority of comments did not provide any specific, technical information on why NWP 12 is not sufficiently protective at crossing-specific locations; that no new, crossing-specific information supports a conclusion

that NWP 12 is not protective of any specific wetland and/or stream; and the majority of comments reiterated issues brought up in the upland Section 401 water quality certification process.

Future Update Report to the Board: Ms. Davenport presented an update to the Board on the Guidance for Stop Work Instructions; Process for evaluating variances and Approved Variances; and Complaint Response and Coordination, including Coordination with U.S. Army Corps of Engineers and FERC, Communication with Citizens, and Complaint Procedures (Inspection Framework/Procedures) in response to the Board's requests at the April 12, 2018 meeting.

The Board then asked the staff questions before providing a limited opportunity for public comment.

Public Comment: During the public comment opportunity, the Board heard from David Sligh (Wild Virginia), Ruby Lorie, Jason Shelton, Kirk Bowers (Sierra Club), Bill Limpert, Charmayne Stalloff (Southern Environmental Law Center), James Hargett, Ben Lockett (Appalachian Mountain Advocates), Tammy Belinsky (Preserve Craig and Preserve Bent Mountain), Peggy Sanner, Kathy Chandler, Jon Sokolow, Minor Terry and Margaret Bondurant. Members of the public stated that a stream-by-stream analysis is not being done; the NWP12 is not sufficient; the certification of NWP 12 should be revoked; evidence indicates that there is no reasonable assurance and the Section 401 should be revoked; narrative water quality standards are being violated; sediment has already caused water quality impacts; controls are not effective on slopes greater than 20%; and private water supplies (Bent Mountain) are being impacted.

Mr. Hayes asked staff to provide the Board with information on reports of impacts to private wells and whether wells on Bent Mountain use the perched water table for water supply.

Motions and Decisions: Mr. Hayes made the following motion:

The Board has reviewed the public comment received during the comment period, has heard the staff's evaluation of the public comments and the sufficiency of the Nationwide Permit 12 to protect stream crossings impacted by the Mountain Valley Pipeline and the Atlantic Coast Pipeline.

The Board has also heard the staff's report on the status of both projects regarding public complaints, compliance and enforcement and have considered advice of counsel as to the Board's jurisdiction and authority.

Based on the foregoing considerations, the Board directs DEQ staff:

- (1) to share relevant information from the public comment period with the Corps of Engineers for their consideration in administering and enforcing Nationwide Permit 12 to ensure protection of state waters;
- (2) to continue aggressive compliance, inspection and enforcement activities to the

maximum extent of its authority; and
(3) to respond promptly and effectively to verified public complaints of violations.

Ms. Wood seconded the motion and requested that the motion include incorporation of erosion and sediment measures required by the Department of Mines, Minerals and Energy where they are relevant and to the extent that they are more stringent.

After discussion, Mr. Wayland moved that the Board notice and conduct a hearing to modify or revoke certification of NWP 12 as it relates to ACP and MPV. Mr. Wayland's motion failed 3 to 4 (Mr. Wayland, Ms. Kellam and Ms. Dean voted aye and Mr. Dunn, Ms. Wood, Ms. Wallace and Mr. Hayes voted nay).

The Board then considered Mr. Hayes motion as amended by Ms. Wood. The motion below passed unanimously:

The Board has reviewed the public comment received during the comment period, has heard the staff's evaluation of the public comments and the sufficiency of the Nationwide Permit 12 to protect stream crossings impacted by the Mountain Valley Pipeline and the Atlantic Coast Pipeline.

The Board has also heard the staff's report on the status of both projects regarding public complaints, compliance and enforcement and have considered advice of counsel as to the Board's jurisdiction and authority.

Based on the foregoing considerations, the Board directs DEQ staff:

- (1) to share relevant information from the public comment period with the Corps of Engineers for their consideration in administering and enforcing Nationwide Permit 12 to ensure protection of state waters;
- (2) to continue aggressive compliance, inspection and enforcement activities to the maximum extent of its authority, and to include incorporation of erosion and sediment measures required by the Department of Mines, Minerals and Energy where they are relevant and to the extent that they are more stringent; and
- (3) to respond promptly and effectively to verified public complaints of violations.


Melanie D. Davenport



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

Street address: 1111 East Main Street, Suite 1400, Richmond, Virginia 23219

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

www.deq.virginia.gov

Matthew J. Strickler
Secretary of Natural Resources

David K. Paylor
Director
(804) 698-4020
1-800-592-5482

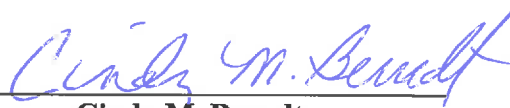
EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON AUGUST 21, 2018

MINUTE NO. 7 - Public Forum

Ms. Freda Cathcart and Ms. Heidi Berthund appeared during the public forum to address non-pipeline related subjects.

Ms. Cathcart spoke regarding the responsibilities of the Board and upholding the Constitution. Requested that the Board look at water quality decisions in a holistic manner and take action in the best interest of the people of Virginia to protect our waters.

Ms. Berthund informed the Board that she was heartened when listening to the groundwater withdrawal permitting report particularly on the use of cumulative impact considerations. She expressed concerned with the fragmentation of the review processes associated with the pipeline.


Cindy M. Berndt



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

Street address: 1111 East Main Street, Suite 1400, Richmond, Virginia 23219

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

www.deq.virginia.gov

Matthew J. Strickler
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 AUGUST 21, 2018

MINUTE NO. 8 - Future Meetings

The Board confirmed September 20, and December 13, 2018, as the dates of future meetings.


Cindy M. Berndt