



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

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

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www.deq.virginia.gov

L. Preston Bryant, Jr.
Secretary of Natural Resources

David K. Paylor
Director

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

MINUTES STATE WATER CONTROL BOARD

July 23, 2009
House Room C
General Assembly Building
9th & Broad Streets
Richmond, Virginia

Board Members Present:

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

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

Staff Present:

David K. Paylor, Director

Cindy M. Berndt

Attorney General's Office:

Alfred B. Albiston, Assistant Attorney General

- 1) The attached minutes summarize activities that took place at this Board Meeting.
- 2) The meeting was convened on July 23, at 9:42 a.m., recessed at 11:25 a.m., reconvened at 11:35 a.m. and adjourned at 12:10 p.m.

Approved
Minute No. 1 - Oct. 26, 2009
SWCB Meeting



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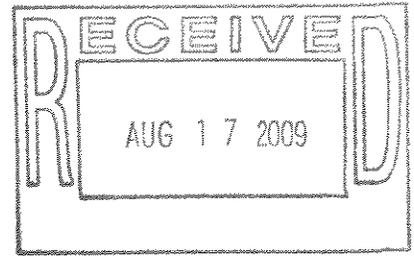
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EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON JULY 23, 2009

MINUTE NO. 1 – Minutes

The Board approved the Minutes from the April 27, 2009, meeting.


Cindy M. Berndt
Cindy M. Berndt



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EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING OF July 23, 2009

MINUTE NO. 2 - Regulations – Final: VPDES Permit Regulation and VPA Permit Regulation Biosolids Amendments

Prior to the meeting, the Board was provided with proposed amendments to the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (9VAC25-31) and Virginia Pollution Abatement (VPA) Permit Regulation (9 VAC 25-32) relating to land application of biosolids. These amendments were made as a result of recent changes to the Code of Virginia, specifically HB 2558 that modified §§62.1-44.19:3.C.10 and 62.1-44.19:3.4.A of the Code of Virginia.

Neil Zahradka gave the staff presentation and recommendation. The Board was requested to adopt as final regulations, amendments to the VPDES Permit Regulation (9VAC25-31-100 P 8 e & 9VAC25-31-290 F 2) and to the VPA Permit Regulation (9VAC25-32-140 E 2 & 9VAC25-32-240 C).

Board Decision

Based on the briefing materials and the staff presentation, the Board voted unanimously to accept the staff recommendation to promulgate the proposed amendments to the VPDES Permit Regulation (9VAC25-31) and VPA Permit Regulation (9 VAC 25-32).

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 JULY 23, 2009 MEETING

MINUTE NO. 3 – City of Waynesboro STP: Petition for Nutrient Waste Load Allocation Amendments in 9 VAC 25-720-50.C. (Water Quality Mgmt. Planning Regulation, Shenandoah-Potomac River Basin).

John Kennedy/OWQP-Chesapeake Bay Program made the staff presentation on requested amendments to revise total nitrogen (TN) and total phosphorus (TP) waste load allocations (WLAs) for the Waynesboro STP, a significant discharger in the Shenandoah-Potomac River Basin.

By letter dated 3/9/09, the City of Waynesboro Department of Public Works petitioned for increased nutrient WLAs for their wastewater treatment plant, which is currently under construction for upgrade and expansion. The existing facility has a design flow of 4.0 MGD; the upgrade/expansion project will raise the capacity to 6.0 MGD and install state-of-the-art nutrient reduction technology, capable of annual average concentrations of 3.0 mg/l TN and 0.30 mg/l TP. The project schedule shows completion on or before December 31, 2010.

PETITION - Waynesboro's existing nutrient WLAs, petition values, and requested increases are:

	Design Flow (MGD)	TN Conc. (mg/l)	Total Nitrogen WLA (lbs/yr)	TP Conc. (mg/l)	Total Phosphorus WLA (lbs/yr)
Existing	4.0	4.0	48,729	0.30	3,655
Petition	6.0	4.0	73,058	0.30	5,479
Difference	+ 2.0	No Change	+ 24,329	No Change	+ 1,824

CURRENT STATUS

- Agency Response to Petition for Rulemaking published in the Virginia Register on 4/13/09.
- Public Comment Period closed 5/4/09; four comments received; all opposed the requested increase in WLAs.

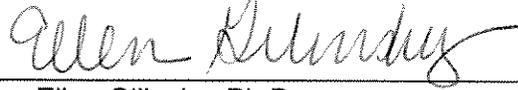
BOARD DECISION - The staff recommended the following:

1. That the Board not initiate a rulemaking to increase nutrient WLAs, since Waynesboro did not pursue the increased WLAs due to a plant expansion under the original rulemaking adopted by the Board in 2005 and the Shenandoah-Potomac is already estimated to be "over-allocated" for nitrogen. Further increases should be avoided when possible to aid in meeting and maintaining water quality standards. In addition, the City has the capability to meet its TN WLA by operating the upgraded nutrient reduction technology, now being installed, at its design intent up to a flow of 5.33 MGD; beyond that point TN credits would need to be secured under the Nutrient Credit Exchange Program. The TP WLA can be achieved at 6.0 MGD design flow through operation at 0.20 mg/l annual

average, which is possible using available technology.

2. Direct staff to inform Waynesboro of the option to try and secure allocation from other dischargers, and if they do so, can petition the Board to amend the WQMP Regulation to exchange the WLAs.

The motion to accept the staff recommendation was accepted unanimously.



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

8/7/09

Date



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EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS JULY 23, 2009 MEETING

MINUTE NO. 4 - Dan River Public Water Supply Petition

STAFF PRESENTATION: Alan Pollock/DEQ Office of Water Quality Programs made the staff presentation on a petition from the City of Roxboro, North Carolina to designate a one mile stretch of the Dan River as a public water supply. A raw water intake is proposed for the Dan River near the town of Milton, NC approximately 13 miles downriver from Danville, VA. North Carolina water quality standards require public water supply protections to extend 10 miles upriver from the intake. For nine river miles above the intake, the Dan River flows through North Carolina.

The final one mile segment of the Dan River that flows in Virginia is the segment being petitioned for public water supply designation to meet the North Carolina 10 mile requirement. The City of Roxboro is requesting a level of public water supply protection in accordance with Virginia's water quality standards regulation and not North Carolina's. The proposed water withdrawal is for 10 MGD. Discharge water would be returned to a tributary of the Dan River several miles below the intake. This tributary flows into the Dan River at a point about 30 miles below the proposed intake.

The Board received the petition at its April 27, 2009 meeting. A petition notice was published in the VA Register on May 25, and the comment period ended June 15. Comment was received from the City of Danville, the Town of Halifax, Halifax County, and the Town of South Boston. Opposing comment received from the Virginia localities is directed towards the necessity of the proposed intake, additional restrictions for upstream wastewater treatment plant discharges, the proposed amount of water to be withdrawn, and the location of the waters return.

Staff reported that the rulemaking process, including the two comment periods for the notice of intended regulatory action (NOIRA) and notice of public comment (NOPC), will provide sufficient opportunity to determine if a public water supply designation is warranted.

COMMENT: Board members asked several questions of staff:

For how many miles upstream of a public water supply within Virginia are rivers normally designated for special protection? *Response: Five.*

What are the special protections provided for public water supplies, and do they differ between Virginia and North Carolina? *Response: Specific numeric water quality criteria are listed in the standards for human health protection of the public water supply use. There are approximately 100 such criteria. Staff does not know if there are any differences between the Virginia and North Carolina criteria for protection public water supplies, but expect the criteria to generally be consistent.*

Was the water intake located within North Carolina to maximize the ten mile distance within their state? *Response: Yes, the intake is close to the Virginia-North Carolina border, so only about one mile of North Carolina's ten mile protection zone extends into Virginia.*

STAFF RECOMMENDATION AND BOARD ACTION

Staff recommended the Board direct staff to initiate a rulemaking to consider designation of the identified one mile segment of the Dan River in Virginia as a public water supply.

The Board voted unanimously [7-0] to adopt the staff recommendation.



Ellen Gilinsky, PhD
Director, Water Division



Date



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MINUTE NO. 5 – Eastern Shore Water Quality

Melanie D. Davenport, Director of the Division of Enforcement, summarized for the Board the status and history of the November 2008 petition for rulemaking regarding certain agricultural activities on the Eastern Shore. Ms. Davenport informed the Board that negotiations were still ongoing with the growers and therefore the staff was not in a position to present a Memorandum of Agreement (MOA) at the meeting. However, she advised the Board that it was the staff's belief that given additional time, an MOA could be presented at a future Board meeting.

The Board asked numerous questions and discussed the content and timing of the negotiations. In addition, the Board heard from Mr. John Daniel, representing the petitioner, and Ms. Katie Frazier, representing the Agribusiness Council.

Based on the staff presentation and Board discussions, the Board unanimously directed (1) staff to bring an MOA to the Board that had been the subject of public notice and a public comment period; (2) that any person who submitted comments on the MOA during the public comment period will be allowed to address the Board at the Board meeting in accordance with the Board's Policy for Public Comment at Board Meetings subject to the time limits, restrictions on new information and pooling of minutes provided in the policy for final action on a regulation; and (3) directed staff to bring a Notice of Intended Regulatory Action to the October meeting for the Board's consideration in the event that a MOA is not agreed to or is not approved by the Board. Further the Board stated the strong desire that any MOA presented for their approval include consequences for failure to perform in accordance with the provisions of the MOA.

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

Melanie D. Davenport
Director
Division of Enforcement



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EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON JULY 23, 2009

MINUTE NO. 6 – Report on Facilities in Significant Noncompliance

Kathleen O'Connell, Water Enforcement Program Manager, reported to the Board that there was one regulated party to be reported as being in significant noncompliance for the quarter ending December 31, 2008. The party, the facility in question and the type of noncompliance are as follows:

1. The Town of Elkton, Elkton Sewage Treatment Plant – Failure to meet VPDES permit effluent limits for Total Suspended Solids.

The Board accepted the report.

A handwritten signature in cursive script that reads "Kathleen F. O'Connell".

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



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MINUTE NO. 7 – VPDES Consent Special Orders

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

1. Contractors Paving Co., Inc.
2. O'Malley's UAP & UC, Inc.

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

A handwritten signature in cursive script that reads "Kathleen F. O'Connell".

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



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MINUTE NO. 8 - VWP Consent Special Orders

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

1. Tascon Group, Inc.
2. Hopson, LLC
3. Liberty University, Inc.

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

A handwritten signature in cursive script, reading 'Kathleen F. O'Connell'.

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



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MINUTE NO. 9 – Other Program Consent Special Orders

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

1. Foster Fuels, Inc.
2. LSF5 Cavalier, LLC
3. Sunoco, Inc.
4. City of Harrisonburg

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. 10 – Public Forum

No one appeared during the public forum.


Cindy M. Berndt



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MINUTE NO. 11 – Impact Study Plan required by Smith Mountain Lake Virginia Water Protection Permit

Scott Kudlas, Director of Surface and Groundwater Supply Planning presented the study plan background to the Board. He indicated that this study to determine the relative impact of providing streamflows through hourly auto-cycling compared to continuous releases was required by the Virginia Water Protection Permit approved by the Board on October 18, 2008. Mr. Kudlas indicated that the applicant had held meetings on January 15, and February 25, 2009. In addition, there had been several additional email exchanges. The meetings included the Department of Game and Inland Fisheries, the Department of Environmental Quality, the Citizens for the Preservation of the River, and the Tri-County Re-licensing Committee as stipulated by the Board. The draft plan was submitted prior to the March 1, 2009 deadline set by the Board. Mr. Kudlas indicated that all agency comments had been addressed in the study plan. The study will be conducted for one year and can begin after your concurrence.

Staff recommended that Board approve the study plan. Chairman Miles requested comment or questions from the Board. Mr. Thompson asked how the applicant would address the impacts from continuous flow. Mr. Kudlas responded that they would have to simulate the system response through modeling as there was not an existing continuous release turbine in place and releasing through the spillway wasn't practical. Chairman Miles expressed his concern that they were taking a risk by not including a reference site outside the impact area in the study.

Board Decision:

The Board approved the study plan required of the applicant by the Virginia Water Protection Individual Permit Number 08-0572.

A handwritten signature in cursive script, appearing to read "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 July 23, 2009

Minute No. 12

Ellen Gilinsky, Water Division Director, informed the Board that we have received a petition for Tier 3 water designation for Urbanna Creek submitted by the Town. Next steps involve notification of landowners of property adjacent to the water body and of administrative officers of involved local governments, a public notice, and a staff site visit to determine eligibility. Staff then report back to the Board with an eligibility determination and a summary of comment so the Board may decide whether or not to direct staff to initiate a rulemaking. She also notified the Board of planned action by the Director to approve several TMDLs that do not require amendment to wasteload allocations contained in the Water Quality Management Planning regulation.

The Board was briefed on the petitions received for extending the deadline to retain higher wasteload allocations under the WQMP regulation based on 2008 legislation. The due date for accepting the petitions was July 10, 2009. DEQ received seven petitions from: Culpeper County, Town of Cape Charles, Town of Onancock, Harrisonburg-Rockingham Regional Sewer Authority, Fauquier County Water and Sanitation Authority – Remington and Vint Hill Wastewater Treatment Plants, and Shenandoah County North Fork WWTP. Staff plans to public notice the petitions with a 30 day comment period and then return to the Board with recommendations at their next scheduled meeting. The legislation requires the Board to approve or deny the petitions with 180 days of the petition deadline.

Finally the Board was updated on the current status of the King William Reservoir Project. Newport News has put the project on hold based on the failure of the Department of Justice to appeal the court decision that the Army Corps of Engineers' decision on the permit was arbitrary. This will likely result in Newport News being unable to meet the deadlines in the state permit for submittal of a complete reapplication with final mitigation plan by December 2010.

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

Ellen Gilinsky
Director, Water Division



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EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON JULY 23, 2009

MINUTE NO. 13 – Meetings

The Board set October 26-27, 2009, and December 14-15, 2009, as the dates of their next meetings.



Cindy M. Berndt