



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

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Douglas W. Domenech
Secretary of Natural Resources

David K. Paylor
Director

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

MINUTES STATE WATER CONTROL BOARD

August 4, 2011

Department of Environmental Quality Offices
2nd Floor Training Room
629 East Main Street
Richmond, Virginia

Board Members Present:

W. Shelton Miles, III, Chair
Lou Ann Jessee Wallace
William A Pruitt

Robert H. Wayland, III, Vice-Chair
William B. Bott
Robert L. Dunn

Board Member Absent:

Roberta A. Kellam

Staff Present:

David K. Paylor, Director
Department of Environmental Quality

Cindy M. Berndt
Department of Environmental Quality

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 on Thursday, August 4, 2011, at 9:34 a.m., recessed at 10:52 a.m., reconvened at 11:02 a.m., and adjourned at 12:16 p.m.

Approved Minute No. 1
Sept. 22, 2011



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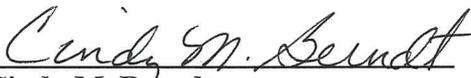
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EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON AUGUST 4, 2011

MINUTE NO. 1 - Minutes

The Board approved the Minutes from the April 14, 2011, meeting as contained in the Board book.


Cindy M. Berndt
Cindy M. Berndt



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MINUTE NO. 2 – Final Exempt Action - Amendments to the Fees for Permits and Certificates Regulation, 9VAC25-20

Melissa Porterfield, Office of Regulatory Affairs, presented final amendments to the Fees for Permits and Certificates Regulation, 9VAC25-20, as contained in the Board books. The amendments implement Chapter 149 of the 2011 Acts of Assembly which exempts Navy-sponsored dredging projects from permit application fees. The Board was asked to adopt the final amendments to 9VAC25-31 and 9VAC25-151.

BOARD DECISION

Based on the board book briefing items and staff presentation, the Board unanimously adopted the amendments to 9VAC25-20 as presented 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 cursive script that reads 'Cindy M. Berndt'.

Cindy Berndt

Director, Office of Regulatory Affairs



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MINUTE NO. 3 – Final Exempt Action - Amendments to the Virginia Pollutant Discharge Elimination System (VPDES) Permit Program Regulation, 9VAC25-31

Melissa Porterfield, Office of Regulatory Affairs, presented final amendments to the Virginia Pollutant Discharge Elimination System (VPDES) Permit Program Regulation, 9VAC25-31, as contained in the Board books. The amendments implement Chapter 252 of the 2011 Acts of Assembly which removes references to the State Water Control Board delegating authority to the Department of Mines, Minerals and Energy to issue VPDES permits for coal surface mining operations. The Board was asked to adopt the final amendments to 9VAC25-31.

BOARD DECISION

Based on the board book briefing items and staff presentation, the Board unanimously adopted the amendments to 9VAC25-31 as presented 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.

Handwritten signature of Cindy M. Berndt in cursive script.

Cindy Berndt

Director, Office of Regulatory Affairs



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MINUTE NO. 4 – Final Exempt Action - Amendments to the Regulations Governing the Discharge of Sewage and Other Wastes from Boats, 9VAC25-71

Melissa Porterfield, Office of Regulatory Affairs, presented final amendments to the Regulations Governing the Discharge of Sewage and Other Wastes from Boats, 9VAC25-71, as contained in the Board books. The amendments implement Chapter 220 of the 2011 Acts of Assembly which specify the methods to be used to prevent sewage discharges from boats and vessels from occurring in no discharge areas. The Board was asked to adopt the final amendments to 9VAC25-71.

BOARD DECISION

Based on the board book briefing items and staff presentation, the Board unanimously adopted the amendments to 9VAC25-71 as presented 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 cursive script that reads "Cindy M. Berndt".

Cindy Berndt

Director, Office of Regulatory Affairs



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MINUTE NO. 5 – Final Exempt Action Amendments to the Virginia Pollution Discharge Elimination System Permit Program Regulation, 9VAC25-31 and the General Virginia Pollution Discharge Elimination System Permit for Discharges of Storm Water Associated with Industrial Activity, 9VAC25-151

Debra Miller, Office of Regulatory Affairs, presented the final amendments to the Virginia Pollution Discharge Elimination System Permit Program Regulation, 9VAC25-31 and the General Virginia Pollution Discharge Elimination System Permit for Discharges of Storm Water Associated with Industrial Activity, 9VAC25-151, as contained in the Board books. The amendments were to update citations due to a recent amendment to the Virginia Solid Waste Management Regulations. The Board was asked to adopt the final amendments to 9VAC25-31 and 9VAC25-151.

BOARD DECISION

Based on the board book briefing items and staff presentation, the Board unanimously adopted the amendments to 9VAC25-31 and 9VAC25-151 as presented 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 cursive script that reads 'Cindy M. Berndt'.

Cindy Berndt
Director, Office of Regulatory Affairs



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MINUTE NO. 6 – Exempt Final Action on Merck Nutrient Waste Load Allocations

John Kennedy/OWQP-Chesapeake Bay Program made the staff presentation on an Exempt Final Action to amend the Water Quality Management Planning Regulation (9 VAC 25-720), revising nutrient waste load allocations for Merck, Inc. (VPDES VA0002178). The staff proposal was based on a Judicial Consent Decree, entered April 27, 2011 in the Richmond Circuit Court, which included an order that the Board shall increase Merck's nutrient waste load allocations as follows:

- Total Nitrogen – increase from 14,619 lbs/yr to 43,835 lbs/yr
- Total Phosphorus – increase from 1,096 lbs/yr to 4,384 lbs/yr

The Consent Decree affirmed the settlement of an appeal, made in June 2009 by the Chesapeake Bay Foundation and the Virginia Waterman's Association, contesting the Board's approval in April 2009 of the same waste load allocation increases. The Board approved that settlement, based on advice of legal counsel, at their April 14, 2011 meeting.

Staff recommended that the Board adopt the amendments to the Water Quality Management Planning Regulation, 9 VAC 25-720-50.C., as presented, authorize its publication, 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.

Decision:

The Board, by unanimous vote, adopted the staff recommendation and approved the amendments to the Water Quality Management Planning Regulation (9 VAC 25-720), as an exempt final action under the Administrative Process Act.


Melanie D. Davenport
Director, Water Division



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MINUTE NO. 7 – Dan River Public Water Supply

Alan Pollock with the Office of Water Quality Programs made the staff presentation. He provided the Board with the background of the April 2009 petition from the City of Roxboro, North Carolina to designate approximately 1.34 miles of the Dan River below Danville as a public water supply. This action would provide the city's proposed water intake a full 10 mile public water supply protection as required by North Carolina. In June 2010 the Board approved a Notice of Public Comment to amend the Virginia Water Quality Standards to include the requested public water supply designation.

The public comment period on the NOPC ended on April 15, 2011, and the agency received four comments, from the City of Danville Utilities Department, Pittsylvania County, Roanoke River Basin Association, and a resident of North Carolina. The comments were primarily directed at concerns over inter-basin transfer of water, future increases in water withdrawal, potential adverse impacts the water withdrawal would have on water supplies in the basin and the need for more stringent effluent limits for wastewater treatment facilities owned by the Cities of Danville and South Boston. Mr. Pollock explained that all of the concerns, except for the potential impact on the Danville wastewater treatment facility, were not germane to the public water supply designation. Interstate water supply issues in the region are being addressed through the Roanoke River Bi-State Commission. Staff had done an analysis of potential impacts on the Danville wastewater discharge permit and found that a public water supply designation approximately 0.5 mile downstream of the discharge point would not impact the Danville permit limits. Although not directly related to the designation issue, staff also evaluated the impact of the proposed water withdrawal on the South Boston wastewater discharge permit and found the only potential impact may be a reduction in the chlorine limits. However, staff believes any reduction in the chlorine limits would not alter the existing need for South Boston to keep chlorine levels below the quantification level to ensure compliance.

Mr. Pollock also informed the Board that DEQ had entered into a Memorandum of Agreement with the North Carolina Department of Environment and Natural Resources in June 2011. The

MOA acknowledges the mutual agreement to work together on reducing the downstream impacts to water supplies and encourage reciprocation of designations in the future when feasible.

After responding to several clarifying questions from the Board, Mr. Pollock presented the Board with a three-part recommendation. Based upon a suggestion by Board member [Wayland] the staff revised the wording of the third part to clarify its intent.

Board Decision

The Board approved the following recommendations by unanimous vote:

1. The Board adopt the following amendment to the Water Quality Standards regulation at section 3 of 9VAC25-260-450 to designate these waters as a Public Water Supply:

SECTION DESCRIPTION

Dan River and its tributaries from the Virginia-North Carolina state line just south of Danville to points 1.34 miles upstream and the first unnamed tributary to Hogans Creek from the Virginia-North Carolina state line to a point 0.45 mile upstream.

2. The Board direct staff to process this final action in accordance with the Administrative Process Act; however, staff is directed to delay (i) submittal of this amendment to U.S. EPA for approval and (ii) establishment of the effective date of the amendment until the Public Water Supply designation of the adjoining section of the Dan River in North Carolina is effective.
3. The Board direct the DEQ Director to withdraw this action, at any time prior to the effective date, if North Carolina fails to designate its portion of the Dan River as a Public Water Supply.



Melanie D. Davenport
Director, Water Division



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MINUTE NO. 8 – Regulations – Proposed: 9 VAC 25-740 Water Reclamation and Reuse Regulation

Prior to the meeting, the Board was provided with proposed amendments to the Water Reclamation and Reuse Regulation (9VAC25-740). These amendments were proposed by staff after four meetings with a regulatory advisory panel conducted between April, 2011 and July, 2011.

Valerie Rourke, Office of Land Application Programs, gave the staff presentation and recommendation. The Board was requested to approve for public comment the proposed amendments to the Water Reclamation and Reuse Regulation (9 VAC 25-740).

Board Decision

The Board voted unanimously to approve the proposed amendments to the Water Reclamation and Reuse Regulation authorized advertisement for public comment.

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

Melanie D. Davenport
Director, Water Division



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MINUTE NO. 9 – Bull Run Tier III

David Whitehurst, with the Water Quality Standards unit in the Office of Water Quality Programs, gave the Board presentation. Mr. Whitehurst informed the Board of the location and extent of the petitioned segment of Bull Run and gave a brief overview regarding the purpose and potential impacts of Tier 3 designations. He then reviewed the activities that had occurred since the Board received the petition at the April 14, 2011 meeting.

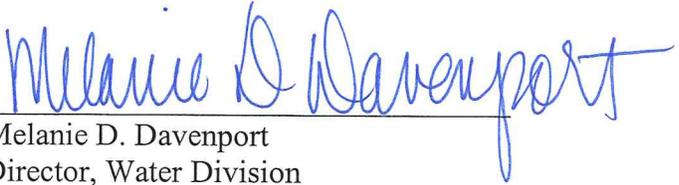
Mr. Whitehurst then provided a summary of the required staff site visit along with some images of Bull Run. He briefly explained the eligibility criteria requirements that a waterbody must meet to be considered for regulatory designation as Tier 3 or Exceptional State Waters and provided to the Board the staff conclusion that the petitioned segment of Bull Run met sufficient eligibility criteria for regulatory consideration. He explained that segment of Bull Run is an integral part of a national park which is a factor to be considered when determining whether or not a waterbody meets the primary criteria of possessing an exceptional environmental setting. The segment was also found to provide for exceptional outdoor recreational opportunities.

Mr. Whitehurst summarized for the Board comment received from potentially impacted localities and riparian landowners. The Department of Planning for Fairfax and for Prince William counties provided comment stating their concerns that regulatory impacts of a Tier 3 designation on this segment of Bull Run may restrict future transportation expansions, maintenance, and/or upgrades. The VA Department of Transportation provided comment voicing similar concerns and asked the Board to not initiate a rulemaking to designate Bull Run as Tier 3. No citizen comment was received. Staff acknowledged the concerns expressed in these comments and stated that the comment periods provided during a rulemaking provide for an opportunity to engage the petitioner and concerned parties in a dialogue regarding these issues.

Board Decision

Based on the briefing materials and the staff presentation, the Board, by unanimous vote, instructed staff to initiate a rulemaking to consider amending section 9 VAC 25-260-30.A.3 of

the Water Quality Standards to designate Bull Run from the confluence of Little Bull Run downstream to the crossing of Interstate 66 as Exceptional State Waters.



Melanie D. Davenport
Director, Water Division



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MINUTE NO. 10A – Report on Facilities in Significant Noncompliance

Kathleen O’Connell, Water Enforcement Program Manager, reported to the Board that there was one regulated party, New Kent County, to be reported as being in significant noncompliance for the quarter ending December 31, 2010. She additionally reported that the County had recently finished an upgrade of its wastewater treatment plant designed to ensure compliance with all permit effluent limitations. Ms. O’Connell reported that as the County had not experienced additional permit limit violations since April, 2011 the staff of the Piedmont regional office believed that further action was not required in this matter.

The Board accepted the report.

A handwritten signature in blue ink that reads "Kathleen F. O'Connell".

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



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MINUTE NO. 10B – VPDES Consent Special Orders

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

1. The Town of Blackstone
2. The Town of Chase City
3. The City of Lynchburg
4. The City of Fredericksburg
5. King George County Service Authority, Purkins Corner and Oakland Park STPs
6. Ennis Paint, Inc.
7. Hercules Incorporated
8. S.E.A. Solutions Corporation
9. Tyson Farms, Inc. Temperanceville Complex WWTP
10. The Town of Elkton
11. Rivanna Water & Sewer Authority, Moores Creek Regional STP
12. Albemarle County
13. The City of Charlottesville
14. Titan Virginia Ready-Mix LLC and Mechanicsville Concrete

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 blue ink that reads "Kathleen F. O'Connell".

Kathleen F. O'Connell

Water Enforcement Program Manager
Division of Enforcement



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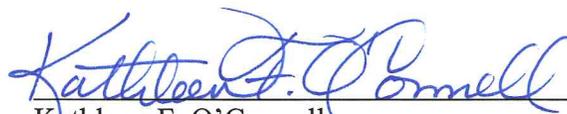
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EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON AUGUST 4, 2011

MINUTE NO. 11 – VPDES Consent Special Order for the Town of Crewe

Kathleen O'Connell, Water Enforcement Program Manager, presented to the Board the Consent Special Order for the Town of Crewe. Ms. O'Connell informed the Board that there had been public comment regarding the Order. In one instance a resident of Crewe was concerned about overflows from the Town's sewage collection system which occurred behind her residence. Ms. O'Connell assured the Board that the Town of Crewe had addressed the apparent cause of the overflows by removing tree roots which had invaded the sewer pipe at that location. Ms. O'Connell informed the Board that the other comments came from a local family, the Jones, and their attorney. The comments indicated that the Order did not contain a sufficiently high penalty and that it did not mention all the system overflows that had occurred during the relevant time period. Ms. O'Connell assured the Board that the penalty contained in the Order was consistent with the Department's penalty policy and that the Order referenced every overflow that the Town had reported to the Department and/or that the Department's staff had independently identified. After her presentation, the Jones - Ben, Sherry and Chris and their attorney, Leonard Vance, reiterated their concerns regarding the Order to the Board. At the conclusion of their comments, Ms. O'Connell made the staff recommendation to the Board that the Order be approved, that the Board authorize the Director of the Department to execute the Order on the Board's behalf and refer violations of the Order to the Attorney General's Office for appropriate legal action. At the Board's request Ms. O'Connell agreed to secure the Town's presence at a subsequent Board meeting so that the Board could be provided with a progress report regarding the Town's compliance with the Order's requirements. The Board accepted the staff recommendation and approved the Order.


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



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MINUTE NO. 12- VWP Program/Wetlands/Ground Water Permit Program Consent Special Orders

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

1. Celebrate Virginia North Community Development Authority, T.S.C.
2. SCI Virginia Funeral Services, Inc., King David Memorial Cemetery
3. Woodhaven Water Company, Inc., Woodhaven Shores System

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


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



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

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

1. Petroleum Marketers, Inc.
2. Baltimore Tank Lines
3. Northrop Grumman Systems Corp.
4. TransMontaigne Operating Co. L.P.
5. W. Harold Talley II, LLC
6. Judy M. McGee and Martin E. McGee

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 blue ink that reads "Kathleen F. O'Connell".

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



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MINUTE NO. 14 – Public Forum

No one appeared during the public forum.


Cindy M. Berndt



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MINUTE NO. 15 – Division Director’s Report

The Board received a report from Melanie D. Davenport, Water Division Director. Ms. Davenport updated the Board on the status of the proposed amendments to the biosolids regulations.

Ms. Davenport also informed the Board that the following TMDL Implementation Plans and TMDL modifications are being presented to the DEQ Director for his approval:

“Hunting Creek, Cameron Run, and Holmes Run Watersheds-Arlington and Falls Church”

“Fontaine Creek -Greensville and Brunswick Counties”

“Unnamed Tributary to Nebletts Mill Run and Hatcher Run-Sussex and Dinwiddie Counties”

Modification for the “Appomattox River Basin- Chesterfield County”

Modification for “Totuskey and Richardson Creeks -Richmond County”

Modification for “Hoskins Creek Watershed-Essex County”

Modification for “Cub Creek, Turnip Creek, Buffalo Creek, Buffalo Creek (UT), and Staunton River Watersheds, Virginia-Halifax and Charlotte Counties”

Modification for “Gills Creek, Virginia-Franklin County”

Modification for “Indian, Tabbs, Dwyer, and Antipoison Creeks-Northumberland and Lancaster Counties”

“Hays, Moffatts, Walker, and Otts Creeks-Rockingham and Augusta Counties”

“South River and Christians Creek-Augusta County”

“James River and Tributaries-Lynchburg, and Campbell, Bedford, and Amherst Counties”

“Mill Creek and Powhatan Creek-James City County”

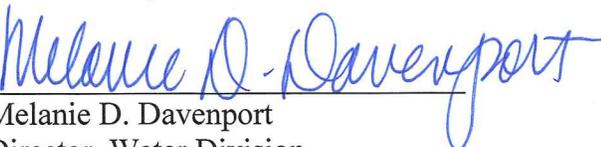
“Slate River and Rock Island Creek-Buckingham County”

“Craig Run, Browns Run, and Marsh Run-Fauquier County”

“Little Dark Run and Robinson River-Madison and Culpeper Counties”

“Lewis Creek-Russell County”

She also noted that these actions had been noticed to the public and no comments were received.


Melanie D. Davenport

Director, Water Division



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EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON AUGUST 4, 2011

MINUTE NO. 16 – Future Meetings

The Board confirmed September 22-23 and December 8-9 and set October 21, 2011, as dates of future meetings and cancelled October 27-28.


Cindy M. Berndt

[Note: New schedule for the remainder of the year is: September 22-23, October 21 and December 8-9]