



# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF ENVIRONMENTAL QUALITY

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

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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

Thursday, March 14, 2013  
General Assembly Building, House Room C  
Richmond, Virginia

#### Board Members Present:

Robert L. Dunn, Chair  
William B. Bott  
Heather L. Wood

William A. Pruitt  
Roberta A. Kellam  
Joseph H. Nash

#### Board Members Absent:

Thomas V. Van Auken

#### 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 on Thursday, March 14, 2013, at 9:31 a.m., recessed at 10:22 a.m.; reconvened at 10:54 a.m.; and adjourned at 11:40 p.m.

Approved Minute No. 1  
June 17, 2013



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### EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON MARCH 14, 2013

#### MINUTE NO. 1 - Minutes

The Board approved the minutes from the December 6, 2012, meeting.

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Cindy M. Berndt



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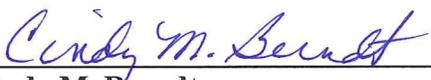
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### EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON MARCH 14, 2013

#### MINUTE NO. 2 - Legislative Update

Mr. David K. Paylor provided the Board with a brief report on legislation passed by the General Assembly concerning the transfer of certain water quality programs from the Soil and Water Conservation Board and Department of Conservation and Recreation to the State Water Control Board and Department of Environmental Quality; organizational changes due to the transfer and coordination efforts between the two departments.

  
Cindy M. Berndt



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### EXCERPT FROM THE PROCEEDINGS OF THE BOARD AT ITS MEETING ON MARCH 14, 2013

#### MINUTE NO. 3 – Regulations – Final Amended Water Reclamation and Reuse Regulation, 9 VAC 25-740

Prior to the meeting, the Board was provided with final amendments to the Water Reclamation and Reuse Regulation (9 VAC 25-740). These amendments were finalized by staff following a public comment period held from October 22, 2012 through January 11, 2013, and a public hearing held December 13, 2012 regarding proposed amendments to the regulation.

Valerie Rourke, Office of Land Application Programs, gave the staff presentation and answered questions from the board. Mr. Peter Mansfield presented public comment. Ms. Rourke concluded with a recommendation for the Board to adopt as final regulation, amendments to the Water Reclamation and Reuse Regulation (9 VAC 25-740), as presented.

#### Board Decision

The Board voted unanimously to accept the staff recommendation to adopt as final regulation, amendments to the Water Reclamation and Reuse Regulation presented to the Board.

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

**Melanie Davenport, Director  
DEQ, Water Division**



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### EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON MARCH 14, 2013

#### MINUTE NO. 4 -Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Concrete Products Facilities, 9VAC25-193

Prior to the meeting the Board was provided briefing materials including a memorandum summarizing the significant changes to the regulation, the regulation showing amendments, a fact sheet for the permit and the agency townhall background document. Elleanore Daub from the Office of VPDES Permits presented background information, a summary and response to comments and a summary of the significant proposed amendments to the general permit regulation.

#### Board Decision

The Board voted unanimously to adopt the amendments to the General VPDES Permit for Concrete Products Facilities, 9VAC25-193. 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 blue ink that reads "Melanie D. Davenport".

**Melanie D. Davenport**  
Water Division Director



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## EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON MARCH 14, 2013

### MINUTE NO. 5 – Petroleum Underground Storage Tank Financial Responsibility Regulation, 9VAC25-590, Amendment to Add a Certificate of Deposit

Debra Harris, Office of Regulatory Affairs, presented a fast-track amendment to the Petroleum Underground Storage Tank Financial Responsibility Regulation, 9VAC25-590. This amendment adds a certificate of deposit (CD) as an acceptable mechanism to demonstrate financial responsibility for owners and operators of underground storage tanks (USTs) subject to 9VAC25-590. Ms. Harris explained that the addition of the CD to 9VAC25-590 is to provide more flexibility to the owners and operators of USTs when meeting their financial responsibility requirements under the regulation. The Board was asked to approve the fast-track process and adopt this amendment.

### BOARD DECISION

Based on the board book briefing items and staff presentation, the Board, on motion by Mr. Pruitt, unanimously:

- Authorized the Department to promulgate the proposed amendment to 9 VAC 25-590 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. Furthermore, as the UST program has received EPA approval, the Board directs the Department to defer submittal of the proposed amendment for Executive Review until EPA approves this amendment.
- Adopted the regulation 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 members of the public, or any member of the applicable standing committee of either house of the General Assembly or 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.

- Authorized the Department to set an effective date 15 days after close of the 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.

*Cindy M. Berndt*

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Cindy Berndt

Director, Office of Regulatory Affairs



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## EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON MARCH 14, 2013

### MINUTE NO. 6 – Aboveground Storage Tank and Pipeline Facility Financial Responsibility Requirements (9VAC25-640), Amendment to Add a Certificate Deposit

Debra Harris, Office of Regulatory Affairs, presented a fast-track amendment to the Aboveground Storage Tank and Pipeline Facility Financial Responsibility Requirements Regulation under 9VAC25-640. This amendment adds a certificate of deposit (CD) as an acceptable mechanism to demonstrate financial responsibility for operators of aboveground storage tanks and pipeline facilities subject to 9VAC25-640. Ms. Harris explained that the addition of the CD to 9VAC25-640 is to provide more flexibility to the operators when meeting their financial responsibility requirements under the regulation. The Board was asked to approve the fast-track process and adopt this amendment.

### BOARD DECISION

Based on the board book briefing items and staff presentation, the Board, on motion by Ms. Kellam, unanimously:

- Authorized the Department to promulgate the proposed amendment to 9VAC25-640 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.
- Adopted the regulation 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 members of the public, or any member of the applicable standing committee of either house of the General Assembly or 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.
- Authorized the Department to set an effective date 15 days after close of the 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". The signature is written in a cursive style with a horizontal line underneath it.

Cindy Berndt  
Director, Office of Regulatory Affairs



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### EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON MARCH 14, 2013

**MINUTE NO. 7** - Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Discharges Resulting from the Application of Pesticides to Surface Waters, 9VAC25-800

Prior to the meeting the Board was provided briefing materials including a memorandum summarizing the significant proposed changes to the regulation, the regulation showing amendments and the agency townhall background document. Elleanore Daub from the Office of VPDES Permits presented background information, a summary and response to comments and a summary of the significant proposed amendments to the general permit regulation.

**Board Decision:**

- (1) The Board voted unanimously to authorize a notice of public comment period and public hearing for amendments to the VPDES General Permit for Discharges Resulting from the Application of Pesticides to Surface Waters, 9VAC25-800, and
- (2) Authorized the staff to serve as Hearing Officer at the Public Hearing.

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

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



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### EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON MARCH 14, 2013

#### MINUTE NO. 8 – Proposed Amendments to the Virginia Pollution Abatement Regulation and the Virginia Pollution Abatement General Permit Regulation for Animal Feeding Operations.

Betsy Bowles with the Office of Land Application Programs presented the proposed amendments to the Virginia Pollution Abatement Regulation and the Virginia Pollution Abatement General Permit Regulation for Animal Feeding Operations as contained in the Board book. The Board was asked to authorize for public comment and hearing the proposed amendments to the Virginia Pollution Abatement Regulation and the Virginia Pollution Abatement General Permit Regulation for Animal Feeding Operations.

#### **Board Action:**

Based upon the Board book material, staff presentation and Board discussion, the Board voted unanimously to accept the following staff recommendations:

Approve for public comment and hearing the proposed amendments to the:

- 9VAC25-192-10 et seq. Virginia Pollution Abatement General Permit Regulation for AFOs and
- 9VAC25-32-10 et seq. Virginia Pollution Abatement Permit Regulation, as presented.

Handwritten signature of Melanie D. Davenport in blue ink.

Melanie D. Davenport  
Director, Water Division



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### EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON MARCH 14, 2013

#### MINUTE NO. 9 – TMDLs

Liz McKercher, Watershed Programs, presented three Total Maximum Daily Load (TMDL) reports and three 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 Chesapeake Bay - Small Coastal - Eastern Shore Basin and the New River Basin. The TMDL reports include the following:

#### TMDL Report Approval

1. Little River Watershed Bacteria, Benthic, and Temperature TMDL (Floyd and Montgomery counties)
2. Gargathy Creek Dissolved Oxygen (DO) and Bacteria TMDL (Accomack County)
3. Folly Creek DO TMDL (Accomack County)

#### Board Actions:

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

1. Approve the three Total Maximum Daily Load (TMDL) reports for inclusion into the Water Quality Management Plan, and
2. Adopt three corresponding TMDL Waste Load Allocations into the Water Quality Management Planning Regulation.

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

Melanie D. Davenport  
Director, Water Division



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### EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON MARCH 14, 2013

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

Kathleen O’Connell, Water Enforcement Program Manager, reported to the Board that there were no major facilities to be reported as being in significant noncompliance for the quarter ending September 30, 2012.

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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### EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON MARCH 14, 2013

#### MINUTE NO. 11 – VPDES Program Consent Special Orders

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

1. County of Culpeper, Greens Corner Wastewater Treatment Plant
2. Brunswick County Industrial Development Authority
3. Greensville County Water & Sewer Authority
4. City of Portsmouth, Lake Kilby Water Treatment Facility
5. George’s Foods, LLC

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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### EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON MARCH 14, 2013

#### MINUTE NO. 12– VPA Consent Special Orders

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

1. Nutri-Blend, Inc.
2. Town of Craigsville

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. 13 – VWP Program Consent Special Orders

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

1. Acacia Credit Fund 10\_A, LLC
2. Howard Hughes Medical Institute
3. Rogers-Chenault, 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 blue ink, reading "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 MARCH 14, 2013

#### MINUTE NO. 14 – UST/Oil Programs Consent Special Orders

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

1. Gauge Works, LLC
2. MRK, LLC

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, reading "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 MARCH 14, 2013

#### MINUTE NO. 15 – Clyde W. & Mary Alice Hudgins Consent Special Order

Kathleen O'Connell, Water Enforcement Program Manager, presented to the Board the Consent Special Order for Clyde W. & Mary Alice Hudgins. Ms. O'Connell requested that the Board delegate approval of the Order to the Department's Director in order to allow issues with local government deed records to be resolved prior to approval of the Order.

The Board unanimously authorized delegation of approval of the Order to the Department's Director and further authorized the 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 blue 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 MARCH 14, 2013

#### MINUTE NO. 16 – Public Forum

No one appeared during the public forum.

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

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Cindy M. Berndt



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## EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON MARCH 14, 2013

### MINUTE NO. 17 - Division Director's Report

Ms. Melanie D. Davenport notified the Board, as required by the Board's delegation of authority, that staff intended to present seven Total Maximum Daily Load (TMDL) reports, two TMDL report modifications and two TMDL implementation plans to the Director for approval. Specifically, the Director would be asked to approve:

1. the following TMDL reports and report modifications

New River Basin:

- *"Bacteria TMDL Development for Mill Creek, Cove Creek, Miller Creek, Stony Fork, Tate Run, South Fork Reed Creek, and Reed Creek in Wythe County, Virginia"*
  - 12 bacteria TMDLs

James River Basin:

- *"Bacteria TMDL Development for Rockfish River, North Fork Rockfish River, and South Fork Rockfish River in Nelson County and Albemarle County, Virginia"*
  - 3 bacteria TMDLs
- *"Bacteria TMDL Development for Chickahominy River and Tributaries, VA"*
  - 1 bacteria TMDL

Chowan River Basin:

- *"Bacteria Total Maximum Daily Load Development for Three Creek, Flat Swamp, Tarrara Creek, Mill Swamp, and Darden Mill Run in Southampton, Sussex, Greensville, Brunswick Counties, VA"*
  - 7 bacteria TMDLs

Chesapeake Bay-Small Coastal-Eastern Shore Basin:

- *"Total Maximum Daily Loads of Bacteria for Finney Creek in Accomack County, Virginia"*

- 2 bacteria TMDLs
- *“Total Maximum Daily Loads of Bacteria for Unnamed Tributary to Pitts Creek in Accomack County, Virginia”*
  - 1 bacteria TMDL

Tennessee/Big Sandy River Basin:

- *“TMDL Development, North Fork Holston River Watershed, VA”*
  - 1 temperature TMDL and 5 bacteria TMDLs
- *Modification to “Chloride Total Maximum Daily Load Development for Upper North Fork Holston River”*
  - 1 chloride TMDL modification, which accommodated the expansion of a municipal discharger

York River Basin:

- *Modification to “Bacteria Total Maximum Daily Load Development for the Pamunkey River Basin”*
  - 2 bacteria TMDLs modified, which added preexisting VPDES dischargers and update future growth allocations

2. the following TMDL Implementation Plans

New River Basin:

- *“Little River Total Maximum Daily Load Implementation Plan”*
  - Proposes actions to restore the natural trout and stockable trout temperature water quality standards, and reduce bacteria and sediment in the Little River watershed located in Floyd and Montgomery counties.

York River Basin:

- *“Upper York River Basin Watershed Implementation Plan”*
  - Proposes actions needed to reduce bacteria in Beaver Creek, Mountain Run, Pamunkey Creek, Plentiful Creek, and Terrys Run located in Louisa, Orange, and Spotsylvania counties.

In addition, Ms. Davenport advised the Board that the Department would be initiating triennial review of the water quality standards in the near future.



Melanie D. Davenport  
Water Division Director



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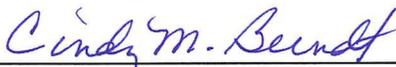
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### EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON MARCH 14, 2013

#### MINUTE NO. 18 – Future Meetings

The Board confirmed June 17-18, 2013, as the dates of their next meeting.

  
\_\_\_\_\_  
Cindy M. Berndt