



# 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](http://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

WEDNESDAY, APRIL 14, 2021

### ELECTRONIC COMMUNICATION MEETING

#### Board Members Present:

Heather L. Wood, Chair (left at 2:30 p.m. before public forum)  
Lou Ann Jessee-Wallace, Vice-Chair  
Timothy G. Hayes  
James A. Lofton  
Paula H. Jasinski  
Jillian Cohen  
Ryan Seiger

Board Members Absent: None

#### Department of Environmental Quality:

David K. Paylor, Director  
Debra A. Harris  
Jutta Schneider

Cindy M. Berndt  
Melanie D. Davenport  
Kristen Sadtler

#### 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 10:06 a.m., recessed at 11:26 a.m., reconvened at 12:35 p.m., and adjourned at 3:35 p.m.
- 3) The Board convened the meeting electronically, consistent with Governor Ralph Northam's Executive Order No. 51 (2020), Item 4-0.01 g of Chapter 1289 of the 2020 Acts of Assembly and the applicable provisions of § 2.2-3708.2 of the Freedom of Information Act. The meeting was necessary for the Board to discharge its lawful purposes, duties, and responsibility; but it is impracticable or unsafe for the Board to assemble in a single location due to the declaration of a state of emergency for COVID-19. A roll call vote was performed for all votes taken during the meeting.

Approved Minutes No. 1  
June 29, 2021



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### EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON APRIL 14, 2021

#### MINUTE NO. 1 - Minutes

The Board, by unanimous roll call vote, approved the minutes of the meetings held on December 9, 2020, and February 26, 2021. (7 to 0).

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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 APRIL 14, 2021

#### MINUTE NO. 2 – REGULATIONS GOVERNING THE DISCHARGE OF SEWAGE AND OTHER WASTES FROM BOATS (9 VAC 25-71) – FINAL

Justin Williams, Director of the Office of Watersheds and Local Government Assistance Programs, presented a final exempt regulatory amendment to the Regulations Governing The Discharge of Sewage and Other Wastes From Boats (9 VAC 25-71). This regulatory action is a final exempt action under the Administrative Process Act (§2.2-4006.A.4.c) as it is necessary to amend the regulations to comport with EPA's approval of the NDZs.

The regulatory amendments pertain to the established of two No-Discharge Zones (NDZ) in Gloucester County for Sarah Creek and Perrin River. The amendments to add the two No-Discharge Zones are in response to the U.S. Environmental Protection Agency's review and determination approving the establishment of these two NDZs.

#### **Board Decision:**

Based on the briefing material and the staff presentation, the Board voted unanimously (7-0 by roll call; Wood, Hayes, Wallace, Cohen, Jasinski, Lofton, Seiger in favor, none opposed) to:

Amend the Regulations Governing the Discharge of Sewage and Other Wastes from Boats to include these two NDZs as shown in the Board meeting memorandum, Section III, Proposed Actions and listed in Attachment III.B of the Board Book Material 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.

  
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Jutta Schneider  
Director, Water Planning Division



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**EXCERPT FROM THE PROCEEDINGS OF THE  
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AT ITS MEETING ON APRIL 14, 2021**

**MINUTE NO. 3** – Final exempt action on a proposed amendment to the Water Quality Management Planning Regulation.

Valerie Rourke with the Office of Land Application Programs presented a proposed amendment to the Water Quality Management Planning Regulation, 9 VAC 25-720. Ms. Rourke explained that the amendment will correct an erroneous VPDES permit number for the Fincaste STP in 9VAC25-720-60, Table B5, Map Location W. The correction is needed to eliminate confusion and ensure that the VPDES permit information in the regulation is correct and consistent with DEQ's water permit information and records for the same discharger. Following the staff presentation, the Board had no questions.

**Board Decision:**

***Based upon the Board book briefing material and information provided by staff, the Board voted unanimously (7-0) to accept the staff recommendation to adopt and publish the proposed amendment to the Water Quality Management Planning Regulation as presented.***

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  
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APRIL 14, 2021**

**MINUTE NO. 4: Cranston's Mill Pond, LLC Virginia Water Protection  
Permit Application No. 16-1937 - Denial**

Scott Kudlas, Department of Environmental Quality (DEQ) Office of Water Supply, presented information to the Board regarding DEQ's tentative decision to deny authorization for a surface water withdrawal from Cranston's Mill Pond, an impoundment located on Yarmouth Creek in James City County. Mr. Kudlas first provided an overview of the Virginia Water Protection (VWP) Permit Program, background about how permitted water withdrawal amounts are determined, and the statutory and regulatory requirements that limit permitted water withdrawals to the amount required for the beneficial use identified that does not constitute waste or unreasonable use. Mr. Kudlas included examples of how the VWP process determines water withdrawal limits that present the least environmentally damaging practicable alternative.


Mr. Kudlas then provided an overview of Cranston's Mill Pond and deficiencies with the application, which included the lack of information describing the intake structure and physical alteration to surface waters, no consideration of alternative sources of water, and no identified proposed beneficial use or user. Mr. Kudlas noted that proposed draft permits with conditions were discussed twice with the applicant, and the applicant rejected the draft permits as provided, and chose not to publish notice of the draft permit for public comment.

Mr. Kudlas then reviewed the public involvement process, including two public comment periods and a public hearing. The public comment periods were September 18, 2020 through November 4, 2020 and November 5, 2020 through December 22, 2020. There were five written comments received and two document packages provided by the applicant during the public comment periods, and four speakers presented on behalf of the applicant during the virtual public hearing held December 7, 2020. Mr. Kudlas reviewed a summary of the comments received and the staff responses provided.

The Board asked a number of questions related to end users, beneficial use and users, and estimating the available water for withdrawal. Mr. Kudlas provided responses to these questions. Following Board questions, the Board received a presentation by the applicant from Ms. Andrea Wortzel, legal counsel for Cranston's Mill Pond, LLC, and comment from Mr. Jeff Corbin (Cranston's Mill Pond, LLC). Mr. Kudlas provided responses to follow-up questions from the Board generated by the applicant's presentation. Mr. Kudlas presented the staff recommendation to the Board for consideration.

## **BOARD DECISION**

Based on the Board Book materials, staff presentation and public comment, the Board denied Virginia Water Protection Permit Application No. 16-1937 submitted by Cranston's Mill Pond, LLC, because the approval of Cranston's Mill Pond, LLC's water withdrawal request without an identified beneficial use and water demand is inconsistent with the provisions of the Commonwealth's policy regarding use of state waters, the Virginia Water Protection Permit Program Regulation, including Section B 3 of 9VAC25-210-340, Section B 4 of 9VAC25-21-340, Section D 1 of 9VAC25-210-370, and DEQ policy and past practice. The motion was made by Mr. Lofton, seconded by Mr. Seiger, and approved 6-1 (Wood, Wallace, Lofton, Hayes, Cohen, and Seiger in favor; Jasinski against). In addition, members of the Board stated that the denial of the application of Cranston's Mill Pond, LLC was without prejudice to the applicant and that the applicant could file an amended application, as either the end user with a specified beneficial use or identifying an end user with a specified beneficial use for the purpose of the application going forward and subject to applicable laws and the Board's regulations.

  
\_\_\_\_\_  
Jutta Schneider, Director  
Water Planning Division



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### EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON APRIL 14, 2021


#### MINUTE NO. 5 – Significant Noncompliance Report and Chesapeake Bay Preservation Act Program Notices of Violation

Kristen Sadtler, Water Enforcement Program Manager, informed the Board that there was one new facility reported to EPA on the Quarterly Noncompliance Report as being in significant noncompliance for the quarter ending September 30, 2020. The permittee reported was:

1. Roanoke Electric Steel Corporation for the Steel Dynamics, Inc.- Roanoke Bar Division

Additionally, Kristen informed the Board that DEQ did not issue any Notices of Violation to Chesapeake Bay Preservation Act Programs from December 9, 2020 to March 15, 2021.

The Board accepted the report.

  
\_\_\_\_\_  
Kristen Sadtler  
Water Enforcement Program Manager  
Division of Enforcement



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#### MINUTE NO. 6 - Future Meetings

The Board confirmed June 29, September 28 and December 14, 2021, as the dates of their regular meetings for the remainder of 2021.

  
Cindy M. Berndt  
Cindy M. Berndt





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**MINUTE NO. 7 – Water Planning Division Director's Report**

Ms. Jutta Schneider provided an update on two ongoing regulatory actions related to the water quality standards regulation:

- A Notice of Intended Regulatory Action for numeric turbidity criteria was published on April 12, 2021 with a comment period closing on May 12, 2021.
- A Notice of Intended Regulatory Action for a triennial review rulemaking to adopt new, update or cancel existing water quality standards was published on March 1, 2021 with a comment period that closed on March 31, 2021.

Next steps include the formation of regulatory advisory panels to assist DEQ with the development of proposed amendments to the water quality standards regulation. Proposed amendments are anticipated to be presented to the SWCB at their September meeting with a request to proceed to public comment.

A handwritten signature in cursive script that reads "Jutta Schneider".

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Jutta Schneider  
Director, Water Planning Division



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**MINUTE NO. 8 – Water Permitting Division Director’s Report**

Ms. Melanie D. Davenport provided an update on the Mountain Valley Pipeline project. She provided updates on (i) the construction status of the project and (ii) the status of MVP’s application for a Virginia Water Protection permit and request for Section 401 water quality certification. She also reported that DEQ continues to work actively with the Parson/Sink family to initiate a study of the likely source of sediment intrusion into Bottom Spring. Mrs. Sink requested to review the plan that will be used to conduct the study and that plan was provided via email on April 1, 2021. Approval to access the property by the landowner is required to conduct the study.

Ms. Davenport also gave an update on DEQ’s response to concerns raised by Mrs. Aimee Hamm regarding safety and access to equipment and feedstock caused by perimeter erosion and sediment controls on her property and her father’s adjacent property. After DEQ facilitated resolution of these issues, Mrs. Hamm expressed concerns with the location of a proposed clean water diversion. DEQ plan review engineers have been involved to ensure the diversion will not affect her father’s drinking water spring. DEQ has recommended to Mrs. Hamm that she grant access to MVP to survey all sensitive features on the property sample the drinking water source.

Finally, Ms. Davenport noted that DEQ had received two reports from Kirk Bowers on behalf of the Mountain Valley Watch with aerial photographs of alleged stretches of areas along the pipeline that were not stabilized in accordance with the Erosion and Sediment Control requirements. DEQ field investigated the allegations in both reports and did not discover any non-compliance on behalf of MVP for failure to stabilize.

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

Melanie D. Davenport  
Director, Water Permitting Division



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#### MINUTE NO. 9 - Public Forum

The following persons appeared during the public forum: Freeda Cathcart, Jessica Sims, Kay Ferguson, Maury Johnson, Roberta Bondurant, Thomas Adams, Stephen Padgett, Ann Rogers, Irene Leech, Kathy Chandler, Nan Gray, Cynthia Munley, Christine Camper, Desiree Shelley, and Patricia McLawhorn. Comments made included support for the Department request to the U.S. Army Corps of Engineers for additional time to process a Section 401 Water Quality Certification for Mountain Valley Pipeline's recent application for stream crossings; concerns, complaints, and requests regarding the Mountain Valley Pipeline project, including requests that the Department be directed to not approve variances for boring under streams and to issue a stop work order in any watershed containing the endangered Roanoke Log Perch or Candy Darter during the spawning season; and requests that the Board and the Department intervene in the Federal Regulatory Energy Commission docket on boring.

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

Cindy M. Berndt