



# 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

April 12, 2018

Bank of American Building  
1111 East Main Street  
3rd Floor Conference Room  
Richmond, VA 23219

#### Board Members Present:

Robert L. Dunn, Chair  
G. Nissa Dean  
Roberta A. Kellam

Heather L. Wood, Vice-Chair  
Timothy G. Hayes  
Robert H. Wayland, III

#### Board Members Absent:

Lou Ann Jessee-Wallace

#### Department of Environmental Quality:

David K. Paylor, Director  
Cindy M. Berndt, Office of Regulatory Affairs Director  
Debra A. Harris, Policy & Planning Specialist

#### Attorney General's Office:

David C. Grandis, Assistant Attorney General

- 
- 1) The attached minutes summarize activities that took place at this Board Meeting.
  - 2) On April 12, 2018, the meeting was convened at 10:00 a.m., recessed at 12:30 p.m., reconvened at 12:35 p.m., recessed at 1:00 p.m. reconvened at 1:57 p.m., recessed at 4:40 p.m., reconvened at 4:50 p.m. and adjourned at 5:55 p.m.

*Approved Minute No. 1  
August 21, 2018*



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### EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON APRIL 12, 2018

#### **MINUTE NO. 1 - Issuance of Virginia Pollutant Discharge Elimination System (VPDES) Confined Animal Feeding Operation (CAFO) Permits: VA0C50004 (FPNA Farms, Inc.), VA0C50005 (Brady Farm) and VA0C5006 (Horsey Poultry Farm, LLC)**

Staff made a presentation regarding the proposed issuance of Virginia Pollutant Discharge Elimination System Permits (VPDES) for management of poultry waste at the three subject farms, which all currently hold coverage under the Virginia Pollution Abatement (VPA) General Permit for Poultry Waste Management. The presentation included a discussion of the projects, a summary of the comments received during the public comment periods and staff's responses to the comments, including staff's recommendation to incorporate additional permit conditions in response to public comment. The proposed additional permit conditions were included in a change sheet that staff provided to the Board during the meeting.

After staff's presentation, the Board heard from Norman B. Pitt, representing Horsey Poultry Farm, LLC; Tony Banks, representing the Virginia Farm Bureau; Hobe Bauhan, representing the Virginia Poultry Federation; Joseph Wood, representing the Chesapeake Bay Foundation; Johnathon Harding, representing the Virginia Agribusiness Council; Sarah Edwards, representing the Environmental Action Center; and Jay Ford, representing the Virginia Eastern Shorekeeper. Staff responded to questions from the Board following citizen comment.

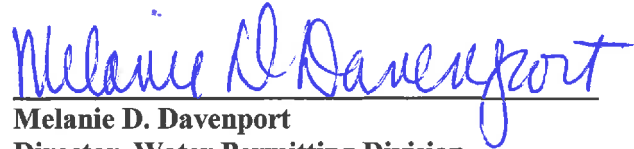
Following the comments made by citizens and staff responses noted above, staff then made the following recommendations:

Based on the draft permit files, the comments received during the public comment period and any explanation of comments previously received during the public comment period made at the Board meeting, the staff recommends that the Board:

1. Find that:
  - a. The permits have been prepared in conformance with all applicable statutes, regulations and agency practices;
  - b. The limits and conditions in the permits have been established to protect public health and the environment; and
  - c. All public comments relevant to the permit have been considered;
2. Approve the permits and conditions as presented today, including the conditions noted in the change sheet provided to the Board.

3. Authorize the Director to issue the permits as approved by the Board.

The Board, based on the Board book material and presentations at the meeting, voted unanimously in favor of the staff recommendation.

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



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### EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON APRIL 12, 2018

#### MINUTE NO. 2 - Public Forum

During the public forum on Eastern Shore Matters, the Board received comments from Jay Ford, Holly Porter, Hobey Bauhan, Sue Mastyl, Jonathan Harding, and Wilmer Stoneman. The comments presented centered on poultry houses and groundwater.

Ms. Kellam requested periodic updates be included on future agendas to provide information to the Board on programs of particular interest to the citizens on the Eastern Shore to include water quality monitoring, groundwater permitting and poultry houses.

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

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Cindy M. Berndt



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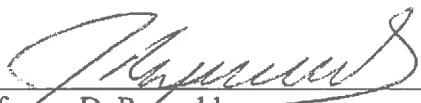
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### EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON APRIL 12, 2018

#### MINUTE NO. 3: Tyson Consent Order Update

Jeff Reynolds, Director for DEQ's Enforcement Division, provided the Board a status of DEQ's open enforcement action against Tyson Farms' Temperanceville facility. A proposed Consent Order is prepared and Tyson is proceeding with completion of an October 2017 corrective action plan (CAP) to resolve violations described in the draft consent order. Tyson has either completed or is on schedule to complete each of the requirements of the CAP. DEQ enforcement staff continue to monitor Tyson's progress. A civil penalty is also currently in negotiation.

Enforcement staff plan to provide further updates on corrective action progress and propose a final Consent Order for the Board's approval at their next meeting.

  
\_\_\_\_\_  
Jefferson D. Reynolds  
Director, Division of Enforcement



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### EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON APRIL 12, 2018

#### MINUTE NO. 4: ANNUAL UPDATE AMENDMENTS - 2017 CODE OF FEDERAL REGULATIONS AND METHODS UPDATE RULE (9VAC25-31, 32, 210, 590, 610, 790 AND 870)

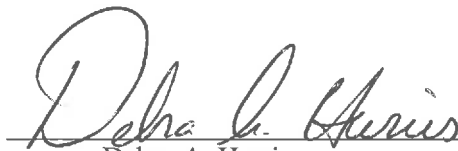
Debra Harris, Office of Regulatory Affairs, presented a regulatory amendment entitled *Annual Update – 2017 Code of Federal Regulations and Methods Update Rule* (Annual Update 2017) to the Board. Ms. Harris explained that Annual Update 2017 incorporates: (i) the latest Title 40 of the Code of Federal Regulations (40 CFR) published on July 1, 2017; (ii) a correction to 40 CFR Part 441.30 published on July 5, 2017 in the Federal Register (82 FR 30997); and, (iii) changes to 40 CFR Part 136 by the *Methods Update Rule* published on August 28, 2017 in the Federal Register (82 FR 40836).

Ms. Harris informed the Board that, as part of this regulatory action 9VAC25-31, 9VAC25-32, 9VAC25-210, 9VAC25-590, 9VAC25-610, 9VAC25-790, and 9VAC25-870, which incorporate by reference provisions of 40 CFR, will be updated to reference the 40 CFR published on July 1, 2017. Additionally, the Board's regulations will be updated as follows: (i) 9VAC25-31-30 will incorporate EPA's new *Effluent Limitations Guidelines and Standards for the Dental Category* added to 40 CFR Part 441; and, (ii) 9VAC25-31, 9VAC25-32, 9VAC25-210, 9VAC25-610, 9VAC25-790, and, 9VAC25-870 will incorporate EPA's *Methods Update Rule* amendment to 40 CFR Part 136.

Ms. Harris noted that §§ 2.2-4006.A.3 and 2.2-4006.A.4(c) of the Administrative Process Act allow the Board to adopt this regulatory amendment as a final exempt action as the changes are necessary to correct a technical error and to conform to changes in the federal regulations. Ms. Harris then presented the staff recommendation to the Board for consideration.

#### BOARD DECISION

Based on the Board Book briefing items and staff presentation, the Board, on motion by Ms. Wood and seconded by Ms. Kellam, unanimously approved Annual Update 2017 to the Board's regulations as a final regulation, and affirmed that the Board will receive, consider and respond to requests by any interested person at any time with respect to reconsideration or revision.

  
Debra A. Harris  
Policy and Planning Specialist



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### EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON April 12, 2018

#### **MINUTE NO. 5 – Stormwater Management Regulations - Final Plan Elements, Specifications, or Calculations (9VAC25-870)**

The amendment of 9VAC 25-870-55 C and 9VAC 25-870-160 D.7 of the Virginia Stormwater Management Program regulation requires that all final plan elements, specifications, or calculations whose preparation requires a license under Chapter 4 (§ 54.1-400 et seq.) or 22 (§ 54.1-2200 et seq.) of Title 54.1 be appropriately signed and sealed by a professional who is licensed to engage in practice in the Commonwealth. This action is required by Chapters 10 (HB2076) and 163 (SB1127) of the 2017 Acts of Assembly which added the reference to Chapter 22. Prior to the meeting the Board was provided with briefing materials including a proposed final regulation and memorandum summarizing the proposed changes. Jaime Robb from the Office of Stormwater Management gave a brief summary of the proposed amendments.

#### **Board Decision:**

Based on the briefing materials and the staff presentation, the Board voted unanimously to approve the amendments to the Virginia Stormwater Management Program regulation (9VAC 25-870).

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 STATE WATER CONTROL BOARD AT ITS MEETING ON APRIL 12, 2018

#### **MINUTE NO. 6 – Regulations - Water Quality Standards- Chesapeake Bay Criteria Assessment Protocols Addendum (November 2017) (9VAC25-260)**

Tish Robertson, a staff member of the Water Quality Standards program, summarized proposed amendments to the Water Quality Standards regulation to include the November 2017 Chesapeake Bay Criteria Assessment Protocols Addendum.

Dr. Robertson briefly reviewed for the board members that the State Water Control Board originally adopted water quality standards specifically for the Chesapeake Bay and its tidal rivers in 2005. Due to the complex nature of the circulation patterns and varying salinity of the Bay waters the standards regulation also includes reference to criteria assessment procedures published by EPA. Since that initial action, the Board has approved amendments to the standards regulation to include reference to updated assessment procedures published by EPA in 2007, 2008, and 2010.

Dr. Robertson told the Board that EPA has continued to refine the assessment procedures as scientific research and management applications reveal new insights and knowledge about the Chesapeake Bay. She explained that each of EPA's updated procedure documents replace or otherwise supersede similar criteria assessment procedures published in earlier documents, though not all of them. She informed the Board that the 2017 protocols addendum establishes newly developed procedures for assessing short-term dissolved oxygen criteria in the Chesapeake Bay and establishes guidance for determining whether a segment should be categorized as having insufficient information for benthic assessment due to statistical uncertainty. Also, she informed the Board that the document presents the results of a literature review that reconciles differences between the 1993 Chesapeake Bay Program restoration targets for submerged aquatic vegetation and state water quality standards.

Dr. Robertson informed the Board that a rulemaking to incorporate the 2017 Addendum documents by reference in the Water Quality Standards is suitable for a Fast-Track rulemaking process because it is expected to be non-controversial since these protocols have been developed by U.S. EPA through a collaborative process within the Chesapeake Bay Program.



Prior to the meeting, the Board was provided briefing materials containing the proposed amendment and relevant background information.

**Board Decision:**

Based on the briefing material and the staff presentation and recommendation, the Board unanimously approved the following actions:

1. That the Board authorize the Department to promulgate amendment to **9 VAC 25-260-185** as shown in Attachment 1 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.

The Board's authorization should also be understood to constitute its adoption of 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 persons, or any member of the applicable standing committee of either house of the General Assembly or of 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.

2. That the Board authorize the Department to set an effective date 15 days after close of the 30-day 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.

 4/18/18  
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Jutta Schneider  
Director, Water Planning Division

**ATTACHMENT 1**

**9VAC25-260-185. Criteria to protect designated uses from the impacts of nutrients and suspended sediment in the Chesapeake Bay and its tidal tributaries.**

A. Dissolved oxygen.

Designated Use	Criteria Concentration/ Duration	Temporal Application
Migratory fish spawning and nursery	7-day mean $\geq$ 6 mg/l (tidal habitats with 0-0.5 ppt salinity)	February 1 - May 31
	Instantaneous minimum $\geq$ 5 mg/l	
Open water <sup>1</sup>	30 day mean $\geq$ 5.5 mg/l (tidal habitats with 0-0.5 ppt salinity)	year-round <sup>2</sup>
	30 day mean $\geq$ 5 mg/l (tidal habitats with > 0.5 ppt salinity)	
	7 day mean $\geq$ 4 mg/l	
	Instantaneous minimum $\geq$ 3.2 mg/l at temperatures < 29°C Instantaneous minimum $\geq$ 4.3 mg/l at temperatures $\geq$ 29°C	
Deep water	30 day mean $\geq$ 3 mg/l	June 1 - September 30
	1 day mean $\geq$ 2.3 mg/l	
	Instantaneous minimum $\geq$ 1.7 mg/l	
Deep channel	Instantaneous minimum $\geq$ 1 mg/l	June 1 - September 30

<sup>1</sup>In applying this open water instantaneous criterion to the Chesapeake Bay and its tidal tributaries where the existing water quality for dissolved oxygen exceeds an instantaneous minimum of 3.2 mg/l, that higher water quality for dissolved oxygen shall be provided antidegradation protection in accordance with 9 VAC 25-610-30 A 2.

<sup>2</sup>Open-water dissolved oxygen criteria attainment is assessed separately over two time periods: summer (June 1- September 30) and nonsummer (October 1-May 31) months.

B. Submerged aquatic vegetation and water clarity. Attainment of the shallow-water submerged aquatic vegetation designated use shall be determined using any one of the following criteria:

Designated Use	Chesapeake Bay Program Segment	SAV Acres <sup>1</sup>	Percent Light-Through-Water <sup>2</sup>	Water Clarity Acres <sup>1</sup>	Temporal Application
Shallow Water Submerged Aquatic Vegetation Use	CB5MH	7,633	22%	14,514	April 1 - October 31
	CB6PH	1,267	22%	3,168	March 1 - November 30
	CB7PH	15,107	22%	34,085	March 1 - November 30
	CB8PH	11	22%	28	March 1 - November

				30
POTTF	2,093	13%	5,233	April 1 - October 31
POTOH	1,503	13%	3,758	April 1 - October 31
POTMH	4,250	22%	10,625	April 1 - October 31
RPPTF	66	13%	165	April 1 - October 31
RPPOH	4	13%	10	April 1 - October 31
RPPMH	1700	22%	5000	April 1 - October 31
CRRMH	768	22%	1,920	April 1 - October 31
PIAMH	3,479	22%	8,014	April 1 - October 31
MPNTF	85	13%	213	April 1 - October 31
MPNOH	-	-	-	-
PMKTF	187	13%	468	April 1 - October 31
PMKOH	-	-	-	-
YRKMH	239	22%	598	April 1 - October 31
YRKPH	2,793	22%	6,982	March 1 - November 30
MOBPH	15,901	22%	33,990	March 1 - November 30
JMSTF2	200	13%	500	April 1 - October 31
JMSTF1	1000	13%	2500	April 1 - October 31
APPTF	379	13%	948	April 1 - October 31
JMSOH	15	13%	38	April 1 - October 31
CHKOH	535	13%	1,338	April 1 - October 31
JMSMH	200	22%	500	April 1 - October 31
JMSPH	300	22%	750	March 1 - November 30
WBEMH	-	-	-	-
SBEMH	-	-	-	-
EBEMH	-	-	-	-
ELIPH	-	-	-	-
LYNPH	107	22%	268	March 1 - November 30
POCOH	-	-	-	-
POCMH	4,066	22%	9,368	April 1 - October 31

	TANMH	13,579	22%	22,064	April 1 - October 31
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<sup>1</sup>The assessment period for SAV and water clarity acres shall be the single best year in the most recent three consecutive years. When three consecutive years of data are not available, a minimum of three years within the data assessment window.

<sup>2</sup>Percent Light through Water =  $100e^{-K_d Z}$  where  $K_d$  is water column light attenuation coefficient and can be measured directly or converted from a measured secchi depth where  $K_d = 1.45/\text{secchi depth}$ . Z = depth at location of measurement of  $K_d$ .

C. Chlorophyll a.

Designated Use	Chlorophyll a Narrative Criterion	Temporal Application
Open Water	Concentrations of chlorophyll a in free-floating microscopic aquatic plants (algae) shall not exceed levels that result in undesirable or nuisance aquatic plant life, or render tidal waters unsuitable for the propagation and growth of a balanced, indigenous population of aquatic life or otherwise result in ecologically undesirable water quality conditions such as reduced water clarity, low dissolved oxygen, food supply imbalances, proliferation of species deemed potentially harmful to aquatic life or humans or aesthetically objectionable conditions.	March 1 - September 30

\*See 9VAC25-260-310 special standard bb for numerical chlorophyll criteria for the tidal James River.

D. Implementation.

1. Chesapeake Bay program segmentation scheme as described in Chesapeake Bay Program, 2004 Chesapeake Bay Program Analytical Segmentation Scheme-Revisions, Decisions and Rationales: 1983—2003, CBP/TRS 268/04, EPA 903-R-04-008, Chesapeake Bay Program, Annapolis, Maryland, and the Chesapeake Bay Program published 2005 addendum (CBP/TRS 278-06; EPA 903-R-05-004) is listed below and shall be used as the spatial assessment unit to determine attainment of the criteria in this section for each designated use.

Chesapeake Bay Segment Description	Segment Name <sup>1</sup>	Chesapeake Bay Segment Description	Segment Name <sup>1</sup>
Lower Central Chesapeake Bay	CB5MH	Mobjack Bay	MOBPH
Western Lower Chesapeake Bay	CB6PH	Upper Tidal Fresh James River	JMSTF2
Eastern Lower Chesapeake Bay	CB7PH	Lower Tidal Fresh James River	JMSTF1

Mouth of the Chesapeake Bay	CB8PH	Appomattox River	APPTF
Upper Potomac River	POTTF	Middle James River	JMSOH
Middle Potomac River	POTOH	Chickahominy River	CHKOH
Lower Potomac River	POTMH	Lower James River	JMSMH
Upper Rappahannock River	RPPTF	Mouth of the James River	JMSPH
Middle Rappahannock River	RPPOH	Western Branch Elizabeth River	WBEMH
Lower Rappahannock River	RPPMH	Southern Branch Elizabeth River	SBEMH
Corrotoman River	CRRMH	Eastern Branch Elizabeth River	EBEMH
Piankatank River	PIAMH	Lafayette River	LAFMH
Upper Mattaponi River	MPNTF	Mouth of the Elizabeth River	ELIPH
Lower Mattaponi River	MPNOH	Lynnhaven River	LYNPH
Upper Pamunkey River	PMKTF	Middle Pocomoke River	POCOH
Lower Pamunkey River	PMKOH	Lower Pocomoke River	POCMH
Middle York River	YRKMH	Tangier Sound	TANMH
Lower York River	YRKPH		

<sup>1</sup>First three letters of segment name represent Chesapeake Bay segment description, letters four and five represent the salinity regime of that segment (TF = Tidal Fresh, OH = Oligohaline, MH = Mesohaline and PH = Polyhaline) and a sixth space is reserved for subdivisions of that segment.

2. The assessment period shall be the most recent three consecutive years. When three consecutive years of data are not available, a minimum of three years within the the data assessment window.

3. Attainment of these criteria shall be assessed through comparison of the generated cumulative frequency distribution of the monitoring data to the applicable criteria reference curve for each designated use. If the monitoring data cumulative frequency curve is completely contained inside the reference curve, then the segment is in attainment of the designated use. The reference curves and procedures to be followed are published in the USEPA, Ambient Water Quality Criteria for Dissolved Oxygen, Water Clarity and Chlorophyll a for the Chesapeake Bay and Its Tidal Tributaries, EPA 903-R-03-002, April 2003 and the 2004 (EPA 903-R-03-002 October 2004), 2007 (CBA/TRS 285-07, EPA 903-R-07-003), 2008 (CBP/TRS 290-08, EPA 903-R-08-001, and 2010 (CBP/TRS 301-10, EPA 903-R-10-002), and 2017 (CBP/TRS 320-17, EPA 903-R-17-002) addenda. An exception to this requirement is in measuring attainment of the SAV and water clarity acres, which are compared directly to the criteria.



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### EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING OF APRIL 12, 2018

#### **MINUTE NO. 7 - Regulation- Fast-track amendments to the Aboveground Storage Tank and Pipeline Facility Financial Assurance Requirements (9VAC25-640 et seq.)**

Melissa Porterfield presented the State Water Control Board (Board) with a fast-track amendment to the Aboveground Storage Tank and Pipeline Facility Financial Assurance Requirements (9VAC25-640 et seq.). This fast-track regulatory action modifies the language in § 30 of the Aboveground Storage Tank and Pipeline Facility Financial Responsibility Requirements (9VAC25-640) to include the revisions made to the exclusions in § 30 of the Facility and Aboveground Storage Tank (AST) Regulation (9VAC25-91). An obsolete section is also being deleted from the Aboveground Storage Tank and Pipeline Facility Financial Responsibility Requirements regulation.

The Board was asked to approve the use of the fast-track process and to adopt the amendments to the Aboveground Storage Tank and Pipeline Facility Financial Assurance Requirements (9VAC25-640 et seq.).

#### **Board Decision**

Based on the briefing materials and the staff presentation, the Board voted unanimously to authorize the department to:

1. Promulgate the proposal 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. The Board authorized adoption of the amendments to the Aboveground Storage Tank and Pipeline Facility Financial Assurance Requirements 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 persons, or any member of the applicable standing committee of either house of the General Assembly or of 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; and
2. Set an effective date 15 days after close of the 30-day 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 black ink, appearing to read "Justin Williams", written over a horizontal line.

**Justin Williams**

Division of Land Protection and Revitalization Director



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#### MINUTE NO. 8 - Virginia Pollutant Discharge Elimination System General Permit for Concrete Products Facilities (9VAC25-193)

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, the proposed fact sheet and the town hall agency background document. Elleanore Daub, 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 General Permit for concrete Products Facilities, 9VAC25-193. 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**  
Director, Water Permitting Division





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### EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON APRIL 12, 2018

#### MINUTE NO. 9 – Significant Noncompliance Report

Kristen Sadtler, Water Enforcement Program Manager, informed the Board that one permittee was reported to EPA on the Quarterly Noncompliance Report as being in significant noncompliance for the quarter ending March 31, 2017, zero permittees were reported for the quarter ending June 30, 2017, one permittee was reported for the quarter ending September 30, 2017, and zero permittees were reported for the quarter ending December 31, 2017. The permittees, the facility and the instances of noncompliance were reported as follows:

1. Frederick-Winchester Service Authority, Opequon Water Reclamation Facility, failure to demonstrate compliance with Ammonia as N VPDES permit effluent limitations for the months of September 2016, January 2017, and March 2017.
2. Greensville County Water and Sewer Authority, Three Creek WWTP, failure to demonstrate compliance with consent order effluent limitations for copper for the month of August 2017.

Ms. Sadtler reported that the Frederick-Winchester Service Authority attributed the violations to the implementation of a green energy system that beneficially reuses methane gas to power the Facility. Ms. Sadtler further reported that the Authority made operational modifications to remediate the causes of the violations and the Facility is now operating in compliance.

Ms. Sadtler reported that the Greensville County Water and Sewer Authority was under a consent order with DEQ that set enforcement limits for copper from August 2014 through August 2017. Ms. Sadtler further reported that during that time, the Authority conducted a WER study which demonstrated that a permit limit for copper was not required for the Facility. Based on these results, when the permit was reissued to the Authority in September 2017, the permit did not contain copper limits and the Facility returned to compliance.

The Board accepted the report.

Handwritten signature of Kristen Sadtler in blue ink.

Kristen Sadtler  
Water Enforcement Program Manager  
Division of Enforcement



# COMMONWEALTH of VIRGINIA

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### EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON APRIL 12, 2018

#### MINUTE NO. 10: Consent Special Orders – Colonial Pipeline Company, Dynamic Aviation Group, Inc., John C. Holland Enterprises, Inc., and Mosely LP.

Lee M. Crowell, Enforcement Operations Manager, presented to the Board the Consent Special Orders for Colonial Pipeline Company; Dynamic Aviation Group, Inc.; John C. Holland Enterprises, Inc.; and Mosely LP. The Board approved the Order in a 6-0 vote, with one member absent, and further authorized the Department's 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, reading "Lee M. Crowell", written over a horizontal line.

Lee. M. Crowell  
Enforcement Operations Manager  
Division of Enforcement



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### EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON APRIL 12, 2018

#### MINUTE NO. 11 – TOTAL MAXIMUM DAILY LOADS (TMDLS)

Will Isenberg, Watershed Programs, presented two Total Maximum Daily Load (TMDL) reports, with six new waste load allocations for Board approval and amendment to the Water Quality Management Planning Regulation.

The proposed actions pertain to water bodies in the Potomac-Shenandoah River Basin. The TMDL reports included the following:

1. Sediment TMDLs for the Accotink Creek Watershed, Fairfax County, Virginia
2. Chloride TMDLs for the Accotink Creek Watershed, Fairfax County, Virginia

#### Board Decision:

Based on the briefing material and the staff presentation, the Board voted unanimously to:

1. Approve the two TMDL reports for inclusion into the Water Quality Management Plan,
2. Adopt the corresponding six new TMDL waste load allocations into the Water Quality Management Planning Regulation 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 STATE WATER CONTROL BOARD AT ITS MEETING ON APRIL 12, 2018

#### MINUTE NO. 12 - Minutes

The Board approved the minutes of the December 6-7, 2017, Board meeting with the following amendments to Minute 13 regarding the 401 Water Quality Certification No. 17-001- Mountain Valley Pipeline, LLC:

- Page 2, third full paragraph, insert language acknowledging that the Board discussed, as reflected in the transcript of the proceedings, the application of the U.S. Army Corps of Engineers Nationwide Permit 12.
- Page 3, next to last paragraph, show that the Board members voting no on the motion were Ms. Kellam and Ms. Dean.

The Board approved the minutes of the December 7-8, 2017, Board meeting with the following amendments to Minute 1 regarding the 401 Water Quality Certification No. 17-002 - Atlantic Coast Pipeline, LLC:

- Page 2, third full paragraph, insert language acknowledging that the Board discussed, as reflected in the transcript of the proceedings, the application of the U.S. Army Corps of Engineers Nationwide Permit 12.
- Page 3, last paragraph, second sentence, change "Ms." To "Mr." before Hayes.

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

Cindy M. Berndt



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### EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON APRIL 12, 2018

#### **MINUTE NO. 13 - UPDATES FOR ATLANTIC COAST PIPELINE AND MOUNTAIN VALLEY PIPELINE (INCLUDING DIVISION DIRECTOR'S REPORT AND PUBLIC FORUM)**

At the State Water Control Board (Board) meeting on April 12, 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.

#### **Report to the Board - Mountain Valley Pipeline, LLC 401 Water Quality Certification No. 17-001 - Supplemental Karst Evaluation Plan, Annual Standards and Specifications, and Erosion and Sediment Control and Stormwater Management Plans:**

At the meeting, Ms. Melanie D. Davenport, Director, Division of Water Permitting, provided a detailed technical presentation on the approved erosion and sediment control and stormwater management plans. This presentation was a follow-up to the March 26, 2018, report to the Board on the Supplemental Karst Evaluation Plan, Annual Standards and Specifications, and Erosion and Sediment Control and Stormwater Management Plans. Submittal of this report was not required as part of the Board's action when it approved the 401 Water Quality Certification No. 17-001 for MVP but was prepared by DEQ in order to be consistent with what the Board required when it issued the 401 Certification for the ACP project.

#### **Report to the Board - Atlantic Coast Pipeline 401 Water Quality Certification No. 17-002 - Supplemental Karst Evaluation Plan, Annual Standards and Specifications, and Erosion and Sediment Control and Stormwater Management Plans:**

There was no report presented at the meeting on ACP as there are still approvals pending on the project.

**Board Action - December 12, 2017 on Atlantic Coast Pipeline 401 Water Quality**

**Certification No. 17-002:**

The Board members discussed the process for the report required by the December 12, 2017, Board action where the Board approved issuance of a Section 401 water quality certification for upland activities for the proposed ACP. The certification included a delayed effective date based on submission and approval of specific information. After that meeting, the process for the report to the Board was documented and made available to the public on DEQ's website at [Protection Requirements for Pipelines](#).

No action was taken to revise the interpretation. In addition, in later discussions the Board indicated that no action is being considered to revisit the December 2017 action on ACP, and no comment on such an action is being sought or considered.

**Board Action - December 7, 2017 on Mountain Valley Pipeline 401 Water Quality**

**Certification No. 17-001:**

As part of the discussion of the December 12, 2017 action on ACP, the Board indicated that no action is being considered to revisit the December 7, 2017 action approving issuance of a Section 401 water quality certification for upland activities for the proposed MVP, and no comment on such an action is being sought or considered.

**Nationwide Permit (NWP) 12 - Activities in Wetlands and Streams for both MVP and ACP:**

Some Board members brought up for discussion whether the U.S. Army Corps of Engineers (Corps) Nationwide Permit (NWP) 12 is sufficiently protective of the Commonwealth's aquatic resources. NWP 12 authorizes discharges of dredged or fill materials into wetlands and streams during the construction of pipelines. NWP 12 was certified by DEQ on April 7, 2017, as meeting the requirements of the Board's Virginia Water Protection (VWP) Permit Regulation and the Corps granted coverage under NWP 12 to MVP on December 26, 2017, and to ACP on February 9, 2018.

DEQ advised the Board that the protections established in NWP 12 were the same as those that would have been established in an individual VWP permit. During the discussions, the members raised no specific areas of concern and provided no technical information that NWP 12 was insufficient. The Board also discussed possible processes and effects of any actions, if deemed appropriate under the Board's regulations, to revisit certification of NWP 12 as it relates to MVP and ACP. The Board took no action at the meeting to revisit certification of NWP 12 as it relates to MVP and ACP.

The Board directed DEQ 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 Corps' NWP 12 general and regional conditions, the Corps 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. Further, after the comment period closes DEQ is to evaluate the comments and submit a summary of the relevant comments to the Board, make the summary available to

the public and make the full text of the comments available to the Board. After review of the summary, no further action by the Board is required. The Board may consider further actions, consistent with its regulatory authority, at its discretion without additional public comment on whether further action is warranted. The vote directing DEQ to take these actions related to NWP 12 was 5 to 1 with Ms. Wood voting no.

**Future Update Reports to the Board:**

During the public forum the Board heard concerns and requests on various aspects of the pipeline projects from Terry Frank, Genesis Chapman, Whitney Whiting, Lee Williams, David Sligh, Nancy Sorrells, Suzanne Keller, William Limpert, Lynn Limpert, Caroline Pruet, Richard Brooks, Jessica Sims, Peggy Sanner, and Walton Shepherd.

In response, the Board requested that DEQ report back to the Board on several items discussed at the meeting. The report will not be the subject of public comment and is to address how DEQ will coordinate activities and complaints with the Federal Energy Regulatory Commission (FERC) and the Corps; how DEQ will address citizen issues; how variances are processed; what variances have been approved; modifications to the blasting plan; guidance for stop work orders; and how complaints will be addressed.



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



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### EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON APRIL 12, 2018

#### MINUTE NO. 14 - By-Laws

Ms. Kellam advised the Board that she will work with staff to bring a single by-laws document to the Board for discussion.

  
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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 12, 2018

#### MINUTE NO. 15 - Meetings

The Board confirmed June 11, September 20, and December 13, 2018, as the dates of future meetings.

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

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Cindy M. Berndt