

## Water Supply Plan Advisory Committee

Wednesday February 29, 2012 meeting, MeadWestvaco

### Members:

John Staelin, Mike Lawless, Chuck Murray, Rob McClintock, Art Petrini, Scott Smith, John Carlock, Bill Cox, Wes Kleene, John O'Dell, Judy Dunscomb, Beate Wright, Rick Linker, Tom Botkins

### Guests:

Tim Morse, Bob Fledderman, Ron Harris, Speaker Pollard, Andrea Wortzel, Greg Prelewicz, Gina Shaw, Tal Day, Cabell Vest

### DEQ Staff:

Scott Kudlas, Tammy Stephenson, Angela Neilan, Sara Jordan, Brenda Winn, Heather Mackey, Brian McGurk, Mary Ann Massie, Valerie Rourke

Mr. Morse welcomed Water Supply Plan Advisory Committee (WSPAC) members, guests, and DEQ staff to the new headquarters office for MeadWestvaco. He invited everyone to a tour of the facility following the WSPAC meeting. Ms. Stephenson reviewed the agenda and introduced Mr. Kudlas and Dr. Cox for a review of the December 2011 State Water Commission meeting. Mr. Kudlas reported that he gave the Commission an overview of the WSPAC's work in 2011 and committee expectations for 2012. The State Water Commission members asked questions about the status of local and regional water supply plan submittals, a schedule for plan review by DEQ staff, and information on products developed by the WSPAC. Dr. Cox was the WSPAC representative at the December meeting. Dr. Cox was pleased with the interest expressed by the State Water Commission on the utilization of the local and regional plans in future water management decisions. The State Water Commission members also expressed interest in the formation of the subcommittee to the WSPAC tasked with investigating interbasin transfer issues. HB 1158 and SB 425 were discussed and are attached to these minutes. Dr. Cox provided WSPAC members with a brief review of legislation that has been introduced on interbasin transfers (IBT) from major river basins. This IBT legislation does not change existing DEQ authority, rather it provides supplemental authority to adopt specified additional procedures.

### Subcommittee updates to the WSPAC:

#### Subcommittee #3 "Methodologies"

*"Development of methodologies for calculating actual and anticipated future water demand"*

Mr. Lawless noted the subcommittee reviewed methodologies for population projections and water demand projections. The subcommittee found that the methodologies were diverse, realistic, well documented, and tailored to local needs. The subcommittee supported flexibility in method selection, rather than DEQ dictating a standard methodology. Mr. Lawless noted the greatest variability between methodologies was in the use of per capita data, as some localities used historic data and others used gross per capita for their calculations. The subcommittee felt this was acceptable for the first iteration and that as data availability improves, projections will improve. As DEQ goes through the plans, any conflicts that may come up due to projection methodology can be further examined. Two final items discussed by the subcommittee were 1) scarcity of data related to agricultural uses and ground water availability, and 2) the need for an improved perspective on growth areas on a statewide scale. Ms. Neilan stepped forward to facilitate additional discussion from the WSPAC on the subcommittee findings. Dr. Cox asked about use of traditional demand methodologies that have recently been rejected by the federal government as part of their permit review (King William Reservoir was given as an example). Mr. Petrini noted the water supply plans are to inform the permitting process but are not tied to permit decisions. Mr. Lawless reiterated the subcommittee's support of diverse projection methodologies as part of a long term planning process with the understanding that documentation was available to defend or recreate the figures.

#### Subcommittee #4 "Consumptive Use/Cumulative Impact Analysis"

*"the impact of consumptive use and reuse on water resources; opportunities for use of alternative water sources, including water reuse and rainwater harvesting; environmental flows necessary for the protection of instream beneficial use of water for fish and wildlife habitat"*

Ms. Dunscomb presented the findings of subcommittee #4. She thanked Ms. Rourke, DEQ Office of Land Application Programs, for her presentation the day before and asked Ms. Stephenson to provide the documentation provided by Ms. Rourke to the full committee (included in these minutes). Ms. Dunscomb reported the subcommittee understands that the reuse of reclaimed wastewater may be considered to be a consumptive use and believes it should be accounted for as a withdrawal because of potential impacts on downstream uses. The subcommittee also supported a holistic watershed evaluation, regardless of whether a plan included a project proposing the reuse of reclaimed wastewater or some other potentially consumptive use, such as rainwater harvesting or stormwater management. The cumulative impact of all consumptive uses should be examined as part of a permitting effort. Mr. Petrini noted a lack of regulatory authority over the reclamation of stormwater. Mr. Linker added that impacts to ground water should also be considered. Ms. Neilan stepped forward to facilitate additional discussion from the WSPAC on the subcommittee findings. Mr. Murray noted Northern Virginia communities have been dealing with consumptive reuse proposals for some time. He has three main concerns on reuse which include quantity impacts to existing and future downstream users, quality impacts, and

financial viability of reuse projects. He noted a recent AWWA press release concerning a nationwide analysis of existing water and sewer infrastructure indicated the need for a \$1trillion dollar reinvestment and questioned whether it makes sense to support the establishment of an entirely new system of infrastructure when it will take \$1 trillion to maintain what we already have in place. Mr. Murray is developing a decision matrix to help guide interested parties on reuse project decisions. He also expressed concern about DEQ's reclamation approval process circumventing existing permitting regulations for withdrawals. Mr. Linker remarked the subcommittee would be meeting in the future to address incorporation of consumptive use concepts into the State Water Resources Plan (SWRP). Ms. Wright felt the SWRP should recognize reuse as a viable tool for meeting demand and noted the SWRP should outline considerations for use as DEQ evaluates reuse projects presented in the 'alternatives' section of local and regional water supply plans.

Ms. Neilan then asked for any further input on Subcommittees #3 and #4 before moving on. Dr. Cox said he thought the SWRP should provide policy and guidance at a high level, not just provide general statements of current conditions. Discussion followed on the overall tone of the SWRP as it examines issues as diverse as reuse and unpermitted withdrawals. Mr. Kudlas offered that the 'alternatives' sections of local and regional plans will likely follow the diversity observed in the population and water demand methodologies selection. Local and regional alternatives will vary depending on the demand they experience. One approach for an alternative source will not fit everyone. Additionally, Mr. Kudlas noted that the scarcity or uncertainty of data on agricultural withdrawals will be examined as water budgets are developed and large scale evaluations are completed. He felt the magnitude of any problems would be revealed at that time and then, a strategy could be developed to address it.

Mr. Murray asked if Subcommittee #3 "Methodologies" examined the method for determining current water supply. Mr. Lawless responded that the subcommittee limited their evaluation to population and water demand projection methodologies. Mr. McClintock noted supply discussions should examine yield. Mr. Murray felt supply issues should be examined and argued for a consistent approach to determining both supply and demand. Mr. Kudlas indicated the SWRP would frame the discussion on how people develop plans in the future. Mr. Murray felt that by the ten year resubmittals, DEQ should be giving feedback on supply and demand projections and identified conflicts. Mr. Petrini felt the conflicts would not necessarily change the methods selected but it could improve the sources considered in the alternatives section. Mr. Kudlas noted that conflicts generally result in standardization of methods. Politicians standardize things via regulation to address conflict. He noted in times of no conflict, flexibility is accepted. Mr. Murray felt that more specificity concerning demand projections would come in the future and noted the rigorous and prescriptive demand projection requirements currently utilized by participating members of the Metropolitan Washington Council of Governments.

On the general topic of the SWRP, Ms. Dunscomb was concerned that the preliminary outline for the SWRP (deliverable from Subcommittee #1) did not acknowledge local and regional plans. She felt statewide assumptions could be laid out and be followed with a more detailed information taken from local and regional plans, example given how they arrived at their current supply and future demand conclusions. Mr. Pollard noted any discussion on conflicts could include a discussion on methodology selections.

#### Subcommittee #5 “Interbasin Transfers”

*“Other policies and procedures that may enhance the effectiveness of water supply and water resources planning in Virginia”*

Mr. Linker presented on behalf of Subcommittee #5. Thinking they would get out in front of legislation, this subcommittee was formed initially to examine interbasin transfers (IBT). As reported earlier, the legislation was developed and is moving through committee. As noted earlier, this legislation does not change existing DEQ authority, only clarifies it. Understanding that DEQ will evaluate beneficial use impacts from IBT as they would any other withdrawal, the subcommittee did not feel special attention to the subject matter was necessary in the SWRP.

Mr. Linker reported the subcommittee also discussed the December 2012 ‘sunset clause’ on the WSPAC. The conclusion was that it was premature to consider extending the timeline.

Ms. Neilan stepped forward to facilitate additional discussion from the WSPAC on the subcommittee findings. Mr. Botkins agreed that IBT was a politically charged issue (social impacts) and agreed that it did not warrant special attention in the SWRP. Mr. Kudlas restated the definition of major watershed basin. Dr. Cox commented on the politics associated with Great Lakes IBT issues.

Ms. Neilan thanked Mr. Linker and moved forward, asking the full committee for any other ‘policies or procedures’ they would like addressed. Discussion followed and a list of items ‘vital to the SWRP’ was developed:

- Administrative policy and procedure associated with reuse – is it adequate and protective of the resource (referred to Subcommittee #4).
- Adequacy of state controls, specifically grandfathered/exempt users – members felt this would be addressed when/if allocation issues are identified. Mr. Botkins suggested that the WSPAC’s final report to DEQ include this as ‘an issue on the table but not addressed.’
- Stormwater impacts and competing purposes/programs, what is the magnitude of this? Flow alteration affects availability of water for in-stream and off-stream users. Issues with definition of ‘harvesting’. It was agreed that the WSPAC’s final report to DEQ will include this as ‘an issue on the table but not addressed.’

- Competing regulations. The SWRP should recognize this as in issue. John Carlock suggested a list of specific examples be included in the SWRP. This list will set the tone for future work.
- Format for WSPAC's final report to DEQ. The code states the WSPAC will provide advice to DEQ on eight issues. Subcommittee #6 was established to develop the final report (Cox, Linker, Wortzel, Lawless, Dunscomb, and Carlock).

Mr. Murray reiterated his concerns associated with reuse projects.

The WSPAC welcomed Robert Burgholzer, DEQ modeler, for a presentation. His presentation is included as an attachment.

A public comment opportunity was included in the agenda. Ms. Neilan asked for any public comment. There was no public comment.

Action items for the future include a final report from Subcommittee #3 by Mr. Lawless and additional meetings to be scheduled for Subcommittee #4 (consumptive use) and Subcommittee #6 (writing final report to DEQ). The meeting adjourned at 2:45 with additional thanks to Mr. Morse, Mr. Botkins, and Mr. Fledderman (MeadWestvaco) for hosting the meeting.

DRAFT

**VIRGINIA ACTS OF ASSEMBLY -- CHAPTER**

*An Act to amend and reenact § 62.1-44.15:20 of the Code of Virginia, relating to issuance of a Virginia Water Protection Permit.*

[H 1158]  
Approved

Be it enacted by the General Assembly of Virginia:

1. That § **62.1-44.15:20** of the Code of Virginia is amended and reenacted as follows:

§ **62.1-44.15:20**. Virginia Water Protection Permit.

A. Except in compliance with an individual or general Virginia Water Protection Permit issued in accordance with this article, it shall be unlawful to:

1. Excavate in a wetland;
2. On or after October 1, 2001, conduct the following in a wetland:
  - a. New activities to cause draining that significantly alters or degrades existing wetland acreage or functions;
  - b. Filling or dumping;
  - c. Permanent flooding or impounding; or
  - d. New activities that cause significant alteration or degradation of existing wetland acreage or functions; or
3. Alter the physical, chemical, or biological properties of state waters and make them detrimental to the public health, animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, or for recreation, or for other uses unless authorized by a certificate issued by the Board.

B. The Board shall, after providing an opportunity for public comment, issue a Virginia Water Protection Permit if it has determined that the proposed activity is consistent with the provisions of the Clean Water Act and the State Water Control Law and will protect instream beneficial uses.

C. Prior to the issuance of a Virginia Water Protection Permit, the Board shall consult with and give full consideration to any relevant information contained in the state water supply plan described in subsection A of § **62.1-44.38:1** as well as to the written recommendations of the following agencies: the Department of Game and Inland Fisheries, the Department of Conservation and Recreation, the Virginia Marine Resources Commission, the Department of Health, the Department of Agriculture and Consumer Services, and any other interested and affected agencies. *When considering the state water supply plan, nothing shall be construed to limit the operation or expansion of an electric generation facility located on a man-made lake or impoundment built for the purpose of providing cooling water to such facility.* Such consultation shall include the need for balancing instream uses with offstream uses. Agencies may submit written comments on proposed permits within 45 days after notification by the Board. If written comments are

not submitted by an agency within this time period, the Board shall assume that the agency has no comments on the proposed permit and deem that the agency has waived its right to comment. After the expiration of the 45-day period, any such agency shall have no further opportunity to comment.

D. Issuance of a Virginia Water Protection Permit shall constitute the certification required under § 401 of the Clean Water Act.

E. No locality may impose wetlands permit requirements duplicating state or federal wetlands permit requirements. In addition, no locality shall impose or establish by ordinance, policy, plan, or any other means provisions related to the location of wetlands or stream mitigation in satisfaction of aquatic resource impacts regulated under a Virginia Water Protection Permit or under a permit issued by the U.S. Army Corps of Engineers pursuant to § 404 of the Clean Water Act. However, a locality's determination of allowed uses within zoning classifications or its approval of the siting or construction of wetlands or stream mitigation banks or other mitigation projects shall not be affected by the provisions of this subsection.

F. The Board shall assess compensation implementation, inventory permitted wetland impacts, and work to prevent unpermitted impacts to wetlands.

DRAFT

**VIRGINIA ACTS OF ASSEMBLY -- CHAPTER**

*An Act to amend and reenact § 62.1-44.15 of the Code of Virginia, relating to the regulation of interbasin transfers.*

[S 425]

Approved

Be it enacted by the General Assembly of Virginia:

1. That § 62.1-44.15 of the Code of Virginia is amended and reenacted as follows:

§ 62.1-44.15. Powers and duties; civil penalties.

It shall be the duty of the Board and it shall have the authority:

(1) [Repealed.]

(2) To study and investigate all problems concerned with the quality of state waters and to make reports and recommendations.

(2a) To study and investigate methods, procedures, devices, appliances, and technologies that could assist in water conservation or water consumption reduction.

(2b) To coordinate its efforts toward water conservation with other persons or groups, within or without the Commonwealth.

(2c) To make reports concerning, and formulate recommendations based upon, any such water conservation studies to ensure that present and future water needs of the citizens of the Commonwealth are met.

(3a) To establish such standards of quality and policies for any state waters consistent with the general policy set forth in this chapter, and to modify, amend or cancel any such standards or policies established and to take all appropriate steps to prevent quality alteration contrary to the public interest or to standards or policies thus established, except that a description of provisions of any proposed standard or policy adopted by regulation which are more restrictive than applicable federal requirements, together with the reason why the more restrictive provisions are needed, shall be provided to the standing committee of each house of the General Assembly to which matters relating to the content of the standard or policy are most properly referable. The Board shall, from time to time, but at least once every three years, hold public hearings pursuant to § 2.2-4007.01 but, upon the request of an affected person or upon its own motion, hold hearings pursuant to § 2.2-4009, for the purpose of reviewing the standards of quality, and, as appropriate, adopting, modifying, or canceling such standards. Whenever the Board considers the adoption, modification, amendment or cancellation of any standard, it shall give due consideration to, among other factors, the economic and social costs and benefits which can reasonably be expected to obtain as a consequence of the standards as adopted, modified, amended or cancelled. The Board shall also give due consideration to the public health standards issued by the Virginia Department of Health with respect to issues of public health policy and protection. If the Board does not follow the public health standards of the Virginia Department of Health, the Board's reason for any deviation shall be made in writing and published for any and all concerned parties.



(3b) Except as provided in subdivision (3a), such standards and policies are to be adopted or modified, amended or cancelled in the manner provided by the Administrative Process Act (§ 2.2-4000 et seq.).

(4) To conduct or have conducted scientific experiments, investigations, studies, and research to discover methods for maintaining water quality consistent with the purposes of this chapter. To this end the Board may cooperate with any public or private agency in the conduct of such experiments, investigations and research and may receive in behalf of the Commonwealth any moneys that any such agency may contribute as its share of the cost under any such cooperative agreement. Such moneys shall be used only for the purposes for which they are contributed and any balance remaining after the conclusion of the experiments, investigations, studies, and research, shall be returned to the contributors.

(5) To issue, revoke or amend certificates under prescribed conditions for: (a) the discharge of sewage, industrial wastes and other wastes into or adjacent to state waters; (b) the alteration otherwise of the physical, chemical or biological properties of state waters; (c) excavation in a wetland; or (d) on and after October 1, 2001, the conduct of the following activities in a wetland: (i) new activities to cause draining that significantly alters or degrades existing wetland acreage or functions, (ii) filling or dumping, (iii) permanent flooding or impounding, or (iv) new activities that cause significant alteration or degradation of existing wetland acreage or functions.

(5a) All certificates issued by the Board under this chapter shall have fixed terms. The term of a Virginia Pollution Discharge Elimination System permit shall not exceed five years. The term of a Virginia Water Protection Permit shall be based upon the projected duration of the project, the length of any required monitoring, or other project operations or permit conditions; however, the term shall not exceed 15 years. The term of a Virginia Pollution Abatement permit shall not exceed 10 years, except that the term of a Virginia Pollution Abatement permit for confined animal feeding operations shall be 10 years. The Department of Environmental Quality shall inspect all facilities for which a Virginia Pollution Abatement permit has been issued to ensure compliance with statutory, regulatory, and permit requirements. Department personnel performing inspections of confined animal feeding operations shall be certified under the voluntary nutrient management training and certification program established in § 10.1-104.2. The term of a certificate issued by the Board shall not be extended by modification beyond the maximum duration and the certificate shall expire at the end of the term unless an application for a new permit has been timely filed as required by the regulations of the Board and the Board is unable, through no fault of the permittee, to issue a new permit before the expiration date of the previous permit.

(5b) Any certificate issued by the Board under this chapter may, after notice and opportunity for a hearing, be amended or revoked on any of the following grounds or for good cause as may be provided by the regulations of the Board:

1. The owner has violated any regulation or order of the Board, any condition of a certificate, any provision of this chapter, or any order of a court, where such violation results in a release of harmful substances into the environment or poses a substantial threat of release of harmful substances into the environment or presents a hazard to human health or the violation is representative of a pattern of serious or repeated violations which, in the opinion of the Board, demonstrates the owner's disregard for or inability to comply with applicable laws, regulations, or requirements;

2. The owner has failed to disclose fully all relevant material facts or has misrepresented a material fact in applying for a certificate, or in any other report or document required under this law or under the regulations of the Board;

3. The activity for which the certificate was issued endangers human health or the environment and can be regulated to acceptable levels by amendment or revocation of the certificate; or

4. There exists a material change in the basis on which the permit was issued that requires either a temporary or a permanent reduction or elimination of any discharge controlled by the certificate necessary to protect human health or the environment.

(5c) Any certificate issued by the Board under this chapter relating to dredging projects governed under Chapter 12 (§ **28.2-1200** et seq.) or Chapter 13 (§ **28.2-1300** et seq.) of Title 28.2 may be conditioned upon a demonstration of financial responsibility for the completion of compensatory mitigation requirements. Financial responsibility may be demonstrated by a letter of credit, a certificate of deposit or a performance bond executed in a form approved by the Board. If the U.S. Army Corps of Engineers requires demonstration of financial responsibility for the completion of compensatory mitigation required for a particular project, then the mechanism and amount approved by the U.S. Army Corps of Engineers shall be used to meet this requirement.

(6) To make investigations and inspections, to ensure compliance with any certificates, standards, policies, rules, regulations, rulings and special orders which it may adopt, issue or establish and to furnish advice, recommendations, or instructions for the purpose of obtaining such compliance. In recognition of §§ **32.1-164** and **62.1-44.18**, the Board and the State Department of Health shall enter into a memorandum of understanding establishing a common format to consolidate and simplify inspections of sewage treatment plants and coordinate the scheduling of the inspections. The new format shall ensure that all sewage treatment plants are inspected at appropriate intervals in order to protect water quality and public health and at the same time avoid any unnecessary administrative burden on those being inspected.

(7) To adopt rules governing the procedure of the Board with respect to: (a) hearings; (b) the filing of reports; (c) the issuance of certificates and special orders; and (d) all other matters relating to procedure; and to amend or cancel any rule adopted. Public notice of every rule adopted under this section shall be by such means as the Board may prescribe.

(8a) To issue special orders to owners (i) who are permitting or causing the pollution, as defined by § **62.1-44.3**, of state waters to cease and desist from such pollution, (ii) who have failed to construct facilities in accordance with final approved plans and specifications to construct such facilities in accordance with final approved plans and specifications, (iii) who have violated the terms and provisions of a certificate issued by the Board to comply with such terms and provisions, (iv) who have failed to comply with a directive from the Board to comply with such directive, (v) who have contravened duly adopted and promulgated water quality standards and policies to cease and desist from such contravention and to comply with such water quality standards and policies, (vi) who have violated the terms and provisions of a pretreatment permit issued by the Board or by the owner of a publicly owned treatment works to comply with such terms and provisions or (vii) who have contravened any applicable pretreatment standard or requirement to comply with such standard or requirement; and also to issue such orders to require any owner to comply with the provisions of this chapter and any decision of the Board. Orders issued pursuant to this subsection may include civil penalties of up to \$32,500 per violation, not to exceed \$100,000 per order. The Board may assess penalties under this subsection if (a) the person has been issued at least two written notices of alleged violation by the Department for the same or substantially related violations at the same site, (b) such violations have not been resolved by demonstration that there was no violation, by an order issued by the Board or the Director, or by other means, (c) at least 130 days have passed since the issuance of the first notice of alleged violation, and (d) there is a finding that such violations have occurred after a hearing conducted in accordance with subdivision (8b). The actual amount of any penalty assessed shall be based upon the severity of the violations, the extent of any potential or

actual environmental harm, the compliance history of the facility or person, any economic benefit realized from the noncompliance, and the ability of the person to pay the penalty. The Board shall provide the person with the calculation for the proposed penalty prior to any hearing conducted for the issuance of an order that assesses penalties pursuant to this subsection. The issuance of a notice of alleged violation by the Department shall not be considered a case decision as defined in § 2.2-4001. Any notice of alleged violation shall include a description of each violation, the specific provision of law violated, and information on the process for obtaining a final decision or fact finding from the Department on whether or not a violation has occurred, and nothing in this section shall preclude an owner from seeking such a determination. Such civil penalties shall be paid into the state treasury and deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund (§ 10.1-2500 et seq.), except that civil penalties assessed for violations of Article 9 (§ 62.1-44.34:8 et seq.) or Article 11 (§ 62.1-44.34:14 et seq.) of this chapter shall be paid into the Virginia Petroleum Storage Tank Fund in accordance with § 62.1-44.34:11.

(8b) Such special orders are to be issued only after a hearing before a hearing officer appointed by the Supreme Court in accordance with § 2.2-4020 or, if requested by the person, before a quorum of the Board with at least 30 days' notice to the affected owners, of the time, place and purpose thereof, and they shall become effective not less than 15 days after service as provided in § 62.1-44.12; provided that if the Board finds that any such owner is grossly affecting or presents an imminent and substantial danger to (i) the public health, safety or welfare, or the health of animals, fish or aquatic life; (ii) a public water supply; or (iii) recreational, commercial, industrial, agricultural or other reasonable uses, it may issue, without advance notice or hearing, an emergency special order directing the owner to cease such pollution or discharge immediately, and shall provide an opportunity for a hearing, after reasonable notice as to the time and place thereof to the owner, to affirm, modify, amend or cancel such emergency special order. If an owner who has been issued such a special order or an emergency special order is not complying with the terms thereof, the Board may proceed in accordance with § 62.1-44.23, and where the order is based on a finding of an imminent and substantial danger, the court shall issue an injunction compelling compliance with the emergency special order pending a hearing by the Board. If an emergency special order requires cessation of a discharge, the Board shall provide an opportunity for a hearing within 48 hours of the issuance of the injunction.

(8c) The provisions of this section notwithstanding, the Board may proceed directly under § 62.1-44.32 for any past violation or violations of any provision of this chapter or any regulation duly promulgated hereunder.

(8d) With the consent of any owner who has violated or failed, neglected or refused to obey any regulation or order of the Board, any condition of a permit or any provision of this chapter, the Board may provide, in an order issued by the Board against such person, for the payment of civil charges for past violations in specific sums not to exceed the limit specified in § 62.1-44.32 (a). Such civil charges shall be instead of any appropriate civil penalty which could be imposed under § 62.1-44.32 (a) and shall not be subject to the provisions of § 2.2-514. Such civil charges shall be paid into the state treasury and deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund (§ 10.1-2500 et seq.), excluding civil charges assessed for violations of Article 9 (§ 62.1-44.34:8 et seq.) or 10 (§ 62.1-44.34:10 et seq.) of Chapter 3.1 of this title, or a regulation, administrative or judicial order, or term or condition of approval relating to or issued under those articles.

The amendments to this section adopted by the 1976 Session of the General Assembly shall not be construed as limiting or expanding any cause of action or any other remedy possessed by the Board prior to the effective date of said amendments.

(8e) The Board shall develop and provide an opportunity for public comment on guidelines and procedures that contain specific criteria for calculating the appropriate penalty for each violation based upon the severity of the

violations, the extent of any potential or actual environmental harm, the compliance history of the facility or person, any economic benefit realized from the noncompliance, and the ability of the person to pay the penalty.

(8f) Before issuing a special order under subdivision (8a) or by consent under (8d), with or without an assessment of a civil penalty, to an owner of a sewerage system requiring corrective action to prevent or minimize overflows of sewage from such system, the Board shall provide public notice of and reasonable opportunity to comment on the proposed order. Any such order under subdivision (8d) may impose civil penalties in amounts up to the maximum amount authorized in § 309(g) of the Clean Water Act. Any person who comments on the proposed order shall be given notice of any hearing to be held on the terms of the order. In any hearing held, such person shall have a reasonable opportunity to be heard and to present evidence. If no hearing is held before issuance of an order under subdivision (8d), any person who commented on the proposed order may file a petition, within 30 days after the issuance of such order, requesting the Board to set aside such order and provide a formal hearing thereon. If the evidence presented by the petitioner in support of the petition is material and was not considered in the issuance of the order, the Board shall immediately set aside the order, provide a formal hearing, and make such petitioner a party. If the Board denies the petition, the Board shall provide notice to the petitioner and make available to the public the reasons for such denial, and the petitioner shall have the right to judicial review of such decision under § **62.1-44.29** if he meets the requirements thereof.

(9) To make such rulings under §§ **62.1-44.16**, **62.1-44.17** and **62.1-44.19** as may be required upon requests or applications to the Board, the owner or owners affected to be notified by certified mail as soon as practicable after the Board makes them and such rulings to become effective upon such notification.

(10) To adopt such regulations as it deems necessary to enforce the general water quality management program of the Board in all or part of the Commonwealth, except that a description of provisions of any proposed regulation which are more restrictive than applicable federal requirements, together with the reason why the more restrictive provisions are needed, shall be provided to the standing committee of each house of the General Assembly to which matters relating to the content of the regulation are most properly referable.

(11) To investigate any large-scale killing of fish.

(a) Whenever the Board shall determine that any owner, whether or not he shall have been issued a certificate for discharge of waste, has discharged sewage, industrial waste, or other waste into state waters in such quantity, concentration or manner that fish are killed as a result thereof, it may effect such settlement with the owner as will cover the costs incurred by the Board and by the Department of Game and Inland Fisheries in investigating such killing of fish, plus the replacement value of the fish destroyed, or as it deems proper, and if no such settlement is reached within a reasonable time, the Board shall authorize its executive secretary to bring a civil action in the name of the Board to recover from the owner such costs and value, plus any court or other legal costs incurred in connection with such action.

(b) If the owner is a political subdivision of the Commonwealth, the action may be brought in any circuit court within the territory embraced by such political subdivision. If the owner is an establishment, as defined in this chapter, the action shall be brought in the circuit court of the city or the circuit court of the county in which such establishment is located. If the owner is an individual or group of individuals, the action shall be brought in the circuit court of the city or circuit court of the county in which such person or any of them reside.

(c) For the purposes of this subsection the State Water Control Board shall be deemed the owner of the fish killed and the proceedings shall be as though the State Water Control Board were the owner of the fish. The fact that the owner has or held a certificate issued under this chapter shall not be raised as a defense in bar to any such action.

(d) The proceeds of any recovery had under this subsection shall, when received by the Board, be applied, first, to reimburse the Board for any expenses incurred in investigating such killing of fish. The balance shall be paid to the Board of Game and Inland Fisheries to be used for the fisheries' management practices as in its judgment will best restore or replace the fisheries' values lost as a result of such discharge of waste, including, where appropriate, replacement of the fish killed with game fish or other appropriate species. Any such funds received are hereby appropriated for that purpose.

(e) Nothing in this subsection shall be construed in any way to limit or prevent any other action which is now authorized by law by the Board against any owner.

(f) Notwithstanding the foregoing, the provisions of this subsection shall not apply to any owner who adds or applies any chemicals or other substances that are recommended or approved by the State Department of Health to state waters in the course of processing or treating such waters for public water supply purposes, except where negligence is shown.

(12) To administer programs of financial assistance for planning, construction, operation, and maintenance of water quality control facilities for political subdivisions in the Commonwealth.

(13) To establish policies and programs for effective area-wide or basin-wide water quality control and management. The Board may develop comprehensive pollution abatement and water quality control plans on an area-wide or basin-wide basis. In conjunction with this, the Board, when considering proposals for waste treatment facilities, is to consider the feasibility of combined or joint treatment facilities and is to ensure that the approval of waste treatment facilities is in accordance with the water quality management and pollution control plan in the watershed or basin as a whole. In making such determinations, the Board is to seek the advice of local, regional, or state planning authorities.

(14) To establish requirements for the treatment of sewage, industrial wastes and other wastes that are consistent with the purposes of this chapter; however, no treatment shall be less than secondary or its equivalent, unless the owner can demonstrate that a lesser degree of treatment is consistent with the purposes of this chapter.

(15) To promote and establish requirements for the reclamation and reuse of wastewater that are protective of state waters and public health as an alternative to directly discharging pollutants into waters of the state. The requirements shall address various potential categories of reuse and may include general permits and provide for greater flexibility and less stringent requirements commensurate with the quality of the reclaimed water and its intended use. The requirements shall be developed in consultation with the Department of Health and other appropriate state agencies. This authority shall not be construed as conferring upon the Board any power or duty duplicative of those of the State Board of Health.

(16) To establish and implement policies and programs to protect and enhance the Commonwealth's wetland resources. Regulatory programs shall be designed to achieve no net loss of existing wetland acreage and functions. Voluntary and incentive-based programs shall be developed to achieve a net resource gain in acreage and functions of wetlands. The Board shall seek and obtain advice and guidance from the Virginia Institute of Marine Science in implementing these policies and programs.

*(17) To establish additional procedures for obtaining a Virginia Water Protection Permit pursuant to §§ **62.1-44.15:20** and **62.1-44.15:22** for a proposed water withdrawal involving the transfer of water resources between major river basins within the Commonwealth that may impact water basins in another state. Such additional procedures shall not apply to any water withdrawal in existence as of July 1, 2012, except where the expansion of such withdrawal requires a permit under §§ **62.1-44.15:20** and **62.1-44.15:22**, in which event such additional procedures may apply to the extent of the expanded withdrawal only. The applicant shall provide as part of the application (i) an analysis of alternatives to such a transfer, (ii) a comprehensive analysis of the impacts that would occur in the source and receiving basins, (iii) a description of measures to mitigate any adverse impacts that may arise, (iv) a description of how notice shall be provided to interested parties, and (v) any other requirements that the Board may adopt that are consistent with the provisions of this section and §§ **62.1-44.15:20** and **62.1-44.15:22** or regulations adopted thereunder. This subdivision shall not be construed as limiting or expanding the Board's authority under §§ **62.1-44.15:20** and **62.1-44.15:22** to issue permits and impose conditions or limitations on the permitted activity.*

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# Proposed Amendments to the Water Reclamation and Reuse Regulation Related to Cumulative Impact Analyses

## 9VAC25-740-50. Exclusions and prohibitions.

B. Prohibitions. The following are prohibited under this chapter:

7. Reduction of the discharge from a VPDES permitted treatment works due to diversion of source water flow for reclamation and reuse such that the physical, chemical or biological properties of the receiving state waters are affected in a manner that would cause a significant adverse impact to other beneficial uses.

## 9VAC25-740-10. Definitions.

“Beneficial use” means both instream and offstream uses. Instream beneficial uses include, but are not limited to, the protection of fish and wildlife resources and habitat, maintenance of waste assimilation, recreation, navigation, and cultural and aesthetic values. The preservation of instream flows for purposes of the protection of navigation, maintenance of waste assimilation capacity, the protection of fish and wildlife resources and habitat, recreation, cultural and aesthetic values is an instream beneficial use of Virginia's waters. Offstream beneficial uses include, but are not limited to, domestic (including public water supply), agricultural uses, electric power generation, commercial, and industrial uses.

## 9VAC25-740-100. Application for permit.

B. General information. For projects that involve water reclamation and the distribution of reclaimed water, the following information shall be submitted with an application for a permit.

Information required for this subsection may be provided by referencing specific information previously submitted to the board unless changes have occurred that require the submission of new or more current information.

6. For the purpose of determining any significant adverse impacts to other beneficial uses, information regarding the VPDES permitted wastewater treatment works or the sewage collection system that proposes a new or increased diversion of source water to a reclamation system or SRS for the production of reclaimed water, including:

a. The latitude and longitude of the treatment works discharge location to a surface water or the SRS return discharge location to the sewage collection system;

b. The mean monthly discharge of the treatment works or the SRS for each month during the most recent 60 or more consecutive months at the time of application, or where this information is not available, estimated values for the mean monthly discharge of the treatment works or the SRS for each month during a period of 12 consecutive months;

c. The maximum monthly diversion of source water from the treatment works to a reclamation system or from the sewage collection system to a SRS for each month during a period of 12 consecutive months;

d. Pertaining to only sewage collection systems that provide source water, the name of the treatment works at the terminus of the sewage collection system; and

e. The information specified in subdivisions B 5 a, b and c of this subsection for each increase in source water diverted by the treatment works or the sewage collection system to a reclamation



system or SRS, respectively, among multiple increases to occur in planned phases, and the anticipated dates of the phased increases.

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