



Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

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www.deq.virginia.gov

Matthew J. Strickler
Secretary of Natural Resources

David K. Paylor
Director
(804) 698-4000

STATE WATER CONTROL BOARD MEETING

TUESDAY, JUNE 29, 2021

Board Members Present:

Heather L. Wood, Chair
Lou Ann Jessee-Wallace, Vice-Chair
Timothy G. Hayes
James A. Lofton
Paula H. Jasinski
Jillian Cohen

Board Members Absent:

Ryan Seiger

Department of Environmental Quality:

David K. Paylor, Director
Debra A. Harris

Cindy M. Berndt
Melanie D. Davenport

Attorney General's Office:

David C. Grandis, Senior Assistant Attorney General

- 1) The attached minutes summarize activities that took place at this Board Meeting.
- 2) The meeting was convened at 10:38 a.m., recessed at 12:55 p.m., reconvened at 1:38 p.m., recessed at 2:50 p.m., reconvened at 3:05 p.m., and adjourned at 3:55 p.m.

*Approved - Minute No. 1
September 28, 2021*



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**EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER
CONTROL BOARD AT ITS MEETING ON JUNE 29, 2021**

MINUTE NO. 1 - Minutes

The Board approved the minutes of the meetings held on April 14, 2021.


Cindy M. Berndt



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**EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD
AT ITS MEETING ON JUNE 29, 2021**

MINUTE 2 – Amendments to 9VAC25-31, 9VAC25-32, 9VAC25-91, 9VAC25-220, 9VAC25-610, 9VAC25-640, 9VAC25-690, and 9VAC25-720 to Implement House Bill 1855 and Senate Bill 1453 Concerning the Department of Mines, Minerals and Energy's Name Change and Recodification of Title 45.1 AND Amendments to 9VAC25-840 to Implement House Bill 1836 Concerning the Name Change for the Secretary of Natural Resources - Final Exempts Final Exempt Regulations: Amendment to 9VAC25-840 Concerning the Name Change for the Secretary of Natural Resources

Melanie Davenport, Division of Water Permitting, presented final exempt regulatory amendments to 9VAC25-31; 9VAC25-32; 9VAC25-91; 9VAC25-220; 9VAC25-610; 9VAC25-640; 9VAC25-690; 9VAC25-720 and 9VAC25-840. Ms. Davenport informed the Board that the amendments were necessary in order to incorporate changes to the State Water Control Law made during the 2021 General Assembly session concerning a name change for the Department of Mines, Minerals and Energy, recodification of Title 45.1 and a name change for the Secretary of Natural Resources. Ms. Davenport then described the amendments incorporating the necessary changes and the final exempt process.

DECISION:

Based on the information provided to the Board and the staff presentation and recommendation, the Board approved unanimously the following actions:

- Adopt the amendments incorporating the change made to 9VAC25-31, 9VAC25-32, 9VAC25-91, 9VAC25-220, 9VAC25-610, 9VAC25-640, 9VAC25-690, 9VAC25-7209 and VAC25-840;
- Authorize the amendments' publication; and
- Affirm that the Board will receive, consider, and respond to requests by any interested person at any time with respect to reconsideration or revision.

Melanie D. Davenport

Melanie D. Davenport, Director
Division of Water Permitting

September 13, 2021

Date



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**EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD
AT ITS MEETING ON JUNE 29, 2021**

**MINUTE 3 - Final Regulation: Virginia Water Protection Permit Program Regulation and
VWP General Permits (9VAC25-210, 9VAC25-660, 9VAC25-670, 9VAC25-680, and
9VAC25-690) - 2021 Legislation Amendment**

Melanie Davenport, Division of Water Permitting, presented a final exempt regulatory amendment to 9VAC25-210, 9VAC25-660, 9VAC25-670, 9VAC25-680, and 9VAC25-690. Ms. Davenport informed the Board that the amendments were necessary in order to incorporate changes to the State Water Control Law made during the 2021 General Assembly session regarding compensatory mitigation bank service areas and proximity to the impact site. Ms. Davenport provided a synopsis of the changes made by Chapter 265 by the 2021 Acts of Assembly. Chapter 265 revised compensation plans to include the information now required by § 62.1-44.15:23. It also clarifies language regarding the purchase of mitigation bank credits and in-lieu fee program credits with a primary service area and the analysis for justification of permittee-responsible compensation. Ms. Davenport then went through the regulatory amendments incorporating the necessary changes and the final exempt process.

DECISION:

Based on the information provided to the Board and the staff presentation and recommendation, the Board approved unanimously the following actions:

- Adopt the amendments incorporating the changes made to 9VAC25-210, 9VAC25-660, 9VAC25-670, 9VAC25-680, and 9VAC25-690;
- Authorize the amendment's publication; and
- Affirm that the Board will receive, consider, and respond to requests by any interested person at any time with respect to reconsideration or revision.

Melanie M. Davenport

Melanie M. Davenport, Director
Water Permitting Division

August 30, 2021

Date



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**EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD
AT ITS MEETING ON JUNE 29, 2021**

**MINUTE 4 – Amendments to 9VAC25-840 (Erosion and Sediment Control Regulations) to
Implement Senate Bill 1258**

Melanie Davenport, Division of Water Permitting, presented final exempt regulatory amendments to 9VAC25-840. Ms. Davenport informed the Board that the amendments were necessary in order to incorporate changes to the State Water Control Law made during the 2021 General Assembly session concerning review by the Department of Environmental Quality of erosion and sediment control plans for large (greater than 5 megawatts) solar farms. Ms. Davenport then described the amendments incorporating the necessary changes and the final exempt process.

DECISION:

Based on the information provided to the Board and the staff presentation and recommendation, the Board approved unanimously the following actions:

- Adopt the amendments incorporating the changes made to 9VAC25-840;
- Authorize the amendments' publication; and
- Affirm that the Board will receive, consider, and respond to requests by any interested person at any time with respect to reconsideration or revision.

Handwritten signature of Melanie D. Davenport in blue ink.

Melanie D. Davenport, Director
Division of Water Permitting

September 13, 2021

Date



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**EXCERPT FROM THE PROCEEDINGS OF THE STATE
WATERCONTROL BOARD AT ITS MEETING ON JUNE 29, 2021**

MINUTE NO. 5 Amendments to 9VAC25-900 (Certification of Nonpoint Source Nutrient Credits) to Implement House Bill 1982 - Final Exempt

Allan Brockenbrough of the Office of VPDES Permits presented to the Board a final exempt amendment to 9VAC25-900 (Certification of Nonpoint Source Nutrient Credits) to implement modifications to the Code of Virginia adopted in Special Session 1 of the 2021 General Assembly. The amendment allows facilities that are issued an individual VPDES permit regulating stormwater discharges that requires nitrogen and phosphorus monitoring at the facility to acquire, use and transfer credits for compliance with any waste load allocations. This provision was previously only available to facilities registered under the Industrial Stormwater General Permit (9VAC25-151).

Board Decision

Based on the briefing material and the staff presentation, the Board voted unanimously to (1) adopt the amendment to Certification of Nonpoint Source Nutrient Credits (9VAC25-900) as amended and presented, and (2) affirm that it will receive, consider and respond to petitions by any person at any time with respect to reconsideration or revision of the regulation, as provided by the Administrative Process Act.

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

Melanie D. Davenport
Director, Water Permitting Division



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**EXCERPT FROM THE PROCEEDINGS OF THE STATE
WATERCONTROL BOARD AT ITS MEETING ON JUNE 29, 2021**

MINUTE NO. 6 Amendments to 9VAC25-720 (Water Quality Management Planning Regulation) to Implement House Bill 2129 and Senate Bill 1354 - Final Exempt

Allan Brockenbrough of the Office of VPDES Permits presented to the Board final exempt amendments to 9VAC25-720 (Water Quality Management Planning Regulation) to implement modifications to the Code of Virginia adopted in Special Session 1 of the 2021 General Assembly. These amendments implement reduced Total Nitrogen and/or Total Phosphorus waste load allocations for seven municipal wastewater treatment facilities and the transfer of two waste load allocations as outlined in the Enhanced Nutrient Removal Certainty (ENRC) Program included in the legislation.

Board Decision

Based on the briefing material and the staff presentation, the Board voted unanimously to (1) adopt the amendment to the Water Quality Management Planning Regulation (9VAC25-720) as amended and presented, and (2) affirm that it will receive, consider and respond to petitions by any person at any time with respect to reconsideration or revision of the regulation, as provided by the Administrative Process Act.

A handwritten signature in cursive script that reads "Melanie D. Davenport".

Melanie D. Davenport
Director, Water Permitting Division



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**EXCERPT FROM THE PROCEEDINGS OF THE STATE
WATERCONTROL BOARD AT ITS MEETING ON JUNE 29, 2021**

MINUTE NO. 7 General Virginia Pollutant Discharge Elimination System (VPDES) Watershed Permit Regulation for Total Nitrogen and Total Phosphorus Discharges and Nutrient Trading in the Chesapeake Bay Watershed in Virginia - 9VAC25-820 - Final Amendment/Reissuance

Allan Brockenbrough of the Office of VPDES Permits presented a summary of materials provided in the Board's briefing materials including significant changes to the general permit regulation and responses to comments received during the Notice of Public Comment and Hearing. Chris Pomeroy of the Virginia Nutrient Credit Exchange Association and Jameson Brunkow of the James River Association spoke in favor of the amendments to the regulation.

Board Decision

Based on the briefing materials and the staff presentation, the Board voted unanimously to (1) adopt the amendment to the General VPDES Watershed Permit for Total Nitrogen and Total Phosphorus Discharges and Nutrient Trading in the Chesapeake Bay Watershed in Virginia (9VAC25-820) as amended and presented, and (2) affirm that it will receive, consider and respond to petitions by any person at any time with respect to reconsideration or revision of the regulation, as provided by the Administrative Process Act.

A handwritten signature in cursive script 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 JUNE 29, 2021**

**MINUTE 8 — Chesapeake Bay Preservation Area Designation and Management
Regulations - 9VAC25-830 – Final Amendment - Coastal Resilience and Adaptation to Sea-
level Rise and Climate Change Criteria**

Justin Williams, Office of Watershed and Local Government Assistance Programs, presented final amendments to the Chesapeake Bay Preservation Area (CBPA) Designation and Management Regulations. The regulatory change was required by Chapter 1207 of the 2020 Acts of Assembly (Act). The Act added “coastal resilience and adaptation to sea-level rise and climate change” to the criteria to be used by local governments and required that the Board adopt regulations to implement the provision. Mr. Williams presented the goals of the amendments, summary of the final changes to the regulation, including the addition of climate adaptation to measures allowed in CBPA Areas and conditions, the requirement that localities consider specific climate change impacts in proposed land development, and language to address the overlap with requirements from floodplain management and Virginia Marine Science Commission regarding wetlands.

Mr. Williams then completed the presentation providing a summary of the comments received during the Notice of Public Comment which ran from 2/1/21 – 5/3/21, along with the DEQ responses and the certification received from the Attorney General’s Office that the Board had the authority to adopt the amendments. Twelve speakers then addressed the Board. Seven speakers, representing two localities, a Planning District Commission, along with a four organizations, primarily requested additional time for the Stakeholder Advisory Group to meet for clarification or minor changes to final amendments. The remaining speakers represented organizations supporting final adoption of the amendments as presented.

Decision:

Based upon the information provided to the Board and the staff recommendation, the Board approved, by a vote of 6-0 (all present) the following action:

- Adopt the final amendments to the CBPA Designation and Management Regulation at 9 VAC25-830-10, as presented.



Jutta Schneider, Director



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**EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD
AT ITS MEETING ON JUNE 29, 2021**

**MINUTE 9 — Chesapeake Bay Preservation Area Designation and Management Regulation -
9VAC25-830 - Final Amendment - Preservation of Mature Trees and Replanting of Trees**

Justin Williams, Office of Watershed and Local Government Assistance Programs, presented final amendments to the Chesapeake Bay Preservation Area (CBPA) Designation and Management Regulation. The regulatory change was required by Chapter 1207 of the 2020 Acts of Assembly (Act The Act added “preservation of mature trees or planting of trees as a water quality protection tool and as a means of providing other natural resource benefits” to the criteria to be used by local governments and required that the Board adopt regulations to implement the provision. Mr. Williams presented a summary of the proposed changes to the regulation, including the definition of mature trees, addition of preserving mature trees and tree planting in existing vegetation requirements, and recognition of existing ordinances related to tree planting and preservation to demonstrate compliance with the new requirements in certain CBPA areas.

Mr. Williams then completed the presentation providing a summary of the comments received during the Notice of Public Comment which ran from 2/1/21 – 5/3/21, along with the DEQ responses and the certification received from the Attorney General’s Office that the Board had the authority to adopt the amendments. Ten speakers then addressed the Board. Six speakers representing two localities, along with four organizations, primarily requested additional time for the Stakeholder Advisory Group to meet for clarification or minor changes to final amendments. The remaining speakers represented organizations supporting final adoption of the amendments as presented.

Decision:

Based upon the information provided to the Board and the staff recommendation, the Board approved, by a vote of 6-0 (all present) the following action:

- Adopt the final amendments to the CBPA Designation and Management Regulation at 9 VAC25-830, as presented.



Jutta Schneider, Director



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**EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL
BOARD AT ITS MEETING ON June 29, 2021**

**MINUTE NO. 10 – Significant Noncompliance Report and Chesapeake Bay Preservation
Act Program Notices of Violation**

Kristen Sadtler, Water Enforcement Program Manager, informed the Board that there were no new facilities reported to EPA on the Quarterly Noncompliance Report as being in significant noncompliance for the quarter ending December 31, 2020 and DEQ did not issue any Notices of Violation to Chesapeake Bay Preservation Act Programs from March 15, 2021 to May 21, 2021.

The Board accepted the report.

A handwritten signature in cursive script that reads "Kristen Sadtler".

Kristen Sadtler

Water Enforcement Program Manager

Division of Enforcement



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**EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD
AT ITS MEETING ON June 29, 2021**

MINUTE NO. 11 – VPDES and VWPP Program Consent Special Orders

Kristen Sadtler, Water Enforcement Program Manager, presented to the Board the Consent Orders for Empire Services, Inc., Leisure Capital Corporation, McGrath Rent Corp., and Virginia Electric and Power Company. The Board took a vote and unanimously approved the Orders and further authorized the Department's Director to execute the Orders on the Board's behalf and refer violations of the Orders to the Office of the Attorney General for appropriate legal action.

A handwritten signature in cursive script that reads "Kristen Sadtler".

Kristen Sadtler
Water Enforcement Program Manager
Division of Enforcement



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**EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER
CONTROL BOARD AT ITS MEETING ON JUNE 29, 2021**

MINUTE NO. 12 – 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 on the status of a number complaints/investigations that DEQ responded to during the period including: DCR’s inspection of trench excavation as it proceeds through the karst terrain in Giles County; DCR and DEQ’s continuing to negotiations with the Sink family on the details of a proposed investigation of possible karst-related sediment intrusion into Bottom Spring; DEQ’s meeting with Franklin County erosion and sediment program staff and property owner at the Angle property to investigate a flood-damaged temporary bridge over Little Creek that was a concern to the County; DEQ’s meeting with representatives of Dominion at its Maplewood Solar site under construction in Pittsylvania County to ensure potential conflicts between MVP and Maplewood are avoided; DEQ’s review of redline documentation for an access road on the Hamm/Vest property (MVP-RO-286) prepared in response to onsite meeting with landowner.

Finally, Ms. Davenport reported that DEQ is currently reviewing compliance data for the March 11, 2021 – June 10, 2021 monitoring period under the existing consent decree; that FERC is evaluating MVP’s proposal to change the crossings methods for some waterways and wetlands from open cut to trenchless and will issue an Environmental Assessment of the proposal by August 13 and a final decision by November 11, 2021; and on March 4, 2021, the U.S. Department of Justice notified MVP that it had concluded its investigation without an adverse determination. US EPA Criminal Investigation Division closed their investigation of MVP on January 29, 2021.

Following the Director's report, Mr. Hayes recommended that at future meetings, a report on MVP be included on the regular agenda. He suggested that this report does not need to include construction status but should focus on complaints and investigations.

A handwritten signature in blue ink that reads "Melanie D. Davenport". The signature is written in a cursive style with a large initial 'M' and 'D'.

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 JUNE 29, 2021**

MINUTE NO. 13 - Public Forum

The following persons appeared during the public forum: Mike Rolband, Chris Saxman (Virginia Free), Nik Banka (Roanoke Gas Company) and Jessica Sims (Appalachian Voices).

Messrs. Rolband, Saxman and Banka expressed support for the Mountain Valley Pipeline project and Ms. Sim expressed opposition to the project and requested State Water Control Board submit a motion to intervene in the Federal Energy Regulatory Commission proceedings.



Cindy M. Berndt



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**EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER
CONTROL BOARD AT ITS MEETING ON JUNE 29, 2021**

MINUTE NO. 14 - Future Meetings

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



Cindy M. Berndt