



*Commonwealth of Virginia*

***VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY***

1111 E. Main Street, Suite 1400, Richmond, Virginia 23219

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(800) 592-5482 FAX (804) 698-4178

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Andrew R. Wheeler  
Secretary of Natural and Historic Resources

Michael S. Rolband, PE, PWD, PWS Emeritus  
Director  
(804) 698-4000

**STATE WATER CONTROL BOARD MEETING**

**TUESDAY DECEMBER 14, 2021**

**Board Members Present:**

Lou Ann Jessee-Wallace, Vice Chair  
Timothy G. Hayes  
Dr. Jack O. Lanier  
Paula Hill Jasinski  
Ryan C. Seiger

**Board Members Absent:**

Heather Wood, Chair  
Jillian Cohen

**Department of Environmental Quality:**

David K. Paylor, Director  
Cindy M. Berndt  
Melissa Porterfield

1. The attached minutes summarize activities that took place at this Board Meeting.
2. The meeting convened at 10:03 a.m., recessed at noon, reconvened at 12:47 p.m. and adjourned at 3:40 p.m.

*Approved Minute No. 1  
March 25, 2022*



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

Minute No. 1- Agenda approved

The Board approved the agenda for the December 14, 2021 meeting.

  
Melissa S. Porterfield



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

Minute No. 2- Minutes

The Board approved the minutes of the meeting held September 28, 2021.

Handwritten signature of Melissa S. Porterfield in blue ink.

Melissa S. Porterfield



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

**MINUTE 3 – GENERAL PERMIT FOR USE OF THE SURFICIAL AQUIFER IN A  
GROUNDWATER MANAGEMENT AREA, 9VAC25-920**

Joseph Grist, Office of Water Supply, presented information to the Board regarding a proposed regulatory action related to implementation of legislation by the General Assembly in 2020. The General Assembly directed the State Water Control Board to adopt regulations to address impacts of non-agricultural irrigation on the confined aquifer system in the Eastern Virginia and Eastern Shore Groundwater Management Areas by prospectively prohibiting the use of these aquifers unless the quality and quantity of the surficial aquifer is insufficient for the proposed beneficial use.

Mr. Grist stated that the Notice of Intended Regulatory Action was published on November 23, 2020 and the public comment period open from November 23, 2020 through December 23, 2020. The Director appointed a Technical Advisory Committee and the committee met five times, virtually, completing its work on June 22, 2021. Mr. Grist then provided an overview of draft Chapter 920 and specific sections of conditions, to include reasons to deny coverage, exclusions from the requirements of the general permit, and proposed application and general permit conditions. Mr. Grist concluded by stating that the Attorney General's Office provided certification on December 3, 2021 that the amendments are within the Board's authority pursuant to Chapter 25 of Title 62.1 of the Code of Virginia and are exempt from Article 2 of the Administrative Process Act (APA) pursuant to §2.2-4006 A 8 of the Code of Virginia.

**BOARD DECISION**

Based on the Board Book materials and information provided in the staff presentation, the Board approved the proposed general permit regulation 9VAC25-920 and authorized staff to proceed to notice of public comment and hearing. The Board further authorized the staff to serve as the hearing office at the public hearing. The Board voted 5-0 (Wallace, Hayes, Jasinski, Seiger, Lanier) by voice vote.

A handwritten signature in black ink that reads "Jutta Schneider".

Jutta Schneider, Director  
Water Planning Division



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

**MINUTE 4 – GENERAL PERMIT FOR USE OF THE SURFICIAL AQUIFER ON THE  
EASTERN SHORE, 9VAC25-910**

Joseph Grist, Office of Water Supply, presented information to the Board regarding two proposed regulatory actions related to implementation of legislation by the General Assembly in 2019. The General Assembly directed the State Water Control Board to adopt regulations to provide incentives for use of the surficial aquifer, rather than the deep aquifer, in the Eastern Shore Groundwater Management Area. The primary option to incentivize use of the surficial aquifer was identified to be the development of regulations to create a general permit for use of the surficial aquifer. Mr. Grist noted that the advantages of creating a general permit is that it will be available to facilities with eligible withdrawals to withdraw groundwater in a manner that is protective of the confined aquifers in the Eastern Shore Groundwater Management Area without increased cost and a more complex application process associated with issuing an individual permit. There are no known disadvantages.

Mr. Grist stated that the Notice of Intended Regulatory Action was published on November 11, 2019 and the public comment period open from November 11, 2019 through January 6, 2020. The Director appointed a Regulatory Advisory Panel and the committee met four times, twice in-person and twice virtually, completing its work on October 9, 2020. During its December 9, 2020 meeting, the Board authorized the Director to initiate a public comment period and schedule a public hearing for the proposed amendments to the Groundwater Withdrawal Permitting Regulation (9VAC25-610), to create a new general permit in regulation, and to promulgate the proposed General Permit for Use of the Surficial Aquifer on the Eastern Shore (9VAC25-910). The Virginia Registrar published draft regulations on August 30, 2021, with a public comment period of August 30, 2021 through October 29, 2021. Mr. Grist noted four public comments were received, three in support of the recommended amendments and a fourth comment concerned with providing other subsidies or incentives for use of the general permit. Mr. Grist noted that the development of a general permit regulation was identified as the primary and most appropriate incentive in response to the legislation and no changes to the proposed regulations were made.

Mr. Grist concluded by stating that the Attorney General's Office provided certification on December 3, 2021 that the amendments are within the Board's authority pursuant to Chapter 25 of Title 62.1 of the Code of Virginia and are exempt from Article 2 of the Administrative Process Act (APA) pursuant to §2.2-4006 A 8 of the Code of Virginia.

### **BOARD DECISION**

Based on the Board Book materials and information provided in the staff presentation, the Board approved adoption of amendments to 9VAC25-610 and to promulgate 9VAC25-910. The Board voted 5-0 (Wallace, Hayes, Jasinski, Seiger, Lanier) by voice vote.

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



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

**MINUTE NO. 5**      Water Quality Management Planning Regulation Amendments (9VAC25-720) and 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 Amendments (9VAC25-820)

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 Water Quality Management Planning Regulation to incorporate chlorophyll-a based Total Phosphorus wasteload allocations in the James River Basin and the transfer of wasteload allocations from five industrial facilities no longer in need of the allocations to the Nutrient Offset Fund. Also presented were amendments to the Watershed Permit Regulation for Total Nitrogen and Total Phosphorus Discharges and Nutrient Trading in the Chesapeake Bay Watershed in Virginia to include schedules of compliance for the chlorophyll-a based Total Phosphorus wasteload allocations as well as the Enhanced Nutrient Reduction Certainty Program wasteload allocations approved by the Board at their June 29, 2021 meeting. Patrick Fanning of the Chesapeake Bay Foundation and Jamie Brunkow of the James River Association spoke in favor of additional nutrient reductions from the point source sector and a process to automatically reclaim nutrient allocations from industries that have closed.

**Board Decision**

Based on the briefing materials and the staff presentation, the Board voted unanimously to adopt the amendments to the Water Quality Management Planning Regulation (9VAC25-720) and 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.

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

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



# COMMONWEALTH of VIRGINIA

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

#### MINUTE 6 – TOTAL MAXIMUM DAILY LOAD REPORTS AND WASTE LOAD ALLOCATIONS

Justin Williams, Director, Office of Watershed and Local Government Assistance Programs, presented three Total Maximum Daily Load (TMDL) reports with sixteen new waste load allocations for Board approval and amendment to the Water Quality Management Planning Regulation. The presentation included a correction to the Board Attachment II for Reed Creek from 99.1 to 22,250 lbs/year for the sediment allocation.

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

1. A TMDL to Address PCB in Lewis Creek Watershed Located in Staunton, Virginia
2. A TMDL to Address Benthic TMDL Development for the Lynch Creek and Reed Creek Watersheds located in Campbell and Pittsylvania Counties;
3. A TMDL to Address Bacteria for the Mattaponi River and Tributaries Located in Caroline, Essex, King William, and King and Queen Counties, Virginia.

Attorney General's Office provided certification on December 3, 2021 that the amendments are within the Board's authority pursuant to Chapter 3.1 of Title 62.1 of the Code of Virginia and exempt from Article 2 of the APA pursuant to Va. Code 2.2-4006(A)(14).

#### Board Decision:

Based on the briefing material and the staff presentation, the Board voted unanimously (5-0, Wallace, Hayes, Jasinski, Seiger, Lanier) by voice vote to:

1. Approve the three TMDL reports for inclusion into the Water Quality Management Plan, and
2. Adopt the sixteen new TMDL waste load allocations including the corrected allocation 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.

  
Jutta Schneider, Director  
Water Planning Division





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**EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD  
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**MINUTE NO. 7 – Significant Noncompliance Report and Chesapeake Bay Preservation  
Act Program Notices of Violation**

Tiffany Severs, DEQ Enforcement Division Director, informed the Board that there was one new facility reported to EPA on the Quarterly Noncompliance Report as being in significant noncompliance for the quarter ending June 30, 2021. The permittee reported was:

1. Advansix Resins & Chemicals LLC for the Advansix Facility in Hopewell, VA

Additionally, Tiffany informed the Board that DEQ did not issue any Notices of Violation to Chesapeake Bay Preservation Act Programs from August 24, 2021 to November 11, 2021.

The Board accepted the report.

A handwritten signature in black ink, appearing to read "T Severs", written over a horizontal line.

Tiffany Severs  
Director, Division of Enforcement



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**EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD  
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**MINUTE NO. 8 – VPDES Consent Special Order**

Tiffany Severs, DEQ Enforcement Division Director, presented to the Board the Consent Order for BleachTech LLC. The Board took a vote and unanimously approved the Order and further authorized the Department's Director to execute the Order on the Board's behalf and refer violations of the Order to the Office of the Attorney General for appropriate legal action.

A handwritten signature in cursive script, appearing to read "T. Severs", written over a horizontal line.

Tiffany Severs  
Director, Division of Enforcement



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

**MINUTE NO. 9 – VPDES and VWPP Consent Special Order**

Tiffany Severs, DEQ Enforcement Division Director, presented to the Board the Consent Order for Henrico County and MEB Haymes Joint Venture LLC. Steve Yob spoke to the Board on behalf of Henrico County. The Board took a vote, unanimously approved the Order, and further authorized the Department's Director to execute the Order on the Board's behalf and refer violations of the Order to the Office of the Attorney General for appropriate legal action.

A handwritten signature in cursive script, appearing to read "T. Severs", written over a horizontal line.

Tiffany Severs  
Director, Division of Enforcement



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

**MINUTE NO. 10 – VPDES Consent Special Order**

Tiffany Severs, DEQ Enforcement Division Director, presented to the Board the Consent Order for Henrico County. Steve Yob spoke to the Board on behalf of Henrico County. Patrick Fanning (Chesapeake Bay Foundation) and Jamie Brunkow (James River Association) provided comments and requested that the Board defer its vote on the Consent Order. The Board took a vote, unanimously approved the Order, and further authorized the Department's Director to execute the Order on the Board's behalf and refer violations of the Order to the Office of the Attorney General for appropriate legal action.

A handwritten signature in black ink, appearing to read "T Severs", written over a horizontal line.

Tiffany Severs  
Director, Division of Enforcement



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

**MINUTE 11 - Virginia Water Protection Individual Permit No. 21-0146, Mountain Valley Pipeline**

Melanie Davenport, Division of Water Permitting, presented the Mountain Valley Pipeline project (Project) overview, background, and history, as well as presenting a comparison of state and federal authorities governing the Project. Dave Davis, Office of Wetlands and Stream Protection, presented details regarding the processing of the Project application and development of the Project draft permit, as well as a detailed response to comments and concerns expressed by the U.S. Environmental Protection Agency and other commenters about the Project. After hearing the Board's discussion and answering the Board's questions, Mr. Davis provided the Staff Findings and Recommendations.

**DECISION:**

At the State Water Control Board's meeting on December 14, 2021, the Department of Environmental Quality (Department) recommended that:

Based on (i) the Board book materials, including revised draft VWP permit no. 21-0416 and fact sheet; (ii) public comments made at the September 27, 2021 and September 28, 2021 public hearings; (iii) written comments received during the 60-day public comment period; (iii) staff responses to public comments; (iv) staff presentation, (v) Board discussions, and (vi) agency files on the draft permit, the Board

1. Find that:

- A. The permit has been prepared in conformance with all applicable statutes, regulations, and agency practices;
- B. The proposed activity is consistent with the provisions of the Clean Water Act and State Water Control Law and there is reasonable assurance that compliance with the permit will protect instream beneficial uses, and will not violate applicable water quality standards;

- C. The proposed permit addresses avoidance and minimization of surface water impacts to the maximum extent practicable;
  - D. The effect of the impact, together with other existing or proposed impacts to surface waters, will not cause or contribute to significant impairment of state waters or fish and wildlife resources;
  - E. The proposed permit conditions are sufficient to achieve no net loss of wetland acreage and function through compensatory mitigation;
  - F. The permit is designed to prevent unpermitted impacts.
2. Approve VWP permit 21-0416 with conditions, as contained in the Board book.
  3. Authorize the Director to issue the final permit, as approved by the Board.

The Board, by a vote of three (3) to two (2) (Ms. Wallace, Mr. Hayes and Dr. Lanier voted aye and Ms. Jasinski and Mr. Seiger voted nay):

1. Adopted the Department's recommended findings and basis for their decision as described in the fact sheet as the Board's written findings and directed that the recommendations be put into the record as the Board's written findings;
2. Approved Virginia Water Protection Permit 21-0416 with the conditions as contained in the Board book and incorporated the permit and fact sheet as contained in the Board book into the Board's record; and
3. Authorized the Director to issue the final permit, as approved by the Board.



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Melanie D. Davenport, Director  
Division of Water Permitting



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AT ITS MEETING ON DECEMBER 14, 2021**

Minute No. 12- Future Meetings

The Board did not confirm their next meeting date. Board members were asked to provide their ability to attend a future meeting in March or April 2022 to Melissa Porterfield.

  
Melissa S. Porterfield



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EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD  
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MINUTE 13 – FY 2022 VCWRLF Loan Authorizations

Ms. Karen Doran, Program Manager of the Department's Clean Water Financing and Assistance Program (the Program), made a presentation to the Board based on a memorandum dated November 9, 2021. The memorandum identified the loan amounts, terms, and interest rates for 32 projects being recommended by staff for FY 2022 Virginia Clean Water Revolving Loan Fund (the Fund) assistance.

Ms. Doran began her presentation by summarizing the FY 2022 application process for 32 projects targeted for a total of \$343,350,944 in assistance from the Fund. She explained that she had met with all of the potential FY 2022 loan recipients to verify the schedules and financial data used to evaluate the local impact and that staff had completed its user charge impact analyses for the targeted recipients in order to establish the interest rates in accordance with Board guidelines. She stated that a public meeting on the proposed funding list was held on October 29, 2021 and no comments were received.

Ms. Doran informed the Board that the program adjusted the Median Household Income (MHI) brackets using the most recently published estimated MHI data from the American Community Survey, performed by the U.S. Census Bureau. Ms. Doran explained that all the interest rate analyses have been finalized in accordance with the Board approved guidelines and the resulting recommendations were included in the memorandum to the Board. As approved by the Board in previous years, staff recommended revisions to the program rates and term options offered to borrowers whose project type and impact to user rates resulted in a program rate based on the Board's Guidelines. Based on consultation with the Virginia Resources Authority (VRA), she stated that the staff was recommending that the program rate calculation vary depending on the term of the loan for wastewater projects.

Board Decision: Authorize the execution of loan agreements for the projects, loan amounts, interest rates and terms listed above, and that 20-year term program rates are set at 1.5% below market, 25-year term program rates are 1.25% below market, and 30-year term program rates are 1.00% below market, based on VRA's evaluation of the market conditions that exist about a month prior to each loan closing. The interest rate for the local program project and Southwest Virginia Pilot Program construction projects will be 0%, the hardship interest rate will be 0.5%, and the minimum interest rate will be 1% for all other loans. Loan closings will be subject to receipt of a favorable financial capability analysis report and supporting recommendation from VRA for each loan recipient.



<b>FY 2022 Proposed Interest Rates and Loan Authorizations</b>		
<i>Locality</i>	<i>Loan Amount</i>	<i>Rates and Loan Terms</i>
1 Town of Saltville	\$ 349,800	0%, up to 30 years
2 Town of Abingdon	\$ 3,336,800	0%, up to 30 years
3 Town of Big Stone Gap	\$ 2,965,566	0%, up to 30 years
4 Town of Chilhowie	\$ 2,069,974	0%, up to 30 years
5 Wythe County	\$ 1,209,000	0%, up to 30 years
6 Town of Wytheville	\$ 1,967,137	0%, up to 30 years
7 Town of Independence	\$ 1,010,840	0%, up to 30 years
8 South Central Wastewater Authority	\$ 30,626,407	PR*, up to 25 years
9 BVU Authority	\$ 9,532,000	0.5%, up to 30 years
10 Stafford County	\$ 26,326,000	PR*, up to 25 years
11 City of Lynchburg	\$ 6,500,000	0.5%, up to 30 years
12 Hampton Roads Sanitation District	\$ 100,000,000	PR*, up to 25 years
13 City of Fredericksburg	\$ 60,000,000	PR*, up to 25 years
14 Wise County Public Service Authority	\$ 8,424,060	0.5%, up to 30 years
15 Town of Marion	\$ 295,240	0.5%, up to 25 years
16 Town of Marion	\$ 442,000	0.5%, up to 30 years
17 Town of Lebanon	\$ 6,715,000	0.5%, up to 25 years
18 Middlesex County	\$ 2,550,000	PR*, up to 30 years
19 City of Portsmouth	\$ 509,458	0.5%, up to 30 years
20 City of Portsmouth	\$ 865,368	0.5%, up to 30 years
21 City of Portsmouth	\$ 761,673	0.5%, up to 30 years
22 City of Portsmouth	\$ 2,104,545	0.5%, up to 30 years
23 City of Portsmouth	\$ 1,499,963	0.5%, up to 30 years
24 City of Norfolk Dept of Public Utilities	\$ 6,000,000	0.5%, up to 30 years
25 City of Salem	\$ 2,300,437	PR*, up to 25 years
26 Town of Vinton	\$ 710,808	0.5%, up to 25 years
27 City of Petersburg	\$ 16,760,000	0.5%, up to 30 years
28 City of Norfolk Dept. of Public Works	\$ 4,513,868	0.5%, up to 20 years
29 City of Lynchburg	\$ 10,000,000	0.5%, up to 20 years
30 City of Norfolk Dept. of Public Works	\$ 400,000	0.5%, up to 20 years
31 Fairfax County	\$ 30,000,000	PR*-1%, up to 20 years
32 Middle Peninsula Planning District Comm	\$ 3,000,000	0%, up to 20 years
<b>TOTAL</b>	<b>\$ 343,745,944</b>	PR = Program Rate *minimum 1%

Valerie E. Thomson-electronic

01/14/22

Valerie Thomson  
Director of Administration



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Minute No. 14- PFAS Study of the Middle Chickahominy Watershed

Mr. Jeffery Steers provided the Board with an update on the PFAS study of the Middle Chickahominy Watershed. Per- and Polyfluoroalkyl Substances (PFAS) are a class of emerging contaminants found to be persistent in the environment. Several of these substances were recently found in the Middle Chickahominy River watershed and the White Oak sub-watershed near the Richmond International Airport. A joint investigation by DEQ, the Virginia Department of Health and Henrico County is underway. An overview of planned activities for sampling surface water, sediment, fish tissue and private wells was presented to the Board.

  
Jeffery A Steers



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Matthew J. Strickler  
Secretary of Natural Resources

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

**MINUTE NO. 15 – Mountain Valley Pipeline-Update**

Ms. Melanie D. Davenport provided an update on the Mountain Valley Pipeline (MVP) project. She discussed (i) the construction status of the project, (ii) significant field related events and (iii) compliance monitoring activities.

Ms. Davenport reported that disturbed areas in Spreads G and H have been stabilized and Spreads G, H and I are now in a dormant stage with no ongoing forward construction. She mentioned three incidents of interest. First, MVP reported a leaking diesel fuel tank in Spread G. Follow up inspection observed that the cleanup was conducted properly and there were no impacts to resources or offsite properties. Second, DEQ staff met with representatives of the U.S. Army Corp of Engineers on site regarding certain landowners concerns about proper delineation of wetland boundaries. No action items resulted from the meeting. Third, during restoration of an access road, MVP filled a small isolated wetland, which had formed as a result of the initial road grading in 2018. MVP obtained a permit from the Corps and provided compensation for the loss of the wetland areas.

Finally, Ms. Davenport reported that DEQ performed 56 site inspections during the period and responded to three complaints. None of the complaints were attributable to MVP non-compliance and none resulted in impacts to resources or offsite properties.

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

Melanie D. Davenport  
Director, Water Permitting Division



*Commonwealth of Virginia*

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

Minute No. 16- Public Forum

The following persons appeared during the public forum: Danny LeBeau, Kay Ferguson, Joshua Vana, Freeda Cathcart, and Jessica Sims. An additional person attempted to speak but was not recognized by the chair.

Speakers commented on the following topics:

- hydrogen gas as a clean energy fuel supplanting all fossil fuels;
- per-fluoroalkyls;
- public engagement;
- accountability for permits issued, and the need to enforce water quality standards;
- the need for the board to have a regulatory committee to the regulations concerning climate change; and
- environmental justice review as part of the board's procedures.

Handwritten signature of Melissa S. Porterfield in blue ink.

Melissa S. Porterfield