

TENTATIVE AGENDA AND UPDATED MINIBOOK
STATE WATER CONTROL BOARD MEETING
THURSDAY, JULY 28, 2016

HOUSE ROOM D, GENERAL ASSEMBLY BUILDING
9TH & BROAD STREETS
RICHMOND, VIRGINIA 23219

CONVENE – 9:30 A.M.

TAB

I. Permits

Chesterfield Economic Development Authority Virginia Water
Protection Permit (Chesterfield County)

Dunaway

A

II. Other Business

Future Meetings (September 22-23, December 12-13)

ADJOURN

NOTE: The Board reserves the right to revise this agenda without notice unless prohibited by law. Revisions to the agenda include, but are not limited to, scheduling changes, additions or deletions. Questions arising as to the latest status of the agenda should be directed to the staff contact listed below.

PUBLIC COMMENTS AT STATE WATER CONTROL BOARD MEETINGS: The Board encourages public participation in the performance of its duties and responsibilities. To this end, the Board has adopted public participation procedures for regulatory actions and for case decisions. These procedures establish the times for the public to provide appropriate comment to the Board for its consideration.

For Regulatory Actions (adoption, amendment or repeal of regulations), public participation is governed by the Administrative Process Act and the Board's Public Participation Guidelines. Public comment is accepted during the Notice of Intended Regulatory Action phase (minimum 30-day comment period) and during the Notice of Public Comment Period on Proposed Regulatory Action (minimum 60-day comment period). Notice of these comment periods is announced in the Virginia Register, by posting to the Department of Environmental Quality and Virginia Regulatory Town Hall web sites and by mail to those on the Regulatory Development Mailing List. The comments received during the announced public comment periods are summarized for the Board and considered by the Board when making a decision on the regulatory action.

For Case Decisions (issuance and amendment of permits), the Board adopts public participation procedures in the individual regulations which establish the permit programs. As a general rule, public comment is accepted on a draft permit for a period of 30 days. If a public hearing is held, there is an additional comment period, usually 45 days, during which the public hearing is held.

In light of these established procedures, the Board accepts public comment on regulatory actions and case decisions, as well as general comments, at Board meetings in accordance with the following:

Regulatory Actions: Comments on regulatory actions are allowed only when the staff initially presents a regulatory action to the Board for final adoption. At that time, those persons who commented during the public comment period on the proposal are allowed up to 3 minutes to respond to the summary of the comments presented to the Board. Adoption of an emergency regulation is a final adoption for the purposes of this policy. Persons are allowed up to 3 minutes to address the Board on the emergency regulation under consideration.

Case Decisions: Comments on pending case decisions at Board meetings are accepted only when the staff initially presents the pending case decision to the Board for final action. At that time the Board will allow up to 5 minutes for the applicant/owner to make his complete presentation on the pending decision, unless the applicant/owner objects to specific conditions of the decision. In that case, the applicant/owner will be allowed up to 15 minutes to make his complete presentation. The Board will then allow others who commented during the public comment period (i.e., those who commented at the public hearing or during the public comment period) up to 3 minutes to respond to the summary of the prior public comment period presented to the Board. No public comment is allowed on case decisions when a FORMAL HEARING is being held.

Pooling Minutes: Those persons who commented during the public hearing or public comment period and attend the Board meeting may pool their minutes to allow for a single presentation to the Board that does not exceed the time limitation of 3 minutes times the number of persons pooling minutes, or 15 minutes, whichever is less.

New information will not be accepted at the meeting. The Board expects comments and information on a regulatory action or pending case decision to be submitted during the established public comment periods. However, the Board recognizes that in rare instances, new information may become available after the close of the public comment period. To provide for consideration of and ensure the appropriate review of this new information, persons who commented during the prior public comment period shall submit the new information to the Department of Environmental Quality (Department) staff contact listed below at least 10 days prior to the Board meeting. The Board's decision will be based on the Department-developed official file and discussions at the Board meeting. In the case of a regulatory action, should the Board or Department decide that the new information was not reasonably available during the prior public comment period, is significant to the Board's decision and should be included in the official file, the Department may announce an additional public comment period in order for all interested persons to have an opportunity to participate.

PUBLIC FORUM: The Board schedules a public forum at each regular meeting to provide an opportunity for citizens to address the Board on matters other than those on the agenda, pending regulatory actions or pending case decisions. Those wishing to address the Board during this time should indicate their desire on the sign-in cards/sheet and limit their presentations to 3 minutes or less.

The Board reserves the right to alter the time limitations set forth in this policy without notice and to ensure comments presented at the meeting conform to this policy.

Department of Environmental Quality Staff Contact: Cindy M. Berndt, Director, Regulatory Affairs, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, Virginia 23218, phone (804) 698-4378; e-mail: cindy.berndt@deq.virginia.gov.

Proposed Issuance of Virginia Water Protection Program Permit No. 16-0731, Project Buzzard, Chesterfield County, Virginia: Joint Permit Application (JPA) Number 16-0731 was submitted on May 5, 2016, by the applicant, Chesterfield Economic Development Authority. The applicant proposes to construct a 600,000 square foot industrial facility, with associated infrastructure such as parking, utilities, and roads. The project is located within Meadowville Technology Park in Chesterfield County. The identity of the proposed user of the facility was not provided within the permit application, due to ongoing confidential negotiations between the applicant and the user.

This proposed project is essentially identical to a project presented in March 2015 in Joint Permit Applicant No. 15-0331. In April 2015, DEQ issued a draft VWP Permit, and the applicant published the public notice. During the public comment period for VWP Permit No. 15-0331, DEQ received 63 individual requests for a public hearing. At the close of the comment period, the applicant withdrew the application, citing market concerns. DEQ staff notified the commenters of the application withdrawal, and did not issue the VWP permit.

Because of the substantial public interest in the previous application and the applicant's proposed construction schedule, the applicant requested that DEQ forego the initial public comment period on the draft permit and immediately proceed to schedule a public hearing and corresponding public comment period for the current application. DEQ agreed to this request and published a public notice announcing the comment period and hearing in the *Richmond Times-Dispatch* on May 25, 2016.

Proposed Impacts to Surface Waters

The proposed project will result in permanent impacts to no more than 0.22 acre of emergent wetland (PEM), 8.21 acres of isolated forested (PFO) wetland, 1.44 acres of forested wetland (not isolated) and 84 linear feet of stream bed. Project activities will also cause the permanent conversion of 0.05 acre forested wetland to emergent wetland.

The current proposed activity is considered a "single and complete project" with previously authorized portions of the Meadowville Technology Park, development of which began in 1997. Total cumulative impacts

for the Park, including those authorized by this permit and previous permits, include permanent impacts to 0.85 acres of emergent wetlands, 8.95 acre of isolated forested wetlands, 2.947 acres forested wetlands and 312 linear feet of stream bed; conversion of 0.753 acre of forested wetlands to emergent wetlands; and temporary impacts to 0.32 acre of emergent wetlands and 0.148 acre of forested wetlands.

Compensatory Mitigation

The proposed permit requires that the applicant purchase wetland and stream mitigation credits in the amounts shown below as compensatory mitigation for proposed impacts. In accordance with Va. Code §62.1-44.15:23(A), all credits must be purchased from a DEQ-approved mitigation bank within the same United States Geological Survey Hydrologic Unit Code (HUC) as the project site, or in an adjacent HUC and in the same river watershed. Standard impact to mitigation ratios were applied to the proposed wetland impacts. The number of stream credits necessary to offset impacts to stream bed was determined using the Unified Stream Methodology (USM), which is standard practice for DEQ and the Norfolk District of the U.S. Army Corps of Engineers.

Permanent Impact	Mitigation Ratio	Required Mitigation Bank Credits
8.21 acres isolated forested wetlands	2:1	16.42 wetland credits
1.44 acres forested wetlands (non-isolated)	2:1	2.88 wetland credits
0.22 acre of emergent wetlands (non-isolated)	1:1	0.22 wetland credits
0.05 acre conversion of forested to emergent wetlands (non-isolated)	1:1	0.05 wetland credits
84 linear feet of stream bed (non-isolated)	n/a	73 USM credits

Status of U.S. Army Corps of Engineers Individual Permit

The applicant must also obtain an individual permit from the U.S. Army Corps of Engineers (USACE) for the impacts to non-isolated surface waters associated with this proposed project. The USACE held a 30-day public comment period in 2015 regarding the original 2015 application. No comments were received. As of July 1, 2016, the USACE has not issued a final permit for this project, but does plan to issue in the near future.

Authorization to Convene a Public Hearing

Due to the significant public interest in the previous application (JPA No. 15-0331), on May 19, 2016, the applicant requested and the Director authorized staff to hold a public hearing regarding the proposed issuance of VWP Permit No. 16-0731.

Public Notice

The public comment period began on May 25, 2016 with the publication of the public notice in the *Richmond Times-Dispatch* on May 25, 2016. The comment period will be open until 4 p.m. on July 13, 2016. Notification of the draft permit, public comment period, and public hearing, and copies of the public notice were sent to the locality in which activities are proposed. Copies of the public notice were also sent to those individuals that commented on the 2015 permit application (JPA No. 15-0331).

Public Hearing

The public hearing was held at 6:30 p.m. on June 28, 2016, in the Central Conference Room of Chesterfield County Central Library. Mr. Robert Dunn of the State Water Control Board served as the Hearing Officer. No members of the public attended the hearing. Four representatives of the applicant attended and one provided verbal comments in support of the project.

Public Notice and Public Hearing

The public hearing comment period closed on July 13, 2016. Below is a summary of the comments that have been received thus far:

- One individual provided oral comments during the public hearing, supporting the permit issuance.
- No written comments were received prior to the hearing
- 37 written comments were received after the hearing.

Summary of Comments and Staff Response

Staff combined and summarized comments, where possible, without losing specifics. The responses were prepared with regulatory, technical, and historical perspectives. The summary of comments and staff responses are:

1. Compensatory Mitigation

Commenters stated that the proposed off-site compensatory mitigation is too far away to offset losses of surface waters, including wetlands, on the project site. Commenters also requested on-site compensatory mitigation.

Staff Response:

The conditions in the draft permit were written in accordance with the Virginia Water Protection Permit Regulation (9VAC25-210-116(A)) and Va. Code §62.1-44.15:23(A), which allow permittees to offset losses of wetlands and streams using DEQ-approved mitigation bank credits located within the same United States Geological Survey Hydrologic Unit Code (HUC) as the project site, or in an adjacent HUC and in the same river watershed. Although wetland and stream losses will occur on this specific project site, these losses will be offset on a watershed scale.

Mitigation banks have several practicable advantages over permittee-responsible mitigation projects, including on-site mitigation:

1. An Interagency Review Team (IRT), with representation from up to 11 federal, state and local agencies, oversees the planning, monitoring and implementation of mitigation banks. Members include representatives from the U.S. Army Corps of Engineers, the U.S. Environmental Protection Agency, the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, the Virginia Institute of Marine Science, DEQ, Virginia Department of Game and Inland Fisheries, Virginia Marine Resources Commission, Virginia Department of Conservation and Recreation, the Virginia Department of Forestry, and the local government.
2. The IRT only releases credits from banks when the IRT agrees that the activities are meeting certain success criteria or when plans for a successful bank or fund project have been approved. Financial assurance is required to ensure that the bank is successful in perpetuity.
3. Mitigation is oftentimes in place before impacts are initiated.
4. Current science shows that consolidated mitigation and a watershed approach are ecologically preferable and typically more successful as compared to permittee-responsible mitigation.

Chesterfield EDA has voluntarily agreed to purchase all wetland mitigation bank credits at the mitigation bank closest to the project site with sufficient credits. The bank is the Eastern Henrico Mitigation Bank, located 15 miles to the north of the project site. The draft permit has been modified to reflect this change.

2. Surface Water Quality

Comments were received related to potential negative effects to surface water quality resulting from this project:

- Pollutants from the adjacent industrial park will no longer be buffered by on-site wetlands.
- Pollutants discharged will result in a human health risk from fish or shellfish consumption due to diminished water quality in the James River, downstream of the project site.

Staff Response:

The conditions in the draft permit are based on requirements in the VWP regulations which were developed to protect downstream water quality during construction. The draft permit contains the following requirements to protect surface water quality:

- Part I.C.1 requires that the project activities be conducted in a manner that minimizes impacts to instream beneficial uses.
- Part I.C.9 prohibits turbidity levels downstream of the construction site from exceeding turbidity levels upstream of the construction site at any time.
- Part I.C.10 requires that instream activities be completed during low-flow conditions.
- Part I.C.11, 12, and 13 prohibit construction or waste materials, contaminated fill and untreated stormwater from entering surface waters.
- Part I.C.14 requires that the permittee take measures to prevent and contain spills of pollutants.
- Part I.C.21 requires that erosion and sediment controls be designed, installed and maintained during the life of the project.

In addition, land disturbing activities associated with the project must be covered under the VPDES Construction Stormwater General Permit (VAR10), which requires installation of stormwater controls and implementation of a stormwater pollution prevention plan to prevent sediment and other pollutants associated with construction sites from being discharged in stormwater runoff. After construction, industrial operations that discharge stormwater associated with industrial activities through a point source or storm sewer system will also be required to obtain a VPDES Industrial Stormwater General Permit (VAR05).

According to the Virginia Department of Health, the area of the James River to which this project drains is too low in salinity to support shellfish. In addition, this permit does not authorize the discharge of any pollutants that may impact the fish consumption designated use. Impairment of the fish consumption use is determined using a comparison of available fish tissue data to Water Quality Standards criterion-based values for toxic pollutants¹ and a comparison of water column data to human health criteria for public water supplies and all other surface waters (9 VAC 25-260-140).

3. Wetland Loss Effect on Appomattox River Rehabilitation Efforts

Comments were received expressing concern over the detrimental effect of wetland losses on efforts to monitor and rehabilitate the Appomattox River.

Staff Response:

This project does not drain to the Appomattox River; therefore, no adverse effect is expected.

4. Negative Effects on Citizens' Quality of Life

Comments were received indicating that the proposed wetland losses will have a negative on citizens' quality of life, specifically hiking, walking, bird-watching or boating at Presquile National Wildlife Refuge and surrounding areas.

Staff Response:

Runoff from the project travels 4 miles via Johnson Creek to the James River. Presquile National Wildlife Refuge is additional 2.5 miles upstream of the intersection of Johnson Creek with the James River. Given the distance between the project site and Presquile National Wildlife Refuge, as well as the draft permit conditions outlined in Item 1, above, staff does not anticipate adverse effects from this project on activities occurring within or near Presquile National Wildlife Refuge.

5. Effects on Marine Life and Water-Dependent Mammals and Birds

Comments were received regarding potential adverse effects to the health of fish, and birds and mammals that consume small aquatic life.

Staff Response:

In accordance with Va. Code §62.1-44.15:20(C), DEQ contacted the Virginia Department of Game and Inland Fisheries, the Virginia Department of Conservation and Recreation, and the U.S. Fish and Wildlife Service regarding the potential effect of this project on fish and wildlife resources. None of these agencies identified adverse effects to fish or wildlife resources resulting from this project.

6. Alternative Site Layouts or Locations May Reduce Impacts

Comments were received requesting relocation of the project and adjustment of site plans to build around surface waters.

Staff Response:

¹ See "Draft 2016 Water Quality Assessment Guidance Manual", VA DEQ (http://www.deq.virginia.gov/Portals/0/DEQ/Water/WaterQualityAssessments/2016_WQA_Guidance_DRAFT.pdf)

9 VAC 25-210-115(C) requires that an applicant demonstrate to the satisfaction of the Board that avoidance and minimization opportunities have been identified and applied to the proposed activity, and that practicable alternatives, including design alternatives, have been evaluated for the proposed activity. 9 VAC 25-210-10 states, “‘Practicable’ means available and capable of being done after taking into consideration cost, existing technology, and logistics *in light of overall project purposes*” [emphasis added]. The purpose of this project is to provide 600,000 square feet of warehouse space and associated infrastructure on a parcel that is immediately adjacent to the Amazon Distribution Center in Chesterfield County and is zoned I-2 to allow medium industrial use. The parcel selected is the only site that meets the project purpose and is sufficiently sized to accommodate the size of warehouse needed. The necessary size, zoning and proximity to the Amazon Distribution Center eliminates other potential sites within the Meadowville Technology Park.

In order to avoid surface water impacts, prior to submitting the application the applicant worked with the prospective user to reduce the required square footage from one 750,000 sq. ft. building and a second 500,000 sq. ft. building to a single, 600,000 sq. ft. building. In addition, the applicant evaluated alternative site layouts to determine if impacts could be avoided. Specifically, the warehouse was configured in an “L-shape” and parking/loading areas were relocated. These site layouts resulted in 12% greater impacts to surface waters than the selected alternative. In the proposed layout, the applicant has designed stormwater basins to avoid surface waters by fitting them into areas where parking lots, drive aisles and other appurtenant features could not be developed. Prior to submitting the application, the applicant moved the loop road closer to the proposed stormwater management facility in order to reduce impacts. Fill slopes were evaluated, and where topography allowed, slopes were designed more steeply to enable a reduction in impacts. Stream and wetland crossings were evaluated; and while bridge crossings were not feasible, the use of wing walls and consolidating utility and road crossings allowed for a reduction in the overall impacts prior to submittal of the application.

DEQ staff could identify no additional sites, design alterations or layouts that would meet the project purpose and result in additional avoidance of impacts. Based on the above, staff believes that the applicant has demonstrated that avoidance and minimization opportunities have been identified and applied to the proposed activity, that practicable alternatives, including design alternatives, have been evaluated for the proposed activity, and that the proposed activity, in terms of impacts to water quality and fish and wildlife resources, is the least environmentally damaging practicable alternative, in accordance with 9 VAC 25-210-115(C).

7. Cumulative Surface Water Impacts

Comments were received which requested disclosure of the total cumulative impacts resulting from Meadowville Technology Park, including previous, current and future development.

Staff Response:

The applicant provided a copy of the Master Plan for Meadowville Technology Park with the permit application. MTP consists of a total of 1,350 acres, which contains 166 acres of wetlands and 13,452 linear feet of streams. Total cumulative impacts for MTP, including those proposed in the current application and authorized by previous permits, include permanent fill of 12.747 acres of wetlands and 312 linear feet of stream bed, the conversion of 0.753 acre of forested wetlands to emergent wetlands, and temporary impact of 0.468 acre of wetlands. Because all future users have not been identified, specific site needs and associated impacts cannot be entirely accounted for at this time. Where feasible, buildings and parking areas are located outside of surface waters, and road and utility crossings are located in the narrowest point of surface waters.

Although DEQ does promote the use of master planned developments as a way to avoid impacts to surface waters by advanced planning, in recent years, DEQ has avoided permitting master planned developments without identified end users in place. Permitting impacts for an entire master plan development years or decades before end users are identified encourages speculative development, which may result in surface water impacts occurring without a clear need. Requiring an end user prior to authorizing impacts also ensures that the mitigation required for impacts adheres to the most current standards and practices in place at the time that impacts occur.

8. Wetland Characterization

Comments were received related to the characterization and delineation of wetlands on the subject property:

- Preliminary Jurisdictional Determination issued by the U.S. Army Corps of Engineers relies too heavily on applicant’s wetland delineation work.
- Wetland delineation data points may not be representative of all of the wetlands on site.
- Wetlands designated as isolated may not in fact be isolated.

- Wetlands designated by the applicant as being the result of silvicultural activities may have been present prior to silvicultural activities

Staff Response:

In accordance with Va. Code § 62.1-44.15:21 and 9 VAC 25-210-45, DEQ accepts wetland delineations conducted using the procedures in the U.S. Army Corps of Engineers' "Wetland Delineation Manual, Technical Report Y-87-1, January 1987, Final Report" and subsequent regional supplements. Confirmation of the wetland boundary by the U.S. Army Corps of Engineers via a preliminary or approved Jurisdictional Determination fulfills this requirement for permitting purposes. The Corps relied on information submitted by the applicant and conducted a field visit to verify the data submitted for this site. DEQ staff was present at the delineation confirmation site visit in late 2014, and conducted a second site visit in March 2015 to review field conditions and the characteristics of the isolated wetland system to be impacted.

Differentiation between isolated and non-isolated wetlands is made by the Corps during the delineation confirmation in order to determine Corps jurisdiction under §404 of the Clean Water Act. (Isolated wetlands are not considered jurisdictional by the Corps under §404.) Whether or not a wetland is isolated does not affect DEQ's jurisdiction under State Water Control Law, nor does it affect DEQ's evaluation of avoidance and minimization and compensatory mitigation proposals.

Based on the application and the site visits conducted, DEQ agrees that the applicant did not provide sufficient evidence to support its claim that most of the forested wetlands characterized as isolated on the site were the result of compaction and vegetation removal associated with silvicultural activities, or that these wetlands were lower in quality as a result. Functional differences do exist between the isolated versus non-isolated systems on the site, due in part to differing vegetative characteristics and hydrologic regimes. These functional differences did not, however, result in preferential avoidance of one wetland system over another, nor were they sufficient to alter standard mitigation ratios for forested wetland impacts. DEQ rejected the applicant's initial, verbal proposal during a pre-application meeting in 2015 to provide compensatory mitigation at a 1:1 ratio for isolated forested wetland impacts. Instead, the standard 2:1 mitigation to impact ratio was required for all forested wetland impacts.

9. Support for the Proposed Permit

Verbal comments were received during the public hearing supporting the project and proposed permit.

Staff Response:

Staff acknowledges receipt of these comments.

Staff Comments

Staff will recommend that the draft permit be issued with the addition of a change to require wetland mitigation credits to be purchased from the nearest mitigation bank with sufficient credits, Eastern Henrico Mitigation Bank, 15 miles north of the project site.

As of July 14, 2016 the U.S. Army Corps of Engineers has not issued a permit for this project. If issued, the Corps permit will authorize non-isolated wetland and stream impacts associated with the project. The isolated surface waters on this site are not under the Corps' jurisdiction.