



COMMONWEALTH of VIRGINIA  
DEPARTMENT OF ENVIRONMENTAL QUALITY

James S. Gilmore, III  
Governor

John Paul Woodley, Jr.  
Secretary of Natural Resources

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Dennis H. Treacy  
Director

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MINUTES  
STATE WATER CONTROL BOARD  
October 19, 2000 - House Room C  
General Assembly Building  
Richmond, Virginia

Board Members Present:

Hunter E. Craig, Chairman  
H. Preston Futrell, Jr.  
Thomas V. Van Auken

Karl F. Wenger  
Lance W. High

Board Members Absent:

James V. Couch, Vice-Chairman

Staff Present:

Dennis H. Treacy, Director  
Department of Environmental Quality

Cindy M. Berndt  
Department of Environmental Quality

Attorney General's Office:

John Butcher, Assistant Attorney General

- 1) The attached minutes summarize activities that took place at this Board Meeting.
- 2) The meeting was convened at 9:40 a.m. on Thursday, October 19, 2000, and adjourned at 11:10 a.m.



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### EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON OCTOBER 19, 2000

#### MINUTE NO. 1 - Minutes

Dr. Van Auken presented a revised Minute No. 18 concerning the report by CASRAM to the Board for their consideration. The Board unanimously approved the revised Minute No. 18. The Board then unanimously approved the Minutes from the September 19, 2000 meeting.

  
\_\_\_\_\_  
Cindy M. Berndt



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Gregory L. Clayton  
Regional Director

**EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT  
ITS MEETING ON OCTOBER 19, 2000**

**MINUTE NO. 2 - Consent Order Issuance/Civil Charges – JSC Concrete Construction, Inc.**

The Department of Environmental Quality's ("DEQ") Northern Virginia Regional Office ("NVRO") presented one proposed Consent Special Order with civil charges for the Board's consideration.

Ms. Elizabeth Anne Crosier of the DEQ NVRO made the staff presentation concerning the proposed Order. Following the presentation, Ms. Crosier made the staff recommendations regarding the proposed Order.

As a result of a citizen complaint, DEQ staff conducted an investigation at the JSC Concrete Construction, Inc., ("JSC Concrete") Manassas Park facility that revealed a petroleum release to state waters from a storm drain at the facility. JSC Concrete did not report the spill to DEQ and failed to provide DEQ with the proper documentation of the subsequent cleanup. A multimedia inspection conducted after the release indicated additional areas of concern including failure to register the facility's aboveground storage tanks and potential violations of the State Air Pollution Control Board and Law and Regulations and the Virginia Waste Management Act and Regulations.

The Order requires that JSC Concrete submit a site plan of the facility's storm sewer, clean the storm sewer, implement a Hazardous Waste Determination Plan, cease operation of sand blasting in the open, and provide adequate containment methods during sand blasting operations. The Order also provides that JSC Concrete pay a civil charge of \$16,791.00, of which \$5,471.00 is for alleged violations of the State Water Control Law and Regulations, and to reimburse the Commonwealth for \$1,318.99 in investigative costs.

**Decision**

Based on the briefing material and the staff presentation and recommendations, the Board voted

unanimously to:

1. Approve the proposed Consent Special Order;
2. Authorize the Director or his designee to sign the Order on the Board's behalf,  
and
3. Authorize the Director or his designee to refer violations of the Order to the  
Attorney General's Office for appropriate legal action.



Gregory L. Clayton  
Regional Director





**COMMONWEALTH of VIRGINIA**  
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**EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL  
BOARD AT ITS MEETING ON OCTOBER 19, 2000**

**MINUTE NO. 3 - VRO - Consent Orders**

Richard W. Anderson, Compliance and Enforcement Manager of the VRO, made a staff presentation and introduced the staff recommendations concerning proposed VRO Consent Special Orders with civil charges for the following facilities:

**Consent Order with a Civil Charge**

**Wampler Foods, Inc.**

Wampler Foods operates a poultry processing and rendering plant in the Town of Timberville in Rockingham County, Virginia. In July of 1999, DEQ staff investigated a report of a fish kill in the North Fork of the Shenandoah River below the Wampler outfall. Wampler staff had noted an abnormally high level of ammonia in the final clarifier of the wastewater treatment plant that morning, which they traced back to condensate from the rendering plant. The rendering plant was processing an unusually high number of dead birds due to extreme heat. In addition, two of the aerators in the clarifier had failed on the same day. Wampler took prompt action to address the high ammonia levels in its effluent. The company has since taken its wastewater treatment plant off-line and has connected to the Sheaffer wastewater reclamation and reuse facility.

The Consent Special Order settles the violation of the State Water Control Law, and requires Wampler to pay a civil charge of \$5250, fish replacement costs, and staff investigative costs. The Order received 30 days of public notice, and there was no public comment.

### **Consent Order without a Civil Charge**

#### **Michael Seeger and Thomas Spencer**

Mr. Michael Seeger and Mr. Thomas Spencer own and operate a wastewater treatment system, serving their individual residences, which is not authorized by a valid permit. The facility discharges to North Creek, Middle James River basin. The Seeger and Spencer residences, located in Rockbridge County, are served by a sewage treatment system consisting of a septic tank and discharging sand filter. The treatment system was formerly regulated under the local health services LHS-120 permitting program. In 1992, regulation of this facility was referred to the State Water Control Board from the local Health Department. LHS-120 facilities did not have valid permits to authorize the discharge of wastewater to State waters. DEQ has found that Michael Seeger and Thomas Spencer to be in violation of laws and regulations for an unpermitted discharge and failure to make application for a VPDES Permit for the discharge.

The Order requires Mr. Seeger and Mr. Spencer to either install on-site subsurface sewage disposal systems approved by the local Health Department or make application for a VPDES discharge permit for the existing treatment system. The Order received 30 days of public notice, and there was no public comment.

#### **Board Decision**

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

1. approve the Consent Special Order and civil charge for Wampler Foods, Inc.;
2. approve the Consent Special Order without a civil charge for Michael Seeger and Thomas Spencer;
3. authorize the Director or his designee to sign the Orders on its behalf; and
4. authorize the Director or his designee to refer any violation of these Orders to the Attorney General's Office for appropriate legal action.

  
**R. Bradley Chewning, P.E.**  
**Regional Director**  
**Valley Regional Office**



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Dennis H. Treacy  
Director

Gerard Seeley, Jr.  
Piedmont Regional Director

**EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL  
BOARD AT ITS MEETING ON OCTOBER 19, 2000**

**MINUTE NO. 4 - Proposed Issuance of Permit No. VPA00579  
Port Tobacco at Weanack - Charles City County**

Piedmont Regional Office Engineer Allan Brockenbrough made a presentation to the Board summarizing the issues raised during the public comment period and at the public hearing for the proposed VPA permit. The permit would be issued to Weanack LLP for the use of Potomac River dredge spoils to reclaim 56 acres of land which had previously been mined for gravel. The Potomac River is being dredged in order to construct a replacement for the Woodrow Wilson Bridge on I-95.

A public hearing on the proposed permit was held in Charles City County on September 27, 2000 with Mr. Van Auken serving as the hearing officer. Issues raised at the public hearing and during the public comment period included the impact of pollutants in the dredge material, wetlands impacts, the potential release of dredge material and water to the James River, the dredge spoil monitoring program, the lack of standards for such a project and the ground and surface water monitoring requirements. Staff analysis and response to the issues raised were addressed in a PowerPoint presentation and in written materials presented to the Board members.

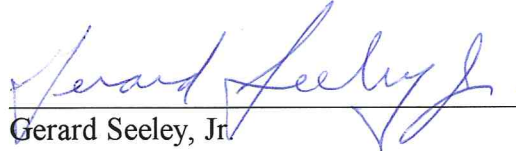
The Board heard comments from Ms. Diana Parker of the Sierra Club, and asked Mr. Charles Carter, managing partner of Weanack LLP, a few questions about the proposal. After a short discussion, the following staff recommendation was made to the Board:

**STAFF RECOMMENDATION:**

Approve the application and issue VPA Permit No. VPA00579 as drafted for a term of 10 years.

BOARD DECISION

The Board voted unanimously to approve the staff recommendation.

A handwritten signature in blue ink, reading "Gerard Seeley, Jr.", is written over a horizontal line.

Gerard Seeley, Jr.  
Piedmont Regional Office Director



## EXCERPT FROM THE PROCEEDINGS OF THE BOARD AT ITS MEETING ON OCTOBER 19, 2000

### MINUTE NO. 5 – Eagle Harbor VWP Permit #99-1030 Issuance

Mr. Bert Parolari of the DEQ Tidewater Regional Office made the staff presentation regarding the proposed issuance of VWP Permit #99-1030 to Eagle Harbor, L.L.C. The proposed permit establishes conditions that ensure that the proposed master-planned community will have no more than minimal impact to State waters and associated beneficial uses. During this presentation, staff advised the Board that a public hearing had been held on the subject permit in Isle of Wight County on October 2, 2000 and that Mr. H. Preston Futrell, Jr. had served as the Hearing Officer. Approximately 129 people attended the hearing, with 21 speaking for the record. Of the 21 speakers, 7 spoke in favor of the project and 14 spoke in opposition. The public comment period closed on Tuesday, October 17, and written comments from one individual were received. A summary of this comment and staff response was provided to the Board during the meeting as an addendum to the summary of comments and issues package they received prior to the Board meeting. Staff then reviewed the permit application process, the draft permit provisions, a summary of issues raised in public comments, and staff responses to these issues.

The draft permit was sent to local and state agencies as required by law and comments were solicited from other agencies with potential interest. No objections were received from the Virginia Institute of Marine Science, the Department of Agriculture and Consumer Services, the Department of Game and Inland Fisheries or the Department of Health – Division of Shellfish Sanitation. The Department of Conservation and Recreation commented that a State rare plant, Southern Beach Spurge, was documented on the adjacent Ragged Island Management Area on secondary dune habitats; however, none had been documented on the subject property and no secondary dune habitats exist on the property. The U.S. Fish and Wildlife Service commented that the upland buffers on the subject property were insufficient to protect the Ragged Island creek system from degradation. The Corps of Engineers approved the project and issued a 404 permit on June 30, 2000.

As stated in Staff's presentation, several issues were raised by the public during the hearing process. These issues can be categorized into two separate groups: those within the regulatory purview of the VWP Permit Program, and those that are not within the program's jurisdiction. A summary of these issues and the staff responses is as follows:

#### **Issues within the VWP Permit Program Purview**

**Unnecessary Wetland Impacts** - Several citizens questioned the need to impact wetlands for construction of the proposed development. They commented that the applicant could move forward with a project that avoids all or most of the wetlands fill, and still have an acceptable profit margin. Staff determined that wetland impacts were avoided and minimized to the maximum extent practicable, considering costs, technical and logistic factors. There are approximately 187 acres of wetlands on the entire 567-acre property. Of these 187 acres of wetlands (60 nontidal and 127 tidal), only 9.38 acres of nontidal wetlands are proposed for impact. The majority of these impacts are to wetlands with minimal water quality functions. Impacts to these wetlands are necessary to support the major commercial component of the development. This commercial component results in a reduction of the support costs to the County and citizens associated with the residential components of the development.

**Inadequate Wetlands Mitigation** – Many citizens expressed concern that the proposed mitigation would not replace the function and values of the wetlands proposed for impact. DEQ staff determined that the mitigation proposed more than meets the requirements of State law, regulations and guidance with regard to mitigation of wetland functions and values. The proposed mitigation package includes both on-site and off-site components. This on-site mitigation consists of preservation in perpetuity, via deed restriction, of all non-impacted wetlands on-site (approximately 177 acres of tidal and nontidal wetlands), as well as, approximately 38 acres of valuable upland buffer. The off-site mitigation consists of creation of approximately 17.2 acres of forested wetlands and preservation of approximately 10 acres of forested wetlands and uplands in the headwaters of Jones Creek and Cypress Creek, just upstream of the project site. This mitigation package will replace and preserve wetland functions such as habitat for wildlife, groundwater recharge, attenuation of stormwater flows, trapping of sediment, absorption of flood waters, and treatment of pollutants prior to release into State waters.

The draft permit requires that success criteria and monitoring requirements for the off-site mitigation be submitted in the form of a mitigation plan and approved by DEQ prior to any associated impacts to wetlands. If the mitigation site is not successful by the end of the monitoring period, additional mitigation will be required. In order to further assure that these mitigation areas are adequately protected, staff recommended to the Board that the draft permit be modified to require DEQ approval of the deed restriction language prior to recordation.

Based on this information, staff finds that this mitigation will result in a net gain in wetland acreage and function, which exceeds the State law requirement of no net loss of wetland acreage and functions.

**Cumulative Impacts** - A few citizens commented that DEQ was not considering cumulative impacts from the proposed development on the Ragged Island Creek system. Staff has determined that the cumulative impacts associated with this single and complete project have been fully addressed and will not cause or contribute to significant impairment of State waters or fish and wildlife resources.

**Fish and Wildlife Resources** - There was an overall concern from citizens that the project would impact fish, shellfish and wildlife within the Ragged Island Creek system. Citizens commented that the site's tidal wetlands were utilized by anadromous fish for spawning and nursery habitat, by various shore and wading bird such as egrets and herons, and by bald eagles, ospreys, warblers and other neotropical bird species. Additionally, private oyster grounds were reported to be located within the Ragged Island Creek system. As previously mentioned, with the exception of Fish & Wildlife Service, none of the agencies contacted expressed concerns that fish, shellfish or wildlife impacts would be associated with the project. Fish & Wildlife Service expressed concern for the potential degradation of Ragged Island Creek due to lack of adequate upland buffers. They requested that 100-foot buffers be included along the drain systems where no stormwater treatment via BMPs was present (ie. Tracts 6, 7, 10, 11 and portions of Tract 2). They also requested that 50-foot buffers be incorporated along the drains that were determined by the locality to be outside the requirements of the CBPA.

The VWP Permit Program has no jurisdiction over upland areas or buffers. These areas are within the purview of the locality with oversight from the Chesapeake Bay Local Assistance Department. The locality granted 50-foot variances into the Chesapeake Bay Preservation Act buffers, and did not require buffers on portions of the site's nontidal drain systems. Our program was able to reach an agreement with the applicant to include 30-foot buffers on the areas where



no buffers were proposed. These buffers will help to protect water quality and associated aquatic life within Ragged Island Creek and its tributaries.

**Impacts to Water Quality** - There was concern from several citizens that the water quality of Ragged Island Creek would be impacted from sediment and pollutant runoff from the proposed development. It is staff's opinion that the combination of off-site mitigation, preservation on-site wetlands and upland buffers, and incorporation and maintenance of on-site stormwater retention basins will assure that no more than minimal impacts occur.

### **Issues Outside of the VWP Permit Purview**

**Stormwater Management and Erosion Control** - Stormwater management and the potential for downstream erosion associated with the proposed development was a big issue of concern for the citizens commenting on the draft permit. There was considerable discussion on the proposed stormwater retention ponds and whether or not they are properly designed to protect the water quality, aquatic life, and overall integrity of Ragged Island Creek. Stormwater management is a responsibility of the local government, and not within the general purview of the VWP Permit Program. Representatives from the Department of Conservation and Recreation and the Chesapeake Bay Local Assistance Department have reviewed the project's Water Quality Impact Report and found the stormwater management to be in compliance with the Erosion and Sediment Control Law and the Chesapeake Bay Preservation Act, provisions of which have been adopted into local ordinances. These provisions require that the site's post-development flows do not exceed pre-development flows into State waters, that BMPs can handle a 10-year storm event, and that flows from the site must not cause downstream erosion of the banks and beds of State waters. While there are no requirements for removal of other pollutants such as petroleum hydrocarbons, it is believed that the BMPs will generally allow for sufficient volatilization and uptake of these pollutants prior to discharge to State waters.

**Flooding** - Flooding was of significant concern to citizens opposed to the project. Management of floodwaters is within the responsibility of the local government and not within the purview of the VWP Permit Program. However, the VWP Permit Program does require that the functions of the wetlands, including the absorption of floodwaters, be mitigated within the same river watershed. While this function has been adequately mitigated per the VWP Permit Program's requirements, it is clearly up to the locality to utilize wise land use planning to ensure that developments are not significantly impacted by flood events.

**Soil Suitability for Construction** - There were many comments regarding the unsuitability of the project's site soils for construction of roads, homes and BMPs. Much of the project site is underlain by Myatt fine sandy loam. This soil generally is very poorly drained with a high water table. According to the Isle of Wight County Soil Survey, these soils present severe limitations for construction of roads and residences. The soil survey states that these limitations may require special design, increases in construction costs, and possibly increased maintenance to overcome these limitations. Again, this is viewed as an issue for the developer of the site and the locality, and not within the purview of the VWP Permit Program.

**Upland Buffers** - Many citizens objected to the reduction in Chesapeake Bay Preservation Act buffer from 100 feet to 50 feet along tidal tributaries to Ragged Island Creek. This reduction was granted by the County, based on review of the Water Quality Impact Report. According to the County, this report demonstrated that buffer functions were compensated for by the site BMPs. The Chesapeake Bay Local Assistance Department did not agree with this reduction in buffer or the elimination of buffers in the nontidal portions of the creek system located on site; however,

they stated that the County had the authority to interpret their own local ordinances. Since these disputed buffers are located in uplands, they are not within the jurisdiction of the VWP Permit Program. However, the applicant voluntarily agreed to include 30-foot buffers (approximately 11 acres) along areas where no buffers were required by the County.

Following the staff presentation, the Board asked several questions, which were addressed by Mr. Parolari, Mr. Dan Slone (representative for Eagle Harbor, L.L.C.), and Martin Ferguson (DEQ Environmental Quality Assistant Division Director). A summary of the questions raised and the resulting responses is as follows:

Board Member Wenger expressed concern that the proposed road culverts would not be adequately designed to allow flow sufficient to prevent flooding impacts to the road and to wetlands. Mr. Slone responded that the Corps of Engineers and DEQ require that culverts be designed to avoid impacts to wetlands, and that the construction of these culverts must meet VDOT standards. Martin Ferguson commented that VDOT standards have improved over the years and now require designs which assure adequate flow to prevent flooding and associated impacts.

Board Member VanAuken brought up public concerns regarding the suitability of the site soils for construction of buildings and BMPs. These concerns involved the possible undermining of structures built on these soils by muskrats and the reportedly tendency for these soils to form underground channels. Mr. Parolari reiterated his earlier statements that these issues were not within the purview of the VWP Permit Program.

Board Member Van Auken also raised the issues of flooding and asked if the BMPs on site would protect against flooding. Mr. Parolari reiterated his earlier comments that these issues were not within the purview of the VWP Permit Program. He stated that the BMPs were required to meet the requirement of local ordinances, which require that the BMPs be able to handle a 10-year storm event. Mr. Slone confirmed this fact. Mr. Parolari stated that the BMPs were not required to handle a 100-year storm or catastrophic rains such as those generated by Hurricane Floyd in 1999.

Chariman Craig requested clarification on the proposed creation and preservation acreages, and was provided this clarification by staff.

### **Staff Recommendation**

At the conclusion of these questions by the board, staff recommended that the Board find:

- The proposed activity is consistent with the provisions of the Clean Water Act and State Water Control Law, and will protect instream beneficial uses.
- The proposed permit has addressed avoidance and minimization of wetland impacts to the maximum extent practicable.
- The effect of the impact, together with other existing or proposed impacts to wetlands, will not cause or contribute to significant impairment of state waters or fish and wildlife resources.
- Based upon an assessment of compensation implementation and an inventory of permitted wetland impacts, and in an effort to prevent unpermitted impacts, the proposed permit



requires compensation for unavoidable wetland impacts sufficient to achieve no net loss of wetland functions and acreage. Compensation will be accomplished by creation of wetlands, and preservation of wetlands and upland buffers, on the proposed wetland impact site and within the same River watershed as the proposed wetland impact site.

Staff further recommended that the Board authorize issuance of VWP Permit Number 99-1030, with the following change:

- Modify Part I.G.1 of the permit to require DEQ approval of deed restriction language, for site non-impacted wetlands and uplands, prior to recordation.

### **Board Decision**

Mr. Wenger moved that the Board accept the staff recommendations. The motion was seconded by Mr. High and passed unanimously.



Francis L. Daniel  
Tidewater Regional Director



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EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL  
BOARD MEETING AT ITS MEETING ON OCTOBER 19, 2000

**MINUTE NO. 6 – Permit Terminations**

R. Bradley Chewning, Director of the Department of Environmental Quality's Valley Regional Office, introduced the staff recommendation concerning the termination of three permits.

**Board Decision**

Based on the briefing materials and the staff presentation and recommendation, the Board voted unanimously to approve the termination of the following permits:

Shenandoah County Landfill, VA0089613  
Cub Run Trout Farm, VA0089435  
Greenville STP, VA0089362

  
R. Bradley Chewning, P.E.  
Regional Director  
Valley Regional Office



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### EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON OCTOBER 19, 2000

#### Minute No. 7 – Future Meetings

The Board confirmed December 13, 2000 as the date of their next regular meeting.

A handwritten signature in cursive script that reads "Cindy M. Berndt".

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Cindy M. Berndt