

SUMMARY

Joint Commission on Administrative Rules January 11, 2005

Members Present:

Senator Frank W. Wagner, Chair
Senator Henry L. Marsh
Senator Stephen H. Martin
Senator Mary Margaret Whipple
Senator Martin E. Williams

Delegate H. Morgan Griffith, Vice Chair
Delegate Fenton L. Bland, Jr.
Delegate Thomas D. Gear
Delegate Algie T. Howell, Jr.
Delegate Michele McQuigg
Delegate Christopher B. Saxman
Delegate Terrie L. Suit

Senator Wagner, Chairman, called the meeting to order at 10:00 a.m. The topics discussed were the following: Child-care regulations, 22VAC 15-30; Water supply planning initiative regulations, 9VAC 25-780; Nutrient control regulations, 9VAC 25-260, 9VAC 25-40, 9VAC 25-720.

I. Child-care Regulations, 22VAC 15-30

The meeting began with the review and discussion of the status of child day center regulations pertaining to space requirements, child-to-staff ratios and other facility requirements. The Commission previously provided the Governor with a letter requesting that he object and not sign the proposed regulations so they do not become final. By letter dated January 11, 2005, the Governor provided a response (attachment A) outlining his general agreement with the proposed regulations but a willingness to consider a grandfathering of the square footage requirements for existing childcare facilities.

At the conclusion of the discussion, **Delegate McQuigg** expressed concern about the possible grandfather provisions and the effect they may have on day care facilities that are currently under construction.

II. Water Supply Planning Initiative 9VAC 25780

Mr. Robert Burnley, Director of the Department of Environmental Quality (DEQ), addressed the Commission on the state's water supply planning initiative.

Mr. Burnley stated that Senate Bill 1221, passed during the 2003 legislative session, required each locality to plan for their own individual water supplies or develop a plan for the water supply for the region with neighboring localities. The plan should describe the existing water use and how the locality is projecting their water demand. There is also a requirement for a local government hearing and review. The plan must consist of having a state water review, and what technical assistance/guidance and financial assistance is needed from the state. The plans will then be reviewed every 5 years. He

further stated that, in conformance with the statutory requirements, the DEQ state water resource plan has developed regulations in draft form. The regulations, according to **Mr. Burnley**, were approved December 2004 for the public comment period and DEQ anticipates that they will be finalized by June 2005.

The planning process and criteria included in the regulations requiring every local government to submit a plan to require it to be due within 3 to 6 years. Larger localities are required to complete their plans first with smaller localities having up to 6 years to work with neighboring communities.

Mr. Burnley indicated that the Technical Advisory Committee, several years ago, approved the means, an accounting system, to evaluate the cumulative impacts of the plans. If the plans were in place then the state would be in position to assist localities to secure permits from the federal government or resolve conflicts with other states. The Technical Advisory Committee is in the process of collecting data pertaining to surface water flow regulations

Mr. Burnley informed the Commission that increased public involvement would be beneficial to the water control process. He stressed that the plans, once in place, would be extremely helpful should the state experience another drought by assisting in determining viable water supply alternatives. He noted that the availability of adequate water sources is a powerful economic tool that is among many factors considered by businesses when relocating.

At the conclusion of his remarks, **Senator Wagner** asked **Mr. Burnley** if the water supply provided by Lake Gaston could be grown. **Mr. Burnley** replied that the interstate sharing of water for the water supply was not proposed at this time but he will be able to assist localities and local government if they choose to meet with North Carolina to discuss the issue.

Senator Williams stated that, while the regulations are not as far as he would have liked, something substantive has been done and the Governor has put money in a worthwhile project.

Delegate McQuigg added that she was pleased that the more populous areas were going to be submitting their water plans first.

III. Nutrient Control Regulations 9VAC 25-260, 9VAC 25-40, 9VAC 25-720

Tayloe Murphy, Secretary of Natural Resources, discussed the state's nutrient control regulations. **Secretary Murphy** noted that nutrient control is a critically important issue to Virginia and that the proposed regulations are well reasoned. He further noted that the regulations included an analysis of the relationship between the EPA and the Commonwealth and what they can do to achieve their mutual goals He would argue that the regulations are the most important in his 20-year career.

Secretary Murphy further stated that there are several elements that are involved in achieving the levels necessary for clean levels of nutrients including (i) farm and air pollution, (ii) wastewater and (iii) management of stormwater. He indicated that there must be greater reductions for point-of-sources. To that effect, a tri-state commission, Virginia, West Virginia and Maryland, has been established.

Secretary Murphy also said that upgrading waste water plants are the best way to help the Bay. Other facts he asserted were: In 1989 the Chesapeake Bay was added to the impaired water list because of excessive amounts of phosphorous, dissolved oxygen and water clarity, there is a need to determine new standards; As of March 2003, 6 states Delaware, Pennsylvania, Maryland, Virginia, West Virginia and the District of Columbia all have nutrient reduction goals allocated to the six river basins including the York, James and Bayside creeks.

He completed his talk by saying in 1983 Virginia entered a new era establishing the maximum amount of phosphorous and nitrogen allowable to establish water control standards.

Allan Pollock, Water Control Manager, Department of Environmental Quality (DEQ) spoke on the same topic. **Mr. Pollock** stated that the Chesapeake Bay is polluted and is on the Environmental Protection Agency's (EPA) impaired water list. According to **Mr. Pollock**, the main problems consist of i) low dissolved oxygen, ii) poor water clarity and iii) algae bloom conditions. Criteria concerning water quality control has been established by the EPA. The EPA requires maximum daily load allowances for Virginia. **Mr. Pollock** provided the Commission with copies of the Water Control Standards, and stated that the main issue with the standards appears to be the trading and offset program and determining how to live under the loading cap of the 2000 Chesapeake Bay agreement.

Several questions were posed by members of the Commission related to the trading and offset program.

Senator Wagner asked if the levels of nitrogen's are coming down on charts, why are there the big algae blooms now? **Mr. Pollock** responded that nitrogen is 33% of the point sources and that it comes from waste water.

Senator Williams asked of the James River doesn't contribute to the Chesapeake Bay, why does it have a stricter standard for Chlorophyll A? In response **Mr. Pollock** stated that a one-size-fits-all approach for river specific problems does not work because rivers have different dynamics.

Senator Wagner asked what type of investment is needed in current waste water treatment plants citing the 7 billion dollar price tag for removal of Nitrogen. **Mr. Pollock** stated that nutrient management includes tree planting and back fitting existing drains.

Senator Whipple questioned whether an offset could be taken from an agricultural source? **Mr. Pollock** stated that 92% of agricultural land needs to be treated by BMP's

Rebecca Hamner, Director of Chesapeake Bay Programs, Environmental Protection Agency, provided information on nutrient control from the federal perspective.

Ms. Hamner asserted that the unqualified support of the state is needed so that by 2010 the Chesapeake Bay may be removed from the list of impaired waters. Seven jurisdictions, as well as the EPA, are to take joint action over jurisdictional boundaries. **According to Ms. Hamner**, Virginia needs the watershed approach which increases the capacity of jurisdictions and is cost effective. Further, a Scientific/Technology advisory committee needs to study nutrients. The EPA will do the regulating under a permitting approach including areas of the James and York Rivers.

IV. Other Business

Delegate Griffith introduced Mr. Thomas who runs a martial art's school about 5 feet off of Main Street in Salem, Virginia. Mr. Thomas thought he was under the exception of the "drop-and-go" policy but now they want them to comply with day- care regulations. **Delegate Griffith** indicated that he would introduce legislation to exempt marshal arts facilities from the day care regulations.

Senator Whipple commented that this problem is larger than the marshal arts issue; it affects the Fairfax County after school programs as well.

Senator Wagner informed the Commission that he will introduce a bill to strike the language that currently reads "at the concurrence of the legislative session" so that if the Commission makes a determination to suspend a rule or regulation within 30 days of the regular session the suspension shall run until the end of the second succeeding regular session.

The meeting was adjourned at 12:10 p.m.