

EXhibit 21

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

JUN 27 2005

Mr. Robert G. Burnley, Director
Virginia Department of Environmental Quality
P.O. Box 10009
Richmond, VA 23240

Bob
Dear Mr. Burnley:

The Virginia State Water Control Board (SWCB) adopted amendments to the Commonwealth of Virginia's water quality standard regulations at its meeting on March 15, 2005. The amendments to the Water Quality Standards (9 VAC 25-260 et seq.) were published in the Virginia Register on November 2004. Virginia's Office of Attorney General certified in a letter dated on June 16, 2005 that the above listed final amendments were adopted pursuant to state law. The amended water quality standards and supporting materials were forwarded to the United States Environmental Protection Agency (EPA) for review in accordance with Clean Water Act (CWA) Section 303(c)(2)(A) on June 17, 2005. This package was received by EPA Region III on June 21, 2005.

The purpose of this letter is to approve the newly adopted definitions, criteria and designated use refinements specific to waters of the Chesapeake Bay drainage basin as being consistent with the requirements of the CWA and the applicable Federal regulations at 40 C.F.R. Part 131. The designated use regulations adopted by Virginia are supported by appropriate technical and scientific data and analysis, and the newly adopted criteria are protective of those uses. See Ambient Water Quality Criteria for Dissolved Oxygen, Water Clarity and Chlorophyll a for the Chesapeake Bay and its Tidal Tributaries (EPA 903-R-03-002), Technical Support Document for the Identification of Chesapeake Bay Designated Uses and Attainability (EPA 903-R-03-004), and the 2004 addenda.

Enclosure 1 to this letter lists the new and revised regulations that are being approved in accordance with CWA Section 303(c) and 40 CFR Part 131. Enclosure 1 lists the Titles and Citations of the sections being approved, a description of the modifications which Virginia has made to the section, and a basis for determination of approval.

Under the Endangered Species Act (ESA), EPA has the obligation to determine if our approval of these modifications to the State's water quality standard regulations will adversely affect or jeopardize threatened and endangered species and their critical habitat in Virginia. EPA completed consultation with both the Chesapeake Bay Field Office of the Fish and Wildlife Service (FWS) and the NOAA National Marine Fisheries Service (NOAA Fisheries) on the Ambient Water Quality Criteria for Chesapeake Bay and its Tidal Tributaries document itself.

On January 10, 2003, the FWS concurred with EPA's finding that EPA's recommended Chesapeake Bay criteria are not likely to adversely affect Federally listed species in Virginia. NOAA Fisheries concluded, on April 19, 2004, and June 3, 2005, that the criteria either were not likely to adversely affected Federally listed species, or did not jeopardize the continued existence of Federally listed species.

EPA would like to commend the Department's water quality standards staff for their diligence in completing the Commonwealth's Chesapeake Bay and Tidal Tributaries water quality standards. We look forward to their continued best efforts to support water quality standards that will restore the Chesapeake Bay.

If you have any questions, please feel free to contact me or have your staff contact Mark D. Smith at (215) 814-3105.

Sincerely,



Jon M. Capacasa, Director
Water Protection Division

Enclosure

cc: Allan Pollack (VADEQ)

Enclosure 1

ENVIRONMENTAL PROTECTION AGENCY, REGION III

VIRGINIA WATER QUALITY STANDARDS 9 VAC 25-260
APPROVAL OF 2005 CHESAPEAKE BAY CRITERIA

Section Approved	Description of Revision	EPA Rationale
9 VAC 25-260-5: Definitions Chesapeake Bay and its Tidal Tributaries	Definition added	Consistent with the Federal recommendations found in EPA document <u>Ambient Water Quality Criteria for Chesapeake Bay and its Tidal Tributaries (EPA 903-R-03-002)</u> .
9VAC 25-260-5: Definitions Pycnocline	Definition added	Consistent with the Federal recommendations found in EPA document <u>Ambient Water Quality Criteria for Chesapeake Bay and its Tidal Tributaries (EPA 903-R-03-002)</u> .
9 VAC 25-260-10: Designation of uses. Migratory Fish Spawning and Nursery Designated Use	Fish, Aquatic life & Wildlife designated use refined	Meets the requirements of EPA regulations at 40 C.F.R. 131.10. Based on appropriate scientific and technical data and analysis, as discussed in <u>Technical Support Document for the Identification of Chesapeake Bay Designated Uses and Attainability (EPA 903-R-03-004)</u> and <u>Ambient Water Quality Criteria for Chesapeake Bay and its Tidal Tributaries (EPA 903-R-03-002)</u> and its addenda.

Section Approved	Description of Revision	EPA Rationale
<p>9 VAC 25-260-10: Designation of uses. Shallow-water Submerged Aquatic Vegetation Designated use</p>	<p>Definition added</p>	<p>Meets the requirements of EPA regulations at 40 C.F.R. 131.10. Based on appropriate scientific and technical data and analysis, as discussed in <u>Technical Support Document for the Identification of Chesapeake Bay Designated Uses and Attainability (EPA 903-R-03-004)</u> and <u>Ambient Water Quality Criteria for Chesapeake Bay and its Tidal Tributaries (EPA 903-R-03-002)</u> and its addenda.</p>
<p>9 VAC 25-260-10: Designation of uses. Open-Water Aquatic Life Designated use.</p>	<p>Fish, Aquatic Life & Wildlife designated use refined</p>	<p>Meets the requirements of EPA regulations at 40 C.F.R. 131.10. Based on appropriate scientific and technical data and analysis, as discussed in <u>Technical Support Document for the Identification of Chesapeake Bay Designated Uses and Attainability (EPA 903-R-03-004)</u> and <u>Ambient Water Quality Criteria for Chesapeake Bay and its Tidal Tributaries (EPA 903-R-03-002)</u> and its addenda.</p>
<p>9 VAC 25-260-10: Designation of uses Deep-Water Aquatic Life Designated Use</p>	<p>Fish, Aquatic Life & Wildlife designated use refined</p>	<p>Meets the requirements of EPA regulations at 40 C.F.R. 131.10. Based on appropriate scientific and technical data and analysis, as discussed in <u>Technical Support Document for the Identification of Chesapeake Bay Designated Uses and Attainability (EPA 903-R-03-004)</u> and <u>Ambient Water Quality Criteria for Chesapeake Bay and its Tidal Tributaries (EPA 903-R-03-002)</u> and its addenda.</p>

Section Approved	Description of Revision	EPA Rationale
<p>9 VAC 25-260-10. Designation of uses. Deep-Channel Seasonal Refuge Designated use</p>	<p>Addition of a refinement of the Fish, Aquatic Life & Wildlife designated use to reflect the Chesapeake Bay criteria.</p>	<p>Meets the requirements of EPA regulations at 40 C.F.R. 131.10. Based on appropriate scientific and technical data and analysis, as discussed in <u>Technical Support Document for the Identification of Chesapeake Bay Designated Uses and Attainability (EPA 903-R-03-004)</u> and <u>Ambient Water Quality Criteria for Chesapeake Bay and its Tidal Tributaries (EPA 903-R-03-002)</u> and its addenda.</p>
<p>9 VAC 25-260-50: Numerical criteria for dissolved oxygen, pH, and maximum temperature</p>	<p>Addition of dissolved oxygen criteria developed for the protection of Chesapeake Bay tidal waters and its tributaries</p>	<p>Meets the requirements of EPA regulations at 40 C.F.R. 131.11. Scientifically defensible for the reasons discussed in <u>Ambient Water Quality Criteria for Chesapeake Bay and its Tidal Tributaries (EPA 903-R-03-002)</u> and its addendum.</p>
<p>9 VAC 25-260-185 Criteria to protect designated uses from the impacts of nutrient and suspended sediment in the Chesapeake Bay and its tidal tributaries, A. Dissolved Oxygen, B. Submerged Aquatic Vegetation and Water Clarity, C. Chlorophyll a narrative criterion, D. Implementation</p>	<p>Addition of dissolved oxygen, water clarity and chlorophyll a criteria developed for the protection of Chesapeake Bay waters and assessment procedures</p>	<p>Meets the requirements of EPA regulations at 40 C.F.R. 131.11. Scientifically defensible for the reasons discussed in <u>Ambient Water Quality Criteria for Chesapeake Bay and its Tidal Tributaries (EPA 903-R-03-002)</u> and its addendum.</p>

Section Approved	Description of Revision	EPA Rationale
<p>9 VAC 25-260-186 Virginia Pollutant Discharge Elimination System Permits and Schedules of Compliance</p>	<p>Chesapeake Bay watershed permit compliance schedules</p>	<p>The water quality standards regulations at 40 CFR Part 131 do not require that states allow compliance schedules. However, under the CWA and the NPDES regulations states have the discretion to adopt compliance schedules in the appropriate circumstances. See 40 CFR 122.47. This provision authorizes the use of compliance schedules to meet VA water quality standards not only in VA permits, but also on permits issued by other jurisdictions in the Bay to discharges that impact water quality in VA Bay waters. Adoption of this provision is discretionary and meets the requirements of the CWA.</p>

Section Approved	Description of Revision	EPA Rationale
<p>9 VAC 25-260-350 Designation of nutrient enriched waters</p>	<p>Revisions of nutrient enriched waters per Chesapeake Bay criteria</p>	<p>This provision removes any waters in the Chesapeake Bay and its Tidal tributaries from the list of nutrient enriched waters. Dischargers into VA waters listed as nutrient enriched waters are subject to effluent limitations on phosphorous and nitrogen. The state will now use the criteria for dissolved oxygen, water clarity and chlorophyll <i>a</i> to control nutrient discharges into those waters removed from the list. As indicated above, these criteria are protective of the designated use in these waters, and thus, applying these criteria to the waters removed from the list meets the requirements of the CWA and its regulations.</p>