



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

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EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON FEBRUARY 4, 2011

MINUTE NO. 6 Request to Conduct a Recreational Use Attainability Analysis for Gillie Creek, City of Richmond

Alan Pollock (DEQ Office of Water Quality Programs) made the staff presentation regarding a request from the City of Richmond to conduct a recreational Use Attainability Analysis (UAA) for Gillie Creek in the City of Richmond. The request was made in accordance with the Code of Virginia and is contained in a document, dated August, 2010, entitled "Reasonable Grounds Documentation to Conduct a Recreational Use Attainability Analysis for Gillies Creek, City of Richmond, Virginia under VAC 62.1-44.19:7" This documentation asserts that attainment of the designated recreational use Gillie Creek is not feasible because:

- primary contact is not attainable due to flow and hydrologic modification.
- the City does not believe there is a primary contact use on lower Gillie Creek.
- the City maintains that 95% reductions above the Long Term Control Plan will cause substantial and widespread economic and social impacts.

Mr. Pollock outlined for the Board that Gillie Creek is unique in that its watershed in the City is served by a combined sewer system and that the creek was channelized and lined with concrete in 1974. All property surrounding the channelized and paved section of Gillie Creek is either owned by the City, railroad companies, or industry, although a City park is nearby.

A general notice soliciting comment on the request to conduct a UAA study in Gillie Creek was published in the Virginia Register on October 1, 2010. The comment period ended on November 1, 2010. Comment was received from seven citizens, three environmental organizations, one state agency, two municipal organizations, and City of Richmond. Mr. Pollock reviewed the comments submitted. In general, citizen and environmental organizations urge the City and DEQ to implement cleanup plans prior to initiating a UAA. Comment from the City and municipal organizations stated there are reasonable grounds to conduct a UAA for Gillie Creek and that a UAA is necessary to determine the existing uses for the creek and direct resources appropriately.

Mr. Pollock reminded the Board that conducting a UAA study is not a regulatory action. After the UAA is completed, if the decision is to move forward, then any change to the standards needs to go through the regulatory process in accordance with the VA Administrative Process Act, and also be approved by EPA.

Questions from the Board regarding the nearby city park and accessibility to the paved portion of the creek were responded to by City representatives and DEQ staff. Board Chairman Shelton Miles expressed his preference of having TMDL implementation in place prior to conducting a UAA. The City representative explained the advantages in this situation to conduct the UAA concurrently with TMDL implementation. Additional questions regarding the status of the City's CSO Long Term Control Plan and pollution abatement activities in Gillie Creek were addressed by a representative from the environmental consulting firm contracted by the City. A representative for the Virginia Municipal League also spoke in support of the City's request. He stated that similar UAAs have been done in Los Angeles and used to support subsequent changes to recreational uses to temporarily suspend the primary contact for a short period after rainfall events.

Subsequent discussion clarified that the City may do a UAA study without Board approval. The Commonwealth may use the results from their UAA study as the basis for considering a water quality standards change.

Staff Recommendations

Mr. Pollock then provided the Board with the staff recommendations.

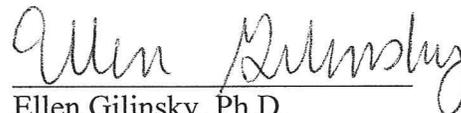
1. Subject to the condition listed below, grant approval for the City of Richmond to conduct a use attainability analysis for recreational uses in Gillie Creek according to criteria established pursuant to the Clean Water Act and in conformance with 9 VAC 25-260-10.
2. Include in the use attainability analysis a detailed examination of how any change to the recreational use in Gillie Creek would avoid impacting the primary contact recreational use of the James River adjacent to, and downstream of, the confluence with Gillie Creek.
3. Direct the staff to report back to the Board upon completion of the UAA study whether the results of the study are deemed consistent with federal and state regulations and warrant initiating a regulatory process to consider removal of the recreational use or establishing a subcategory of recreational use in Gillie Creek.

Board Decision

The Board vote was evenly split three to three (Kellam, Wallace and Wayland – yes; Bott, Dunn and Miles – no) so the staff recommendations were not accepted.

The Board then considered an alternative action and voted unanimously in favor of the following:

1. Recognize that the City of Richmond can conduct a use attainability analysis for recreational uses in Gillie Creek according to criteria established pursuant to the Clean Water Act.
2. Request that the City include in the use attainability analysis a detailed examination of how any change to the recreational use in Gillie Creek would avoid impacting the primary contact recreational use of the James River adjacent to, and downstream of, the confluence with Gillie Creek.
3. Direct the staff to report back to the Board upon completion of the UAA study whether the results of the study are deemed consistent with federal and state regulations and warrant initiating a regulatory process to consider removal of the recreational use or establishing a subcategory of recreational use in Gillie Creek.



Ellen Gilinsky, Ph.D.

Director

Water Division