



March 14, 2024

Submitted via email

Austin Galbraith
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Re: Comments on Draft VPDES Permit No. VA0025470, Rivanna Water and Sewer Authority, Scottsville WRRF - Objection Due to DEQ's Failure to Properly Address PFAS Pollutants in Discharge; Request for Public Hearing

Dear Austin Galbraith:

I am submitting these comments on behalf of Wild Virginia and our members and supporters across the state.¹ We object to issuance of the referenced permit as currently drafted and urge the Department of Environmental Quality (DEQ) to deny the permit, for the reasons explained below. In addition, we request that DEQ hold a public hearing to provide for wider public involvement and awareness of the issues related to this permit.

Our primary concerns include the following:

- The application submitted by the Rivanna Water and Sewer Authority (RWSA or the Authority) is incomplete and must be amended to include PFAS data and to provide a proper basis for the permit decision.
- DEQ has failed to perform required analyses regarding impacts of per- and polyfluoroalkyl substances (PFAS) discharged from the Scottsville Water Resources Recovery Facility (WRRF) on state waters or to provide any reasonable explanation for refusing to address PFAS in the record.
- DEQ has failed to meet its duty to set limits for pollutants currently in the permit that are protective of all affected state waters, improperly basing its analyses only on the James River as a receiving stream.
- DEQ must establish effluent limits for PFAS in the permit and must include appropriate monitoring requirements for PFAS throughout the permit period.

Incomplete Application

RWSA has gathered sampling results for a set of PFAS showing significant concentrations are present in both influent and effluent at the Scottsville WRRF.² RWSA has an obligation to disclose information to DEQ about the presence of pollutants in the discharge from its facility,

¹ Mailing address: David Sligh, Wild Virginia, PO Box 1065, Charlottesville VA 22902; phone: 434-964-7455; email: david@wildvirginia.org.

² The excel spreadsheet supplied by RWSA is being submitted in a separate document with this letter in a file labeled "WW PFAS shared with Wild Virginia 10 31 2023.xlsx." In addition to the data supplied for the Scottsville plant, RWSA included data for three other plants it operates.

and this obligation certainly extends to those for which proof of the pollutants' presence in the discharge exists. Here the Authority has demonstrated that PFAS are present in the discharge but failed to submit the data with its application.

As the U.S. Environmental Protection Agency (EPA) has long made clear:

[D]ischargers have a duty to be aware of any significant pollutant levels in their discharge. [...] Most important, [the disclosure requirements] provide the information which the permit writers need to determine what pollutants are likely to be discharged in significant amounts and to set appropriate permit limits. [...] [P]ermit writers need to know what pollutants are present in an effluent to determine appropriate permit limits in the absence of applicable effluent guidelines.³

DEQ must not hide behind this omission from the Authority's initial application to pretend it does not know of the presence of PFAS in the discharge or avoid its obligation to assess the risk to water quality related to these pollutants.⁴ Further, DEQ must not rest on the excuse that EPA application forms do not currently name or require PFAS to be entered. As an applicant, RWSA "must provide any additional information that the permitting authority may reasonably require to assess the discharges of the facility (40 CFR 122.21(e), (g)(13))."⁵

To fulfill its duty to protect Virginia waters, DEQ can and must "reasonably require" RWSA to submit not only the data Wild Virginia submits with this letter, with all appropriate documentation and explanatory information, but any other information the Authority possesses about these or any other forms of PFAS that are or may be discharged. In requiring these additional submissions, DEQ should require RWSA to collect and provide data using analytical method 1633, as recommended by EPA for wastewater, and require that the "monitoring include each of the 40 PFAS parameters detectable by draft method 1633."⁶

DEQ's Refusal to Address PFAS in the Record or to Analyze the Threats They Pose

The State Water Control Law requires that "[i]n granting a permit pursuant to this chapter, the Department shall provide in writing a clear and concise statement of the legal basis, scientific rationale, and justification for the decision reached." Va. Code § 62.1-44.6:1.

In relation to the presence of PFAS in this wastewater system and the risks associated with these pollutants, DEQ has been entirely silent. We have reviewed all of the documents supplied by DEQ, including the draft permit, the fact sheet, and all of the application materials and find that there is not one mention of PFAS. An action by DEQ to issue this permit with these glaring omissions cannot satisfy the quoted provisions of state law and would result in a decision that is arbitrary and capricious.

³ Consolidated Permit Application Forms for EPA Programs, 45 Fed. Reg. 33516, 33526 (May 19, 1980).

⁴ Not only is Wild Virginia providing the RWSA data with these comments, we supplied them to DEQ well before the draft permit was completed, by email from David Sligh, Wild Virginia to Austin Galbraith, DEQ, *Re: Application for VPDES Permit No. VA0025470*, November 3, 2023.

⁵ Memorandum from Radhika Fox, Assistant Administrator, U.S. Env't Prot. Agency (EPA), Addressing PFAS Discharges in NPDES Permits and Through the Pretreatment Program and Monitoring Programs (Dec. 5, 2022), at 2, https://www.epa.gov/system/files/documents/2022-12/NPDES_PFAS_State%20Memo_December_2022.pdf.

⁶ *Id.*

Of course, DEQ must do more than simply acknowledge the presence of PFAS in the Scottsville discharge. It must use that data and additional information to assess whether technology- or water quality-based limitations are necessary and appropriate for the discharge.

The first step in regulating pollutant discharges is to consider whether technology-based effluent limitations must or should be imposed. Given that EPA has not issued national effluent limitation guidelines for PFAS from publicly owned treatment works or other categories of discharges,⁷ such national requirements do not apply here. However, the absence of national guidelines must not end the analysis for this permit. DEQ must assess whether technology-based limitations should be applied based on "best profession judgement" or BPJ.

In considering such case-by-case limitations, 40 C.F.R. § 125.3(c)(2) specifies that "the permit writer . . . shall consider: (i) The appropriate technology for the category or class of point sources of which the applicant is a member, based upon all available information; and (ii) Any unique factors relating to the applicant." DEQ must discuss its rationale in adopting or choosing not to adopt technology-based limits for PFAS in the permit. It has not done so.

The second step in permit development, whether technology-based limits are required or not, is to consider whether water quality-based limits are necessary to prevent violation of water quality standards (WQS). These limitations must be established "to control all pollutants or pollutant parameters (either conventional, nonconventional, or toxic pollutants)"⁸ which the permitting authority "determines are or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any State water quality standard, including State narrative criteria for water quality."⁹

As described in the next section, narrative or "general" criteria in Virginia's WQS prohibit impacts like those that PFAS are likely to cause. In addition, antidegradation provisions in the standards apply to the waters affected by the Scottsville discharge.

Of course, given that DEQ has refused to even acknowledge the presence of PFAS in this discharge, it is clear that the necessary analysis of potential degradation of water quality has not been conducted. It would seem that DEQ has decided to follow the example of the "Three Wise Monkeys" in the Japanese parable—when it comes to discharges of PFAS to our waters they have determined to "see no evil, hear no evil, speak no evil."¹⁰

Without Limits, the Discharge Will Cause or Contribute to Water Quality Standards Violations
Where a state has established numeric criteria for specific pollutants or parameters, those criteria may be the basis for limitations in VPDES permits. Virginia has yet to develop, or even

⁷ EPA describes plans for development of national guidelines at the web page "Current Effluent Guideline Program Plan," accessed at <https://www.epa.gov/eg/current-effluent-guidelines-program-plan>.

⁸ 40 C.F.R. § 122.44(d)(1)(i).

⁹ Id.

¹⁰ See e.g. Wolfgang Mieder. 1981. "The Proverbial Three Wise Monkeys," *Midwestern Journal of Language and Folklore*, 7: 5- 38.

begin a regulatory process to develop, numeric criteria for any of the forms of PFAS. In this regard, Virginia is lagging far behind some other states.¹¹

However, DEQ may not defer appropriate regulatory action until progress is made in these areas. In fact, even after numeric criteria are developed for some forms of PFAS, the need to apply narrative criteria as an overarching protection will remain. There are thousands of substances in this category. Effects from individual chemicals in the class, as well as combined and even synergistic effects from combinations of these substances, must be considered when protections are devised.

Virginia's WQS regulations include "general criteria," which require that

State waters, including wetlands, shall be free from substances attributable to sewage, industrial waste, or other waste in concentrations, amounts, or combinations which contravene established standards or interfere directly or indirectly with designated uses of such water or which are inimical or harmful to human, animal, plant, or aquatic life.¹²

The scientific literature is replete with evidence that PFAS are "inimical or harmful to human, animal, plant, or aquatic life." The range of known or potential human health concerns is wide and extensive, as are those that affect various wildlife species. Rather than include an extensive list here or in footnotes of authorities addressing these negative impacts on people, animals, and plants, we have included a selection of the citations in an Attachment to this letter.

In recommending a Maximum Contaminant Level (MCL) for certain types of PFAS in drinking water, EPA chose concentrations as low as 4 parts per trillion (ppt). That EPA and other scientists deem such miniscule amounts to be dangerous to human health, supports a contention that even very small PFAS levels in discharges are likely to be "inimical or harmful" to wild organisms and to people.

Particularly concerning, in regard to the levels of PFAS discharged, is that some forms of PFAS are thought to increase risks of certain cancers,¹³ and to act as "endocrine disruptors."¹⁴ EPA has long based water quality criteria for carcinogenic substances on an assumption that there is no

¹¹ See e.g. Michigan Department of Environment, Great Lakes, and Energy, web page "EGLE established new surface water values for two PFAS chemicals," (state established numeric criteria for PFBS and PFOA more than a year and a half ago), <https://www.michigan.gov/egle/newsroom/mi-environment/2022/07/27/egle-establishes-new-surface-water-values-for-two-pfas-chemicals>, July 27, 2022; New Hampshire Department of Environmental Services, *Plan to Generate PFAS Surface Water Quality Standards*, December 20, 2019, (laid out plan, schedule, and cost estimates for additional study and plan of development for numeric criteria more than four years ago.), <https://www.des.nh.gov/sites/g/files/ehbemt341/files/documents/r-wd-19-30.pdf>.

¹² 9 VAC 25-260-20.A. (The conditions Virginia terms "general criteria" are generally termed "narrative criteria" in federal law.)

¹³ U.S. EPA web page, *Our Current Understanding of the Human Health and Environmental Risks of PFAS*, (Current peer-reviewed scientific studies have shown that exposure to certain levels of PFAS may lead to . . . Increased risk of some cancers, including prostate, kidney, and testicular cancers.") <https://www.epa.gov/pfas/our-current-understanding-human-health-and-environmental-risks-pfas>.

¹⁴ See e.g. Mokra, Katarzyna, *Endocrine Disruptor Potential of Short- and Long-Chain Perfluoroalkyl Substances (PFASs)—A Synthesis of Current Knowledge with Proposal of Molecular Mechanism*, *Int J Mol Sci*, 2021 Feb; 22(4): 2148.

definable threshold below which these chemicals can be considered "safe," holding that there is simply an increase in the risk of cancer deaths as levels of exposure increase.¹⁵ Likewise, for endocrine disrupting chemicals some experts assert that "there may be no safe dose for chemicals that disrupt the endocrine system."¹⁶ Thus, even the tiny threshold EPA is proposing for drinking water may be too high for safety.

All of the evidence about known or likely dangers of PFAS being released from this wastewater plant heightens the need to prohibit any detectable concentration of PFAS in discharges from the plant. An additional factor that makes this "non detectable" threshold necessary is that these chemicals accumulate in wildlife, sediments, and likely in plant life. Therefore, what is discharged today is additive to what was discharged previously and tomorrow's discharge will only add to the burden of contaminants in the environment

Having looked at the threats and recognizing that detectable PFAS concentrations in discharges from Scottsville are nearly certain to violate the general criteria, we next look at the data RWSA has collected. As shown in the spreadsheet of data submitted separately from this letter and in the summary figures below, there are very problematic levels of PFAS entering state waters.

Scottsville WRRF

	May 2020	Dec 2020	June 2021	Jan 2022	July 2022	Mar 2023	Sep 2023
Influent PFAS/PFOS total	0.00	20.36	10.56	35.42	77.40	69.60	35.85
Effluent PFAS/PFOS - total	49.15	55.18	150.28	51.14	177.59	47.93	40.20

Discharges sampled over more than three years, in every season, show that the very lowest concentration for a combination of forms of PFAS was at 40.2 ppt and the highest was nearly 178 ppt. Clearly, all of these effluent values are extremely high in comparison to the levels likely to be inimical or harmful.

It is also important to assess potential pollutant concentrations in the waters impacted by the discharge. DEQ's discussion of the basis for possible water quality-based limitations for other pollutants is deeply flawed and fails to provide protection for all state waters. If this method were used in a PFAS analysis, it would lead to extremely high concentrations in the receiving waters.

¹⁵ See e.g. U.S. EPA, Human Health Risk Assessment Branch/HECD/OST/OW, *Human Health Ambient Water Quality Criteria*, Virtual WQS Academy, May 2023, https://www.epa.gov/system/files/documents/2023-06/06_HumanHealthCriteri_Pres_VirtualWQSA_May2023_508c.pdf.

¹⁶ Gore, Andrea C., PhD., Michele A. La Merrill, PhD, Heather Patisaul, PhD, and Robert M. Sargis, M.D., PhD., *Endocrine Disrupting Chemicals: Threats to Human Health - Pesticides, Plastics, Forever Chemicals, and Beyond*, Endocrine Society, February 2024, <https://www.endocrine.org/-/media/endocrine/files/advocacy/edc-report2024finalcompressed.pdf>.

DEQ performs what is termed an "Effluent/Stream Mixing Evaluation" in the fact sheet.¹⁷ In that evaluation, DEQ predicts how the amount of a pollutant in the discharge would affect the instream concentration after the effluent and stream water are mixed together. In this case, DEQ's evaluation for other pollutants looks only at the results as if the Scottsville plant discharged directly to the James River. However, this is not the case and this approach leaves two small streams without the proper protections.

The Scottsville discharge first enters a small stream that DEQ characterizes in the fact sheet as a "dry ditch" that is "considered a conveyance to the James River."¹⁸ In fact this stream flows more than 250 yards to the east and then enters another tributary to the James known as Mink Run. Based on a GIS analysis, because the junction of these two small streams is underground, we estimate Mink Run then flows approximately 150 yards from that point before emptying into the James River. In field visits we noted that both streams have well established vegetation, stream beds and banks, and appropriate habitat for aquatic and amphibian species. They are also both available and useable for recreation, including aesthetic enjoyment.

It is inappropriate for DEQ to disregard these two streams when performing its analyses. In fact, DEQ is required to apply the water quality standards to both of these streams and to afford them the same degree of protection as it affords the James River. DEQ has no authority to "write off" any receiving stream. WQS apply in all state waters,¹⁹ and the term "'State waters' means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands."²⁰

The implication of DEQ's flawed method here would be even more serious if DEQ did the required reasonable potential analysis for PFAS in the same manner. The first affected stream, which flows adjacent to a park and recreation area, would have levels of PFAS as high or nearly as high as those in the discharge itself. Thus, anyone coming into contact with that water would be exposed to these relatively high PFAS concentrations.

And even after the Scottsville discharge enters the James River, significant concentrations of PFAS or other pollutants will persist in the areas most accessible to river users. The confluence of Mink Creek and the James River lies less than 300 yards upstream of the boat ramp used by many people to access the river. We are aware that boaters, fishers, and people floating on innertubes value and use this area extensively. During the annual Batteau festival, this area is among the popular stops for boats and sites for visitors.²¹ And even after the discharge begins to mix with the James River, a zone of greater concentration, of PFAS and other pollutants will persist miles downstream.²²

¹⁷ Fact Sheet - VPDES Permit No. VA0025470 - Scottsville WRRF [hereinafter "Fact Sheet"], at Appendix A - Page 3.

¹⁸ Fact Sheet, at Appendix A - Page 1.

¹⁹ 9 VAC 25-260-20.A.

²⁰ Code of Virginia § 62.1-44.3.

²¹ The Daily Progress, Scottsville celebrates Batteau Festival, June 25, 2015, https://dailyprogress.com/news/local/scottsville-celebrates-batteau-festival/article_6b21b486-1aff-11e5-8c65-b7a7f7bf587e.html.

²² DEQ's analysis of mixing patterns during drought conditions indicates that the discharge will not completely mix across the stream, and thereby be fully diluted, for more than two miles downstream. Fact Sheet at Appendix A - Page 3.

Based on the descriptions of pertinent factors above, including the concentrations of PFAS in the discharge, the serious risks the substances pose to humans and the environment, and the heightened impacts to small streams and areas of the James, we believe the limited analysis included here shows that this discharge is nearly certain to cause or contribute to violations of WQS. It is incumbent on DEQ to use its authority to gather additional necessary data, perform a valid technical analysis, and base limits in this permit on the results.

In addition to any limits for PFAS included in the permit, it is vital that DEQ require sampling for PFAS throughout the permitted period and at a frequency that ensures that fluctuations in discharge quality are detected and that proper treatment is maintained. This required sampling should be done using analytical method 1633, or another method if a technical evaluation shows a change is appropriate. The permit must require that at least the forty parameters specified in EPA's guidance are measured and that additional forms of PFAS are sample, if deemed necessary or appropriate.

Public Hearing Request

Wild Virginia requests that DEQ hold a public hearing for this permit. A hearing is justified because there is a high degree of public interest in this permit and in the issue of PFAS contamination in the Scottsville area and downstream in the James River. as explained above the draft permit is seriously deficient and fails to even address an issue that is vital to the protection of humans and the environment. While describing the problems, we have also recommended changes that must be made in the permit. Namely, the permit must include requirements for future monitoring of PFAS at the facility and it must include stringent limitations of the amounts of PFAS that may be discharged.

Conclusion

To date, DEQ has abdicated its clear duty to identify PFAS as a threat in this and other permits and has refused to confront the problem in the administrative record in any way. This much be corrected in this permitting action and DEQ's overall approach to PFAS in permitting must change. It is simply unacceptable for DEQ to drag its feet and fail to use the laws that already exist to make a start in limiting harms from PFAS.

Thank you for addressing our comments.

Sincerely,

/s/ David Sligh

David Sligh
Conservation Director

Attachment to Wild Virginia Comments on Permit No. VA0025470
Selected References on PFAS Health and Environmental Effects

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