



## VIRGINIA ASSOCIATION OF MUNICIPAL WASTEWATER AGENCIES, INC.

P.O. Box 51

Richmond, Virginia 23218-0051

Tel (804) 716-9021 • Fax (804) 716-9022

### MEMBER AGENCIES

Alexandria Renew Enterprises  
County of Arlington  
Augusta County Service Authority  
Blacksburg-VPI Sanitation Authority  
County of Chesterfield  
Town of Christiansburg  
Coeburn-Norton-Wise Reg. Wastewater Auth.  
Town of Culpeper  
City of Danville  
County of Fairfax  
Frederick County Sanitation Authority  
Frederick-Winchester Service Authority  
Town of Front Royal  
Hampton Roads Sanitation District  
County of Hanover  
Harrisonburg-Rockingham Reg. Sewer Auth.  
County of Henrico  
City of Hopewell  
Town of Leesburg  
Loudoun Water  
City of Lynchburg  
City of Martinsville  
Pepper's Ferry Regional Wastewater Auth.  
Prince William County Service Authority  
City of Richmond  
Rivanna Water and Sewer Authority  
South Central Wastewater Authority  
County of Spotsylvania  
County of Stafford  
Upper Occoquan Service Authority  
City of Waynesboro  
Western Virginia Water Authority  
City of Winchester

### ASSOCIATE MEMBER AGENCIES

Amherst County Service Authority  
Town of Amherst  
Bedford Regional Water Authority  
Town of Bowling Green  
City of Buena Vista  
County of Campbell  
County of Caroline  
Town of Colonial Beach  
County of Culpeper  
D.C. Water  
Dinwiddie County Water Authority  
Fauquier County Water & Sanitation Auth.  
City of Fredericksburg  
County of Goochland  
Halifax County Service Authority  
Henry County Public Service Authority  
Town of Kilmarnock  
Louisa County Water Authority  
Maury Service Authority  
Montgomery County Public Service Auth.  
County of New Kent  
Town of Onancock  
County of Powhatan  
Town of Purcellville  
Rapidan Service Authority  
Stoney Creek Sanitary District  
Town of Strasburg  
Sussex Service Authority  
Town of Tappahannock  
Town of Warsaw  
Wise County Public Service Authority  
Town of Woodstock

### CONSULTANT MEMBERS

ARCADIS  
Black & Veatch  
CDM Smith  
Dewberry  
Greeley and Hansen  
Hazen and Sawyer  
Jacobs  
O'Brien & Gere

### ASSOCIATE CONSULTANT MEMBERS

AECOM  
Brown and Caldwell  
CHA Consulting  
Clyde Wilber  
Draper Aden Associates  
Energy Systems Group  
GHD  
HDR, Inc.  
Johnson, Mirmiran & Thompson  
Kimley-Horn & Associates, Inc.  
Mangrum Consulting & Design  
McGill Associates, P.A.  
Pennoni Associates Inc.  
Perrow Consulting Services, LLC  
RK&K  
Stantec  
The Thrasher Group, Inc.  
Timmons Group  
Trane  
Whitman, Requardt & Associates  
WileyWilson  
William P. Johnson II, PE, PC  
Woodard & Curran Inc.  
WW Associates

### LEGAL COUNSEL

AquaLaw PLC

April 21, 2020

**By Email (david.paylor@DEQ.virginia.gov)**

Mr. David K. Paylor, Director  
Virginia Department of Environmental Quality  
P.O. Box 1105  
Richmond, VA 23218

### **Re: Managing Impact of COVID-19 on Clean Water Utilities**

Dear Director Paylor:

On behalf of the Virginia Association of Municipal Wastewater Agencies (VAMWA), this letter seeks to proactively keep DEQ informed of current and potential challenges in the municipal wastewater treatment sector relevant to our mutual interests in protecting public health and the environment and related regulatory programs and initiatives.

Before turning to these important matters, first we wish to extend our appreciation for recent DEQ outreach efforts such as Deputy Director Jeff Steer's presentation to the VA WARN members (our mutual aid network) and Water Permitting Division Director Melanie Davenport's briefing during the VAMWA COVID-19 webinar. Your leadership and DEQ's partnership are always appreciated and especially so in these challenging times.

As the Nation and the Commonwealth continue to battle coronavirus, VAMWA's clean water utility members are working tirelessly to continue to provide reliable wastewater service and water quality protection, while also striving to minimize health risks to their dedicated workforce. This letter addresses three areas where DEQ's assistance is needed or expected to be needed to support clean water utilities.

### **COMPLIANCE & ENFORCEMENT CONSIDERATIONS FOR CLEAN WATER UTILITY OPERATIONS DURING COVID-19 RESPONSE**

VAMWA members hold themselves to high standards and, if full compliance is not possible due to manpower or other limitations during the pandemic, we know they are committed to achieving the highest level of regulatory compliance possible under the circumstances. We appreciate DEQ's March 31 regulatory compliance guidance, DEQ's recognition of the need to balance environmental protection with the paramount need to protect public health, and DEQ's recognition of potential compliance challenges such as in the event of reduced availability of staff, contractors, and laboratories.

To be clear, VAMWA has no interest in asking DEQ for a blanket waiver of compliance obligations and does not expect one from the agency. Our Members have made massive clean water investments and developed very talented workforces. We are your local governmental partners on the front lines of protecting clean water in the Commonwealth. Nevertheless, our members' operations are subject to staffing, supply chain and financial risks like other many other entities.

VAMWA respects DEQ's enforcement discretion and trusts in DEQ's ability to reasonably address any noncompliance on an appropriately flexible, case-by-case basis depending on the specific facts. With regard to potential force majeure-type regulatory noncompliance due to COVID-19, we wish to express our agreement with DEQ's case-by-case approach and ask that clean water utilities be given every reasonable consideration toward foregoing enforcement and penalties.

We are aware of the March 31 temporary federal Clean Water Act NPDES advisory recommending that NPDES-authorized states set up NPDES reporting codes that will not automatically generate a violation flag for reported COVID-19 related noncompliance. The advisory recommended that a No Data Indicator (NODI) code specifically for COVID-19 be used for missing data or a NODI code "K" for Natural Disaster. This seems to be a sensible data management approach and, if DEQ requires any special information in monitoring reports (DMRs) from our municipal WWTPs to support such data management efforts, please do let us know.

In addition to NPDES related reporting, another reporting issue of particular interest and concern for clean water utilities is the short reporting timeframe for "extraordinary conditions" precluding attainment of performance standards under Water Quality Improvement Fund (WQIF) grant agreements. This item was not mentioned in DEQ's guidance, so for completeness we want to bring this issue to DEQ's attention. Should performance and reporting be impaired due to COVID-19 impacts – and we all hope not – VAMWA simply asks that DEQ be similarly flexible on a case-by-case basis and extend VAMWA members the courtesy and relief of waiving grant penalties in appropriate cases. We trust the agency will.

## **MITIGATION OF FINANCIAL IMPACTS ON THE PUBLIC**

We wish to also give you early notice of financial impacts to utility operations and express the (perhaps obvious) connection with the severe financial strain impacting Virginians during this crisis. Below we address two key areas of concern: New Finance Challenges and Upcoming Regulatory Mandates.

### ***New Financial Challenges***

Key special financial considerations for clean water utilities at this time are:

- **Revenue Decline** – It is likely that clean water utilities will experience significant declines in revenue in the near term. For public health reasons, most utilities have ceased terminating service for nonpayment, and some report also waiving penalties and interest. Similarly, loss of commercial or industrial consumption impacts revenue adversely. We hope that these losses can be mitigated by future Federal and State-provide financial relief, but that is uncertain at this time.

- Expense Increase – Utilities are incurring additional expenses for COVID-19 response measures of various kinds. We hope that these losses can also be mitigated by FEMA or other future Federal and State financial relief.
- Bond Interest Rate Increases – Based on communications from the Virginia Resources Authority, VAMWA members report concern about significant interest rate increases adversely impacting the cost of new financings for capital projects.

### ***Upcoming Regulatory Mandates***

In light of these financial challenges, we urge DEQ's attention to limiting the burden of regulatory requirements and thus the cost of utility operations to comply, which are necessarily passed on to ratepayers. The two key areas that occur to us at this time are:

- New Regulations Including WIP3 Nutrient Projects – The single most helpful thing that DEQ can do at this time to help utility ratepayers statewide is discontinue efforts to increase regulatory mandates and associated compliance expense. The largest savings opportunity is reconsideration of the Phase III Watershed Implementation Plan's (WIP3) Initiative 52 "Floating Cap" and related rulemaking. VAMWA has previously recommended a far less costly implementation approach, which we understand – and appreciate – will be considered in the Water Quality Management Planning Regulation process and similarly in the work group process resulting from the FY2021-22 State Budget. This recommendation is now even more necessary and appropriate, as it would benefit local ratepayers as well as the State Budget (the associated Point Source WQIF cost-share) while still meeting WIP3 goals.
- Implementation Schedules for Other Capital Projects – The financial realities that have hit us all in 2020 also warrant DEQ being open to appropriate schedule adjustments for other capital projects mandated by the agency such as under consent orders. Though the projects are community-specific in nature, general DEQ support for reconsideration of schedules would provide an opportunity for utilities to identify potential savings at a time when so many Virginians are losing jobs and income.

### **FEDERAL OR STATE STIMULUS FUNDING**

Lastly, to the extent that the Federal or State government considers launching an infrastructure funding program as an economic stimulus, VAMWA would be glad to work with DEQ to help identify worthy projects statewide. This could benefit DEQ's and VAMWA's mutual water quality interests as well as overall economic interests of the Commonwealth and our communities. If you see an opportunity to do so, please do let us know.

Sincerely,



Michael T. McEvoy  
President

Mr. David K. Paylor

April 21, 2020

Page 2

Copy by email to:

Jeffrey Steers, DEQ

Melanie Davenport, DEQ

VAMWA Board & Members