

Virginia General Assembly 2021: Environmental Issues

Presented to Virginia Asphalt Association
Andrea Wortzel
Troutman Pepper

June 18, 2021



- Environmental Justice
- Climate Change
- Compensatory Mitigation
- Cultural Resources

- **Changing Regulatory Climate**

- APA Exemptions
- DEQ Regulatory Advisory Panels
- FOIA Exemptions
 - HB 2313 (McQuinn) – FOIA exclusion for Director of Diversity, Equity and Inclusion - FAILED
- Permit Fees
 - SB 1210 (Peterson) – Permits fees for water withdrawal and waste facilities - PASSED

Environmental Justice

- Defining/Identifying EJ Communities
- Developing Standards for Community Outreach
- Establishing Required Reviews/Studies
- Implementing Substantive Permitting Criteria

Virginia Legislation

- **Virginia Environmental Justice Act (2020)**
 - Establishes definitions
 - Environmental justice (broader than federal)
 - Fenceline community
 - Environmental justice community
 - Low-income community
 - Community of color
 - Fair treatment
 - Meaningful involvement

SB 1284 (Favola) – Commonwealth Clean Energy Policy

- **General language linking EJ & climate change:**

“The Commonwealth recognizes the need to promote environmental justice and ensure that it is carried out throughout the Commonwealth, as provided in § 2.2-235, and the need to address and prevent energy inequities in historically economically disadvantaged communities, as defined in § 56-576.”

- **Language requiring to “ensure that energy development projects avoid, minimize, and, if necessary, mitigate damage to the Commonwealth's natural and cultural resources.”**

HJ 538 (Aird) – Access to Water

- Recognizes that access to clean, potable water is a necessary human right.
- “[T]he lack of access to drinking water and water-related illnesses disproportionately impact low-income communities and communities of color, and all efforts must be made to ensure public access to and affordability of water for private use by all residents of the Commonwealth ...”
- “[I]n addition, climate change has resulted in challenges to accessibility and affordability of water, with freshwater and groundwater increasingly threatened by storm surges, sea level rise, and drought ...”

HJ 537 (Aird) - Racism

- Recognizes that racism is a public health crisis in Virginia.
- “[M]any communities of color suffer from increased exposure to environmental hazards, poor air quality ...”
- Outlines numerous steps that Virginia can take to address systemic racism, including promoting community engagement, actively engaging all citizens on issues of racism, and providing tools to engage actively and authentically with communities of color.

Other Virginia Legislation of Interest

- **HB 1836 (Plum):**

- Changing the name of the “Secretary of Natural Resources” to the “Secretary of Natural and Historic Resources.”
- The Secretary will serve as the Chief Resilience Officer.

- **SB 1290 (Mason):**

- Establishing *Conserve Virginia* program and map to prioritize conservation areas, which should include cultural and historic preservation category.
- Incorporate *Conserve Virginia* into acquisition or grant decisions when appropriate.

Other Virginia Legislation of Interest

- **SB 1319 (Hashmi):**
 - Continuing the Waste Diversion and Recycling Task Force established in 2020.
 - The Task Force to include a member of the EJ Council
- **SB 1274 (Marsden):**
 - Follow up to 2020 legislation requiring development of Wildlife Corridor Action Plan.
 - Adds a role for the State Forester: *The State Forester shall develop and implement forest conservation and management strategies to improve wildlife habitat and corridors, incorporating applicable elements of any wildlife action plan developed by the Department of Wildlife Resources and the Wildlife Corridor Action Plan developed pursuant to § [29.1-579](#).*
 - First plan due September 2022.

HB 2221 (Hayes) / SB 1373 (McClellan) - FAILED

- DEQ-supported bill creating public outreach requirements for permitting
 - Applies to air, water and waste permits
 - Mailing to every property owner within a 5-mile radius
 - Public meeting/response to comments
- Significant amendments made during session
 - Would not apply to general permits
 - Mileage for notification changed from 5 to 3 miles
- Ongoing concern regarding pre-application outreach

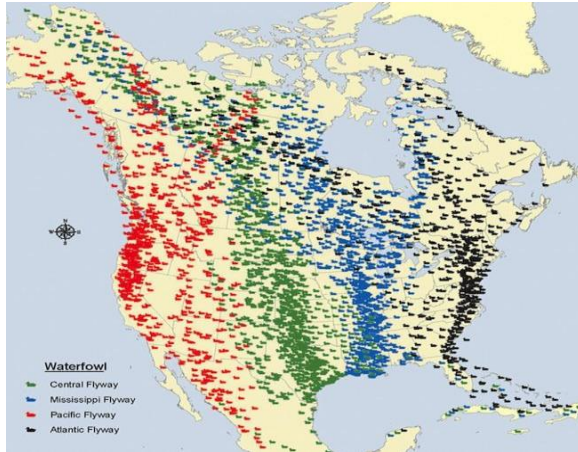
HB 2074 (Simonds) / SB 1318 (Hashmi) – FAILED

- Permit application requirements
 - Public involvement plan
 - Cumulative impact statement
 - Environmental justice impact statement
- Potential for denial of application
- Local government comprehensive plans
- Interagency working group

HB 2074 (Simonds) / SB 1318 (Hashmi) – FAILED

- Significant amendments generally favorable to the regulated community
 - Removal of public involvement plan and cumulative impact statement
 - Removal of permit denial provision
 - Recognition that impacts can be positive as well as negative
 - Inclusion of industry representative on interagency working group
- Ongoing concern about EJ reviews during permitting
 - **Site suitability for air permits**

A Word about Compensatory Mitigation



A Word about “Green Washing”

- **Federal Trade Commission “green guides”**
- **Complaint filed against Chevron**
 - Climate impacts / energy transition
 - Calls out Chevron’s [Black Lives Matter Twitter post](#).
 - “In reality, Chevron’s business operations exacerbate racial inequalities and disproportionately harm people of color.”
- **Complaint filed against Coca-Cola (under Washington DC Consumer Protection Act)**



Questions?