



VMA Environmental Letter

INDUSTRY'S ADVOCATE

DECEMBER 2006

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Overview

Environmental issues facing manufacturers continue to be a challenge, but the ultimate goal of achieving a responsible balance between protecting our natural resources and protecting industry from overzealous regulation is well within reach. Protecting the environment through a smart, cost-efficient and science-based approach is beneficial to everyone and the VMA is dedicated to this end.

2006 has brought some changes in Virginia's executive branch. The administration of Governor Kaine has been in full operation since January of this year. The VMA has established good relationships with the new Secretary of Natural Resources, L. Preston Bryant, Jr., and the new Director of the Department of Environmental Quality (DEQ), David K. Paylor.

The 2006 Session of the General Assembly saw 3,200 bills introduced in the 60 day Session, rivaling that of full time legislatures in other states. An impressive 1,748 bills were passed by both houses. Of the 114 bills tracked by the VMA, 14 were specifically environmental. Several pieces of 06' legislation that have now become law are of interest to the VMA, including HB447- Mercury Switches, HB1457 - TMDL's for impaired waters, SB106 - waste discharge permitting, HB1055/SB651 - Mercury pollution, and HB1150 - the Chesapeake Bay

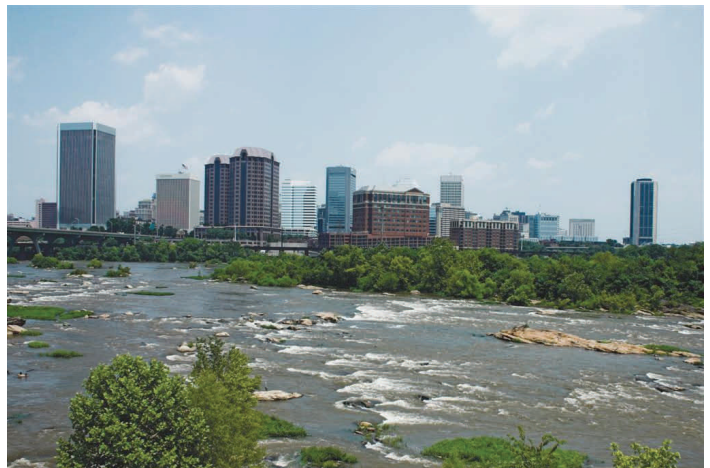
and Virginia Waters Clean-up and Oversight Act.

The VMA continues to be wary of a trend toward state environmental regulations much stricter than at the Federal level. The manufacturing industry must be vigilant in watching for special interest legislation. It is important to maintain the balance of science-based public policies. One example to be discussed further in this letter, involves the DEQ's stated intention to change wetlands permitting in Virginia.

Looking toward the 2007 session, the VMA has identified legislation to be introduced which may seek to mandate Renewable [Energy] Portfolio Standards (RPS) in Virginia. An RPS mandate will be op-

posed by the VMA because of its potential to only serve special interests while possibly destabilizing energy prices and putting pressure on biomass markets in Virginia. Additionally, the VMA intends to introduce legislation to relieve manufacturers of machinery and tools taxes paid on pollution control equipment.

A final noteworthy item, discussed later in this letter, involves a major shift in the VMA's delivery of professional development services. Beginning in 2007, the Virginia Industry Environmental (VIE) Conference and the Governor's Environmental Excellence Awards (GEEA) will undergo some major changes.



Legislative and Regulatory Updates

2006 General Assembly Legislative Highlights:

HB447: The removal of mercury switches from certain motor vehicles prior to demolition is an issue that Virginia Manufacturers have addressed well before any legislation was brought to the table. This proactive legislation shows that Virginia manufacturing is well ahead of the curve on current issues that affect both the environment and industry.

HB1457: Concerning "total maximum daily load" (TMDL) for impaired waters. This allows certain businesses to ask for a use attainability analysis if it is believed that the required water quality standards are not feasible. Businesses are now able to work with DEQ to reach workable and reasonable goals regarding impaired waters regulations.

HB1055/SB651: pertaining to air emissions control regulations. This establishes a phased schedule for electric generating units in Virginia to reduce their emissions of sulfur dioxide, nitrogen oxide, and mercury. The bill also requires the Board to adopt the federal Clean Air Mercury Rule as well as adopt a state-specific rule for mercury.

HB1150: Chesapeake Bay and Virginia Waters Clean-up and Oversight Act. This requires the Secretary of Natural Resources to develop a clean-up plan for the Bay and Virginia waters that have been designated as impaired. The plan will include measurable objectives, a description of the strategies to meet the plan's objectives, time frames for accomplishing the objectives, and a plan for disbursing funds for point and non-point pollution projects. **By law, the plan is to be submitted by January 1, 2007, and could possibly spawn some additional legislation in the 2007 Session of the General Assembly.**

SB106: Waste discharge permits; consent of local governing body required before Water Control Board issues. Local consent to State Water Control Board permits. Requires an application for a new or modified individual Virginia Pollutant Discharge Elimination System permit or a new or modified coverage under a general Virginia Pollutant Discharge Elimination System permit, authorizing direct or indirect discharge of stormwater runoff from a new municipal solid waste landfill into a local watershed protection district established and designated as such by city ordinance prior to January 1, 2006, to contain a certification from the local governing body of the city in which the discharge is to take place, that the discharge is consistent with the city's ordinance establishing and designating the local watershed protection district in order to be considered complete. The bill does not apply to any municipal solid waste landfill in operation on or before January 1, 2006.

2007 Potential Legislation:

In 2007 the VMA intends to support legislation that will exempt pollution control equipment from machinery and tools taxation. The DEQ has advised us that they have no issues that they are going to promote. This is the good news. The bad news is that our efforts in the 2007 general assembly will be focused on issues in a defensive posture. The primary issue of concern at this point is an initiative by the EPA to drive the DEQ to capture greater permit fees from the NPDES program or risk a reduction in their state funding from EPA. We are not certain that it will be an issue in 2007 (the permit funding issue is currently part of a Federal appropriations bill), but we are working with the National Association of Manufacturers and DEQ to resolve the issue. There may be other issues coming forward from the environmental activist community, but these are not known at

this time. California has just passed legislation related to green house gas emissions restrictions (Kyoto Protocol compliant) that we must be prepared to address in 2007 and 2008. There are also notions of creating a statewide recycling quota for solid waste.

Senator Whipple of Northern Virginia has plans to introduce a bill in the 2007 General Assembly which may seek to mandate a RPS in Virginia, an idea opposed by the VMA. VMA believes that manufacturers would be hurt by any mandated energy laws. While manufacturers in Virginia have actually led the way in creating renewable forms of energy through the development of landfill gas technology, any government required standards which mandate renewable energy production are simply not realistic and could potentially cause great volatility in the energy market. The renewable energy industry must be allowed to develop through a market-driven environment that will allow energy prices to remain stable. Solar and wind power for example, are currently incredibly expensive endeavors that cannot be funded easily, and manufacturers must be allowed to pursue stable forms of energy.

According to Pepco Energy Services, residential wind energy in Virginia currently sells at over 10 cents a kilowatt hour and residential "green energy" (a mixture of renewable resources) sells for 9.68 cents per kilowatt hour. These prices are 3-4 times higher than conventional residential electricity prices, and while they may decrease through market-driven conditions, mandating an RPS at these prices would be detrimental to Virginia's energy market and its consumers. Renewable energies will develop naturally, as evidenced by current land-fill gas production projects, like Honeywell in Hopewell, VA.

Regulatory:

Use Attainability – Virginia has nine major river basins with an estimated 50,527 miles of perennial rivers and streams and approximately 2,557 square miles of estuaries (EPA's National Hydrography Database figures). According to the DEQ, the overall water quality for Virginia is assessed based on whether or not the condition of the water-body being assessed permits citizens to safely enjoy the designated uses of the waters as described in the Virginia Water Quality Standards. These standards for designated uses in Virginia include: aquatic life use, fish consumption use, shellfish consumption use, [human] swimming use, public water supply use, and wildlife use. This means that all waters in Virginia must be readily available for all of these uses, all of the time. The problem with these criteria is that these desired conditions, such as the ability to swim in all 50,000 plus miles of Virginia's water ways simply are not feasible and are probably not even naturally possible. Naturally occurring conditions in water around Virginia regularly deter people from fishing, swimming, and drinking, without even the slightest human contaminant.

To add a historical perspective, it is a recorded fact that many of the settlers at Jamestown died from drinking and swimming in the waters of the pristine and tranquil James River in the 1600s. While they may have desired it to be naturally clean for these purposes, even in its pristine pre-Industrial Revolution stage, the river was not suitable for all uses. Examples such as these designated water quality use standards must be carefully monitored for unreasonable and irrational regulations.

Water Reuse – The VMA continues to monitor this issue and feels that the reuse of industrial wastewater already triggers VPA and VPDES permit requirements, which are adequate to protect human health and the environment. Any additional requirements would discourage reuse, and go against the DEQ's established legislative mandate. This is another example where vigilance must be maintained in order to prevent hasty or redundant regulations.

New Source Review – In 2002 the U.S. EPA adopted new regulations governing major new source review (NSR). NSR mandates the air permitting and emission control requirements that facility owners must follow when they make "major modifications" affecting air emissions. EPA adopted new "reforms" to the federal NSR program that reduce regulatory burdens and provide regulatory certainty to facility owners. However, these important federal NSR reforms did not automatically take effect in Virginia. Instead, they had to be adopted into Virginia's air regulations by the State Air Pollution Control Board. VMA's Air Regulation Subcommittee was an active participant in the rule-making process leading up to the adoption of the major NSR reforms in Virginia by the Air Board. The Subcommittee was represented by Tom Knauer on the ad hoc advisory group set up by the DEQ to draft Virginia's NSR reform regulations.

In spite of DEQ recommendations to the contrary, the Air Board first adopted new regulations that deviated substantially from the federal NSR reforms in ways that would severely disadvantage Virginia businesses compared to their competitors in other states. VMA initiated an appeal of those regulations, and then the Subcommittee worked with the DEQ to change the regulations initially adopted by the Board. On the basis primarily of written and oral comments from the Subcommittee, the Air Board changed the NSR reform regulations to make them more like the federal NSR reform regulations. Without the constant vigilance and efforts by VMA's Air Regulation Subcommittee, Virginia's businesses would have faced crippling NSR regulations that would have severely restricted their operational flexibility and ability to respond quickly to new and changing market demands.

In summary, the VMA staff monitors proposed legislation and brings issues of importance to the Environmental Affairs Committee (EAC) and solicits requests for comment. This helps guide our legislative and regulatory activities throughout the year. DURING THE SESSION, we monitor legislation daily and even hourly and pass on all important information to the EAC and ask for IMMEDIATE responses. We then take this info and use it in our activities with legislators and other groups

we have partnered with that have interests similar to ours. We continue to experience good participation by our members and have found this member/staff partnership to be crucial to our continued success on behalf of the membership.

JLARC Manufacturing Regulations Compliance Cost Report:

The Virginia General Assembly's Joint Legislative Audit and Review Commission (JLARC) released a much anticipated report in October on the Impact of Regulations on Virginia's Manufacturing Sector. The report, which was the result of several months of surveys and case studies conducted by JLARC with the cooperation of many of Virginia's finest manufacturing companies and VMA staff, is the first of its kind in the United States. The report analyzed compliance costs, direct and indirect, in four major areas: taxation, environmental, economic and workplace. The total cost of regulatory compliance in the manufacturing sector for these four areas was reported to be as much as **\$3.49 billion** in 2005 alone. The total direct and indirect upper limits for the environmental regulatory area were **\$1.72 billion**.

Among the many findings in JLARC's comprehensive 130 page report, it is important to note that the study and survey revealed that while compliance costs are expensive, Virginia manufacturers strongly prefer that state regulations not differ from Federal regulations. As the study mandate directed, the report cites data from neighboring states including North Carolina, Maryland, Tennessee, Georgia, and Pennsylvania and drew conclusions that these states are similar to Virginia's regulatory framework, and therefore similar to the Federal level.

It is important to note that Virginia's environmental regulations may dictate capital purchases, (such as pollution control equipment), in order to comply with Federal and State environmental regulations (having substantial direct and indirect costs alone). The state then allows local government to tax that equipment as machinery and tools, (which has a substantial direct and indirect cost as well). While the state legislature may not be aware of this circuitous route, which is clearly a competitive disadvantage for manufacturing in Vir-

ginia, it is an issue which must be addressed. The VMA will continue to work to protect our state's employees and communities as always, but the taxation of pollution control equipment is simply regressive tax policy.

The report also found that increasing the participation among manufacturers in Vir-

ginia's Environmental Excellence Awards Program, administered by VMA Outreach, should be evaluated. The study also found that a major concern of industry was the indirect cost associated with environmental permit compliance. JLARC noted that the DEQ Peer Review Study which cited 250 recommendations for improving permitting should be reviewed as well. The VMA has

committed to continuing that collaborative effort to improve permitting and participation in the Virginia Environmental Excellence Program under the leadership of David Paylor, DEQ Director.

Announcements

Events:

The VMA partnered with the DEQ to host the 4th Annual Virginia Industry Environmental (VIE) Conference at the Greater Richmond Convention Center, September 13th & 14th. The **11th Annual Governor's Environmental Excellence Awards (GEEA)**, administered by both groups, was held for the fourth consecutive year at the Convention Center.

This year's dynamic 2-day conference included a unique exchange between government and industry, with full participation from DEQ Director David Paylor and his staff, an informative session on legislative processes with members of the General Assembly, insight from both former and current Secretary of Natural Resources, and two fascinating national experts who gave presentations on global climate change. This year's VMA-DEQ Environmental Conference was not only a unique professional development opportunity, but also an excellent chance for networking and relationship building. One of the notables of this year's event was the strategic planning session with DEQ staff that helped develop a document on regulatory efficiency. This exercise fostered excellent communication between industry members and DEQ, and produced a tangible working document which will help improve DEQ's sometimes lengthy and repetitive regulatory processes.

Please note that the VIE in September 2007 will change to a one day session and the awards ceremony will change to a luncheon program. The VMA will develop a series of area environmental meetings intended to promote our activities and to increase the involvement of members and non-members in the environmental

activities affecting their operations. We will also look for methods of promoting new technologies to the membership that will benefit each environmental professional and their organization through events, meetings, and online resources such as the VA Environmental Services Network at www.VESN.biz and the VMA website, www.vamanufacturers.com.

New Leadership:

The new DEQ Director David Paylor, formerly the Deputy Secretary of Natural Resources in the Warner Administration, was welcomed earlier this year by the VMA. The Association and the DEQ continue to work closely together and have developed a partnership of mutual respect and trust. This partnership has resulted in a joint conference program and our assistance in the permit peer review process. The VMA has a strong presence on many of the Technical Advisory Committees (TACs), participation in board meetings, special focus groups, and the Governor's Summit on the Environment.

The TAC's with VMA member involvement include: Amendments 5 and 6 to the Solid Waste Management Regulations, Bay nutrients -- general permit and trading implementation, Freshwater nutrient criteria, Triennial review of water quality standards, Wastewater reclamation and reuse, Water supply planning and permitting, Total Maximum Daily Loads (TMDLs), Impaired waters clean-up plan, Lake Nutrient Criteria, Permit Program Peer Review Team, Nutrient Credit Exchange, VPDES Nutrients, Mercury Advisory Committee, Clean Air Mercury Rule, Clean Air Interstate Rule, State Air Advisory Board, and Chamber of Commerce.

Of concern to our membership are the recent changes to the various citizen boards. The VMA nominated several highly qualified members to the state's air, water, and waste boards, and succeeded with the appointment of Brenda Robinson to the water board. In particular, the VMA is concerned that these boards are interested in developing regulations that are stricter than those imposed by the EPA and may have a willingness to disregard staff recommendations involving permits

In his first address to the VMA Environmental Affairs Committee earlier this year, Paylor discussed the need for DEQ to be consistent and timely, while stressing efficiency and clarity in its rulings and determinations. He expressed a desire to seriously rationalize all wetland rules and regulations, perhaps scrutinizing some previously irrational and impractical rules. Of particular interest to the VMA and its members is DEQ's stated intention to take over the wetlands permit program in Virginia from the Army Corp of Engineers. Paylor further stated that the DEQ would "get its own house in order" by eliminating redundancy and implementing recommendations from a permit efficiency study on its own processes. He also wishes to address new initiatives such as water reuse, rainwater collection, and community-based environmental education. Paylor emphasized his desire to work with VMA and Virginia businesses remarking, "It's easy for us [DEQ] to say 'No,' but what does it take to get to 'Yes'?" He concluded by observing that the state government must learn how to do more with less, an idea welcomed by the Committee.

At the Secretariat level we have a very good relationship with Secretary Bryant, the new Secretary of Natural Resources, and we look to develop similarly good relationships with his executive staff. Secretary Bryant served 10 years as a Delegate in the Virginia General Assembly before joining the Kaine Administration. Bryant's official charge is to implement the governor's policies and we are closely monitoring those activities so we can develop a better understanding of their effect on the manufacturing community.



Winners of the Governor's Environmental Excellence Award at the 2006 VMA Environmental Conference, pictured with Lt. Governor Bill Bolling and DEQ staff.

Environmental Education

Outreach:

It is essential that the manufacturing community promote a positive image of manufacturing and how we are impacting the environment. Education is the key element to the success of this initiative. This program is funded by the membership and its members manage the affairs of the projects supported by the group. The most successful project in 2006 was their support of the **Canon Envirothon** program that produced the **national winners** of the Canon sponsored award from right here in Virginia. The Fort Defiance High School team was also honored at the annual GEEA Program in September. VMA's Outreach group provides the funding and administration of the Environmental Excellence Award. VMA Outreach is part of the Virginia Industry Foundation (VIF), a 501 (C) 3 non-profit. Fundraising for the VIF began in 2006 and the VMA hopes to successfully nurture this organization into a self-sustaining entity in the near future.

GEEA Program:

The Environmental Excellence Award has been in existence for 11 years and has continued to grow in participation and in award categories. This award provides industry with an opportunity to display and promote the environmental successes they have developed that have benefited the community and their own processes.

The 2006 Governor's Environmental Excellence Award recipients are as follows:

Environmental Projects – Large Manufacturer

Gold (Flag Winner): **Virginia Port Authority – Port of Virginia**

Silver: Smithfield – **Gwaltney of Portsmouth**

Silver: Tysons Foods – **Harrisonburg Processing**

Bronze: Smithfield – **Gwaltney of Smithfield, Ltd.**

Bronze: Smithfield – **Smithfield Ham & Products**

Environmental Programs – Small Manufacturer

Gold (Flag Winner) – **JTEKT Automotive Virginia, Inc. (JAVA)**

Environmental Programs – Large Manufacturer

Gold (Flag Winner) – **Goldschmidt Chemical Corp. – Hopewell Plant**

Silver: Alcoa – **Howmet Hampton Castings**

Land Conservation – Large Manufacturer

Gold (Flag Winner) – **International Paper – Franklin Paper Mill**

***received the highest score in the 11 year history of the awards program!**

Background

Mission statement of the VMA environmental program:

The VMA monitors and comments on the Department of Environmental Quality's (DEQ) administration of federally-delegated programs. The VMA also monitors the legislative process by offering constructive science-based comments and guidance to the legislators in their develop-

ment of state specific legislation of the regulated community. Further, these programs and policies should have an appropriate balance between environmental protection and the cost of compliance imposed on the regulated community that provides industry with the opportunity to remain globally competitive.

Environmental Program Structure:

The VMA environmental program is supported by staff and membership. The regulatory program and committees are the responsibility of Joe Croce, VP of the VMA, Allan Sharrett, Jeff Smith, and Brett Vassey, VMA President, provides the legislative support of the environmental program and interaction during the General

Assembly. The membership's participation in environmental affairs is very critical to overall success of the VMA environmental program. The VMA's largest committee is the Environmental Affairs Committee. This committee meets twice a year and the focus of those meetings is to dis-

cuss current and future issues and to network with regulators. As a subset of this committee there are three subcommittees. These are the air, water, and waste committees. These committees are specifically funded by the members of the committees and retain attorneys to represent the com-

mittees on specific regulations that are of concern (Brooks Smith and Dan Jordanger of Hunton & Williams and Tom Knauer of Williams Mullen). The value of these subcommittees generally extends beyond the group and has a positive impact on the entire manufacturing community.

The VMA Environmental Letter is a periodic update on the environmentally-related activities of the VMA. The growing number of studies, commissions and rulemaking actions in the last 6-8 months have created a necessity for the association to consolidate a single document in which an overview of environmental activities can be documented for members to keep informed.

For more information on VMA Outreach, the Governor's Environmental Excellence Awards for Manufacturers, the Environmental Affairs Committee, or the Virginia Manufacturers Association, go to the VMA's website or contact Joe Croce (jcroce@vamanufacturers.com) and Allan Sharrett (asharrett@vamanufacturers.com) at (804) 643-7489.



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VMA Outreach

www.vmaoutreach.com

Virginia Environmental Services Network

www.vesn.biz

Virginia Byproducts Group

www.vamanufacturers.com/vabyproduct.php