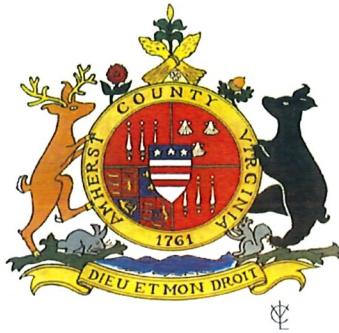


Board of Supervisors

L. J. Ayers III, Chair
District 3
Kenneth M. Campbell, Vice-Chair
District 1
David W. Pugh, Jr., Supervisor
District 4
Jennifer R. Moore, Supervisor
District 5
Claudia D. Tucker, Supervisor
District 2



County Administrator
Dean C. Rodgers

County Attorney
Michael W. S. Lockaby

AMHERST COUNTY BOARD OF SUPERVISORS



MINUTES

July 16, 2019
Board of Supervisors
Administration Building - 153 Washington Street - Public Meeting Room
Amherst, Virginia 24521
Meeting Convened – 7:00 p.m.

I. Call to Order

II. Approval of Agenda

III. Invocation and Pledge of Allegiance

IV. Citizen Comment

V. Public Hearing

A. Ordinance 2019-0006, amending § 12-26 – Prohibited uses of parks of Chapter 12, Article I – In General, to the Code of the County of Amherst to allow swimming, boating or fishing in designated swim areas.

VI. Consent Agenda

- A. Minutes - June 4, 2019 and June 18, 2019
- B. Appropriation of Revenue- Commonwealth Attorney
- C. Appropriation of Revenue- Amherst County Sheriff's Office
- D. Appropriation of Revenue- Solid Waste Fund
- E. Appropriation of Revenue- Amherst County Schools

VII. Special Presentation

- A. Customer Service Initiative

VIII. Old Business

- A. Transfer Station - Update

B. Riveredge Trail Update

IX. New Business

A. Delta Dental Contract

X. County Administrator's Report

- A. Board of Supervisors Retreat - August 5, 2019
- B. Trooper Lucas B. Dowell Bridge Dedication
- C. MPO Appointment
- D. Projects Status Report

XI. County Attorney's Report

XII. Liaison and Committee Reports

XIII. Departmental Reports

- A. Department Spotlight - Museum
- B. Treasurer's Monthly Report
- C. Winton Farm Update - Finance

XIV. Citizen Comment

XV. Matters from Members of the Board of Supervisors

XVI. Closed Session

A. A closed session, pursuant to Section 2.2-3711(A)(1) of the Code of Virginia, 1950, as amended, to evaluate the performance of the County Administrator.

B. A closed session, pursuant to Section 2.2-3711(A)(3) of the Code of Virginia, 1950, as amended, for the purpose of discussion or consideration of the acquisition of real property for a public purpose, or of the disposition of publicly held real property, where discussion in an open meeting would adversely affect the bargaining position or negotiating strategy of the public body, specifically relating to property in Madison Heights, Virginia.

XVIII. Adjournment

MINUTES

At a Regular Meeting of the Amherst County Board of Supervisors and held at the Amherst County Administration building, Amherst, Virginia, thereof on Tuesday, the 16th day of July, 2019, at 7:00 p.m., the following members were present:

BOARD OF SUPERVISORS:

PRESENT: L. J. Ayers III, Chairman
Kenneth M. Campbell, Vice-Chair
David W. Pugh, Jr., Supervisor
Jennifer R. Moore, Supervisor
Claudia D. Tucker, Supervisor

ABSENT: None

STAFF PRESENT: County Administrator Dean C. Rodgers
Deputy County Administrator David R. Proffitt
Attorney Mark C. Popovich for County Attorney Michael W. S. Lockaby
EA Clerk to Board Regina M. Rice
Recreation & Parks Director Sara Lu Christian
Community Development Director Jeremy Bryant

OTHERS PRESENT: Customer Service Team members
Ms. Gloria Witt of Define Success

I. Call to Order

Chairman Ayers called the meeting to order at 7:02 p.m.

II. Approval of Agenda

By motion of Supervisor Tucker and with the following vote, the Board approved the agenda for July 16, 2019.

AYE: Mr. Ayers, Mr. Campbell, Mr. Pugh, Ms. Moore and Ms. Tucker
NAY: None
ABSENT: None

III. Invocation and Pledge of Allegiance

Chairman Ayers led the Invocation and Pledge of Allegiance.

IV. Citizen Comment

There was no public comment

V. Public Hearing

A. Ordinance 2019-0006, amending § 12-26 – Prohibited uses of parks of Chapter 12, Article I – In General, to the Code of the County of Amherst to allow swimming, boating or fishing in designated swim areas.

Recreation & Parks Director Sara Lu Christian addressed the Board and reported on proposed Ordinance 2019-0006 to allow public swimming at Mill Creek Lake.

County Administrator Rodgers emphasized there was no legal restriction to allow the public to swim at the lake, that liability was not an issue or any restrictions by the Town of Amherst regarding a potential use of the lake for drinking water. He said research of the original documents when the dam was constructed allowed recreation as part of that plan.

Supervisor Pugh asked about the extra liability and if it would affect the county's insurance premium.

Mr. Rodgers said there would not be an increase in the premium, however, the county did have an obligation to warn the public of any hazards at the lake.

The Public Hearing was opened.

Proponents: Ms. Ginny Willow of Amherst, Virginia, submitted her email stating she was in favor of the ordinance to allow swimming at Mill Creek Lake. (See Attachment 1)

Opponents:

Mr. Dan French of Monroe, Virginia, addressed the Board and provided several handouts to Board members. Mr. French stated that he is trained as a biologist and a career of 43 years in water and wastewater. He voiced his opposition to the ordinance and said his comments were only to protect the interests of potential swimmers, county taxpayers and individual members of the Board of Supervisors. He trusted that the Board would do the right thing for all parties. (See Attachment 2)

Mr. Bill Peters of Amherst, Virginia addressed the Board and stated that there could be a potential problem with polluted water in the reservoir if swimming is allowed. Mr. Peters read a statement and endorsed Mr. French's statement, which made it clear that the County could have a real pollution problem in the reservoir by allowing swimming. (See Attachment 3)

The Public Hearing was closed.

Supervisor Tucker said Mill Creek Lake is taxpayer property. She requested that the entrance to the water should be made appropriate by putting sand down and to use money from tax revenue for that expense. She requested that language be included in her motion.

Supervisor Moore commented on the James River being tested every two weeks for E.coli and wondered about how frequently E.coli changes in the water.

Supervisor Pugh said that swimming in a lake increases the risk of getting harmful bacteria. He asked that the water be tested and ascertained as acceptable for swimming. The water would need to be monitored to determine if E.coli is present.

Vice-Chair Campbell remarked that it might be worth testing the water at Mill Creek Lake.

Chairman Ayers stated he would like to have water testing at the lake.

Supervisor Tucker asked that swimming be allowed and to have the water tested now or once a month.

Attorney Popovich commented that there are several groups who provide water testing services which would add a layer of protection to insure the water is a safe level to swim in.

By motion of Supervisor Tucker and with the following vote, the Board adopted Ordinance 2019-0006 and included that protocol be developed with the help of the Amherst County Department Health, the James River Association, and any other appropriate stakeholders as named to determine baseline E.coli levels and determine a policy for closing the lake should those numbers rise above what is safe for human health; and that the County Administrator be directed to use fine revenue money for sand to put at the water's edge and that all appropriate signage be in place before swimming is allowed.

AYE:	Mr. Ayers, Mr. Campbell, Ms. Moore and Ms. Tucker
NAY:	Mr. Pugh
ABSENT:	None
ABSTAIN:	None

Supervisor Pugh said he voted against this ordinance and would have rather seen water testing done first before allowing swimming at Mill Creek Lake.

VI. Consent Agenda

- A. Minutes - June 4, 2019 and June 18, 2019
- B. Appropriation of Revenue- Commonwealth Attorney
- C. Appropriation of Revenue- Amherst County Sheriff's Office
- D. Appropriation of Revenue- Solid Waste Fund
- E. Appropriation of Revenue- Amherst County Schools

By motion of Vice-Chair Campbell and with the following vote, the Board approved the Consent Agenda for July 16, 2019.

AYE: Mr. Ayers, Mr. Campbell, Mr. Pugh, Ms. Moore and Ms. Tucker
NAY: None
ABSENT: None

Ms. Tucker abstained from voting on the minutes of June 18, 2019 due to her absence at that meeting.

VII. Special Presentation

A. Customer Service Initiative

County Administrator Rodgers presented a slide presentation of the Customer Service initiative. The Customer Service Team met over the past six months and created an initiative to improve customer service in the County.

Supervisor Pugh asked several questions regarding collection of the data and the amount of work required to compile the data received.

Supervisor Tucker said this can be used as a guideline for training people coming into the workforce.

Ms. Gloria Witt, Facilitator of Define Success, praised the group for their teamwork, their creativity and a true team effort.

Chairman Ayers expressed thanks to the Customer Service Team.

VIII. Old Business

A. Transfer Station - Update

Deputy County Administrator David Proffitt provided the Board an update on the construction of the transfer station.

Mr. Proffitt advised that the PPEA process is in place and a RFP was advertised July 11, 2019. He explained the RFP is written to encourage innovative ideas and design suggestions from proposers that could result in additional cost savings for the construction.

B. Riveredge Trail Update

Community Development Director Jeremy Bryant presented a resolution to apply for multiple grants for trail funding. He explained that approval of the resolution will inform the DCR of the county's intent to provide funding for construction of Section 1 of the Riveredge Trail extension.

By motion of Supervisor Pugh and with the following vote, the Board adopted Resolution 2019-0010-R. **(See Attachment 4)**

AYE: Mr. Ayers, Mr. Campbell, Mr. Pugh, Ms. Moore and Ms. Tucker
NAY: None
ABSENT: None

IX. New Business

A. Delta Dental Contract

Human Resource Director Linda Warner asked the Board for approval of a contract with Delta Dental to continue to provide dental insurance to employees.

By motion of Supervisor Moore and with the following vote, the Board approved the Delta Dental contract.

AYE: Mr. Ayers, Mr. Campbell, Mr. Pugh, Ms. Moore and Ms. Tucker
NAY: None
ABSENT: None

X. County Administrator's Report

A. Board of Supervisors Retreat - August 5, 2019

County Administrator Rodgers informed the Board that the Board's retreat has been rescheduled for August 26, 219 at Sweet Briar College beginning at 9:00 a.m.

He informed the Board the retreat will develop a vision for next five to ten years out.

B. Trooper Lucas B. Dowell Bridge Dedication

The dedication for the Trooper Lucas B. Dowell Bridge will take place on Friday, August 2, 2019, at 2:00 p.m. at the Amherst County High School Auditorium.

C. MPO Appointment

County Administrator Rodgers informed the Board that Mr. Will Mays has resigned his seat as the representative for Amherst County on the regional Municipal Planning Organization (MPO).

By motion of Vice-Chair Ayers and with the following vote, the Board appointed Vice-Chair Campbell to represent Amherst County to the Municipal Planning Organization.

AYE: Mr. Ayers, Mr. Campbell, Mr. Pugh, Ms. Moore and Ms. Tucker
NAY: None
ABSENT: None

C. Projects Status Report

County Administrator Rodgers reported that Broadband for the County is continuing to move forward and a press release will be sent out each time a tower comes on line.

XI. County Attorney's Report

Attorney Popovich reminded the Board that effective January 1, 2020 there will be a reassessment. The Board will need to think about potential Board of Equalization members. He

said one should be an appraiser and other members should have some background in real estate and financial expertise.

He said that County Attorney Lockaby will present a proposed ordinance to set the dates the Board of Equalization will sit and the date it will terminate.

Deputy County Administrator David Proffitt said the Board of Equalization is appointed by the Circuit Court and recommendations will be needed by the end of the year for training and certification.

Supervisor Pugh requested that Mr. Proffitt provide the Board a list of individuals who served on the last reassessment.

XII. Liaison and Committee Reports

XIII. Departmental Reports

A. Department Spotlight -Museum

Ms. Octavia Starbuck, Director of the Amherst County Museum presented an overview of the museum how it preserves the history of the county.

Ms. Starbuck thanked the Board for donations made to the museum and remarked on the new front porch and inside painting. She said the museum has added Ancestry.com to use without charge and also has a genealogist on the Board of Directors.

The Board expressed thanks to Ms. Starbuck for all that she does for the museum.

B. Treasurer's Monthly Report

For information only.

C. Winton Farm Update - Finance

The Board received an update on the Winton reserves. The balance as of this date is \$217,485.69.

XIV. Citizen Comment

Mr. Bill Peters of Amherst, Virginia addressed the Board regarding the conflict that the county has with regard to Mill Creek Lake swimming and the lack of data on bacteria at the lake.

He suggested that the Supervisors put a swimming beach on the November referendum along with a potential YMCA.

Mr. Peters complimented the Customer Service Team and asked to have a customer service manual available to the public.

Chairman Ayers recommended that Mr. Rodgers take this request to the Customer Service Team regarding posting the manual on the county webpage.

Mr. Peters asked that the Board consider two ideas at their retreat in August at Sweet Briar College: 1) review of sources of tax revenue to determine if the distribution of taxes is equitable; and, 2) that education needs to be a number one strategic goal of the county's budget.

XV. Matters from Members of the Board of Supervisors

Supervisor Tucker had no matter to discuss.

Supervisor Moore had no matter to discuss.

Supervisor Pugh commented on the great job the Customer Service Team did with the outside facilitator to establish good customer service in Amherst County.

Vice-Chair Campbell reported that Mr. Dawson has contacted him again regarding the railroad's continual horn blowing at night on the east bound rail. Mr. Dawson again complained about the mosquito problem there and ditches full of standing water. He said all of the vegetation has been cut down on the adjoining property and understood this area has been known for years as a "wetland area."

Chairman Ayers had no matter to discuss.

XVI. Closed Session

A. A closed session, pursuant to Section 2.2-3711(A)(1) of the Code of Virginia, 1950, as amended, to evaluate the performance of the County Administrator.

B. A closed session, pursuant to Section 2.2-3711(A)(3) of the Code of Virginia, 1950, as amended, for the purpose of discussion or consideration of the acquisition of real property for a public purpose, or of the disposition of publicly held real property, where discussion in an open meeting would adversely affect the bargaining position or negotiating strategy of the public body, specifically relating to property in Madison Heights, Virginia.

Supervisor Pugh moved that the Amherst County Board of Supervisors convene in closed session pursuant to Section 2.2-3711(A)(1) of the Code of Virginia, 1950, as amended, to evaluate the performance of the County Administrator; and a closed session, pursuant to Section 2.2-3711(A)(3) of the Code of Virginia, 1950, as amended, for the purpose of discussion or consideration of the acquisition of real property for a public purpose, or of the disposition of publicly held real property, where discussion in an open meeting would adversely affect the bargaining position or negotiating strategy of the public body, specifically relating to property in Madison Heights, Virginia.

AYE: Mr. Ayers, Mr. Pugh, Mr. Pugh, Ms. Moore and Ms. Tucker
NAY: None
ABSENT: None

It is noted in the minutes the Board heard Item B. before Item A. of the closed session matters.

Supervisor Pugh motioned to come out of closed session and was approved with the following vote:

AYE: Mr. Ayers, Mr. Campbell, Mr. Pugh, Ms. Moore and Ms. Tucker
NAY: None
ABSENT: None

CERTIFICATION OF CLOSED MEETING

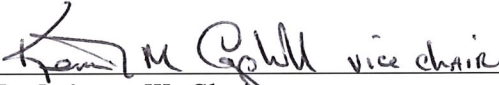
Supervisor Tucker moved that the Amherst County Board of Supervisors certify by a recorded vote that, to the best of each Board member's knowledge, only public business matters lawfully exempted from the open meeting requirements of the Virginia Freedom of Information Act and identified in the motion authorizing the closed session were heard, discussed, or considered in the closed session.

Mr. Ayers	AYE
Mr. Campbell	AYE
Mr. Pugh	AYE
Ms. Moore	AYE
Ms. Tucker	AYE


XVII. Adjournment

By motion of Vice-Chair Campbell and with the following vote, the Board adjourned at 9:22 p.m.

AYE:	Mr. Ayers, Mr. Campbell, Mr. Pugh, Ms. Moore and Ms. Tucker
NAY:	None
ABSENT:	None



~~L. J. Ayers III~~, Chairman
Amherst County Board of Supervisors



Dean C. Rodgers, Clerk

Attachment 1

From: Jenny's Gmail <jennycwillow@gmail.com>
To: kcampbell@countyofamherst.com, cdtucker@countyofamherst.com,
jayers@countyofamherst.com, dwpugh@countyofamherst.com, jrmoore@countyofamherst.com,
dcrodgers@countyofamherst.com, slchristian@countyofamherst.com
Date: 07/10/2019 12:21 PM
Subject: Swimming at Mill Creek Lake

I am writing in support of allowing swimming at Mill Creek Lake. As a life-long swimmer I have enjoyed the exercise and recreation of swimming. Having been raised in Minnesota many of my years (as a child and as an adult) have been in lake swimming. And as a citizen of Amherst County for 44 years I have also enjoyed lake swimming at Virginia State Parks.

It is my understanding that all three lakes were built for future water use and recreational use, which for the last 30 plus years has meant fishing. I am encouraged and excited that Amherst County is considering a swimming area at one of the lakes; leaving two lakes and plenty of acres in the third for fishermen to continue what they love to do. Please let those of us who love to swim be able to enjoy what we love to do as well.

Thank you for considering this wonderful opportunity for recreation.

Jenny Willow
687 Gidsville Road
Amherst Va 24521
434-661-7802

Fw: Swimming at Mill Creek Lake - Msg from Jenny Willow

Dean C Rodgers to: Regina M Rice

07/18/2019 08:14 AM

Dean C. Rodgers
Amherst County Administrator
(434) 946-9400

The mission of Amherst County's government is to provide limited, efficient and effective government services that promote liberty and a high quality of life for our citizens. We are a County open for business in a secure community dedicated to providing a superior work force through investments in education and economic development. Our citizens expect and we deliver a fiscally responsible and transparent government.

----- Forwarded by Dean C Rodgers/Amherst on 07/18/2019 08:15 AM -----

From: Jenny's Gmail <jennycwillow@gmail.com>
To: kcampbell@countyofamherst.com, cdtucker@countyofamherst.com, jayers@countyofamherst.com, dwpugh@countyofamherst.com, jrmoore@countyofamherst.com, dcrogers@countyofamherst.com, slchristian@countyofamherst.com
Date: 07/10/2019 12:21 PM
Subject: Swimming at Mill Creek Lake

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Thank you for considering this wonderful opportunity for recreation.

Jenny Willow
687 Gidsville Road
Amherst Va 24521
434-661-7802

Attachment 2

Public Hearing on the Proposal to Open Mill Creek Reservoir to Public Swimming

Comments of Dan E. French, 602 Montrose Road, Monroe, VA 24574

I am trained as a biologist and having spent 43 years in a water and wastewater career, I have instructed more than 2000 individuals in this subject at Central Virginia Community College and Virginia Tech.

Good Evening Board Members. As an avid swimmer myself, I fully understand the public's desire for a new swimming site in Amherst County. I also understand the Board's wish to fulfill this desire. It is regrettable that I must attempt to discourage you from considering Mill Creek Reservoir as a public swimming access location.

I have for each of you a packet of government documents, plus publicly available legal and insurance opinions related to the risks of public swimming and associated liabilities. I believe the content of this packet is vital for the Board in order to make a fully informed decision. Please understand my comments and the information I am providing you tonight are intended to protect the interests of not only potential swimmers, but also all County taxpayers and individual members of the Board of Supervisors.

Prior Boards considered a multitude of reasons whether or not to allow public swimming at Mill Creek Reservoir. Among their considerations were public water supply concerns and safety for all parties. I will try to explain the most important of these.

1. Swimming is typically not encouraged in a small water reservoir. At less than 200 acres, Mill Creek is considered a small reservoir. Because the human body is covered with millions of microbes, some of which can be disease producing, reservoir swimming can increase the microbial loading on any water treatment facility. While water treatment plants have adequate disinfection capacity to deal with these matters, it requires more treatment chemicals. This drives up the expense to rate payers who then see larger bills to cover these extra expenses.
2. This microbial transfer also works in the opposite direction. If the microorganism content of the water is above Virginia's water quality standards for swimming, the Virginia Department of Environmental Quality (DEQ) describes the water as being **impaired for the swimming/recreational designated use**. Bacteriologically impaired waters are capable of transmitting diseases from organisms such as Cryptosporidium, Giardia, Vibrio, Pseudomonas, Viruses and a multitude of other disease infections.

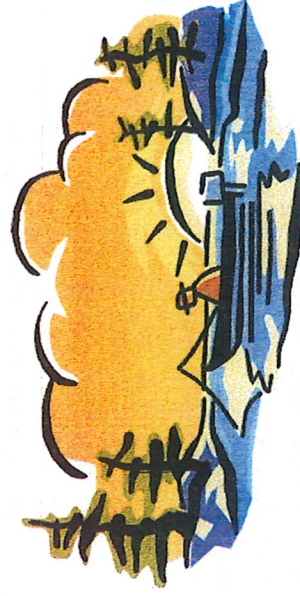
The waters of Mill Creek are beautiful and clear. But they conceal an unexpected condition. Much of the rest of my comments will focus on the fact that **DEQ has determined Mill Creek is impaired based on monitoring of E. coli, a fecal coliform bacteria.**

3. Exhibit A in your packet is a Virginia Department of Health (VDH) flyer titled "Safely Enjoy Virginia's Natural Waters". In it, they caution that rainwater runoff and human impacts make it impossible to guarantee that any natural body of water is free of health risk. It further states, "Children are more likely to swallow water and are at greater risk of infection due to a developing immune system"
4. Exhibit B is a 2018 DEQ Fact Sheet regarding the Bacterial Impairment in Mill Creek. It shows Mill Creek is currently impaired for E. coli and historically fecal coliform (of which E. coli is a sub-group) exceedances of the water quality standards for swimming.
5. Exhibit C is an excerpt from a bacterial Total Maximum Daily Load (TMDL) development report on 11 streams in Nelson and Amherst Counties. This "pollution reduction" plan produced by DEQ and the Department of Conservation and Recreation (DCR) noted that Mill Creek had the highest E. coli violation rates of the 11 streams studied, 47% of the water quality samples exceeding the state standards.
6. Exhibit D is Appendix A: Glossary of Terms from the same TMDL report. You will note under the Fecal Coliform definition it states, "E. coli bacteria are a subset of this group found to more closely to correlate with human health problems."
7. Exhibit E. Not being an attorney, I am not qualified to generate valid legal opinions. However, I have been present when a prior County Attorney told the Board that, "No one can sign away or give away their right to sue in Virginia". Yet, I believe the Board should see a formal legal opinion of this statement. This exhibit is an on-line opinion by a firm who specializes in this type of litigation, confirming the statement a prior County Attorney offered to the Board regarding potential legal risks.
8. Exhibit F is VACORP's letter to David Profitt about County insurance. From the 3rd paragraph you will note their opinion includes the following statement. "If the county knows of a danger and fails to inform the public, then arguments could be made for gross negligence. Most likely, any suit would be denied and won, but the loss is often in legal costs to defend the claim. VACORP would defend the county, but the losses would go against the county's loss record."

The Board is now aware of 3 state agency's (VDH, DEQ & DCR) work in the community and/or focus on the risks associated with public swimming and water quality, plus the profound risk and potential consequences. Any swimming related injury, infection, or drowning, could be disastrous for everyone. Is VACORP's reference to "most likely" protection really an adequate level of risk avoidance for our citizens and our elected officials?

I trust the Board will do what is right for all parties.

Safely Enjoy Virginia's Natural Waters



VDH VIRGINIA
DEPARTMENT
OF HEALTH
Protecting You and Your Environment
www.vdh.virginia.gov

What You Can Do To Protect Yourself

- Look for posted signs and follow the advice on them.
- Do not swim in water that is stagnant, muddy, smells unpleasant, or has an unusual color.
- Avoid swallowing river, stream or lake water. Children are more likely to swallow water and are at greater risk of infections due to a developing immune system.
- People with weakened immune systems should avoid contact with natural bodies of water.
- Prevent direct contact between broken skin and natural waters.
- Avoid swimming several days after a heavy rainfall.
- During extremely warm periods, keep your head out of the water, use nose clips or hold your nose shut, and avoid stirring up sediment in shallow fresh water areas.
- Do not drink alcoholic beverages or use drugs when swimming or boating.
- Avoid areas where you may become trapped in rocks or debris by fast flowing water.
- Avoid flood waters that can carry hidden debris and cause injury.
- Do not add to the risk; use toilet facilities and properly dispose of pet waste.

For more information, contact your local health department or the regional Department of Environmental Quality office.

Visit our website at

www.vdh.virginia.gov/environmental-epidemiology/

People who have a weakened immune system may get sick from much lower levels of harmful organisms than healthy people, and should avoid any contact with natural bodies of water.

Some waters

may be

contaminated

with toxic

substances.

The risk of

illness is

greater for

persons eating

fish from those

waters than it is

for swimmers.

The Virginia

Department of

Health issues fish

consumption advisories when levels of

contaminants found in fish exceed safe

levels and recommends that people limit

or eliminate consumption of certain

types of fish from those waters. Warning

signs and brochures on fishing

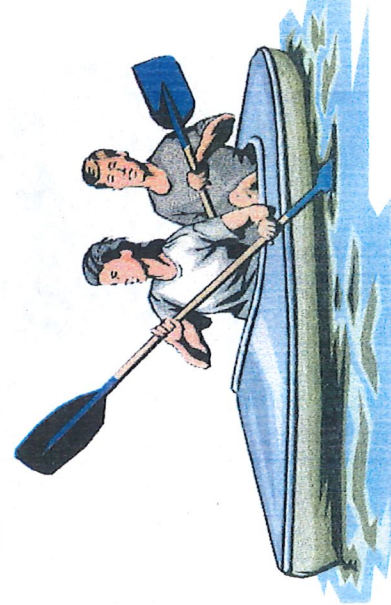
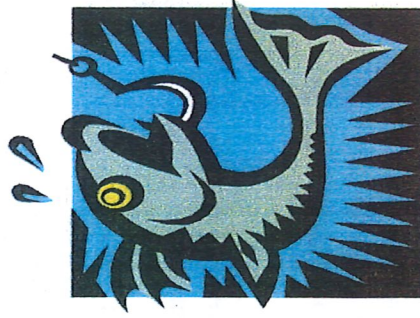
regulations provided by the Department

of Game and Inland Fisheries notify the

public of fishing advisories. Waterbody-

specific advisory information is available

on the VDH website.



What You Should Know

The quality of

Virginia's natural

waters, including

ocean, bays, rivers,

streams and lakes,

is monitored

regularly. There are

a number of factors

including naturally

occurring

organisms, rainwater runoff and

human impacts that make it impossible to

guarantee that any natural body of water is

free of health risks. Most of the organisms in

Virginia's recreational waters probably do

not cause human illness or are in such low

levels they will not make anyone sick, but

there is no way to be sure. Because natural

bodies of water, especially rivers, are so

changeable, officials can only make general

statements about the health risk of certain

bodies of water; they cannot say exactly

what the condition of a specific body of

water is at any particular time.



contribute to microbiological pollution.

Water flow, temperature, level of acidity,

chemical composition, amount of organic

material, and especially what runs into or is

dumped into the water influence how many

and what kinds of organisms are present.

Why Avoid Natural Water After a Heavy Rain?

During a heavy rainfall, pollution from the

land washes into rivers, lakes

and streams and

eventually

winds up in

our coastal

waterways.

Pet,

livestock

and

wildlife

wastes, and

untreated waste water

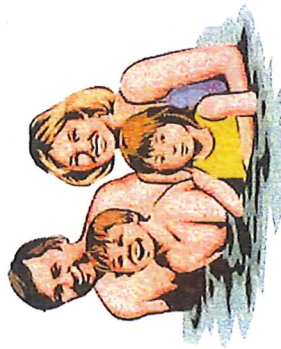
from sewage treatment plants

that are overloaded by an excess of

rain water can all end up in natural waters

used for recreation and pose risks to human

health.



Where Do Organisms Found in Water Come From?

All natural waters contain

algae, bacteria, viruses and

parasites. These

microbiological organisms

come from plants, animals

and sometimes, humans.

Agricultural and urban

runoff and improperly or

partially treated sewage



National standard tests for *E. coli* and

enterococci, a group of bacteria, indicate the

level of possible contamination from human

waste. Non-disease causing bacteria can

also come from animals or multiply readily

in certain types of water so high levels of

these indicator bacteria do not necessarily

mean the water is unsafe. Likewise, water

that tests negative for indicator bacteria

could contain disease-causing organisms. In

general, the higher the indicator level, the

more likely it is that harmful bacteria are

present, increasing the risk that people will

become ill from the water.

What Are the Risks?

The most common waterborne illnesses are

gastrointestinal and may cause vomiting,

diarrhea or nausea. These illnesses result

from swallowing water contaminated by

disease causing microbiological organisms.

Less commonly, skin, ear and eye infections

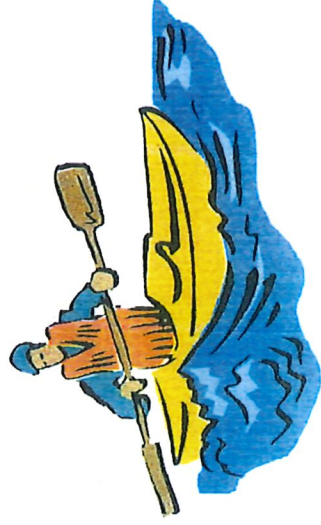
can result from contact with contaminated

water. Although recreational water users

may inadvertently swallow water,

deliberately drinking from rivers, streams

or lakes is never recommended.



How is Health Risk from Natural Waters Determined?

Because testing water for bacteria, viruses,

and parasites that cause illness is difficult,

time consuming and costly, two bacteria

have been selected to use as indicators of

possible contamination from human waste.

Exhibit B

Fact Sheets for Impaired (Category 4 or 5) Waters in 2018

James River Basin

Cause Group Code: **H11R-02-BAC**

Mill Creek

Cause Location: Mill Creek from its headwaters to the backwaters of Mill Creek Reservoir.

City / County: Amherst Co.

Use(s): Recreation

Cause(s) / VA Category: Escherichia coli / 4A

The Hat Creek, Piney River, Rucker Run, Mill Creek, Rutledge Creek, Turner Creek, Buffalo River, and Tye River Bacteria TMDL Study (Mill Creek) received U.S. EPA approval on 9/20/2013 [Fed. ID 53767] and SWCB approval on 4/4/2014 for these 2004 303(d) Listed waters for fecal coliform and 2008 and 2010 303(d) Listed water for E.coli. Escherichia coli (E.coli) replaces fecal coliform (FC) bacteria as the indicator as per Water Quality Standards [9 VAC 25-260-170. Bacteria; other waters]. 53767, 9/20/2013

One station is located within the 4.19 miles of impaired waters. 2-MIN002.25 (Citmon Follow-up) (Mill Creek @ Rt 778 Lowesville Rd)

2-MIN002.25 (Citmon Follow-up)(Mill Creek @ Rt 778 Lowesville Rd) Five of 12 samples in excess of the instantaneous criterion.

Assessment Unit / Water Name / Location Desc.	Cause Category	Cause Name	Cycle First Listed	TMDL Dev. Priority	Water Size
VAW-H11R_MIN01A08 / Mill Creek / Mill Creek from its headwaters to the backwaters of Mill Creek Reservoir.	4A	Escherichia coli	2008	L	4.15

Mill Creek

Recreation

Estuary
(Sq. Miles)

Reservoir
(Acres)

River
(Miles)

Escherichia coli - Total Impaired Size by Water Type:

4.15

Sources:

Livestock (Grazing or
Feeding Operations)

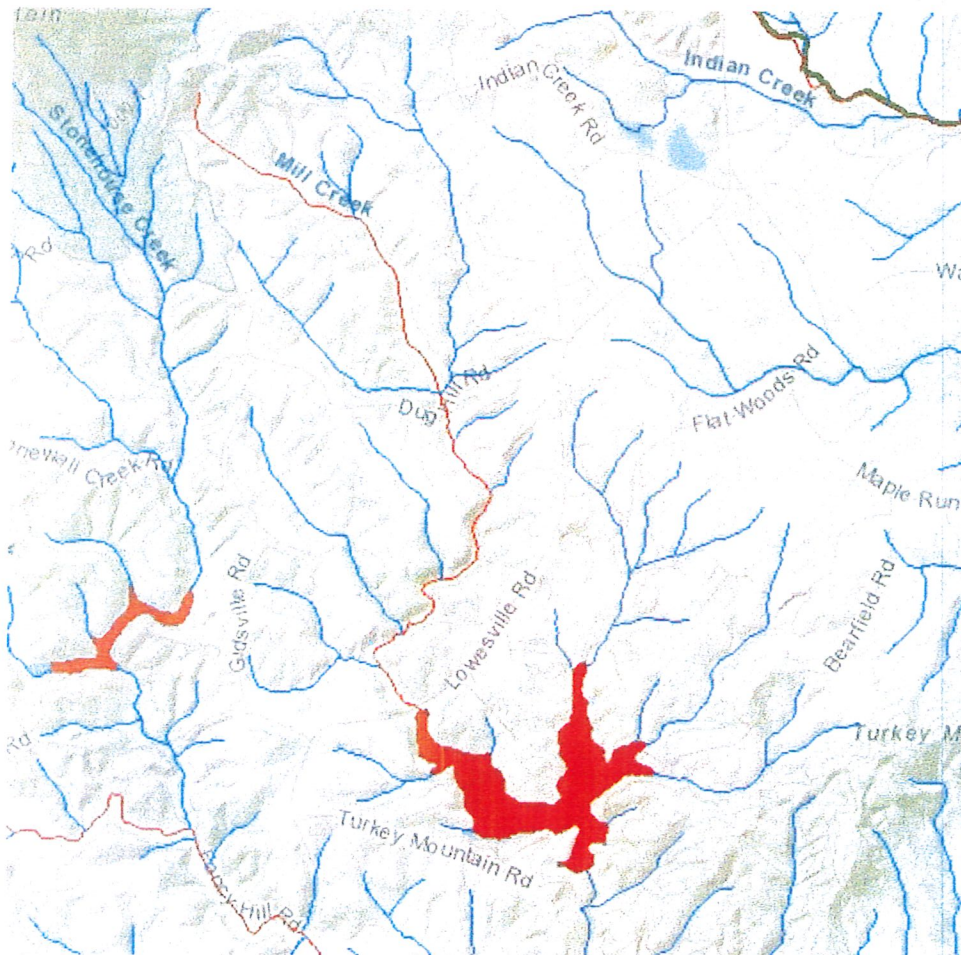
Unspecified Domestic
Waste

Wastes from Pets

Wildlife Other than
Waterfowl

According to Virginia DEQ, Mill Creek and Mill Creek Reservoir (located in Amherst County) are listed as impaired waters in their Draft 2018 305(b)/303(d) Water Quality Assessment Integrated Report; publicly released in January 2019. The following map shows the location of these impairments and their extent.

The "...biennial report satisfies the requirements of the U.S. Clean Water Act sections 305(b) and 303(d) and the Virginia Water Quality Monitoring, Information and Restoration Act. The goals of Virginia's water quality assessment program are to determine whether waters meet water quality standards, and to establish a schedule to restore waters with impaired water quality."



According to DEQ (see web site reference below):

"Water quality standards designate uses for waters. There are six designated uses for surface waters in Virginia:

- aquatic life
- fish consumption
- public water supplies (where applicable)
- recreation (swimming)
- shellfishing
- wildlife"

The impairment for Mill Creek is caused by exceedances of E. coli bacteria, which is a pathogen that can cause people to become sick. The Virginia recreational designated use is designed to protect people from over exposure to harmful bacteria and viruses that can cause illness and - in extremely rare cases - death.

E. coli is the bacteria DEQ currently monitors to determine if a waterbody is impaired for recreational (swimming) use. Historically it was fecal coliform bacteria, of which E. coli is a subset.

Mill Creek was initially listed as impaired for Virginia's Recreational/Swimming Designated Use in 2004. The state has since completed a Total Maximum Daily Load (TMDL) pollution reduction plan in 2014.

The impairment for Mill Creek Reservoir is pH, with the impairment cause currently unknown. Mill Creek Reservoir was first listed as impaired in 2014. No TMDL plan has been written or initiated by the state as of this time.

The DEQ produced fact sheets for Mill Creek and Mill Creek Reservoir from the Draft 2018 305(b)/303(d) Water Quality Assessment Integrated Report is included as part of this handout for the Board's review.

The Virginia Department of Health has published a factsheet entitled, "Safely Enjoy Virginia's Natural Waters". It provides an excellent background on the issues of bacteria in our rivers and reservoirs and steps the public can take to minimize the risk of becoming sick from bacterial exposure. This is also being provided to the Board for its review.

Source Information:

2019. Virginia DEQ. "Draft 2018 305(b)/303(d) Water Quality Assessment Integrated Report."
[https://www.deq.virginia.gov/programs/Water/WaterQualityInformationTMDLs/WaterQualityAssessments/2018305\(b\)303\(d\)IntegratedReport.aspx](https://www.deq.virginia.gov/programs/Water/WaterQualityInformationTMDLs/WaterQualityAssessments/2018305(b)303(d)IntegratedReport.aspx)

2016. Virginia Department of Health. "Safely Enjoy Virginia's Natural Waters."
<http://www.vdh.virginia.gov/content/uploads/sites/12/2016/04/RecWater.pdf>

2018 Impaired Waters (Category 4A/4D) TMDL Approved and (Category 4B) Other Control Measures Present*

James River Basin

Cause Group Code Impaired Use	Water Name Cause	Cause Category	Estuary (Sq. Miles)	Reservoir (Acres)	River (Miles)	Initial List Date	TMDL Dev. Priority
H09R-03-BAC	Tye River						
Recreation	Escherichia coli	4A			8.40	2006	L
	Escherichia coli	4A			8.24	2008	L
H10R-01-BAC	Piney River						
Recreation	Escherichia coli	4A			6.89	2008	L
	Escherichia coli	4A			6.50	2010	L
H11R-01-BAC	Buffalo River						
Recreation	Escherichia coli	4A			3.66	2006	L
	Escherichia coli	4A			9.85	2010	L
	Escherichia coli	4A			4.26	2014	L
H11R-01-BEN	Long Branch						
Aquatic Life	Benthic-Macroinvertebrate Bioassessments	4A			3.59	2008	L
H11R-02-BAC	Mill Creek						
Recreation	Escherichia coli	4A			4.15	2008	L
H11R-02-BEN	Buffalo River						
Aquatic Life	Benthic-Macroinvertebrate Bioassessments	4A			2.09	2008	L
H12R-01-BAC	Rutledge Creek						
Recreation	Escherichia coli	4A			3.32	2012	L
H12R-03-BAC	Buffalo River						
Recreation	Escherichia coli	4A			5.46	2008	L
	Escherichia coli	4A			2.34	2008	L
H12R-04-BAC	Turner Creek						
Recreation	Escherichia coli	4A			4.49	2008	L
H12R-05-BAC	Rutledge Creek						
Recreation	Escherichia coli	4A			4.16	2014	L
H13R-01-BAC	Rucker Run						
Recreation	Fecal Coliform	4A			18.35	2004	L
	Escherichia coli	4A			18.35	2012	L
H13R-02-BAC	Bobs Creek						
Recreation	Escherichia coli	4A			4.34	2014	L
H15R-01-BAC	South Fork Rockfish River						
Recreation	Fecal Coliform	4A			11.55	2004	L
	Escherichia coli	4A			11.55	2008	L
H15R-02-BAC	North Fork Rockfish River						
Recreation	Escherichia coli	4A			7.18	2006	L
H15R-03-BAC	Taylor Creek						
Recreation	Escherichia coli	4A			4.99	2012	L
H15R-04-BAC	Goodwin Creek						
Recreation	Escherichia coli	4A			2.55	2016	L

Bacteria Total Maximum Daily Load Development for Hat Creek, Piney River, Rucker Run, Mill Creek, Rutledge Creek, Turner Creek, Buffalo River and Tye River

Table 2.4. VADEQ monitoring stations within the Tye River watershed used in model development.

Station ID	Stream Name	Indicator Organism Measured	Number of Samples	Violation Rate	Period of Record
2-TYE000.30	Tye River	<i>E. coli</i>	16	13%	2005 - 2012
2-RKR000.20	Rucker Run	<i>E. coli</i>	13	23%	2010 - 2012
2-TYE008.77	Tye River	<i>E. coli</i>	24	21%	2004 - 2012
2-TYE020.67	Tye River	<i>E. coli</i>	57	15%	2002 - 2012
2-HAT000.14	Hat Creek	<i>E. coli</i>	25	40%	2007 - 2012
2-PNY005.29	Piney river	<i>E. coli</i>	91	31%	2002 - 2012
2-BUF002.10	Buffalo River	<i>E. coli</i>	54	15%	2005 - 2012
2-TNR000.25	Turner Creek	<i>E. coli</i>	29	30%	2005 - 2012
2-RTD003.08	Rutledge Creek	<i>E. coli</i>	24	33%	2010 - 2011
2-MIN002.25	Mill Creek	<i>E. coli</i>	20	47%	2006 - 2010
2-BUF023.21	Buffalo River	<i>E. coli</i>	27	19%	2005 - 2010

Seasonality of fecal coliform concentrations in the streams was evaluated by plotting the mean monthly fecal coliform concentrations observed at station 2-TYE020.67, the station with the longest period of record (Figure 2.3). Mean monthly fecal coliform concentration was determined as the mean of all values in any given month for the period of record; there were between 4 and 7 samples available for every month (2002-2010). The observed bacteria record shows little seasonality, except perhaps to show that bacteria concentrations observed in April, May and October are higher than the other months.

Please note that Mill Creek has the highest *E. coli* violation rate of any of the 11 streams being monitored.

**Bacteria Total Maximum Daily Load Development for
Hat Creek, Piney River, Rucker Run, Mill Creek,
Rutledge Creek, Turner Creek, Buffalo River and Tye
River in Nelson County and Amherst County, Virginia**

Submitted by:

Virginia Department of Environmental Quality
Virginia Department of Conservation and Recreation

Prepared by:

Department of Biological Systems Engineering, Virginia Tech



June 2013

VT-BSE Document No. 2013-0005

*Bacteria Total Maximum Daily Load Development for Hat Creek, Piney River, Rucker Run, Mill Creek,
Rutledge Creek, Turner Creek, Buffalo River and Tye River*

Appendix A: Glossary of Terms

where it can flow over the soil surface to streams or contribute pollutants to the surface where they can be lost during storm runoff events.

Fecal coliform

A type of bacteria found in the feces of various warm-blooded animals that is used as indicator of the possible presence of pathogenic (disease causing) organisms. *E. coli* bacteria are a subset of this group found to more closely correlate with human health problems.

Geometric mean

The geometric mean is simply the n th root of the product of n values. Using the geometric mean lessens the significance of a few extreme values (extremely high or low values). In practical terms, this means that if you have just a few bad samples, their weight is lessened.

Mathematically the geometric mean, \bar{x}_g , is expressed as:

$$\bar{x}_g = \sqrt[n]{x_1 \cdot x_2 \cdot x_3 \dots x_n}$$

where n is the number of samples, and x_i is the value of sample i .

HSPF (Hydrological Simulation Program-Fortran)

A computer-based model that calculates runoff, sediment yield, and fate and transport of various pollutants to the stream. The model was developed under the direction of the U.S. Environmental Protection Agency (EPA).

Hydrology

The study of the distribution, properties, and effects of water on the earth's surface; in the soil and underlying rocks, and in the atmosphere.

Instantaneous or Single Sample criterion

The instantaneous criterion or instantaneous water quality standard is the value of the water quality standard that should not be exceeded at any time. For example, the Virginia instantaneous water quality standard for *E. coli* is 235 cfu/100 mL. If this value is exceeded at any time, the water body is in violation of the state water quality standard.

Load allocation (LA)

The portion of a receiving water's loading capacity that is attributed either to one of its existing or future nonpoint sources of pollution or to natural background.

Margin of Safety (MOS)

A required component of the TMDL that accounts for the uncertainty about the relationship between the pollutant loads and the quality of the receiving waterbody. The MOS is normally incorporated into the conservative assumptions used to develop TMDLs (generally within the calculations or models).

Bacteria Total Maximum Daily Load Development for Hat Creek, Piney River, Rucker Run, Mill Creek, Rutledge Creek, Turner Creek, Buffalo River and Tye River

Model

Mathematical representation of hydrologic and water quality processes. Effects of land use, slope, soil characteristics, and management practices are included.

Nonpoint source

Pollution that is not released through pipes but rather originates from multiple sources over a relatively large area. Nonpoint sources can be divided into source activities related to either land or water use including failing septic tanks, improper animal-keeping practices, forest practices, and urban and rural runoff.

Pathogen

Disease-causing agent, especially microorganisms such as bacteria, protozoa, and viruses.

Point source

Pollutant loads discharged at a specific location from pipes, outfalls, and conveyance channels from either municipal wastewater treatment plants or industrial waste treatment facilities. Point sources can also include pollutant loads contributed by tributaries to the main receiving water stream or river.

Pollution

Generally, the presence of matter or energy whose nature, location, or quantity produces undesired environmental effects. Under the Clean Water Act for example, the term is defined as the man-made or man-induced alteration of the physical, biological, chemical, and radiological integrity of water.

Reach

Segment of a stream or river.

Runoff

That part of rainfall or snowmelt that runs off the land into streams or other surface water. It can carry pollutants from the air and land into receiving waters.

Septic system

An on-site system designed to treat and dispose of domestic sewage. A typical septic system consists of a tank that receives liquid and solid wastes from a residence or business and a drainfield or subsurface absorption system consisting of a series of tile or percolation lines for disposal of the liquid effluent. Solids (sludge) that remain after decomposition by bacteria in the tank must be pumped out periodically.

Simulation

The use of mathematical models to approximate the observed behavior of a natural water system in response to a specific known set of input and forcing conditions. Models that have been validated, or verified, are then used to predict the response of a natural water system to changes in the input or forcing conditions.

Exhibit E

Virginia Waivers of Liability Laws

Are pre-injury clauses valid in Virginia?

Liability waivers and pre-injury release clauses are generally invalid in Virginia but there are important exceptions.

When you sign a liability waiver before engaging in a potentially dangerous activity, you might ask yourself, "can I waive my right to sue?" or "will waivers of liability hold up in court?" Pre-injury release clauses are an attempt to make you forfeit your legal right to sue if you are injured. In Virginia, the answer to whether these exculpatory clauses are valid and enforceable is generally a resounding "NO!" While important exceptions exist (your Virginia personal injury attorney can help explain them), liability waivers are generally unenforceable in Virginia. Therefore, even if you signed a pre-injury release clause and were severely injured in an activity, you may still retain a Virginia personal injury lawyer and file a claim for compensation.

Note that the law continually evolves and that the information provided here should not be taken as legal advice. Speaking to a qualified personal injury attorney can help determine if the injury you or your loved one suffered is an actionable claim. If you suffered a serious personal injury in Virginia, we recommend contacting us for a free case review. Because the law sets time deadlines for filing a claim, we recommend contacting us at your earliest convenience.

Virginia Supreme court upholds victims rights to sue

Unlike Maryland or Washington, D.C., Virginia is one of the few states that provides robust protection to injury victims who signed waiver of liability clauses. With some narrow exceptions, you do not sacrifice your right to file a lawsuit if you've signed a liability waiver in Virginia.

Virginia's protection of injured victims' rights dates back to 1890 when the Virginia Supreme Court ruled in the landmark case of *Johnson's Adm'x v. Richmond and Danville R.R. Co.*, 86 Va. 975 (1890) "for one party to put the other parties to the contract at the mercy of its own misconduct...can never be lawfully done where an enlightened system of jurisprudence prevails. Public policy forbids it, and contracts against public policy are void."

Another important case, *Hiett v. Lake Barcroft Community Assoc.*, 244 Va. 191, 194-195 (1992), upheld the public policy established in *Johnson* of voiding pre-injury waivers. Robert Hiatt, was a tri-athlete who signed a liability waiver shortly before competing in a triathlon in Fairfax County. He suffered a catastrophic injury after diving into shallow water in a lake, leaving him a quadriplegic. He sued the owner of the lake, alleging that the event organizers failed to ensure that the lake was reasonably safe, properly supervise the swimming event, advise of the risk of injury, and train them how to avoid serious personal injury. The Supreme Court of Virginia, affirming the 1890 decision in *Johnson*, held that the liability waiver signed by Hiatt was against public policy and did not prevent him from filing a lawsuit.

Indemnity clauses: an exception to liability waivers in Virginia

In Virginia, indemnity provisions are one possible caveat to the general ban against enforcing liability waivers. Indemnity provisions are agreements between parties apportioning liability between them. Unlike liability waivers, indemnity provisions do not prevent injured parties from suing for damages after a catastrophic personal injury. Indemnity clauses, however, can sometimes obligate the injured individual to compensate the wrongdoer for expenses related to the personal injury lawsuit – rendering the end result of an indemnity clause indistinguishable from a liability waiver. A qualified Virginia personal injury attorney can analyze contracts, case law, and other applicable regulations to determine whether your legal rights are impacted by the indemnity clause exception.

A good example of indemnity clauses in Virginia is the case of *Estes Express Lines, Inc. v. Chopper Express, Inc.*, 273 Va. 358 (2007). The case involved a contract where Chopper Express agreed to indemnify (repay) Estes Express for liability related to personal injuries.

An employee from Chopper Express sued Estes for negligence after suffering an injury on the job. As a result, Chopper Express was forced to reimburse Estes for the damages as part of the agreed upon indemnity clause.

Filing a personal injury lawsuit in Virginia

Even though liability waivers are generally unenforceable in Virginia, wrongdoers may still attempt to hold you to them. Speaking to a qualified Virginia personal injury attorney with The Cochran Firm, D.C. can help you get the justice you and your family deserve. Our attorneys are well-versed in premises liability, product liability and personal injury law.

If someone in Virginia refuses to compensate you for your catastrophic personal injury because they believe the waiver of liability you signed is enforceable, contact The Cochran Firm, D.C. We offer injury victims free, prompt, and confidential case reviews. We represent our clients on a contingency basis, meaning there are absolutely no legal fees unless you win. If you don't win your case, you don't owe us a dime.

Call us during business hours at 202-682-5800 or at 1-800-THE-FIRM (843-3476) to reach us 24 hours a day. You may also fill out a contact form on our website. Strict time deadlines apply when filing a personal injury lawsuit so please contact us at your earliest convenience in order to preserve your rights.

DO I HAVE A CASE?

Fill out this form for a FREE, confidential, risk-free legal consultation.

Name

E-mail

Phone

Tell us what happened:

Submit

Exhibit F

David:

Thanks for the call to inquire about liability exposures regarding swimming at the three county owned lakes. The lakes are used primarily for fishing with non-motorized boats. The county currently has a "No Swimming" policy for all lakes. Discussions are taking place on whether to allow swimming. There is no current discussion regarding adding a beach or life guard.

The most conservative approach would be to keep the policy as it is currently written. Should someone decide to swim, which I'm sure they do, it would provide the county with an effective defense against any lawsuit that may arise. This is the policy that I would recommend keeping.

Simply allowing swimming would most likely never rise to the standard of gross negligence. If the county knows of a danger and fails to inform the public, then arguments could be made for gross negligence. Most likely, any suit would be denied and won, but the loss is often in the legal cost to defend the claim. VACORP would defend the county, but the losses would go against the county's loss record.

If a decision is made to allow swimming, it is important to modify/replace any current sign that states the county rules and includes "Swim at your Own Risk" and "No Lifeguard on Duty." If swimming is allowed, you may also get more traffic to these lakes and swimming may occur at or near the pier and/or boat ramp. Young swimmers jumping off the pier and being in the area of the boat ramp would create a risk from backing vehicles. I think this would be the most likely situation for something to happen. I would probably recommend that swimming not be allowed in this area due to the inherent danger of children being exposed to vehicle traffic. This should be clearly stated on the sign. Of course, piers should be kept in good condition regardless of whether swimming is allowed. We have had a serious claim from failure to maintain a pier which left exposed nails.

Please let me know if you have any further questions or concerns regarding this issue.

Jim McClellan, CSP, CPSI

Senior Risk Control Consultant

VACORP

1819 Franklin Rd

Roanoke, VA 24018
(844) 986-2705

FROM: BILL PETERS, COUNTY RESIDENT AT
435 PRYOR CREEK RD. ON 7-16-2019

TO: AMHERST COUNTY BOARD OF SUPERVISORS

SUBJECT: REVISING AMHERST COUNTY, CHAPTER 12,
PARAGRAPH 12-26 TO ALLOW SWIMMING AT MILL CREEK LAKE

I endorse the concerns of Mr. Dan French about the degradation of water quality in the Mill Creek Reservoir. Further, I endorse the advice of the county's insurance company, VACORP of Roanoke, VA which reads as follows:

"The most conservative approach would be to keep the policy as it is currently written. Should someone decide to swim, which I'm sure they do, it would provide the county with an effective defense against any lawsuit that may arise. This is the policy that I would recommend keeping."

Swimming at Mill Creek Lake is harmful and foolish. Try swimming at the swimming pool of the renowned Winton Country Club property now owned by the county.

THANK YOU
