



Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

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Travis A. Voyles
Secretary of Natural and Historic Resources

Michael S. Rolband, PE, PWD, PWS Emeritus
Director
(804) 698-4020

November 22, 2023

**Mark Fendig
Cushaw Hydro, LLC
P.O. Box 13
Coleman Falls, VA 24536**

Delivery Confirmation

Notice of Special Order Proceeding

DATE: December 14, 2023

TIME: 10:00am

CONFERENCE CALL INFORMATION:

CALL-IN NO.: 1-434-230-0065

ACCESS CODE: 391 721 380#

**In re: Cushaw Hydro, LLC
Virginia Water Protection (VWP) Individual Application No. 22-1141
Cushaw Hydropower Project, Amherst, Virginia**

Dear Mr. Fendig:

You are hereby notified that, pursuant to Virginia Code ("Va. Code") § 2.2-4019 an informal fact finding hearing will be held on December 14, 2023 at 10:00am regarding Cushaw Hydropower Project (the "Facility") located at US Route 501 and State Route 130, Amherst, Virginia. If you are unable to attend at this date and time and wish to appear in person, please contact Eric Seavey at 804-754-6250 to arrange an alternate date and time. The Special Order Proceeding will be held via conference call or if the Permittee requests an in person proceeding at DEQ's Central Office. At the scheduled time, dial **1-434-230-0065**, and enter the Access Code

391 721 380# when requested. If you have any difficulty accessing the conference call, please call **Eric Seavey** at **804-754-6250**.

PURPOSE

The informal fact finding hearing will determine whether Virginia Water Permit (VWP) Individual Application No. 22-1141 (application) submitted by Cushaw Hydro, LLC is incomplete and may be administratively withdrawn in accordance with 9VAC25-210-80 D 2. DEQ staff will be seeking to administratively withdraw the application submitted by Cushaw Hydro, LLC.

INFORMATION TO BE USED BY DEQ

This letter notifies you of information upon which DEQ staff may rely to determine that the application is incomplete may be withdrawn. In addition to the information enclosed with this Notice Letter and labeled as “DEQ Exhibit Book,” DEQ staff may also rely on other public documents in DEQ files. The enclosed information, the information in DEQ’s case file, and the information presented by witnesses will be relied upon to ascertain the facts in this matter.

DEQ staff will also rely on applicable statutes, regulations, and DEQ guidance. In addition to the laws and regulations cited in this Notice Letter, DEQ may rely on other authorities. Full texts of statutes, regulations, and DEQ guidance can be obtained at <http://www.deq.virginia.gov/LawsRegulations.aspx> or <http://lis.virginia.gov/> (statutes and regulations) and <http://townhall.virginia.gov/L/GDocs.cfm> (DEQ guidance). Copies will be provided upon request.

ALLEGED VIOLATIONS AND LEGAL REQUIREMENTS

On June 29, 2023 DEQ sent a letter to Mark Fendig & Cushaw Hydro, LLC (‘applicant’) requesting information necessary for the completion of Virginia Water Permit Individual Application No. 22-1141. A list of adjacent property owners, recent/accurate cartographic representations of the project site, and narratives regarding potential updates to the dam, impoundments, and bypass reach flow control device were requested among other details. To date, the applicant has not provided this information. DEQ cannot process or finalize the permit application without this information.

Per 9VAC25-210-80 D 2 the application for an individual permit or general permit coverage will be administratively withdrawn from processing by the Department for failure to provide the required information after 60 days.

RECOMMENDED DECISION, RELIEF AND CIVIL PENALTY

Per 9VAC25-210-80 D 2 VWP Individual Application No. 22-1141 (application) submitted by Cushaw Hydro, LLC may be administratively withdrawn as incomplete for failure to provide required information after 60 days.

PROCEDURES

You may participate in the conference call yourself or by counsel or other qualified representative pursuant to Va. Code § 2.2-4019 or attend in person at DEQ Central Office (CO) located at 1111 East Main Street, Richmond, VA 23219. At this proceeding, Cushaw Hydro, LLC will be able to present factual data, argument, or proof in connection with this case. DEQ staff may rely on the enclosed documents, other documents in its files, and statements of DEQ staff in establishing the propriety of the administrative withdrawal. . A presiding officer will hear the evidence in this case and make a recommendation to the Director of Water. Both parties may prepare an independent Findings of Fact and Conclusions of Law and a draft Order for the Director's review. The Director will then issue a case decision in this matter.

Be advised that if you fail to attend or appear without good cause at an informal fact-finding proceeding conducted pursuant to Va. Code § 2.2-4019, the presiding officer may issue a default recommendation regarding the subject of this notice. A default recommendation and order may be issued is, Further, an order may be issued against you based on any admissions or other evidence without notice to you.

You will be notified of the results of the proceeding in accordance with Va. Code § 2.2-4019 and have the right to appeal any adverse decision in accordance with Va. Code § 2.2-4026.

Eric Seavey will represent DEQ at this proceeding. Please contact **Eric Seavey** at **804-754-6250** or **eric.seavey@deq.virginia.gov** within ten (10) calendar days of the receipt of this letter to indicate whether you will be represented at this informal fact finding proceeding by counsel or if you are unable to participate by conference call or in person at the scheduled time.

DEQ encourages settlement of this matter at any time if such settlement is consistent with the provision and objectives of the applicable laws and regulations. You may request a settlement conference with DEQ staff to discuss the allegations in the notice. A request for a settlement conference or the opportunity to submit documentation will not affect the scheduled proceeding unless the parties and the presiding officer otherwise agree. If you wish to arrange an informal settlement conference or discuss the opportunity to submit documentation, please call **Eric Seavey** within ten (10) calendar days of receipt of this notice.

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In re: **Cushaw Hydro, LLC**
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If you have any questions or require assistance, please contact **Eric Seavey** at **804-754-6250** or **eric.seavey@deq.virginia.gov**.

Sincerely,



Eric Seavey
Office of Water Withdrawal
Permitting Manager

Enclosure

cc: **Carla Poole, Presiding Officer**
Scott Morris, DBA, P.E., DEQ, Director, Water Division
Lee Crowell, DEQ, Enforcement Director