

POTOMAC RIVER FISHERIES COMMISSION
Colonial Beach, Virginia
March 7, 1969

P R E S E N T - MEMBERS: Commissioners Richard E. Lankford,
J. Clifford Hutt, Lawrence O. Hayden,
Milton T. Hickman, Donald E. Hood,
William P. Hunt.

OFFICERS: K. Thomas Everngam, Legal Officer,
Robert M. Norris, Jr., Executive
Secretary

VISITORS: Dr. William J. Hargis, Jr. and
Dr. Morris L. Brehmer, of the Virginia
Institute of Marine Science; Dr. L. Eugene
Cronin, Dr. Herbert Hidu and Mr. Elgin A.
Dunnington, Jr., of the Natural Resources
Institute of Chesapeake Biological
Laboratory; Mr. Paul W. McKee and
Mr. Albert E. Sanderson, Jr., of the
Maryland Department of Water Resources;
Lt. Paul C. Wentzell, of Maryland Marine
Police; Supervisor Ralph Dameron and
Mr. Charles R. Bagnell, of Marine Resources
Commission of Virginia; Mr. Jess W. Malcolm,
of the Chesapeake Bay Foundation; Mr. R. T.
McBride, of the U. S. Coast Guard,
Mr. Jack A. Poole.

Mr. Lankford, Chairman, called an informal session to order at 9:10 p.m. March 6, 1969 explaining that the only purpose of this meeting was to discuss in general, with no action to be taken this evening, agenda items including the application of Potomac Electric & Power Co. for appropriation of Potomac River water at its new generating station at Morgantown, Maryland, and under what conditions the permit would be issued. Mr. McKee than said it would be impossible for him to be present tomorrow (the 7th). However, when the discussion revealed that Mr. McKee had already issued PEPCO the said permit effective March 6, 1969 with some clauses which did not conform to the Maryland Water Quality Standards Regulations, as interpreted by Chesapeake Biological Laboratory represented by Dr. Cronin, Director, and Virginia Institute of Marine Science represented by Dr. Hargis, Director; the Commissioners asked that this discussion be terminated until the following morning when the press, public and perhaps other interested persons would be present. Mr. McKee finally agreed, under the circumstances, to be present on the next day. The session recessed to meet the following morning.

On March 7, 1969 - 10:00 a.m. the Commission met in the offices at Colonial Beach, Virginia. Mr. Lankford declared a quorum present and requested that the meeting be adjourned to the Town Hall to better accomodate the visitors present. This was done and the meeting continued. Those present are listed as follows:

MEMBERS: Commissioners Richard E. Lankford, J. Clifford Hutt, Lawrence O. Hayden, Milton T. Hickman, Donald E. Hood, William P. Hunt.

OFFICERS: K. Thomas Everngam, Legal Officer; Robert M. Norris, Jr., Executive Secretary.

VISITORS: Dr. William J. Hsrgis, Jr., Dr. Morris L. Brehmer, Dr. Herbert Hidu, Mr. Elgin A. Dunnington, Mr. Paul W. McKee, Mr. Albert E. Sanderson, Jr., Lt. Paul C. Wentzell, Chief J. William Ryland, Supervisor Ralph Dameron, Mr. Charles R. Bagnell, Mr. R. T. McBride, Mr. Jess W. Malcolm, Mr. A. P. Bimbo, Mr. Jack A. Poole; and the press representatives were Mr. Ron Claxton, Mr. John Frye, Miss Isabel Gough.

Mr. Lankford changed the order of the agenda by suggesting

that Mr. McKee, Director of Maryland Board of Water Resources, present his remarks first. Mr. McKee presented a file of papers containing the application of PEPCO for appropriation of Potomac River waters for cooling purposes in the steam electric generating plant at Morgantown, Charles County, Maryland; the six (6) page permit granted by his department to PEPCO on March 6, 1969; a three (3) page explanatory statement prepared by the Department of Water Resources; a statement signed by the following (named) that they "find no reason to believe that issuance of the permit will operate to violate Maryland's water quality standards, degrade water quality, or jeopardize the natural resources of the Potomac River", (signed by) Joseph H. Manning, Director Chesapeake Bay Affairs, James B. Coulter, Assistant Commissioner, State Health Department, Kenneth N. Weaver, Director Maryland Geological Survey and George B. Shields, Director of Department of Game and Inland Fisheries three (3) page letter from Dr. Donald W. Pritchard, Director Chesapeake Bay Institute concluding that the operations of the Morgantown Power Plant will have no measurable detrimental effects on the adjacent estuarine environment of the Potomac River; and attached thereto Dr. Pritchard's eleven (11) page "appraisal" supporting the above letter.

These papers were immediately reproduced in the office of the PRFC in order that Dr. Cronin and Dr. Hargis could have copies. Mr. McKee said that PEPCO has assured his department that PEPCO will conform to all Board of Water Resources requirements - that permit applies only to intake and discharge of water; that his department will monitor operation of PEPCO plant as required by law and that other agencies may monitor water temperatures, etc., but they are not required to do so by law, and the permit makes no reference to such right or requirement. Mr. Hickman remarked that it would seem proper that PEPCO be required under the permit to cooperate with other state agencies. Mr. McKee, in response to what urgency prompted the permit being issued yesterday, replied there was none except that Maryland Department of Water Resources and PEPCO were ready for the permit. In reply to whether Chesapeake Bay Affairs had been consulted, Mr. McKee said "yes" and "no" - that the Potomac River Fisheries Commission had been named the consulting agency for the Potomac and had not objected to the water quality standards when adopted.

The Commissioners interposed that the Potomac River Fisheries Commission has not been consulted on the PEPCO permit - has not had time to study reports and has been overlooked in making recommendations as advisory agency for the Potomac.

Mr. McKee said that the Board of Public Works has final authority regarding dredging bottom through oyster beds, etc; for example, Mr. Manning had requested \$500,000 damages at Calvery Cliffs site for Baltimore Gas & Electric Co. canals and was awarded \$400,000; Mr. Hood said that in the case above the Department of Water Resources is working closely with Chesapeake Bay Affairs, but in case of PEPCO and PRFC, they are not. Mr. McKee was asked if Mr. Manning had any authority over the Potomac River - he replied "no"; when also asked why Mr. Manning signed a joint statement approving the issuance of the permit; Mr. McKee said he did not solicit the statement, that it was handed to him.

Mr. McKee was asked why he did not give the Potomac River Fisheries Commission an opportunity to review its position that there is a "deviation" from the water quality standards act in the use of cooling water, especially in view of a letter from the special assistant attorney general for the Water Resources Board that the Director is required to consult with the PRFC. He replied that he had discussed this permit with Governor Mandel on two occasions, and in answer to further question about issuing permit the day before appearing here said that with one addition to the permit the Governor had approved the permit. He said that if anyone is aggrieved by the action they have the right to appeal and, next, if not satisfied, the right of judicial review. In answer to question that could he have requested PEPCO to limit temperature to 90 degrees in condenser, Mr. McKee said that he followed regulations that 90 degrees not be exceeded at point of discharge; that 92.7 degree will occur only 5.7 seconds in the

condensers. He added that all the documents included in the permit condition the operation of the plant, as they constitute a part of the permit. In answer to a question, Mr. McKee said that his department is responsible for discovering violations in the operation of the plant.

Dr. Hargis, of Virginia Institute of Marine Science, said:

1. That in his opinion the use of tempering water to comply with water quality standards is an engineering trick; that the same thing could be done to overcome BOD in sewerage outfall.
2. that he thinks that the "point of discharge" is where mixing water meets condenser water. Recommends: that Maryland Board of Water Resources secure their own pre- and post- operations data - that it should not be done by people hired by PEPCO, and
3. that he thinks damage may be done to a natural oyster bar by dredging canals for intake and discharge water, and that PRFC should take steps to determine and secure damages.

Dr. Cronin said that although the foregoing contributed by Dr. Hargis is not a prepared joint report, that he nevertheless concurs with it. In addition he listed the three recommendations adopted by the PRFC at previous meeting, as prepared by the two laboratories (CBL & VIMS) and re-affirmed their soundness in relation to Water Quality Standards Regulations and biological research. He re-iterated that an essential point of the water quality standards act is that the intent of the Natural Resources Institute was that at no point should temperature exceed 90 degrees - that now it is being interpreted that at the "point" of discharge that there could be no more than a 10 degree elevation, but that in the plant it can go higher. He says it is well to say in the application that studies by PEPCO will continue, but in his opinion their studies and reports are not adequate, which constitutes a very serious problem.

One of the Commissioners remarked that issuing this permit without consultations with and agreement of the gi-state Potomac River Fisheries Commission had undoubtedly set back the concept of a two state administration of the Chesapeake Bay for many years.

There followed a discussion regarding use of injunctive powers by the PRFC to amend the permit and were advised by Mr. Everngam that the Commission would have to follow administrative appeals before resort to the courts.

The Commission turned to other business, and the matter of requiring pound and stake gill net fishermen to maintain or remove damaged poles and/or the PRFC having such "abandoned" poles removed was discussed. Mr. Hutt offered the following motion, seconded by Mr. Hickman:

"That the problem of "damaged" poles and removal or maintenance of same be further studied by the Committee appointed at a previous meeting and their conclusions be brought to the next meeting". Motion was approved.

At 1:05 p.m. the Commission recessed for lunch and re-convened at 1:20 p.m.

Mr. Lankford asked next for the report on the results of the winter crab survey in the Potomac and other tidal waters, and Mr. Dunnington gave the following: 1) expected spring and early summer catches will be very low, 2) reproduction last year very good, 3) that by middle or late July starting with soft crabs and peelers, and then marketable hard crabs, the catch will be good, 4) Potomac follows the pattern of the Chesapeake Bay, 5) there are less crabs wintering in Potomac than in other parts of Bay (parts of the bottom make it less desirable than other portions of the

Bay, 6) crab harvest in the Potomac will probably follow the pattern of the balance of the Chesapeake Bay depending on the fishing effort. However, harvesting practices in the Potomac are somewhat different from either Maryland or Virginia, and 7) cannot predict in dollars or bushels the estimated 1969 harvest.

With regard to funds available for 1969 oyster repletion program, the Executive Secretary reported that at lease \$150,000 is available. Mr. Hutt offered the following motion, seconded by Mr. Hood:

"That the PRFC expend up to \$100,000 for purchase of seed oysters and that Mr. Hickman, Mr. Charles Bagnell, of MRC of Va., and the Executive Secretary be authorized as a committee to buy such seed oysters at a cost to be determined as proper in the judgement of the above-named committee". Motion was approved.

Chairman Lankford requested that the two state laboratory advisors select six (6) suitable oyster bars - three (3) on each side of the river - and that the Chairman and Vice-Chairman will select rotation. The Commission agreed.

At this time, Dr. Herbert Hidu, of the Chesapeake Biological Laboratory, presented a summary of research on seed oyster hatched under controlled conditions and some conclusions drawn from this work. He stated that perhaps the PRFC might wish to consider, as a possibility, an oyster hatchery since the Potomac River would be successful because:

1. It is a high productivity area
2. There is a lack of predators in the river
3. There is a lack of "set" generally

Dr. Hidu spoke of the limited results so far from other experimental or commercial hatcheries, and the present high cost per bushel of seed. Also, that the Chesapeake Biological Laboratory has overcome the biological problems of spawning and setting but not the commercial production problems. That, if the PRFC is interested, that funds for the initial cost might be available from other state and federal sources.

Mr. Dunnington added that since work has proceeded in the laboratory as far as it can, that further research is now related to actual field experience, i.e., 1) how to put the young seed or spat in definitive areas in the river, 2) how to hold and develop the young oysters before putting in the river; that, therefore field practice and experience is needed. He added that since it appears that seed in the foreseeable future for the Potomac may be in short supply, that a hatchery could provide a constant source. Further, that as machine shucking of oysters seems necessary and practical, there will be a need in the future for well shaped oysters such as a hatchery would produce. He concluded that this would be a long range experimental pilot plant operation but he, and Dr. Hidu agreed, that the high risk might be worth the price of getting in on the ground floor in hatchery seed production.

Mr. Hickman offered the following motion, seconded by Mr. Hutt:

"That disbursement of \$5,825.64 for January 1969 and \$14,002.89 for the month of February 1969 be approved". Motion approved.

Mr. Hood offered the following motion, seconded by Mr. Hutt:

"That all checks in amounts in excess of \$1,000 signed by the Vice-Chairman, Mr. J. C. Hutt, during the absence of the Chairman during the month of March 1969 be, and are hereby approved". Motion approved unanimously.

For the purpose of having alternate official signatories for countersigning checks in excess of \$1,000, in case of the absence of the Chairman, the following resolution was offered:

"Be It Resolved, the (name of bank) be, and it is hereby, designated a depository of the Potomac River Fisheries Commission and that its funds so deposited may be withdrawn upon check, draft, note or order of the Commission.

Be It Further Resolved, that all checks, drafts, notes or orders drawn against said account in an amount not to exceed One Thousand Dollars (\$1,000.00) be signed by the Executive Secretary, with no countersigning required; and checks, drafts, notes or orders in excess of One Thousand Dollars (\$1,000.00) be signed by the Executive Secretary and countersigned by either the Chairman or Vice-Chairman, and that the depository bank be advised by letter of the names of such officers immediately following each annual meeting of the election of said officers for that year.

AND THAT THIS RESOLUTION supercede Resolution dated (date), only in respect to signatures and countersignatures."

Mr. Hunt offered the following motion, seconded by Mr. Hood:

"That the foregoing resolution pertaining to countersignatures on checks in excess of \$1,000 be approved, and that copies be furnished each depository of this Commission." Motion approved unanimously.

The Commission was advised that the U. S. Coast Guard has again requested action regarding missing or leaning jurisdictional line markers above Route #301 Bridge. Members of the law enforcement personnel present suggested the need for such marking and Mr. R. T. McBride, a civil engineer of the U. S. Coast Guard, recommended test boring or sounding before we place any markers in order to determine the length of piling needed at each station. Mr. Hood offered the following motion, seconded by Mr. Hunt:

"That we begin the planning stage for replacing markers up river as far as Indian Head by determining locations of stations, testing depths to be driven, and specifications for same." Motion approved.

Mr. Hayden asked for discussion on the problem of the fishermen holding stakes in some areas and that a licensing arrangement be considered for stake gill nets eliminating the stakes. Mr. Lankford asked the Committee (of which Mr. Hayden is a member) which has been appointed to consider the question of setting gill nets with an end stake at each end only, and report at the next meeting.

Mr. Lankford requested the Executive Secretary to advise C. J. Langenfelder and Son, Inc., that the Commission would not be purchasing any reef shells for planting in the Potomac River this year.

Mr. Hutt offered the following motion, seconded by Mr. Hayden:

"That the Potomac River Fisheries Commission join the Oyster Institute of North America as an associate member". Motion approved.

At this time Mr. Lankford requested that the Commission hold an executive session including the members of the two laboratories present, legal officer and executive secretary.

In answer to the Commission's question, Mr. Everngam said he is convinced that the PRFC can take an appeal as of thirty (30) days from yesterday on the provisions of the permit issued to PEPCO. After considerable discussion including the in-propriety of one state agency possibly eventually being in litigation in court with another state agency as the result of an appeal, the Commission decided to act upon Dr. Cronin's suggestion that he would be satisfied if, at the PRFC's request, the Maryland Department of Water Resources would add the specific wording (as shown in caps below) in paragraph #3 of section "B" on page 3 of the permit to PEPCO dated March 6, 1969 (effective date of permit).

"When natural water temperatures are greater than 50 degrees F., the MAXIMUM temperature elevation, between the natural water temperature at the point of intake and the water temperature at the point of discharge to the waters of the State, must not exceed 10 degrees F. AT ANY POINT."

Mr. Hutt offered the following motion, seconded by Mr. Hunt:

"That the legal officer write Mr. McKee, Director of the Maryland Department of Water Resources and ask for inclusion of the words capitalized in the foregoing paragraph and ask him to supplement inclusion of such words in the foregoing permit to PEPCO, and that the Commission re-affirm the position taken in the original recommendation as follows:

1. That waters must not be heated more than 10 degrees F. across the condensers of the plant or above 90 Deg. F.
2. That practice of using tempering waters to reduce water temperature to meet effluent requirements be prohibited.
3. That thorough pre- and post-operational studies be conducted to determine accurately the effects of the plant operations on River temperatures and biota."

Motion was approved unanimously.

The next meeting will be held on Friday, May 2, 1969 at 10:00 a.m. (EDT).


CHAIRMAN


SECRETARY