



Public Use of Virginia's Public Waterways Threatened

In the summer of 2010, Dargan Coggeshall took his brother-in-law and his pastor fishing on one of Virginia's premier trout fisheries, the Jackson River. The three men entered the river in kayaks at the Smith Bridge public access area, floated a section of the river that is shown on Virginia Department of Game and Inland Fisheries (VDGIF) maps as being open for fishing by the public, and at the end of their trip, took out from another public access area.

At several points during the trip, the men stopped mid-river and stood in the water to cast their rods, a common practice among both spin and fly fishers known as wade-fishing. At no point did they venture over to the banks of the river or stop upon any land. A little more than a year later, Dargan Coggeshall finds himself accused of trespass, having incurred over \$20,000 in legal defense fees, and acting as the lone defender of the public's right to fish a historically public river.

Shenandoah Riverkeeper and Potomac Riverkeeper have taken an interest in the case out of concern about the ramifications the ruling could have on public access to other waterways in Virginia including parts of the Shenandoah Valley. Shenandoah Riverkeeper Jeff Kelble succinctly explains, "We are seeking clarity on public access to our waterways for citizens like Dargan."

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Regressing to Worst Available Technologies: Proposed Facility Seeks to Use Mixing Zone

Many advances have been made in the technologies available for treating wastewater, but many outdated practices continue to be employed by polluters. One of those obsolete discharge methods is the toxic mixing zone, which means the river itself is used to dilute waste in concentrations not normally allowed.

A proposed incinerator facility in Frederick County, the Frederick/Carroll County Renewable Waste to Energy (FCCRTWE) plant, has applied to use a mixing zone for its effluent discharge. The incinerator would take treated water from the Ballenger-McKinney Wastewater Treatment Plant to use in its cooling tower. Between 240,000 and 670,000 gallons of water with concentrated pollutants would be discharged per day into the Potomac, about 10 miles away.

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On the River



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Coggeshall had fished the Jackson River for many years and did more than his due diligence by looking into which sections were legally open to the public. “People like Dargan, who have spent a lot of time researching the Jackson River, who rely on information provided to them by the State of Virginia, people who go through that amount of effort, they want to be law abiding citizens,” Jeff explains.

In Virginia, most navigable rivers and streams are owned by the state and held in trust for use by the public. There are exceptions – King’s or Crown Grants (similar in nature to Commonwealth grants) were used during the colonial era to promote homestead settlement, and some contain language that conveys ownership of specific waterways. In addition, several court decisions have added confusion to the question of which waterways are subject to these grants.

“This case affects all Virginians,” as Potomac Riverkeeper Ed Merrifield explains. “The rivers held in trust by the Commonwealth belong to the public and it is the responsibility of the state to protect those interests.”

Coggeshall is being sued by a development company and several riverside landowners who claim that a King’s grant gives them ownership of the river bottom. These owners have not used the normal review process to apply for King’s grant status with the Virginia Marine Resources Commission (VMRC). Instead, if they

“The state has the responsibility to protect the state’s natural treasures for the common good.”

- Jeff Kelble, Shenandoah Riverkeeper

receive a favorable ruling against Coggeshall, they will have effectively bypassed the VMRC and set a precedent for other holders of King’s and Commonwealth grants to essentially privatize sections of many of Virginia’s waterways such as the Hazel, Rappahannock, Bull Run, and Shenandoah.

Since Coggeshall diligently followed the instruction he received from VDGIF, his counsel asked for the state to intervene in the case. The Office of the Attorney General Ken Cuccinelli has declined to do so even though the river bottom property in question is owned by the State according to the State’s own findings.

“A law abiding citizen should not be defending the public interests of the state. That is the state’s responsibility and the state is morally obligated to participate in the case,” Kelble expounds. “A decision in favor of the plaintiffs would not only be a serious restriction of public rights for anglers, paddlers, and recreationalists, it would be a reduction of the state’s natural treasures, treasures held in trust for the common good.”

For more information about the lawsuit, visit www.virginiariversdefensefund.org

Out on the Water

Island to Island Paddle Successfully Completed

Joe Hage (pictured), Caretaker of Sycamore Island, joined by staff member Whit Overstreet, successfully completed the Island to Island Paddle from Sycamore Island to St. Catherine’s Island, home to the Jefferson Islands Club. Covering 132 miles in 6 days, the two met a host of river characters along the way, brought awareness to the work of Potomac Riverkeeper, and raised over \$2,000 to protect our nation’s river. Visit our website to learn more and find out when they are giving their next REI presentation. (www.potomacriverkeeper.org/island)



Shenandoah Riverfest and River Rodeo: New Location, Same Great Time

Shenandoah Riverkeeper partnered with the Town of Front Royal to put on this year’s Riverfest and Rodeo, a celebration of the river attended by hundreds of people young and old. Thank you to all of our partners and sponsors, especially WZRV 95.3 The River for the radio coverage, VFW Post 1860 for the grounds and venue, Downriver Canoe Company and Front Royal Canoe Company for providing free canoe rides and shuttles, Ara Moomjian for the BBQ, Front Royal Visitors Center for partnering on the event, all of the fishing guides for donating a day of fishing, and to our other generous supporters and auction item donors (go to www.shenandoahriverkeeper.org/rodeo for a full listing of sponsors)

“Toxic mixing zones are effectively one of the worst available technologies.”

- Ed Merrifield, Potomac Riverkeeper

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Among other harmful substances, the discharge from FCCETWE would contain concentrations of aluminum, arsenic, lead, cyanide, and mercury.

FCCRTWE intends to use an existing discharge pipe and outfall that was originally owned by Alcoa's Eastalco aluminum smelting plant and is now owned by the County of Frederick. The outfall itself is a 480 foot diffuser pipe in the river near Noland's Ferry Boat Ramp.

“We are supposed to be progressing toward cleaner water using the Best Available Technologies.” Potomac Riverkeeper Ed Merrifield explains frankly, “Toxic mixing zones are effectively one of the worst available technologies. Essentially, it's like returning to the 19th century.”

The thinking behind a mixing zone harkens back to the days of “the solution to pollution is dilution.” As science and technology have advanced, it is clear that dilution is not the answer to pollution. To the contrary, researchers continue to find more contaminants of emerging concern – pollutants that can be toxic, cancer causing, or affect hormone function yet are not required to be monitored. These contaminants are meant to work in small doses in living systems, so mixing them with large amounts of water does not stop the potential for these contaminants to cause harm.

Currently, the incinerator's permit application is being reviewed by the Maryland Department of the Environment. Potomac Riverkeeper has engaged the pro bono services of one of the largest law firms in the country to help with this issue. Adding concentrated pollution to our waters in the form of toxic mixing zones should have been stopped years ago. For more information, please visit our website.



The confluence of the Shenandoah and Potomac at Harpers Ferry evidences in stark contrast why we must care about nutrient pollution and algal blooms. Coming in from the bottom left is the Shenandoah, colored a bright green from algal growth. Feeding in from the top left is the clearer water of the Potomac, showing the clarity both rivers should exhibit in the fall.

[Aerial photo by Alan Lehman]

In the News

Jeff Kelble interviewed for The Ripple Effect

Shenandoah Riverkeeper Jeff Kelble is featured in the water quality chapter in a new book by Alex Prud'Homme which explores the thesis that water will be the defining natural resource of the 21st century.

Accolades for USGS scientific research!

In 2010, Shenandoah Riverkeeper Jeff Kelble teamed up with Vicki Blazer (our 2011 Protector of the Potomac) and others to author a study on fish health. In September the report received the American Fisheries Society 2010 Publications Award.

Meet Sarah Sorenson, Our New Production & Membership Coordinator



Sarah comes to us from Colby College, where she majored in Environmental Studies and led a successful Take Back the Tap campaign to eliminate bottled water on campus. No stranger to water issues, Sarah has interned with San Diego Coastkeeper and Food & Water Watch. Sarah has won several awards for her environmental advocacy work, including a Morris K. Udall Scholarship.



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River Watch

The Newsletter of Potomac RIVERKEEPER, Inc.

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Report Pollution

Call 301-POTOMAC (301-768-6622)

Online form: potomacriverkeeper.org/report-pollution

Give to the Max - November 9th

Potomac Riverkeeper is participating in the Give to the Max Day, a one-day, online fundraising event on Nov. 9th. We need your help. Learn more at give2max.razoo.com



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Got Drugs? Help keep them out of our Rivers!

National Drug Take-Back Day
October 29th, 10AM-2PM

Did you know that flushing your unused or expired medicines or throwing them into the trash can pollute our river and our drinking water? Join us for National Prescription Drug Take-Back Day.

By bringing your unwanted medicines to a collection site in your community from 10AM-2PM on October 29th.

Find a local site, get answers to any questions and make a commitment at
www.potomacriverkeeper.org/drugtakeback
or by calling us at 202-222-0724.