

COMMONWEALTH OF VIRGINIA


DEPARTMENT OF ENVIRONMENTAL QUALITY
WATER DIVISION

P.O. Box 1105

Richmond, VA 23218

Subject: **Guidance Memo No. 14-2016**
Public Participation Procedures for Water Quality Management Planning

To: Regional Directors

From: Melanie D. Davenport, Water Division Director 

Date: October 20, 2014

Copies: James Golden, Jeff Steers, Fred Cunningham, John Kennedy, Allan Brockenbrough, Water Permit Managers, Watershed Program Staff, Cindy Berndt

Summary:

In order to be consistent with the new exemption, §2.2-4006.A.14 of the Administrative Process Act for waste load allocations as approved by the 2014 General Assembly, the State Water Control Board approved a revision to the Public Participation Procedures for Water Quality Management Planning. The procedures set forth the process to provide the public and stakeholders with an adequate opportunity to participate in the development and implementation of TMDLs, TMDL modifications, 305(b)/303(d) Integrated Reports, and non-TMDL waste load allocations.

Electronic Copy:

An electronic copy of this guidance in PDF format is available on the Virginia Regulatory Town Hall website.

Contact information:

For additional information regarding TMDLs, please contact Elizabeth McKercher, Watershed Program Manager, at (804) 698-4291 or at elizabeth.mckercher@deq.virginia.gov.

For additional information regarding the 305(b)/303(d) Integrated Reports, please contact John Kennedy, Director of the Office of Ecology, at (804) 698-4312 or at john.kennedy@deq.virginia.gov.

Disclaimer:

This document is provided as guidance and, as such, sets forth standard operating procedures for the agency. However, it does not mandate or prohibit any particular action not otherwise required or prohibited by law or regulation. If alternative proposals are made, such proposals should be reviewed and accepted or denied based on their technical adequacy and compliance with appropriate laws and regulations.

Public Participation Procedures for Water Quality Management Planning

Virginia Department of Environmental Quality
Water Division

September 29, 2014

Public Participation Procedures for Water Quality Management Planning

Background:

On November 5, 2001, the State Water Control Board (“the Board”) published for public comment a proposed regulation concerning public participation guidelines for water quality management planning and the proposed repeal of 18 existing water quality management plans (“WQMPs”) as state regulations. After completion of the public comment period, several changes were made to the original proposal, including a decision to have the Board (i) establish a public participation process in guidance, not regulation; and (ii) have a WQMP Regulation that would contain total maximum daily loads (“TMDLs”), stream segment classifications, effluent limitations including water quality based effluent limitations, and waste load allocations (“WLAs”). The final regulatory actions were published in the Virginia Register on March 24, 2003 and were effective April 24, 2003.

During the 2014 General Assembly, a provision¹ was added to Virginia's Administrative Process Act (APA) which grants an exemption for the Board's adoption, amendment or repeal of WLAs into the Water Quality Management Planning Regulation (WQMPR), 9VAC25-720. Therefore, these procedures have been modified to be consistent with §2.2-4006.A.14 of the APA. Specifically, actions resulting in adoption, amendment, or repeal of WLAs and procedures for Board approval have been revised to comply with the exemption criteria. TMDL implementation and non-regulatory processes of water quality management will continue to be available for planning purposes and are also addressed in this guidance document.

Section I. Purpose.

This guidance document sets forth the public participation procedures that the Board should follow in connection with development of 305(b)/303(d) Integrated Reports, TMDLs, TMDL implementation plans, and non-TMDL based WLAs² in order to provide the public and stakeholders with an adequate opportunity to participate in their development and implementation and also sets out the procedures necessary to comply with the exemption provisions of §2.2-4006.A.14 of the APA for adoption, amendment, or repeal of WLAs in the Water Quality Management Planning Regulation, 9VAC25-720.

Section II. Public participation of 305(b)/303(d) Integrated Report actions.

A. Public notice. The Board gives public notice of the following 305(b)/303(d) Integrated Report actions:

1. The draft guidance for developing the 305(b)/303(d) Integrated Report for assessing water quality and defining impaired waters has been prepared under §62.1-44.19:5 C of the State Water Control Law and is available for public review and comment. The public notice for the draft guidance availability should contain the applicable information on the action pursuant to Section VI of this guidance and the requirements for a 30-day comment period. Public notice should be given by: (i) posting a general notice on the Virginia Regulatory Town Hall website; (ii) publication in the Virginia Register as a general notice; and (iii) posting on the DEQ's Water Quality Assessment webpage.

¹ See [Chapter 202](#) of the 2014 Acts of Assembly ([House Bill 445](#)).

² This refers to those WLAs included in part B of the WQMPR that are generally developed via a comprehensive water-quality based model.

2. The draft 305(b)/303(d) Integrated Report has been prepared under §62.1-44.19:5 C of the State Water Control Law and is available for public review and comment. The public notice for the draft Integrated Report should contain: (i) information on the action pursuant to Section VI of this guidance; (ii) requirements for a 30-day comment period; and (iii) details for a public meeting as provided in Section VII.A of this guidance. Public notice should be given by: (i) posting a general notice on the Virginia Regulatory Town Hall website; (ii) publication in the Virginia Register as a general notice; and (iii) posting on the DEQ's Water Quality Assessment webpage.

3. An impaired water has attained water quality standards and is to be removed from the EPA approved 303(d) list prior to EPA approval of the subsequent 303(d) list. The public notice for the removal should contain information on the action pursuant to Section VI of this guidance and the requirements for a 30-day comment period. Public notice should be given by: (i) posting a general notice on the Virginia Regulatory Town Hall website; (ii) publication in the Virginia Register as a general notice; and (iii) posting on the DEQ's Water Quality Assessment webpage.

B. Multiple actions. Public notices may describe more than one 305(b)/303(d) Integrated Report action.

Section III. Public participation for TMDL actions.

A. Public notice. For the TMDL process under § 62.1-44.19:7 of the State Water Control Law, the Board gives public notice when:

1. A TMDL development process is beginning under §62.1-44.19:7 of the State Water Control Law³. The TMDL development's initial public notice shall⁴ contain: (i) information on the action pursuant to Section VI of this guidance (ii) requirements for a 30-day comment period; (iii) details for the public meeting in accordance with Section VII.A of this guidance; and (iv) information regarding the advisory group (see Appendix A – TMDL Development Public Notice Template). Public notice shall⁴ be given by publishing in the Virginia Register and should also be given by posting on the DEQ's TMDL Public Notices webpage and mailing to the persons listed in Section VIII of this guidance. Notice of any associated public meeting(s) shall also be given by posting on the Virginia Regulatory Town Hall website as specified in Section VII.A of this guidance.

2. A draft TMDL report has been prepared and is ready for public review and comment. The public notice for the draft report availability should contain: (i) information on the action pursuant to Section VI of this guidance; (ii) requirements for a 30-day comment period; and (iii) details for the public meeting in accordance with Section VII.A of this guidance. Public notice should be given by: (i) publication in the Virginia Register; (ii) posting on the DEQ's TMDL Public Notices webpage; and (iii) mailing to the persons listed in Section VIII of this guidance. Notice of any associated public meeting(s) shall also be given by posting on the Virginia Regulatory Town Hall website as specified in Section VII.A of this guidance.

3. A draft TMDL report modification has been prepared and is ready for public review and comment.⁵ The public notice for this modification shall⁶ contain: (i) information on the action pursuant to Section VI of this guidance; (ii) requirements for a 30-day comment period; (iii) details for the public meeting in accordance with Section VII.A of this guidance; and (iv) information regarding the advisory group (see Appendix A). Public notice shall⁶ be given by publishing in the

³ TMDL development typically involves convening an advisory group (e.g., the technical advisory committee (TAC)) to facilitate data exchange prior to or immediately following the first public meeting. This meeting is posted to the Virginia Regulatory Town Hall website to announce the meeting time and to post the minutes. Please refer to Section III.A.7 and Section VII.B of this guidance for additional requirements for advisory groups .

⁴ Required in accordance with [§ 2.2-4006.A.14](#) of the APA.

⁵ The requirement pertains only to TMDL report modifications where the overall waste load allocation is being increased or decreased.

⁶ Required in accordance with [§ 2.2-4006.A.14](#) of the APA .

Virginia Register and should also be given by posting on the DEQ's TMDL Public Notices webpage and mailing to the persons listed in Section VIII of this guidance. Notice of any associated public meeting(s) shall also be given by posting on the Virginia Regulatory Town Hall website as specified in Section VII.A of this guidance.

4. A TMDL implementation plan (IP) development process is beginning. The public notice for commencement of the IP development process should contain: (i) information on the action pursuant to Section VI of the guidance; (ii) requirements for a 30-day comment period; and (iii) details for the public meeting in accordance with Section VII.A of the guidance. Public notice should be given by: (i) publication in the Virginia Register; (ii) posting on the DEQ's TMDL Public Notices webpage; and (iii) mailing to the persons listed in Section VIII of this guidance. Notice of any associated public meeting(s) shall⁷ also be given by posting on the Virginia Regulatory Town Hall website as specified in Section VII.A of this guidance.

5. A draft TMDL implementation plan or implementation plan modification has been prepared and is ready for public review and comment. The draft IP public notice should contain: (i) information on the action pursuant to Section VI of this guidance; (ii) requirements for a 30-day comment period; and (iii) details for the public meeting in accordance with Section VII.A of this guidance. Public notice should be given by: (i) publication in the Virginia Register; (ii) posting on the DEQ's TMDL Public Notices webpage; and (iii) mailing to the persons listed in Section VIII of this guidance. Notice of any associated public meeting(s) shall⁷ also be given by posting on the Virginia Regulatory Town Hall website as specified in Section VII.A of this guidance.

6. A priority schedule for TMDL development and TMDL alternatives has been prepared, pursuant to §62.1-44.19:7.C of the State Water Control Law, and is available for public review and comment. The public notice of the priority schedule should contain the descriptive information on the action and the requirements for a 30-day comment period. Public notice should be given by publication in the Virginia Register and posting on the DEQ's TMDL webpage. Notice of any associated public meeting(s) shall⁷ also be given by posting on the Virginia Regulatory Town Hall website as specified in Section VII.A of this guidance.

7. Whenever an advisory group (such as a working group) meets, the public notice of the advisory group meeting shall⁷ include: (i) the date, time, and place of meeting; and (ii) a brief description of the nature and purpose of the meeting, including the applicable rules and procedures. This notice shall⁷ be posted on the Virginia Regulatory Town Hall website and should be posted on the DEQ's TMDL Public Notices webpage. Minutes of advisory group meetings shall be drafted and posted on the Virginia Regulatory Town Hall website in accordance with §2.2-3707.1 of the FOIA. Please see Section VII.B of this guidance for additional information on advisory groups.

B. Multiple actions. Public notices may describe more than one TMDL or TMDL actions.

Section IV. Public participation for non-TMDL waste load allocations.

A. Public notice. For non-TMDL based WLAs, the Board gives public notice when:

1. Development or modification of a non-TMDL WLA is beginning. The initial public notice shall⁸ contain:
 - a. information on the action pursuant to Section VI of this guidance;
 - b. requirements for a 30-day comment period;
 - c. details for the public meeting in accordance with Section VII.A of this guidance; and,

⁷ Required in accordance with [§ 2.2-3707](#) of the FOIA.

⁸ Required in accordance with [§ 2.2-4006.A.14](#) of the APA .

d. information regarding the advisory group. The public notice information regarding the advisory group shall state one of the following:

- i. An advisory group to assist in development of this WLA was convened on [provide the date];
- ii. An advisory group to assist in development of the WLA will be established. Persons interested in assisting should notify the DEQ contact person by the end of the comment period and provide their name, address, phone number, email address and the organization you represent (if any). Notification of the composition of the panel will be sent to all applicants; or
- iii. An advisory group to assist in development of the WLA will not be established. However, public comment on the use of an advisory committee is invited. Persons requesting the agency use an advisory committee and those interested in assisting should notify the DEQ contact person by the end of the comment period and provide their name, address, phone number, email address and their organization (if any). Notification of the composition of the panel will be sent to all applicants.

The initial public notice shall⁹ be published in the Virginia Register and should also be given by posting on the DEQ's website and mailed to the persons listed in Section VIII of this guidance. Notice of any associated public meeting(s) shall⁸ also be given by posting on the Virginia Regulatory Town Hall website as specified in Section VII.A of this guidance.

2. Whenever an advisory group meets, the public notice of the advisory group meeting shall⁹ include: (i) the date, time, and place of meeting; and (ii) a brief description of the nature and purpose of the meeting, including the applicable rules and procedures. This notice shall⁹ be posted on the Virginia Regulatory Town Hall website and should be posted on the DEQ's website. Minutes of advisory group meetings shall be drafted and posted on the Virginia Regulatory Town Hall website in accordance with §2.2-3707.1 of the FOIA. Please see Section VII.B of this guidance for additional information on advisory groups.

B. Multiple actions. Public notices may describe more than one non-TMDL WLA action.

Section V. Public participation pertaining to the *Public Participation Procedures for Water Quality Management Planning.*

The Board should give public notice anytime that a revision is to be made to any of the procedures contained in this document. The public notice should provide for a 30-day comment period of the revisions proposed. Announcement of the public notice should be made by posting a general notice on the Virginia Regulatory Town Hall website.

Section VI. Public notice contents.

The public notice information describing the action being taken for the water quality management planning under Sections II, III and IV of this guidance should contain the following minimum information:

1. Description of the action being taken;
2. If applicable, the name of the water or stream segment, location description (including the name of the county), and watershed for which the action is being taken;

⁹ Required in accordance with §2.2-3707 of the FOIA

3. A brief description of the procedures for submitting comments and the time and location of any public meeting that may be held;
4. Name and address of the Department's office(s) responsible for the action for which public notice is being given. If the study or action will involve multiple regions, each regional office affected should be listed; and
5. Name, address, telephone number and e-mail address of the DEQ staff person(s) from whom interested persons may obtain information.

Section VII. Meetings.

A. Public meetings for water quality actions.

During water quality actions, meetings are held to provide the public with information pertaining to the specific water quality action, such as a TMDL draft report. These meetings are called public meetings and are normally held in conjunction with a public comment period. The purpose of the public meeting is to clarify and provide information to interested persons on the action.

A public meeting shall¹⁰ be held when: (i) the TMDL development process is initiated as provided in Section III.A.1; (ii) a TMDL report modification is drafted where the overall waste load allocation is being increased or decreased as provided in Section III.A.3; or (iii) a non-TMDL WLA is being adopted, amended, or repealed as provided in Section IV.A.1. Public meetings should also be held when: (i) a draft TMDL report is ready for public review as described in Section II.A.2, (ii) the TMDL IP development process is beginning as described in Section III.A.4, and (iii) a draft TMDL IP is ready for public review as described in Section III.A.5 of this guidance. Public notices which include an announcement of a public meeting shall¹¹ also contain the following details: (i) date, time, and place of public meeting(s); and (ii) a brief description of the nature and purpose of the public meeting, including any applicable rules and procedures. In addition, all public meetings shall¹¹ be noticed by posting on the Virginia Regulatory Town Hall website at least three working days prior to the meeting date. Any public meeting convened pursuant to this section should be held in the geographic area of the proposed action.

Any person may photograph, film, record, or otherwise reproduce any portion of a public meeting as long as the use of the recording equipment does not physically interfere with the meeting.

B. Advisory groups and advisory group meetings.

Meetings of advisory groups should be held when needed during a water quality action. These advisory groups may be called steering committees, technical advisory committees, work groups, or go by another name. The purpose of these groups is to provide information and advise the DEQ on the actions being undertaken; therefore, these groups are public bodies under the FOIA and meetings of public bodies are required to comply with the applicable provisions under the FOIA.

Advisory groups may include, but are not limited to, representatives in the watershed from governments, Virginia Pollution Discharge Elimination System permittees, environmental groups, industry, agriculture, silviculture, manufacturing, residential areas, or mining.

Meetings for advisory groups are meetings of a public body and shall be duly noticed and held in accordance with the provisions of FOIA¹². The notice for an advisory group meeting shall also include

¹⁰ Required in accordance with 2.2-4006.A.14 for adoption/amendment/repeal of any TMDL-based WLA in 9VAC25-720.

¹¹ Required in accordance with §2.2-3707 of the FOIA.

¹² See FOIA under Chapter 37 of Title 2.2 of the Code of Virginia.

the following details: (i) date, time, and place of advisory group meeting(s); and (ii) a brief description of the nature and purpose of the meeting, including any applicable rules and procedures. In addition, these meetings shall¹³ be noticed by posting on the Virginia Regulatory Town Hall website at least three working days prior to the meeting date and shall be posted on the DEQ website.

Meetings may be audio or video recorded by any person as long as the use of the recording equipment does not physically interfere with the meeting.

Minutes are required¹³ for any meeting of an advisory group or any subgroup of the advisory group. Minutes shall include: the date, time, and location of the meeting; the members of the advisory group present and absent; a summary of matters discussed; and a record of any decisions made. In accordance with §2.2-3707.1 of the FOIA, draft minutes of meetings must be posted to the Virginia Regulatory Town Hall website as soon as possible but no later than 10 working days after the conclusion of the meeting. Final approved meeting minutes must be posted within three working days of final approval of the minutes. Minutes of advisory groups do not have to be officially approved by the group unless the group establishes that requirement.

Additional information regarding advisory groups and the requirements of FOIA is provided in Appendix C.

Section VIII. Mailing of public notifications.

As described under Section III.A.1 through III.A.5 of this guidance, public notice should also be given by mailing¹⁴ a copy of a notice to the following persons:

1. Any Planning District Commission that may have jurisdiction over the areas included in the action;
2. Federal and state agencies having jurisdiction (i.e. lands in the watershed) that may be affected by the action;
3. Soil and Water Conservation Districts having jurisdiction over areas included in the action;
4. Chief administrative officer or designee and chair of governing body or designee of any unit of local government having jurisdiction over the areas included in the action;
5. Any adjacent state that may be affected by the results of the action; and
6. Persons on the mailing list maintained by the Regional Office including State Water Control Board permittees affected by TMDL development, as well as those who request to be on the list.

Regional DEQ offices should be responsible for maintaining watershed-specific contact lists of persons and organizations.

Section IX. Other notification methods.

Announcement of the public notices as described under Sections II, III, IV and V of this guidance may also be given by any other method reasonably calculated to give actual notice to persons potentially affected, including press releases, or any other forum or medium to elicit public participation, such as posting a notice in a local newspaper.

¹³ Required in accordance with §2.2-3707 of the FOIA.

¹⁴ The definition of mail means electronic or postal delivery pursuant to § [10.1-1183](#) of the Code of Virginia.

Section X. Public comments and agency response.

During the public comment periods for the public notices under Sections II.A, III.A.1-6, IV.A and V of this guidance, any interested person may submit written comments on the actions being public noticed. All relevant comments should be considered by the Board when taking actions under Section XI of this guidance. A summary response to comments should be prepared and made available to the public. Appendix B contains additional detail on the summary response document.

Section XI. Board actions.

The following are the Board actions related to the Water Quality Management program:

1. Approve final TMDL reports and approve submittal of TMDL reports to EPA; and
2. Adopt the WLAs as part of 9VAC25-720, Water Quality Management Planning Regulation, in accordance with §2.2-4006.A.14 of the APA.

Section XII. Delegation.

The Director or his designee may perform any action contained in this document except those prohibited by § 62.1-44.14 of the State Water Control Law.

Appendix A - TMDL Development Public Notice Template

DEPARTMENT OF ENVIRONMENTAL QUALITY NOTICE OF PUBLIC MEETING AND PUBLIC COMMENT

The Department of Environmental Quality (DEQ) seeks written and oral comments from interested persons on the development of Total Maximum Daily Loads (TMDLs) for *[list creeks/watershed]* in *[list cities/counties]*. These streams are listed on the 303(d) TMDL Priority List and Report as impaired due to violations of the State's water quality standards for the *[list types of impairments – i.e., General Standard (Benthics)]*.

Section 303(d) of the Clean Water Act and §62.1-44.19:7.C of the State Water Control Law require the DEQ to develop TMDLs for pollutants responsible for each impaired water contained in Virginia's 303(d) TMDL Priority List and Report.

[Provide description - name of the water or stream segment, location description (including the name of the county), and watershed for which the action is being taken – example is below:

The Pleasant Run stream segment is located in Rockingham County. It is 6.30 miles in length and begins at the headwaters and continues to the confluence with the North River. The Muddy Creek stream segment is located in Rockingham County. It is 10.36 miles in length and begins at the headwaters and continues to the confluence with Dry River. The Holmans Creek stream segment is located in Rockingham and Shenandoah counties. It is 10.44 miles in length and begins at the headwaters and continues to the confluence with the North Fork of the Shenandoah River.]

The first public meeting on the development of the TMDL to address the *[list types of impairments – i.e., General Standard (Benthics)]* for these segments will be held on *[provide the day, date, time and location]*. *[Provide the alternate meeting information in case of inclement weather]*.

The public comment period will begin on *[provide date]* and end on *[provide date – remember cannot end on a weekend or a state holiday. If it does, use the next business day]*. *[Please state one of the following in the notice:*

- i) An advisory committee to assist in development of this TMDL was convened on [date of TAC meeting];*
- ii) An advisory committee to assist in development of this TMDL will be established. Persons interested in assisting should notify the DEQ contact person by the end of the comment period and provide their name, address, phone number, email address and the organization you represent (if any). Notification of the composition of the panel will be sent to all applicants; or*
- iii) An advisory committee to assist in development of this TMDL will not be established. However, public comment on the use of an advisory committee is invited. Persons requesting the agency use an advisory committee and those interested in assisting should notify the DEQ contact person by the end of the comment period and provide their name, address, phone number, email address and their organization (if any). Notification of the composition of the panel will be sent to all applicants.]*

A component of a TMDL is the Waste Load Allocation (WLA); therefore, this notice is provided pursuant to §2.2-4006.A.14 of the Administrative Process Act for any future adoption of the TMDL WLAs. Information on the development of the TMDLs for the impairments is available upon request. Questions or information requests should be addressed to *[name of DEQ staff person(s) along with contact information (address, telephone number and e-mail address) if this staff person is different than the contact person listed below]*. Please note, all written comments should include the name, address,

and telephone number of the person submitting the comments and should be sent to the DEQ contact person: [*name, address, telephone number and e-mail address of DEQ staff contact(s)*].

Appendix B – Public Comment Response Document Preparation

A key element of the public participation process is public comment and response. Though public comment may be generated and collected throughout the TMDL development process, the bulk of public comment is received during public meetings and the associated 30-day comment period. Regardless of when and where it is generated, comments received during the TMDL development process will be compiled in a comment-response document as detailed below.

Comments received should be directed to the appropriate TMDL coordinator and handled as follows:

1. Copy the comment(s) to all parties involved with the preparation of the TMDL;
2. Enter the comment(s) into a central comment-response document containing comments received for that TMDL;
3. Prepare or request preparation (from appropriate source) of a response for each comment received;
4. Place responses into the central comment-response document referenced above;
5. Mail a copy of the comment-response document to each party that submitted a written comment; and
6. Append a copy of the comment-response document to the final TMDL for submittal to the EPA.

Stakeholders are engaged and provide verbal comments throughout the TMDL development process. However, the cutoff for the comment-response document preparation, which addresses written comments, will be 30 days after any public comment period.

Note that there will be one comment-response document prepared for each public meeting and its associated comment period. These separate comment-response documents will be combined for submittal to the EPA.

Appendix C – Advisory Group Guidelines

The creation of an advisory group is the creation of a public body. All meetings of the group are public meetings. That means notice of the meeting has to be given by posting on Virginia Regulatory Town Hall website and the Commonwealth Calendar at least three working days prior to the date of the meeting. In addition, notice should be included on the DEQ's web page. Meetings may be audio or video recorded by the agency, advisory group members, or members of the public as long as the use of the recording equipment does not physically interfere with the meeting.

The FOIA requires that minutes be prepared. Therefore, a summary of the meeting shall be prepared and posted to the Virginia Regulatory Town Hall website. If the minutes must be approved by the group a draft of the minutes must be posted within 10 days after the meeting with a final posted within 3 days of approval. If the minutes do not need to be approved by the group, the final must be posted within 10 days after the meeting. The minutes must include, but are not limited to: (i) the date, time and location of the meeting, (ii) the members of the public body recorded as present and absent, and (iii) a summary of the discussion on matters proposed, deliberated or decided, and a record of any votes taken

Role of the Advisory Group:

The purpose of the advisory group is to assist in the water quality action. This group has been formed to help the DEQ balance the concerns of all those interested. All such concerns will be addressed by the group, and any group member is free to advance any opinion.

The role of the group is advisory only. The group's primary responsibility is to collaboratively contribute to a water quality action that is in the best interests of the Commonwealth as a whole.

The group's goal is to reach consensus on a specific action and make recommendations to the Department. Consensus is defined as a willingness of each member of a group to be able to say that he or she can live with the decisions reached and will not actively work against them outside of the process. This is not to say that everyone will be completely satisfied by the results of the process. It is necessary that each participant come prepared to negotiate in good faith around complex and sensitive issues. Also, because the group represents many different interests, all members should expect to compromise in order to accomplish the group's mission.

Voting, per se, is contrary to a consensus-based process, but people may be asked to demonstrate their strength of feeling for or against a particular idea, and may be asked to help set priorities during the course of the process.

Participation by Persons not on the Group:

Because these types of group meetings are public meetings, any member of the public may attend and observe the proceedings; however, only group members have a seat at the table and only group members may actively participate in the discussions. Those persons not on the group are encouraged to work with the group members that have common interests to ensure their concerns are heard.

As warranted, the DEQ will provide a means for those persons not on the group to make their concerns known to the group to ensure full consideration of all issues surrounding the question, provided it is not disruptive or does not inhibit the advancement of the work of the group. (There are several ways to accomplish this. One option is to allow for a specific time for interested persons to address the group at a designated time during the meeting. Another is to have an empty seat at the table. If an interested person desires to make a brief comment or raise an issue, he would come to the empty seat, be recognized in turn, make his statement and then return to the audience. Time

limitations may be necessary in order to ensure all persons have an opportunity to address the group.)

After the group makes its recommendations, Department staff managing the group will summarize the deliberations, outcomes and recommendations and prepare recommendations. Areas where the group was unable to reach consensus or where the staff's recommendation differs from the group's recommendation will be identified in the material sent for a decision. Staff should inform the group members of the decision made by the Department or Board, as applicable.

Advisory Group Information Regarding E-mail and Meetings

The VA Supreme Court has held that e-mails may constitute a "meeting" under FOIA if there is simultaneous e-mail communication between three or more members of a public body. Therefore, members of an advisory group should avoid "reply to all" as a general rule and should use the Department staff contact in order to disseminate information to the group.