

DRAFT NOTES

WAC Subcommittee Meeting – Safe Yield

April 26, 2018

10:00 am, VDH 5th Floor Conference Room

ODW

- Dwayne Roadcap
- Nelson Daniel
- Sherri Sullivan
- Dan Horne

DEQ, Office of Water Supply

- Drew Hammond
- Scott Kudlas

City of Norfolk

- Chris Harbin
- Christopher Gill (Christian and Barton, counsel)

Fairfax Water

- Pete Johnson (Hunton Andrews Kurth, counsel)
- Greg Prelewicz (Fairfax Water)

Prince William County Service Authority

- Theresa O'Quinn (Director of Human Resources)
- Dean Dickey (General Manager, Prince William County)
- Andrea Wortzel (Troutman Sanders, counsel, Mission H2O)

The group discussed the overview of the process to promulgate regulations. VDH is relatively early in the process (issued NORIA, preparing draft to take to Board of Health during Dec. 2108 meeting, get approval and go to Stage 2 of the reg process). Today's goal – address concerns about proposed revisions to 12VAC5-590-830, possibly refine this section to better define the process.

VDH/ODW follows certain steps when issuing a permit for a waterworks that uses a surface water withdrawal. The text in 12VAC5-590-830 is proposed for deletion because it is not currently used and it is not consistent with current procedures for issuing a permit. There are two subcategories: (1) DEQ issues VWPP, or (2) there is situation where waterworks does not currently have a VWPP permit from DEQ. New waterworks permits always go through DEQ. Older waterworks that update and need new VDH construction permit do not need to get VWPP permit from DEQ. The subgroup's objective is to come up with recommendation to take back to the WAC at the next meeting, tentatively sched for 5/17

Some waterworks have major plants and money in infrastructure that does not have VWPP permit. Nevertheless, these facilities would submit yield data to VDH. There is a lot of concern about removing definition for Safe Yield. What does that mean going forward with grandfather

rights and protection of those rights? VDH's operating permit references yield, but is not based on VWPP. If definition is eliminated, what takes its place? Is there any nexus between VDH's definition and what DEQ uses? Everyone wants permitting to be transparent, predictable.

Why is ODW eliminating the definition? It does not adequately describe how VDH manages permit program. Would the draft change mean that any permit going forward will not have a safe yield number?

There are very few surface water permits being issued; VDH does not use the term "safe yield" in the description sheet. The description sheet is no longer part of the permit, it is stand-alone document; current permits talk about operation conditions. VDH gets information from applicant and asks for DEQ's review. There are a number of sources for information on source water capacity. There is not necessarily a relationship between safe yield and plant capacity/system capacity. An example is when waterworks has surface water withdraw under VWPP, pumps to reservoir, but pulls water from reservoir. VDH's permit review looks at the source capacity and the source is the reservoir.

Some believe that *safe yield/source capacity* is typically a limiting factor. Does that mean VDH will no longer be "source limiting" with its permits? The source water is frequently not the limiting factor. VDH compares/considers pumping capacity to storage capacity to source capacity, etc. The goal is for the Commonwealth to speak with one voice, DEQ and VDH need to be consistent – VDH is relying on DEQ for resource management. DEQ has determinations, modeling, calculation capacity, etc. This is why text *in 12VAC5-590-830* is being drafted for deletion.

Is source water capacity defined? VDH will look at plant, storage, etc., but when VDH looks at source capacity, is VDH going to look to DEQ? Yes, DEQ is the Commonwealth's resource manager.

VA legislature has given water resource management to DEQ for oversight. The Waterworks Regulations have been in place since the 1980's, *with no, or very few updates to the Manual of Design (Part 3)*. The safe yield language has been in place for years, what is prompting change? Is there a statutory change? This should have been with DEQ since 80's. After 1982, there was the promulgation of water protection program – authority to regulate instream flows; 12VAC5-590-830 is in Manual of Design – for new waterworks construction; for new facilities, after 1989 when DEQ issued permit, process has been to work with DEQ to determine resource management. The Waterworks Regulations have not been updated to reflect the new process on how DEQ and VDH coordinate. What happens with facilities that were operating before 1989?

There will not be one number used as safe yield/source water capacity; there will be different scenarios, number will vary depending on flows, storage in quarry/reservoir. The subgroup could try to look at the definition for "source capacity" to line up terminology with DEQ's program, which may not resolve question. There remains concern that VDH looks to DEQ.

The General Assembly clearly said DEQ has no purview over withdrawals before 1989. Where does that leave things? The reality is that if source capacity designation is wrong or changes with environmental conditions (i.e., drought), then a problem will present itself regardless of the permit language for source capacity. VDH shouldn't be independently determining source capacity. DEQ has other tools. Those with grandfathered withdrawals have been responsible and there are tools for water supply planning. There is an appeal process if the applicant does not agree with source capacity designation. DEQ is providing information to VDH in a technical capacity. DEQ does not issue a permit, but does provide technical information. VDH is going to use the number DEQ gives them in practical application, but VDH will decide how to use the applicant and DEQ's information. For facilities that have river intakes or combination of surface/ground source, with or without offline storage (DEQ considers offline storage in VWPP); the VWPP sets limits on withdrawal from river to impoundment; when waterworks makes a determination (re: source capacity), it is based on offline impoundment.

The term "safe" is a misleading term. Perhaps use reliable yield, firm yield? VDH cannot allocate water from stream because regulatory authority is limited to the waterworks, not the stream. Mission H2O will regroup and consider offering revised language for VDH staff to consider. VDH willing to consider adding references to Code sections or DEQ regulations.