VDH ODW Regulatory Advisory Panel Meeting

August 7, 2014 9:30 a.m. – 3:30 p.m.
The English Inn, Charlottesville, Virginia

DRAFT Meeting Summary

Facilitated by the Institute for Environmental Negotiation

Executive Summary

This Regulatory Advisory Panel (RAP) has been tasked by the Virginia Department of Health (VDH) Office of Drinking Water (ODW) with advising the agency on its amendments to the *Waterworks Regulations* (12VAC5-590). The RAP's goals are to improve content and readability, clarify the regulations, and address modern practices already in use by providers within Virginia. The group met for the first time on August 7, 2014, to discuss recommendations for Part I of the regulations. During the first meeting, participants reviewed Part I, including suggesting certain language changes and requesting clarification from VDH on certain sections. The next RAP meeting will take place Thursday, August 28th from 9:30 a.m. to 3:30 p.m. at the English Inn in Charlottesville.

Welcome/Introductions

Thirty people met at the English Inn for the RAP meeting. A list of the meeting participants can be found at the end of this summary. The meeting was the first in a series intended to lead to recommendations from the panel concerning amendments to the state's *Waterworks Regulations* (12VAC5-590) with hopes of improving readability, incorporating references to new techniques already in use by providers throughout the state, and receiving diverse stakeholder input in preparation for the agency's filing of Notice of Intended Regulatory Action (NOIRA) and subsequent public commenting period.

In total, the RAP will meet four times and divide its work as follows:

- Thursday, August 7th — Kick-off, *Waterworks Regulations* Part I
- Thursday, August 28th — *Waterworks Regulations* Part II
- Thursday, September 25th — *Waterworks Regulations* Part III
- Thursday, October 16th — *Waterworks Regulations* Wrap-Up

Frank Dukes and Kelly Wilder from the Institute for Environmental Negotiation (IEN) at the University of Virginia facilitated the meeting. Opening the meeting, the facilitators welcomed participants and introduced John Aulbach, Director of the Office of Drinking Water. Mr. Aulbach explained the rationale for initiating the RAP process and invited participants to engage with candor in evaluating the regulations as they stand after ODW staff review. He then introduced ODW's role in the RAP process by explaining that ODW

staff members are available as a resource to RAP members, but that recommendations for further changes to the regulations will ideally originate from the RAP itself. ODW will consider RAP recommendations before developing a draft set of regulations for the NOIRA process. Mr. Aulbach then thanked RAP participants for taking their time to engage in the process, the IEN team for accepting the task, and ODW staff members present for attending the meeting in a resource capacity.

Kelly invited members to share their names and reasons for being involved in the RAP process. The expressed goals are listed below:

- Amend out-of-date regulations.
- Improve readability.
- Incorporate new technologies already being used in the field.
- Address the permitting process.
- Increase clarity for users in the field.
- Represent constituencies in providing feedback (*e.g.* operators, local governments).
- Edit definitions for clarity.

Introduction to the Process

Frank introduced himself and the Institute for Environmental Negotiation. He briefly described the involvement of IEN and its responsibilities. IEN is contractually responsible to ODW, which hired them to organize and facilitate the process. IEN aims to facilitate in a way that is fair, effective, and efficient. IEN will track agreements and disagreements, prepare meeting summaries, and facilitate meetings, but they will not advocate for any particular outcome. ODW staff members are available as a resource, not to shape the discussion. ODW would like to hear all concerns and suggestions, and changes supported by consensus will be weighted most heavily. After each meeting, ODW will respond to changes and provide any previously requested additional information. Frank added that the Board of VDH has the ultimate responsibility for approving amendments to the regulations.

Frank then segued into a discussion about RAP discussion guidelines, found on page 4 in the member binders. He asked RAP participants to be mindful of representing their constituencies, rather than speaking solely as individuals; to exhibit electronic etiquette; and to come to meetings well prepared. The following suggestions were also made by RAP members:

- Everyone should speak clearly and to the group, rather than to VDH.
- IEN/VDH should provide an opportunity for written comment submissions.

Finally, Frank asked participants to practice active listening with “an open heart and mind” and explained consensus testing. When prompted, group members will be asked to raise their fingers depending on their level of agreement. Three fingers means completely in agreement, two fingers means willing to support but with minor questions or concerns, and one finger signifies opposition or a need for further explanation. A single member with one

finger up prevents consensus. If members display twos, there may be more discussion to understand what is preventing those members from supporting the particular idea.

Frank then introduced Angie McGarvey, Environmental Health Specialist Consultant, and Susan Douglas, Director of Technical Services, from the Office of Drinking Water, to clarify the aims of the first meeting.

Office of Drinking Water Presentations

Angie briefly described the structure of the regulations, invited members to interrupt with any clarifying questions, and explained that the focus of the first meeting was on Part I. She emphasized that federal regulations incorporated in the text could not be amended and that the group should focus on non-federal sections. To help RAP members keep track of these distinctions, each section of their binders contains a table of contents with significant changes made during staff review check - marked and all non-federal regulations highlighted. Angie added that the regulations must adhere to the Virginia Register's Style Manual (no italics, no appendices, standard text form, and standard table format). Angie explained the format of the draft revisions as follows:

- Underlined text was added during ODW staff review.
- ~~Strikeout~~ signifies text that was removed during ODW staff review.
- Text with no underline or no strikeouts is current regulation text.
- Current regulation text that has been moved will appear as underlined text.

Susan then gave an overview of the significant changes made during staff review of Part I. She began by emphasizing the need for updating the regulations and stated that most of the text in Part I was adopted in 1974. She shared that members could locate the Code of Virginia in the front of their binders and that much of the regulations, if taken directly from the code, could not be amended as part of the RAP process. Robert Payne, Director of Hearings and Legal Services at ODW, echoed this and added that regulations must be consistent with the code.

Susan listed the significant changes within 12VAC5-590 Part I as follows:

- Scope & Definitions, Section 10 - Added abbreviations and symbols in definitions for non-technical readers.
- Section 10- Definitions are a mix of federal and state. Matrix table provided showing definitions eliminated, revised and new, and where in the Regulations they are used.
- Section 45 - Waterworks Advisory Committee (WAC) descriptions of who must serve on the committee were removed to add flexibility.
- Section 50 - Applicability of Regulations Part III as they relate to existing facilities; commonly referred to as "grandfathered-in".
- Section 160—Formal hearings text removed and informal fact-finding procedures added; defers to the Code as appropriate.

- Sections 190 through 320 - Distinction added between construction and operating permits; Permit Application form has been revised; Business Operation Plans may be required per Code; other withdrawal permits added in order to coordinate with Department of Environmental Quality (DEQ) regulations.
- Sections 190 & 220 - Two construction permit exemptions described, one allowed by Code, the other by Licensure Board decision.
- Sections 260 - Capacity is explained. More detail is provided in Part III of Regulations.
- Sections 260 & 290-Operation Permits - Two types of operation permits, standard and temporary, to better agree with Code.

Kelly invited the group to help prioritize which sections they wanted to discuss. The prioritized sections were as follows:

- Section 5 - Scope
- Section 10 - Definitions
- Section 45 -Waterworks Advisory Committee
- Section 200 F - Preliminary Engineering Reports (PERs)
- Section 190 - Permits
- Section 290 - Temporary Permits
- Section 220 - Compliance with the Manual of Practice
- Section 230 - Issuance of the Construction Permit

<u>Discussion of Part I, Article I</u>

Section 5

Angie stated that the scope primarily aims to reflect the Code (§32.1-168). Many members offered recommendations to the scope, but Angie and other staff emphasized that changes to this section would require a change in the Code.

Members particularly disagreed with the waterworks exception language written in Section 5 Scope, stating that it seemed to contradict their understanding of the definition of a consecutive waterworks. Members specifically asked:

- Must a water system "resell" to customers to be a waterworks? Or simply distribute?
- How does treatment relate to the definition of a consecutive waterworks?
- Can the federal definitions be provided and compared with state ones?
- Shouldn't definitions be the same as federal regulations?

Susan noted that the exception language was taken from the Code (32.1-168), which concerned several RAP members. It was noted that the word "collection" in the language is inappropriate to water systems, further casting doubt on the Code language. Angie noted this section is cited directly from 40CFR 141.3. John Aulbach offered for VDH staff to perform further research and bring information to the next meeting. Frank asked RAP members if they would like to compile a separate list of potential recommendations for

DRAFT

Code revision and many agreed. It was suggested that the regulations simply refer back to the Code rather than repeat it, that way as the Code is changed, the regulations will not be out of date. Kelly tracked the following suggested change that deleted some of the language quoted directly from the Code, Frank tested for consensus, and the proposed changes passed:

> **Section 5. Scope.**
>
> This chapter applies to all waterworks, as defined in 12VAC5-590-10, except for a waterworks that meets all of the conditions pursuant to § 32.1-168 of the Code of Virginia.

Section 10

The following concerns about the definitions were raised by RAP members, with any suggested follow up items in parentheses.

- "Consecutive waterworks" - What is the federal definition? Propose to remove "some or all" out of the definition. This definition is important as it relates to Section 5 Scope.
- "Potable water" should be used instead of "Pure water." (VDH will look into this.)
- "Exemption" - "Providing public health protection" is vague. Suggestion to change to "meets state and federal quality standards." (VDH will look into this.)
- "Terminal Reservoir" - Concern about the deletion of "terminal reservoir" definition - One RAP member representing a locality stated that the city had cited this to protect sources from boating and swimming. Effective storage.-Remove "For tanks (such as standpipes) that use a portion of their volume to generate system pressure." Measurement between operating level and overflow level questioned.
- "Operating staff", "Operator", "Licensed operator", and "Operate" definitions - Appear to contradict each other. Is there a conflict with licensing? (VDH will look into this.)
- "Practical quantitation level" - Suggestion to use EPA wording. (Regulation language changed to reflect this decision.)
- "Consumer's water supply system " - How is "pipes" being used? (VDH will look into this.)
- Fire flow should be included as a definition. Jesse Royall recommended against suggestion, because there are other water uses that could also be added. Most RAP members agreed with Jesse.

Section 45

The WAC description suggests that the committee is optional, which was not the prevailing understanding. Mr. Aulbach explained that VDH has the discretion to appoint this committee, as the draft text states. A suggestion was made to stipulate a minimum number of members and meetings. Jesse Royall, a long-standing WAC member, provided a brief history of the WAC and its accomplishments. A suggestion was made to replace 'director'

with the 'commissioner', for consistency throughout the Regulations. This would require the definition of commissioner to include 'or designee'. (VDH will look into this).

Section 50, Paragraph B

Language must clearly reflect that existing waterworks are not required to meet new standards; must encourage incremental improvements at existing facilities. (Steve Herzog, Jesse Royall, and Cliff Parker agreed to provide revised language).

Discussion of Part I, Article 2—Sections 60-180

Frank then opened discussion for Part I, Article 2. He added that the remainder of the meeting would follow chronologically and that sections would not be tested individually for consensus due to time constraints. The following concerns were raised:

- "Enforcement" or "administrative proceeding" - Use should be consistent.
- Suggestion to place Sections 160-180 under 110 for better organization.
- Variance seems to be used in Section 140 A 1 more broadly than it is defined in Section 10. (VDH will look into this).
- Section 140E—Sequence seems to include two public comment periods. This may be a result of federal regulation. (VDH will look into this.)
- Suggestion was repeated that a definition for "commissioner" should include "or designee". (VDH will look into this).
- Section 140 G 2 and G 3 b - Suggestion to change "terminate" to "revoke" to be consistent with Section 320.

Discussion of Part I, Article 2—Sections 190-330

Frank then turned the meeting over to Kelly, who opened discussion for the final section of regulations in Part I concerning permitting. The following concerns were raised:

Section 190

- Section 190 B - Include reference to general permits (Section 300).
- Section 190 B 3 - Change "may" to "shall". By stating that annual reports shall be provided, it alleviates the concern about document retention requirements, should the request be made after records have been destroyed. VDH added that this is the intention of Section 190 B 3 and agreed that "shall" would communicate this more effectively. (Regulation language changed to reflect this decision.)
- Reference to "15 connections" questioned—VDH stated that this is from the Code. Frank suggested that this concern be added to the list of concerns specific to the Code.

Section 200

- Section 200 B - One member stated that "notifying local governing body" is "redundant and burdensome" and that approval should be conditioned by price tag or scale. Specific governing body should also be stated. Clifton Parker and Andrew

Snyder volunteered to propose new language for online comment. The requirement to provide notice during the permit application process to a local governing body is often unclear to owners. For many waterworks, the local governing body is the same group that manages the waterworks. Some members would like to see a list when it would be appropriate to notify the local governing body. There is a check box on the permit application (Form ODW-001).

- Section 200 A & C - Concerns were raised that Preliminary Engineering Conferences and Reports were too onerous for very small projects. Clifton Parker and Andrew Snyder agreed to propose new language.
- Section 200 E - Last sentence is confusing. Agreed to delete last phrase "and the site must be inspected again before construction." (VDH will provide revised language).
- Section 200 F 5 b - Rational for peak hourly demands questioned. VDH explained that this was needed for nontransient waterworks that do not have a storage requirement, and must meet this demand.
- Section 200 F 8 b (7). Suggestion to change the "may" to a "shall" (Regulation language changed to reflect this decision.)
- Section 200 F 12 c - Suggestion to change pollution source assessment to a 1,000 foot rather than a 250 foot radius. VDH agreed and this language was changed to reflect this decision. Some members disagreed, stating that this is unnecessary for the coastal plain region. VDH maintained that this change is consistent with Section 200 G 2 g and is consistent with the source water assessment program. (Regulation language changed to reflect this decision.
- Section 200 G 2 g - Change "location of all sources" to "location of all *potential* sources" (Regulation language changed to reflect this decision.)
- Section 200 F 3 - Member stated that providing an evaluation of alternative plans is too detailed and applies to a small percentage of projects. (Cliff Parker and Andrew Snyder to provide suggested language.)
- Section200 I 11 - Members suggested removing such detailed language as many courthouses process these applications differently. (Regulation language changed to reflect this decision.)

Section 210

- Section 210 B - Members want to ensure that "sealing plans" does not limit electronic submission. This should be clearer and allow for flexibility with changing technology and forms of submission.

Section 220

- Section 220 B – The sentence stating, "Deviations from "shall" criteria which the owner's engineer believes to be substantial in nature shall be identified and justified needs clarification to mean the mandatory requirements of Part III. Suggestion made to refrain from use of "accepted engineering practices," due to uncertainty about its definition, and to delete the last few sentences to match the definition of exception. (Regulation language changed to reflect this decision.)

- Section 220 D 2 - Language should avoid use of provider classes. Replace "class A contractor" with "certified water well systems provider," for example. (Regulation language changed to reflect this decision. Jesse Royall to provide additional suggested language).

Section 290

- Sections 290 B - The phrase "raw water purification" should be modified. Susan suggested this be changed to "raw water treatment"

At this time, Kelly closed the discussion in the interest of time and asked members to share requests for materials or information from VDH and IEN. Members requested:

- Access to document with tracked changes.
- Opportunity for online comment.

IEN agreed to provide detailed instructions for an online commenting tool called NowComment within the coming weeks. VDH and IEN requested that members avoid circulating electronic copies to those outside the RAP and to only share relevant portions with constituents. Angie added that Part III will be available at the next meeting. She asked for permission to post members' names and affiliations online, and there were no objections.

The meeting participants shared the following feedback about the first meeting:

- Lack of trash and recycling containers in the hallway.
- Concern with crowded room and noisy air conditioner.
- Appreciative of group and ease of interaction.

IEN facilitators and VDH staff thanked participants and closed the first meeting of the RAP shortly before 3:30 p.m. The next meeting will be held at the English Inn in Charlottesville on August 28 at 9:30. Until then, members will have the opportunity for online commenting.

<u>Regulatory Advisory Panel</u>

Jason Clark, P.E.—Engineering Consultant at WW Associates
Roger Cronin—American Council of Engineering Companies of VA
Vincent Day, P.G.—VA Section, American Institute of Professional Geologists
Elmer W. Handy—Virginia Rural Water Association
Chris Harbin—Public Utility, Class 1, Norfolk
Jamie Bain Hedges, P.E.—Public Utility, Class 1, Fairfax
Steve Herzog—Virginia Water Environment Association
Jerry Higgins—Virginia AWWA
Eric LaSalle—VA Manufacturers Association
Tom McNulty, P.E.—Engineering Consultant at CDM Smith

DRAFT

Paula Moore, P.E.—Engineering Consultant at Whitman, Requardt & Associates, LLP
Ignatius Mutoti, P.E.—Virginia Society of Professional Engineers
John O'Dell—VA Water Well Association
Clifton L. Parker, IV, P.E.—Private Utility, Class 3-6, Aqua Virginia Inc.
Jerry Peaks, P.E.—Engineering Consultant at Bowman Consulting
David Raines—Virginia Associate of Counties
Jesse L. Royall, Jr., P.E.—Private Utility, Class 4-6, Sydnor Hydro Inc.
Andrew Snyder, P.E.—Engineering Consultant, Draper Aden Associates
Lauren Sufleta—Private Utility, Class 1-6, Virginia American Water
Caleb Taylor—Virginia Municipal League
David Van Gelder—Public Utility, Class 1, Hanover Co.
Michael Vergakis—Public Utility, Class 3-6, James City
Larry Wallace—Southeast Rural Community Assistance Project
Uwe Weidel, P.E.—VA Water and Wastewater Authority
Beate M. Wright, P.E.—Public Utility, Class 1, Loudoun Water
Grier Mills—VA Dept. of General Services
Jay Armstrong—VA Dept. of General Services
Craig Nicol—VA DEQ

Meeting Resource Members

John Aulbach—VDH
Susan Douglas—VDH
Angie McGarvey—VDH
Robert Payne—VDH

IEN Facilitation Team

Frank Dukes
Kelly Wilder
Sarah Burr

DRAFT