VDH ODW Regulatory Advisory Panel Meeting

September 25, 2014 9:30 a.m. – 3:30 p.m.
The English Inn, Charlottesville, Virginia

Meeting Summary DRAFT Oct. 2, 2014

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 third time on September 25, 2014, to review changes to Parts I and II based on recommendations from the first and second meetings as well as workgroups formed after meeting 2. RAP members also reviewed Part III, including suggesting specific language changes and requesting clarification from VDH on certain sections. The next RAP meeting will take place Thursday, October 16th from 9:30 a.m. to 3:30 p.m. at the English Inn in Charlottesville.

Welcome/Introductions

Forty people met at the English Inn for the third RAP meeting. A list of the meeting participants can be found at the end of this summary. The meeting was the third in a series intended to gather 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 comment period. The fourth RAP meeting will be held on Thursday, October 16th to discuss additional changes to Part I, II and III as a result of previous RAP comments and to continue to review Parts II and III of the Waterworks Regulations.

Frank Dukes and Elizabeth Moore from the Institute of Environmental Negotiation (IEN) at the University of Virginia facilitated the meeting. Opening the meeting, the facilitators welcome participants and introduced John Aulbach, Director of the Office of Drinking Water. Mr. Aulbach thanked RAP participants for their contributions and pledged ODW's full time and attention to

complete the process in the case that four RAP meetings are not sufficient. He emphasized that ODW's priority is quality content, rather than time.

Frank then introduced the IEN team, outlined the day's agenda, encouraged each member to candidly share concerns, and reviewed the consensus testing process. When prompted, group members will be asked to raise their finger depending on their level of agreement. Three fingers signifies complete agreement, two fingers signifies willingness to join the consensus but with some remaining minor questions or concerns, and one finger signifies opposition or need for further explanation. A single member with one finger prevents consensus. If members display twos, there may be more discussion to understand what is preventing those members from more fully supporting the particular idea.

Frank welcomed members and initiated introductions around the table. He then reminded the group that only three weeks would pass before the next meeting and encouraged participants to submit additional language suggestions through NowComment or email so that ODW can address comments beforehand and more ground can be covered in the meetings.

Review and Further Editing of Part I and II Revisions

Angie McGarvey of ODW then led the discussion of edits made to Parts I and II as a result of further ODW review and workgroup discussions. Changes are as listed below:

- **Section 10 Definitions**
    - "Consecutive waterworks"- definition revised to remove "some or" and simply state "all" based on feedback gathered during further ODW internal review.
    - "Consolidated formation"- new definition added by workgroup for well abandonment and reactivation, taken from AWWA Standard A100 for Water Wells.
    - "Exemption"- definition removed, no federal definition is provided and the meaning is explained in Section 140.
    - "Permitted capacity" – new definition added, definition is non-federal.
        - A RAP member expressed concern that operations that produce more may feel they are in violation based on the new definition. ODW requested this discussion be tabled until Section 520 is addressed.
    - "Unconsolidated formation" – new definition added by workgroup for well abandonment and reactivation, taken from the AWWA Standard A100 for Water Wells, further addressed in Section 475.
    - "Variance" – definition removed, no federal definition is provided and the meaning is explained in Section 140.

At this point, Frank paused discussion to test for consensus on the changes made thus far. One member displayed a two and expressed he was holding full agreement until further discussion on Section 520. Another RAP member suggested adding "silt and clay" to the consolidated formation definition, but after further discussion it was concluded that these types of soils are implicit in the definition. All other members were in full agreement.

- **Section 50, Subsection B Application of regulations** – last sentence was revised to clarify construction during the period between regulations review process and adoption, and now states that construction is deemed to be commenced upon the issuance of the construction permit.

All members displayed a three in full agreement.

- **Section 130** Suspension of this chapter – edited to reflect that enforcement of regulations may be suspended during emergency conditions.
    - RAP members expressed concern about the use of the word "localities" noting that some waterworks may not know if there were included. After some discussion about using some other geographic area, members suggested that the word be changed to "waterworks" so that the Commissioner can specify which waterworks would be covered. ODW will follow up with legal counsel.

All members displayed a three in full agreement to change "localities" to "waterworks" if approved by ODW's legal advisor.

- **Section 200, Subsection A** Procedures for obtaining a construction permit – "field" was added between "ODW" and "office" in Subsection A 2.

After some discussion of concern about eliminating details, all members displayed a three.

- **Section 260, Subsection E** Issuance of the operation permit – at the suggestion of legal counsel, last two sentences removed regarding permitted capacity, considered extraneous, permitted capacity is described in Section 520.
    - RAP members expressed concern in regard to permitted capacity, storage, daily max, and how ODW calculates limitation. ODW added that monitoring permits could change, so this should be left out of operating permits.
    - ODW agreed to incorporate deleted language in E as a definition of permitted capacity and bring it back to the RAP for review.

The RAP then began the review of changes to Part II.

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- **Section 430, Subsection B, Item 2 a (1)** Determination of surface water influence of groundwater sources – revised to remove sampling requirement during the phrase "multiple significant rainfall events" to reflect the reality of field work.
    - RAP members expressed that "immediately after rainfall" requirement is tough to meet. Text was added to include "as practical."

The group supported these changes with all threes.

- **Section 475** Removal of wells from service and **Section 476** Reactivation of wells – a new section divides the topic into temporary inactivation and permanent abandonment, changes made as a result of workgroup 1. Due to time constraints, comments were not taken on the proposed text during the meeting and were postponed to the next RAP meeting.
- **Section 480, Subsection E, Item 1** Operational control testing and monitoring – last sentence deleted as unnecessary.
- **Section 510, Subsection B, Item 5** Acceptable operating practices, Filter operation – changed to clarify nonconventional filtration technologies.
    - At the suggestion of a RAP member, language was changed to remove "by means of" for clarification.
- **Section 511, Subsection B, Item 2** Maintenance of waterworks integrity – changed to reflect AWWA standards before returning a waterworks to service. Members suggested reviewing applicable AWWA standards for putting a well back online.

All members displayed a three in complete agreement, with the exception of Section 460 still under review.

- **Section 520** Waterworks Capacity – edited substantially to reflect concerns raised at the last meeting.
    - At this point, with legal counsel present, ODW clarified that permitted capacity definition is somewhat bound by the Code of Virginia. Members suggested that Section 260 should be used to clean up the definition. ODW will follow up to address Section 260 and 520 together. Finally, a RAP member suggested a maximum and a minimum be outlined.

Angie then provided an update on workgroups 2 and 3. Workgroup 2 (Section 460) met two times with no final proposal for this section. RAP members expressed concern that operator attendance is being increased without proof that public health has been compromised and that small waterworks' limited budgets will be stressed. One RAP member emphasized that all costs will be borne by the customers, for both publically-owned and privately-owned waterworks. Another RAP member remarked that the table for operator attendance requirements has too

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many variables and is confusing. In the meeting ODW provided the RAP with a revised Section 460, which eliminated the table and simplified the operator attendance requirements. At the request of Workgroup 2 members, comments were not taken on the revised Section 460 during the meeting, but instead will be addressed during the next Workgroup 2 meeting/conference call. ODW will initiate another conference call with Workgroup 2.

Angie emphasized that Workgroup 3 would convene in the next few weeks to discuss Part II, Article IV in reference to cross-connections and backflow prevention. In the meantime, ODW welcomes any comments.

Angie suggested using web conferencing for workgroup sessions and RAP members agreed.

Overview and Discussion of Part III

Susan Douglas of ODW gave a brief overview of Part III of the regulations. All of this section is state regulation, with the exception of the BAT Tables, which are from federal regulations. Susan emphasized that much of the current text is based in the 1974 “Ten States Standards”, which has been updated several times since the Waterworks Regulations were adopted.

Frank asked RAP members to share sections they felt were a priority. The following were raised as priority items:

- Section 640 – specifically the 40 PSI requirement.
- Sections referring to source water capacity.
- Sections 830 and 840 – conducting aquifer tests, what action is taken with data?
- Concern that ERCs have been eliminated – ODW clarified that ERCs are only suitable for estimating residential water demand. In order to correctly estimate water demands from non-residential users such as commercial and industrial areas, ERCs will no longer be used.

Section 640, Subsection C

Members expressed concern with 40 PSI requirement. Many noted that this is a cost and a public relations issue and that some customers interpret “should” as a requirement rather than a recommendation. ODW emphasized that 40 PSI is not a requirement but a goal for a design standard within the context of Part III. Language was changed to reflect “may” in reference to modeling, “at all times” was removed and replaced with "under all conditions", the recommendation for a minimum of 40 PSI was removed, and “local and state building and fire officials” was added for clarity. When testing for consensus, two members displayed twos and all others displayed threes.

Section 640, Subsection B

Members objected to the term “sound engineering” as being unclear. After some discussion, the term “sound engineering practice” was selected as most appropriate.

A correction was made to the project review and permit process by using “design” rather than “report.” Also "or other means" was added for flexibility, and "USBC" replaced "local building codes."

Item 2

Members expressed concern that this section does not take into account reliability and redundancy; in fact, too much storage may create a water quality issue. One RAP member suggested that aquifer storage should count towards effective storage. However this suggestion disagrees with the definition of effective storage that was previously agreed to by the RAP. No changes made.

Consideration in storage design for fire protection and emergency reserves was reiterated.

Section 640, Subsection A

Language was changed to remove “ordinarily,” and add the phrase "such as water withdrawal limitations." A consensus test reflected two twos and all others threes.

Section 640, Subsection D

A query about the 1.8 figure for source capacity calculations was answered by the response that this includes a long-standing safety factor.

Members expressed concern that there is no distinction about where a yield and drawdown test and an aquifer test would apply. Language was changed to differentiate between inside and outside of groundwater management areas. Subsections were rearranged to combine 2 and 3.

Members expressed further concern in reference to “requiring a DEQ withdrawal permit” and knowing when a test is needed. It was added that this is not detailed in Section 845 either. ODW will follow up by combining 2 and 3 and rewording subsection D.

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Section 640, Subsection F

Members stated that they wished to remove the listing of specific part requirements and to change the local storage requirement. When questioned about the "50 residential connections," a RAP member shared that this is from the 10 States Standards and has been a long-standing regulation.

Language was changed to remove the list of parts and "stored or stocked locally" was replaced with "readily available."

The group had all threes in the test for consensus.

Section 640, Subsection G

RAP members challenged language that states NSF as preferred standard stating that it makes it very difficult to use other standards of testing.

Language was changed to "or an approved equivalent" for flexibility.

The group offered all threes in support of this change.

Section 660, Subsections B

Members requested edits for clarity about defining accessibility.

ODW will follow up to make mentions of all-weather access consistent throughout the regulations.

Section 660, Subsection C

Language was changed to remove "outside." This allows for large plants with outages to have options either to provide two feeds or to have onsite generation capability.

Section 660, Subsection D

One member questioned why this subsection was included in the regulations at all. ODW stated that they would follow up with legal counsel to find out whether or not this language is from state code and decide the appropriate language for this subsection.

Section 670, Subsection B

"Waste" was replaced with "residuals."

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Section 680

RAP members expressed confusion and stated that the table from the appendix does not prescribe action for over 10,000 residents. ODW stated that they would clean up the language and verify the numbers in the federal regulations.

Section 700

RAP members requested more clarity about ODW's intent of metering: do they want to know all water withdrawn, used internally for filter backwash, etc. or pumped into distribution system? ODW clarified that the intent is to meter potable water produced for distribution. Language was changed to reflect "source water and finished water" production.

Section 720, Subsection A

Language was changed to "shall comply with USBC including, but not limited to…" As above, members felt an exhaustive list was not needed and that responsibility ultimately falls onto the owner, but that a small list serves as a good reminder.

Section 720, Subsection B

RAP members discussed whether or not the regulations should list specific health and safety standards or simply refer to standards generally. There was concern that items would be left out if an attempt were made to list all such items. Particular attention was paid to chemical compatibility, due to risk.

Language was changed to state, "shall comply with applicable health and safety standards including, but not limited to…" "Separate rooms" was also eliminated. This allows for flexibility and gives the owner the final say in requiring separate rooms.

Section 720, Subsection C

RAP members had specific questions about building requirements based on size (for example, when are toilets required?). ODW emphasized that this was not their responsibility to regulate. The subsection was deleted.

The language was changed to replace "building codes" with "USBC codes." Some language under the authority of the code was struck.

The group tested for consensus for the all of Section 720 and all members displayed three fingers in full agreement.

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Section 725

Members expressed concern that SCADA procedures would become antiquated in the face of new technologies and that there was too much detail in the draft regulations. This section was then modified significantly during the meeting to state goals, rather than describe the processes. The title was changed to "Automated Monitoring and Control Systems."

All members displayed three fingers in full agreement with the changes.

Section 730

Members expressed concern that this section lacked consideration for reliability and redundancy and some questioned why this section was included at all. Many members expressed concern that large systems are not accounted for. ODW emphasized that this language benefits many people and that it should stay, but agreed to revise the language in order to account for exemptions for larger systems.

Language was changed to add a reference to section 505 in part II and the title was changed to "Alternate Power Source."

Section 760

Members found this section to be far too prescriptive. ODW agreed to remove significant portions of this section.

The language was changed to remove subsection B, items 1-4 and "shall provide for." "Treatment shall include labs with" was added. ODW stated they would follow up with any further recommendations for this section.

<u>Wrap-Up and Next Steps</u>

In the interest of time, Frank initiated a wrap-up of the day's discussion. There were no public comments.

John Aulbach of ODW contributed the answer to an earlier question in reference to localities. He stated that "towns, cities, and localities" language is from the Code of Virginia and that section 670, subsection C should be reworked with this in mind. ODW pledged to follow up. Frank reiterated that workgroups two and three would reconvene before the next meeting, that a meeting summary would be posted in the coming days.

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He strongly encouraged members to submit language suggestions through email or NowComment before the next facilitation. This will make for the most effective use of RAP members' time.

RAP members expressed concern that the process would not be long enough to voice all concerns. ODW pledged its commitment to work with members beyond the current end date of October 16 if needed.

Members also requested that snacks be available earlier in the day.

IEN facilitators and ODW staff thanks participants and closed the meeting of the RAP shortly after 3:30 p.m. The next meeting will be held at the English Inn in Charlottesville on October 16th at 9:30 a.m.

RAP Members Present

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
Jamie Bain Hedges, P.E.—Public Utility, Class 1, Fairfax
Jerry Higgins—Virginia AWWA
Eric LaSalle—VA Manufacturers Association
Ignatius Mutoti, P.E.—Virginia Society of Professional Engineers
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.
Janet Rogel—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
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
Tom Fore—Public Utility, Class 2, Town of Amherst
Skip Harper—Virginia Department of Housing and Community Development

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Guests Present

Emory Rodgers—Virginia Department of Housing and Community Development
Rachel Goldberg

ODW Staff Present

John Aulbach
Susan Douglas
Angie McGarvey
Hugh Eggborn
Jim Moore
Robert Payne

IEN Facilitation Team

Frank Dukes
Elizabeth Moore
Sarah Burr

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