

VIRGINIA WATER PROTECTION PERMIT PROGRAM REGULATION AND ASSOCIATED VIRGINIA WATER PROTECTION GENERAL PERMIT REGULATIONS

CITIZEN ADVISORY GROUP

MEETING #6 - NOTES - DRAFT

MEETING WEDNESDAY, OCTOBER 15, 2014 DEQ PIEDMONT REGIONAL OFFICE – TRAINING ROOM

Meeting Attendees

<i>CITIZEN ADVISORY GROUP MEMBERS</i>	<i>INTERESTED PARTIES</i>	<i>SUPPORT STAFF</i>
Steven E. Begg – Virginia Department of Transportation	Tom Broderick – Loudoun Water	Melanie Davenport
Jason P. Ericson – Dominion Resources Services, Inc.	Brad Campbell - AQUA	Mike Murphy
Katie Frazier – Virginia Agribusiness Council	Tracey Harmon – Virginia Department of Transportation	Bill Norris
Karen Johnson – The Nature Conservancy (TNC)	Dan Savage – Chesapeake Bay Foundation (CBF)	Ann Regn
Bob Kerr – Kerr Environmental	Mark Williams – LUCK Companies	Brenda Winn
Greg Prelewicz – Fairfax Water	Joe Wood – Chesapeake Bay Foundation	<i>OTHER DEQ STAFF</i>
Mike Rolband – Virginia Homebuilders Association		Elizabeth Andrews
Peggy Sanner – Chesapeake Bay Foundation (CBF)		Lee Crowell
Beth Silverman Sprenkle – EEE Consulting, Inc.		Steve Hardwick
William T. (Tom) Walker – US Army Corps of Engineers		Bert Parolari

NOTE: Citizen Advisory Group Members NOT in attendance: Nina Butler – Virginia Manufacturers Association/Mission H2O; Skip Stiles – Wetlands Watch

1. Introductory Comments – Overview and Status of Regulatory Process (Melanie Davenport):

Melanie Davenport made the following introductory comments and provided an overview and status report on the regulatory process for the proposed VWP Regulatory revisions. She welcomed the group to the meeting and thanked everyone for attending. She noted that the DEQ staff presence was somewhat diminished this morning – Dave Davis; Sarah Marsala; and Allison Dunaway are all out not feeling well today.

She noted that based on the group’s last meeting where the provisions for surface water withdrawals were discussed that the single consistent message throughout those discussions from the members of the group as well as members of the interested public was a request for some additional time. Following that meeting, DEQ staff sat down and discussed where we were in the process of pulling the surface

water withdrawal provisions into its own part or section and we at the staff level concluded that absolutely no way was presenting this material to the Board at their meeting in December going to be feasible, especially if we have to have another meeting to finish going back through just those proposed revisions. So for planning purposes there will be an additional meeting of the VWP CAG to review and consider the final proposed revisions to the surface water withdrawal provisions. That meeting has been scheduled for Monday, November 3, 2014 at the DEQ Piedmont Regional Office – Training Room.

She noted that she had met with Dave Paylor regarding the status of the efforts of the group and staff to meet the deadlines established by the Governor’s Executive Order and the staff’s determination that we will not be able to carry through the planned process within that timetable. Dave Paylor said that even though we don’t know what the consequences will be for failing to meet the deadline that but he would approve continuing with the current effort understanding that all of the work associated with this effort has to be finished and the final proposal for revisions has to be ready to present to the Board at their March meeting. So this is now our new schedule and revised deadline.

She informed the group that she was unsure whether we would have one additional meeting to go over the final revisions to the regulation or what the remaining schedule will look like – but we will work with the group and try to incorporate their concerns for adequate review and comment time on any final proposed revisions. Once we get through the special meeting on November 3rd and are able to incorporate those revisions as well as the revisions that we will be discussing today that we could schedule another meeting of the group. But we need to keep in mind that the General Assembly Session starts in January and may impact available meeting dates and there will be conflicts associated with the General Assembly being in session.

Comments from the group included:

- A request was made for a complete copy of the final proposed regulation revisions so that the members of the Advisory Group could have an opportunity to review the document and the proposed revisions as a total document. *Staff Response: Unfortunately at this time that is still a moving target. We will be presenting those proposed “final” revisions to the group via Power Point during today’s discussions but unfortunately we do not have a hard copy of that track-change document for distribution to the group at this time.*
- The need to have another meeting after the group has a hard copy of the proposed revisions and has had adequate time to review those proposed revisions so that the group can discuss those changes face-to-face was stressed. *Staff Response: The plan is now to have that additional meeting to do just that but when that meeting will occur is still not known. It was noted that we will need to work the scheduling around the holidays as well as the General Assembly session.*
- It was noted then that the conclusion that we would not be ready for the December meeting of the State Water Control Board was based on both the proposed revisions to the VWP regulations as they relate to wetlands as well as those proposed revisions to surface water withdrawals. *Staff Response: Yes, staff is taking into consideration the entire process for both areas of the regulations.*

Melanie noted that there is an element in this process known as “Executive Review”, which we at the

staff level have no control over. There is a possibility that we may find ourselves in a position where we have expiring General Permits included in this current action, but because of the APA Process, particularly Executive Review if that takes a significant amount of time, we may have consider another course of action. Even though General Permits are regulations, they are exempt from Executive Review. This is an element of this process where we have a little more control. What we have said at the staff level throughout this process is that we did not want to reissue the General Permits in their current condition, because there are things in there that are just not consistent with how we do business or how we want to do business and they are not consistent with how we issue Individual Permits. Our plan all along was to get back into the Base-Regulation and make the changes we want for that and make that make sense and then reflect the changes in the General Permits. The corollary though is that we are not going to let the General Permits expire. So if we are faced with a situation where we can't move on the base-regulation, we are just going to have to reissue the General Permits in the condition they are in today. And then we will need to think about going back into them once we finalize the revisions to the underlying base-regulation. We have not thought through that option yet. The fallback position is that we are not going to let the General Permits expire, they just might be the ideal permits that we are reaching toward as we go through this process.

Again, we don't know what the consequences are going to be once we report to the Governor's Office that we are going to miss the deadline, but we are going to try to appraise them ahead of time what we are doing and the status of our current regulatory development process. Hopefully there won't be any horrible sanctions come January.

Comments from the Group Included the following:

- When is staff planning now to take this proposal to the Board? *Staff Response: At their March meeting. There is no way that we can go past the March meeting – that is an absolute drop-dead date to complete this current process. We have to remember that there are requirements ahead of that date for submittal of the proposed language and associated documentation to address and explain all of the proposed revisions that needs to go to the board well ahead of that meeting. The Board Books have to go out to the board members 3 weeks ahead of the meeting date so that they have time to review the proposal.*
- *Staff Note: If there is a need for a meeting during the General Assembly Session it would likely need to occur on a Friday.*

2. Notes from Previous Meeting (Bill Norris):

Bill Norris noted that he had just distributed the notes from the Special meeting of the VWP Citizen Advisory Group that was held on Monday, October 6th to specifically address surface water withdrawals late on Tuesday, October 14th so in order to provide adequate time for review those notes will be considered at a future meeting of the group. He asked for the group to review them as they were able and to provide any needed edits to him as soon as possible.

A request was made for all of those in attendance at the meeting on October 6th to also receive notification of the November 3rd meeting of the group to address surface water withdrawals. *Staff Response: A notification for the meeting on November 3rd was distributed to the VWP Revisions*

Distribution List that has been developed for this regulatory action. It was noted that all of those in attendance at the meeting on October 6th as well as all of those that had been identified as “interested parties” for those specific revisions were included in the notification that was sent out about the meeting late Tuesday, October 14th.

3. Welcome & Introductions (Bill Norris/Mike Murphy):

Bill Norris welcomed the members of the Advisory Group and members of the Interested Parties to the meeting. He asked everyone to make sure that they signed in on the "Sign-In List" so that we can have a record of those in attendance. He asked for introductions from the group.

Mike Murphy asked for those participating in today’s discussions to be mindful that the meeting is being recorded as an aid for the development of meeting notes and that there have been some instances in past meetings where statements or questions have been hard to hear, so please make sure that you speak up when you are participating in the discussions so that your thoughts can be adequately captured for review and consideration by staff following the meeting.

4. VWP General Permit Term, Coverage, and Administrative Continuance (Brenda Winn):

Brenda Winn provided an overview of the proposed VWP General Permit language and the concepts behind the proposed revisions to the General Permits to address “permit term”; “Coverage” and “Administrative Continuance”. She noted that we are going to be going back and spending a little time reviewing the VWP General Permits and DEQ’s proposed vision on how these are going to work. Her presentation included the following:

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- Each VWP General Permit Regulation currently contains an expiration date for the *regulation and for the authorizations for coverage*
 - Challenging to operate in the current model, options for both public and staff are limited
 - Propose to operate *general permits* more in line with Stormwater Construction Program General Permits and VPDES General Permits
 - Existing Model:
 - regulation contains regulation effective and expiration date
 - GP text in each regulation has no specified effective or expiration date
 - Each paper GP authorization contains a different effective and expiration date
 - Use the Notice of Planned Change or Continuation of Coverage as extension methods
 - No admin continuance provisions included
 - Point of application not considered in regulation
 - Proposed Model:
 - regulation does not expire
 - GP contains specific effective and expiration dates
 - paper cover page is signed and dated
 - Use Statement of Intent to Continue as method to request extension (criteria apply)
 - Admin continuance provisions included
 - Point of application affects options to complete project

- Example of Proposed Model/Proposed Revised General Permit Process:
 - Active VWP General Permit (Year 1 through Year x)
 - Application/Fee received
 - Board reviews application and issues authorization, issues authorization with conditions, or denies application
 - If board issues, permittee commences project
 - Complete project by Year x
 - Will not complete the project by Year x - possibly via construction monitoring or inspection
 - When complete project by Year x:
 - Submit notice of completion
 - Board does/does not terminate
 - When have an existing authorization, but will not complete project by Year x:
 - Option 1: Extension of authorization
 - Eligible if have commenced authorized activities in surface waters, and by circumstance, compensation (if required)
 - Submit Notice of Intent to Continue within 60 days of GP expiration (*not an application*); minimal project/permittee info
 - No fee required
 - Board letter within 15 days, have one year to complete (Year x +1) under existing authorization conditions (possible caveat for new construction monitoring)
 - Complete project
 - Submit notice of completion / Terminate authorization
 - Will not complete project
 - Submit JPA or alternate + fee for new authorization within 60 days, or for IP [180] days
 - Board issues permit/authorization, issues permit/authorization with conditions, denies application
 - When have an existing authorization, but will not complete project by Year x:
 - Option 2: New GP Authorization
 - Submit JPA or approved alternative and fee within 60 days of GP expiration for new authorization
 - Board issues, issues with conditions, denies
 - GP authorization valid until Year x, regardless of when in GP cycle the authorization is granted
 - When have an existing authorization, but will not complete project by Year x:
 - Option 3: Individual Permit
 - Submit JPA or approved alternative and fee for new permit within [180] days of GP expiration
 - Board issues, issues with conditions, denies
 - Permit valid for up to 15 years from date of issuance

She noted the following:

- Our General Permits have this duel or dueling expiration date issue that has been in them forever. This is a challenging model to operate under and the options for both the public and staff are limited.
- We are proposing a different model which is more in line with how the other water programs operate their General Permits, particularly the Stormwater Construction General Permit, since a large percentage of our General Permits are related to construction.
- The current VWP Regulation has an expiration date in the regulation which is a unique and archaic concept. The proposed model would not have a regulation expiration date.
- The regulation is provisions and then the actual permit is imbedded in the regulation. The actual permit that we are referring to is the General Permit. To keep them separate, the regulation includes the actual General Permit.
- The General Permit text in the regulation has no specific authorization or effective or expiration date – it is blank – the proposal is to include the term of General Permit in the text that is imbedded in the regulation.
- One of the questions that we will try to address today is how long to make that General Permit Term – currently we are looking at a proposal for a 10 year permit term. But we do have some flexibility on the length of the permit term.
- The current GP authorization paperwork contains different effective and expiration dates – the proposal is to have a signed cover sheet that is signed and dated, so that a single date is contained in the paperwork.
- We are planning on using a “Statement of Interest to Continue” as the method to request an extension instead of the current “Notice of Planned Change” or “Continuation of Coverage” extension methods. This is not an application, it is a request for continuation.
- Currently our General Permit regulations and the main regulation do not have any administrative continuance provisions – the proposal is to provide those provisions in the General Permit regulation.
- In the current process the point of application is not considered in the regulation – in the new model that will affect the options available for completing projects. Right now it doesn’t matter when in the permit cycle you apply for a permit but that will change and you will have to look at where you are in 10 year time frame and that may affect what options you have available to use. This is picking up the concept that is used by the Corps in their Nationwide Permits.
- An example of the proposed new concept was reviewed.
- The concept of “extension of authorization” was discussed. This is for those folks who have an existing authorization but who are not going to be able complete the work by Year X (the end of the permit term). Staff is proposing a new process called “extension of authorization” for inclusion in the VWP regulation – not really a new concept but the proposed criteria might be. You are eligible for an “extension of authorization” if you have commenced your authorized activities in surface waters and by circumstance compensation – because you have to start your

compensation within a certain period of time – if it is required at all from your points of impacts.

- The “notice of intent” was discussed. The permittee would submit the “notice of intent” to continue within 60 days of the GP expiration. Again this is not an application it is a letter of request. There would be minimal project and permittee information required in the letter. It is a streamlined request letter. There is no application fee because it is not an application. DEQ would return a letter to the permittee within 15 days stating that you have one year to finish the project and that the existing authorization conditions would apply. There is a possible caveat related to construction monitoring because there will be some folks where that requirement might not be included in their current authorization – at a minimum we may require that the new construction monitoring provisions be followed during the extension. Other than that – the authorization that you currently have at the time of the request for extension is what you would be following during that year.
- There is also an administrative extension option for Individual Permits when the IP is issued for a 15 year term. But that is under the circumstance where we at the state can’t do the work that is necessary to get you your permit – it is not because of something on the permittee’s side that is going on. This type of continuance provision is existing in other regulations now.

Group Discussions included the following:

- **RE: Permit Term:** Is the proposed 10 year permit term measured from the date of issuance of the General Permit? *Staff Response: This is a General Permit so that when it becomes effective that is Day 1 of Year 1 of the term of the General Permit.* It was noted that sounds good but that is not what was alluded to earlier when it was suggested that it would be following the VSMP model. Those expire every 5 years, period. *Staff Response: We are not married to a 10 Year Permit Term – that is just a proposal to consider.* The problem with the other permits right now is that if you get a permit 2 months before the expiration – you have to get another permit. Is it going to be 5 years or 10 years from the date you get the permit? *Staff Response: No, the permit exists for a set 10-year period. It has to exist for 15 years or less by law.*
- **RE: Extension of Authorization/”By Circumstance”:** What does “by circumstance” mean? *Staff Response: Your impacts in surface water are tied to your required compensation that have to start within a certain amount of time from those impacts occurring. They are connected and if compensation is required then both should be taking place at or near the same time.*
- **RE: Extension of Authorization”:** If you are granted a 1-Year extension – it would be 1-Year from the original expiration date of the General Permit. *Staff Response: Yes, that is the year X that you are bumping up against.* Will that be written into the regulation? There won’t be any issue with having an expired permit? *Staff Response: Yes, that is correct (that is the language that staff has not yet hammered out). The assumption is that the term of the GP is not the maxed out 15 years as allowed by law – it is something less.*
- **RE: Permit Terms:** So if you go with a 10 year permit term, then all the permits would expire on the same date. *Staff Response: That is correct.* There was a pretty negative reaction to this

approach. This would be mimicking what the Nationwide Permits do every 5 years. Back in 2001 when the original regulatory language was written, DEQ staff and the Industry folks did not want to do it that way because of the overwhelming amount of work every 5 years. Now you are proposing to do this every 10 years. That is an overwhelming amount of work for staff to take on all at one time. The problem comes when you can't get financing because a permit is going to expire and you can't get the new permit in place in a timely manner. It was suggested that no matter where you were in the overall permit term that a project normally needs a 5-year window in which to get completed. *Staff Response: There is no way legally that we can issue permit coverage under a General Permit created by a regulation that goes beyond the effective date of the regulation.* There doesn't appear that we have any big problems with the way the system is currently working so why change it – the system is working – why break it? *Staff Response: Because it is not legal. Fundamentally there is a real flaw in the way the system is currently being handled.* With a 10-Year term, if you coming in at Year 9 ½ and DEQ knows the program is expiring – it is even money as to whether any agency is going to issue the new General Permits prior to the expiration dates of the ones that are about to expire. One would hope that those permits are issued in a timely manner. So, 2-things, would you be able to continue coverage under the new General Permit if the terms and conditions either apply to you or that the conditions are not any different than the existing ones or you be able to just roll-over the permit and continue to use it – or could you? *Staff Response: You would have to apply for reissuance under the new General Permit – there could be a truncated process for reissuance.* You could maybe use your old application if nothing has changed.

- **RE: Permit Terms – 5-Years:** If you could give people a reasonable solution and 5-years has always been a number that people are willing to live with. If you could say that if you are not going to be able to complete the project within the extra one year – if you could make that an extra 4-years up to 5 total. Folks don't need 10 years on a General Permit – they really need 3 to 5 years normally – if it is going to take longer than that they would be going to an Individual Permit. Could you just give the permittee 5 years in total no matter where they are in the permit term? So if someone gets a permit 6-months before the end of the program that they could get a 4 ½ year extension. There have been instances where regulators would not issue the permits near the end of the permit term. They would just sit on the permit application. *Staff Response: That is not an acceptable practice. The applicant has the option to wait to apply under the new permit.* They can't wait due if the bank needs a letter to be able to provide financing. *Staff Response: Every single permit that DEQ issues has a statutory maximum length of coverage allowed.*
- **RE: Request for Continuance – More than 1 Year to complete:** Instead of the proposed 1 year extension time to complete a project could more time be provided through the continuance request? *Staff Response: What does the Corps do?* The Corps uses 1-year.
- **RE: Continuance – Could there be a graduated time allowance?** Could there be a graduated time allowance provided? Is there a way to look at extending that proposed 1 year extension? Consideration needs to be given to allowing at least 4 years or maybe a maximum of /or a total

of 5 years to complete a project. What you have now is something that a bunch of lawyers at DEQ approved once and maybe they are gone now but if the system is working now why break it? You asked the stakeholders what they thought needed to be changed – they didn't ask for this change. So don't do it. The whole process is taking so long because you keep making changes. DEQ started this process saying they were going to make a few minor changes and now you are making big huge changes. *Staff Response: We can't go to the Water Board and suggest that they adopt a General Permit regulation that we don't think is consistent with current underlying statutory authority.*

- **RE: Continuance – 5-Years:** A proposal was made that a total of 5 years would be allowed for the permit coverage – it would be based on the point of authorization – and the Delta between the length of time left in the permit term and 5 years, so that the maximum would be 5 years. You would not be asking for 5 plus 1 years. So if you applied in Year 9 of a 10-Year permit term, the Delta would be 4. It is all referenced to your year of authorization. Conceptually there would need to be a phrase in the regulation that says that this cannot be extended for more than 5 years. With a 10-Year permit term, if someone applies and gets authorization in Year 9 the proposal would be for that permit to last for a total of 5 years and would not expire with the permit term expiration. Folks who get a permit, no matter where in the 10-year permit term would like to have a permit term for their permit to be 5 years. *Staff Response: The reason that we went with a proposal of 10-years is that right now we have 7-year terms in 3 of the General Permits that are used most frequently. We have not had 5-years since the first round of GPs. We also need to realize that this GP has to be reissued. If we set 5 years then we will have to go through this whole regulatory process very frequently to meet the statutory and regulatory time lines. That is why we shied away from using 5 years as the term of the GP and are suggesting 10.*
- **RE: Term of GP:** If by definition the General Permit has to be reissued then it was suggested that the preference would be for a 10-year term, not a 5-year term. Could we have a GP that is good for 10 years where authorization is provided for a period of 5 years? So that if you come in for a permit in Year 9 that you would still get your authorization for 5 years. *Staff Response: That is essentially the system in place now that is not working very well.* The stakeholders noted that in their opinion the current system was working – don't change it. From the industry's perspective the process of knowing how long your permit is good for at any point of time in the process works very well. *Staff Response: Let's back up – We have been extending authorizations under a GP past the date that the GP expires. If that is the case then where is the permit in that scenario? Under what permits are your clients actually operating? That permit no longer exists if it is past its expiration date. That is the challenge of this whole process. How do you continue activities under a permit that no longer exists?*
- **RE: Term of GP:** Maybe the way to address the term of the GP is to make the term 15 years and only issue the permit with an effective date of 5-years. That gives you time after 5 years to go reissue it again for the 15 year total term. So every 5 years you would reissue the GP for another 15 year term. So that you would always have a minimum life of 5-years and you would

have a continuance allowed for up to a max of 5 years. So in Year 4 ½ you could get a permit for 5 Years. The permit would be reopened every 5 years for review and updating. *Staff Response: The regulation, because the permit lives inside of it has to be reissued. The permit itself has the expiration date. The current regulation has an expiration date but as noted earlier that is counter to existing practice and every other regulation and is being proposed to be taken out of the regulation through these revisions. The base regulation does not go away – it is subject to a periodic review every 4 years but there is no requirement at that time to make changes.*

- **RE: Administrative Continuance:** Could DEQ use the “administrative continuance” provision to address this time and expiration of permit authorization concern? Could the regulation address continuance through this mechanism in the last 4 years of the regulation? Maybe this could get around the concept of the regulation doesn’t exist and you have a permit that is worthless idea. Could “administrative continuance” be expanded to cover the scenario of extending permit authorization beyond that identified for DEQ? *Staff Response: There are some “operating rules” that provide some controlling language that is contained in 62.1-44.15 (5a):*

(5a) All certificates (*permit*) issued by the Board under this chapter shall have fixed terms. The term of a Virginia Pollution Discharge Elimination System permit shall not exceed five years. **The term of a Virginia Water Protection Permit shall be based upon the projected duration of the project, the length of any required monitoring, or other project operations or permit conditions; however, the term shall not exceed 15 years.** The term of a Virginia Pollution Abatement permit shall not exceed 10 years, except that the term of a Virginia Pollution Abatement permit for confined animal feeding operations shall be 10 years. The Department of Environmental Quality shall inspect all facilities for which a Virginia Pollution Abatement permit has been issued to ensure compliance with statutory, regulatory, and permit requirements. Department personnel performing inspections of confined animal feeding operations shall be certified under the voluntary nutrient management training and certification program established in § [10.1-104.2](#). **The term of a certificate (*permit*) issued by the Board shall not be extended by modification beyond the maximum duration and the certificate (*permit*) shall expire at the end of the term unless an application for a new permit has been timely filed as required by the regulations of the Board and the Board is unable, through no fault of the permittee, to issue a new permit before the expiration date of the previous permit.**

- *Staff Note: Just suppose that DEQ issues the General Permit for 15 years. Even though we adopt it as a regulation let’s call it what it is – a General Permit. It is a permit that has general applicability for a period of 15 years. That permit dies after 15 years. We either have to issue Individual Permits for all of those projects or have promulgated a new General Permit by that expiration date. That is the boundary that we have. Now if we choose to issue that General Permit for a scope of less than 15 years it still has that end of life date. So maybe that argues for issuing the permit for 15 years which is the maximum we can by law.*
- **RE: Permit Term - Amendment:** If the permit is issued for a 15 year term is there anything that prohibits DEQ from amending or updating the permit at the 10-Year mark, even though the permit doesn’t expire until year 15? *Staff Response: So what you are saying is that we would*

issue a permit for a 15 year term general permit and then in Year 10 we move to reissue the permit. Yes, so if someone applies in Year 9 of that 10 Year cycle, you would still have the ability to issue that 5 year permit up to the max of 15. But that doesn't mean you are letting the regulation get 15 years old before you are updating it. You could use that last 5 years under the "intent to continue" concept. Staff Response: What is interesting with this approach is you would have to think through which underlying conditions would apply to which project and which permit for which project – but you might be able to do it. Would you have to have 2 sets of permits at that point? New Permits and Old Permits? Staff Response: Likely, but that might not be as problematic as it would seem because you would have the conditions clearly articulated in whichever permit is applicable. Why would there be a need for two different permits? Couldn't you issue a permit that would be valid for 10 years and allow for up to a 5 year continuation, so if you get a permit in Year 9 you could get a letter of continuance for 4 more years? Then you would still be within that 15 year window. Staff Response: But if you follow what has just been suggested does that in fact mean that applicants would have to choose under which General Permit that want to be covered under or filing an application under. No, they could only file under the regulation/general permit that was valid at the time of application. But after Year 11, if you change things in Year 10, the old permit is gone so you would have no choose but to apply under the new permit. You could condition your permit that this permit expires on Year 15 but there won't be any new authorizations issued after Year 10. So there would be a 15 year permit term, but no new authorizations would be issued after Year 10 and then there would be a reopener clause at Year Y so that you would have a new set of permits coming up. At Year 10 you would have a new 15 Year General Permit under which new authorizations could be issued. So you wouldn't have to wait until Year 15 to reissue the general permit. This way everyone can always get a 5 Year permit. At the end of Year 10 you could get a permit that would have a 5 year life. What would be the difference if you used a 15 year expiration term but used a 5 year maximum permit term for the general permits instead of a 10 year term? Staff Response: Are you suggested that no new authorizations would be offered after Year 5? This is just trying to get back to the idea that a 5 year term seems to be working now so why change it. A 15 year permit term with 5 years for the authorization period would seem to be workable. For the Homebuilders and Commercial Builders we have historically supported the concept of a 5 Year Permit/Authorization. The idea was that for the smaller projects that were going to use a General Permit that 5 years was a reasonable amount of time and that was a compromise with Environmental Groups back in the beginning of the program. Bigger projects that needed more time would get an Individual Permit. That historically has been the position of these organizations – we will take 10 or 15 but 5 years is workable and reasonable. The idea is that the permit would be for 15 years but the authorization given to a permittee would be for 5 years. A concern was raised that it might be difficult to tell someone that he can't have a permit when the permit is still valid and doesn't expire until Year 15 – that has been the case with some of the Corps permits. Staff Response: There is a fundamental challenge to what the industry needs and reality of getting financing and zoning approvals but there is just this unavoidable conflict in that the General Permit exists for just a defined term. It

is not like a project specific permit where you can tailor your start date to the reality of the business needs of the project. Not sure how you really reconcile it. It is a fact of what it is. The reality is that we need to figure out a way to address these incomplete projects by the end of the term of the general permit. The 5 year period is already problematic – there are already a number of projects that are not getting completed within that time frame.

ACTION ITEM: Staff will take into consideration the comments of the Advisory Group regarding the term of the General Permit and the term of the authorizations and see if any revised proposed language can be developed.

- **RE: Extension of Permit Term:** It was noted that the idea of extending the GP for 15 years was not a good concept. It doesn't give DEQ sufficient flexibility to assess things that may come up that might make the program better. Recognize that the industry has some issues about wanting to be able to plan. Since there has not been a big push from the industry side for a big change, any changes should be the minimum needed to conform to state law. The request was made that DEQ tinker with the language and make it consistent with state law, but not to materially change the expectations or structures that are currently working.

5. BREAK – 10:45 – 11:05:

6. VWP General Permit Term, Coverage, and Administrative Continuance (Brenda Winn) - Continued:

Brenda Winn continued the overview of the proposed VWP General Permit language and the concepts behind the proposed revisions to the General Permits to address “permit term”; “Coverage” and “Administrative Continuance”. Her presentation included the following:

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- When applications received late in GP cycle:
 - Applicant options:
 - Apply authorization, finish by expiration of GP
 - Apply authorization, commence but don't finish: request extension or apply for new authorization
 - Wait until effective date of new GP to apply
 - Apply for IP
 - Board options:
 - Deny request, require application for new authorization
 - Require IP instead
 - Issue authorization, issue authorization w/ conditions, deny application for new authorization
 - Proposed revisions:
 1. Delete expiration date of general permit regulation, replace with expiration date in general permit (9VAC25-xxx-100 Part I – cover page)
 - 9VAC25-xxx-20 C. This VWP general permit shall become effective on August

- 2, 2016, and shall expire on August 1, xxxx.
 - 9VAC25-xxx-100. VWP general permit.
 - Any applicant whose application has been accepted by the board shall be subject to the following requirements:
 - VWP General Permit No. WPx
 - Effective date: August 2, 2016
 - Expiration date: August 1, xxxx
 - Authorization Notes(s)...
 - 2. Add Administrative Continuance provisions:
 - If the permittee has submitted a timely application, which is a complete application and, through no fault of the permittee, board does not issue a new permit/authorization on or before the expiration date of the previous general permit authorization, admin continuance of existing authorization until board does issue
 - Existing authorizations administratively continued remain fully effective and enforceable
 - 3. Revise or add provisions to describe earlier slides to regulations and GPs
 - 4. Add info requirements for a Notice of Intent to Continue to regulations
 - 5. Delete from regulations and GPs any references to NOPC or COC as methods for implementing new model
 - 6. Review and revise provisions for Duty to Comply, Duty to Re-apply, Duty to Cease or confine activity, if necessary to complement other revisions
 - 7. Add or revise related provisions in 9VAC25-210
-

She noted that following:

- She discussed the options when applications are received late in the term of the General Permit.
- She discussed the expiration date proposal to remove the expiration date of the regulation.
- The current GPs expire on August 1, 2016.
- She discussed the administrative continuance provisions.
- She discussed the other proposed revisions related to this area of the regulation related to the General Permit.

Group Discussions included the following:

- **RE: NOPC and COC:** Do these apply to the whole regulation? *Staff Response: These are proposed to be deleted from only the sections of the regulations as they apply to the process of implementing the new model not throughout the balance of the regulations – only as they apply to the new model of implementing the General Permits as proposed.*
- It was suggested that we might need to go back through some of the slides and discussions prior to the break to make sure that all of the proposed revisions were addressed. *Staff Response: Do you want to go back through them all and see if we have consensus on any of the proposals? It was suggested that it may be too early to ask for consensus – we need to see these proposals in text form before making any decisions related to consensus.*

- It was suggested that we are not at a consensus point yet. There is a lot of conversation taking place right now. There is still a feeling that the system is not broken so why make any changes. We need to have some more back and forth discussions to make sure that we need to make these proposed changes. We don't feel that the changes are necessary. It is really important to understand that at this stage of the game that we have been operating under a certain way of doing business – the potential ramifications of these proposed revisions are very big. Regardless of the term (5/10/15 years) at some point we are going to have to address this – the last year prior to your permit termination is a tough time. DEQ will end up with a whole bunch of permits that will all expire at the same time – that will be a significant work load for DEQ and the permittees to handle in a very short span of time.
- It was suggested that DEQ needs to go back through the thought process and the legal process and make sure that these changes are necessary. *Staff Response: We could go to the AGs Office and seek an opinion that coverage under this existing permit that went past the expiration date that none if it is valid coverage but is that really what you want to have happen – is this really where we want to go? If there is an opportunity to apply for coverage a year before the permit expires and you know that your permit has been reissued a year before it expires that is seamless – is it not? No, because you don't know if the agency is going to reissue the permit. They might say that they do not approve that project anymore. Wetland permits are discretionary in nature and DEQ staff does not have to approve impacts that are proposed.*
- The process under which permits are approved and conditions related to impacts are approved was discussed. Also the possibility of changes to the conditions under which those impacts were approved when shifting to a new permit and new permit term were discussed. The lack of sufficient guarantees that those approved conditions would not change between permits and permit terms was discussed. There needs to be a guarantee that the conditions under which a permit was approved will not change when the permit is reissued. There needs to be an iron-clad guarantee – we just don't trust you based on what has happened historically. *Staff Response: Could this be addressed through a “guarantee” that if you have a project that is in process it not fair for DEQ to change the obligations and requirements mid-stream. As long as you get coverage under today's requirements – you know what they are and you have some period time to rely on continuing coverage for your project under those conditions – as long as the project stays the same.*
- The need for assurances that a permit is going to be valid through the lengthy process of securing finances and approvals at the local level was discussed (3 to 5 year process) – Have asked for a 5-Year period. *Staff Response: It appears that the concern is that someone may have applied for coverage under the GP in 2017/2018 and based on the facts of the application we determine that the project is appropriate for coverage under one of these GPs and what you are concerned about is with that GP being reissued that you would need to go through that review again. And you might not get approved the second time around or the conditions might change with the new approval. That concept doesn't seem fair to the applicant.*

- It was noted that the biggest problem related to the permits and approvals and permit terms is the financing. There has to be a written assurance that the permit is going to be valid – the tough ones are the ones that are near the end of the permit term. How are we going to be able to convince a lender that we are going to get a new permit during the new permit cycle? How do we guarantee that there will be no changes in the approval conditions? *Staff Response: It appears that the concern is related to the assumptions related to reissuance. The whole reissuance piece is the area of concern.*
- Concerns related to reissuance were discussed. There is a history in the process of conditions for approval changing between permit terms. *Staff Response: The section of the regulations dealing with reissuance needs to look at specifying how to address reissuance with the same conditions – when there are no proposed changes to a project. We understand the need to relay on a state action where there is a reissuance where the conditions might change would be problematic. There may be some language in the “transition” section of the regulation that might address this concern. There might be some clarification needed.*

ACTION ITEM: Staff will look at the language related to reissuance under the same conditions and will take into consideration the concerns raised by the Advisory Group for possibly additional revisions to the proposed regulatory text.

- It was suggested that based on the discussions related to reissuance and a number of other issues that it was clear that additional time and additional meetings of the Advisory Group may be needed to clarify this language and to seek a possible consensus.
- The question was raised as to when the Advisory Group would be able to see the proposed text for the entire regulation and the general permits? The request was made to receive this as soon as possible so that we can see where we are in the process. *Staff Response: We are constrained by having an additional meeting on November 3rd to take another look at the surface water withdrawal pieces – so if you want to see that part included it might take a little longer.* The suggestion was made that the first piece that is sent to the group could be done excluding the surface water withdrawal piece as to not delay the process further.
- It was noted that during the initial meetings of the group that the group had prioritized the list of concepts for possible revision – the weird thing is that the least desirable of those choices, revision of the surface water withdrawals, is getting the most attention and now additional new issues that weren't on that original list of concerns are being raised. *Staff Response: We certainly value the input of the advisory group and your opinions – that is why form an advisory group for the regulatory process – but we as staff are allowed to say that from a regulatory point of view that these are things that we need in the regulation, so we are not constrained to just offering things that the advisory group members are interested in – we are allowed to address our own issues too.* It was suggested that from a statistical standpoint we are spending too much effort on something that the Advisory Group has noted that they do not want to or see the need to change. *Staff Response: DEQ is trying to be responsive to the consternation being raised.*

- A concern was noted that the group does not have anything to read yet as to what the proposed revisions look like in one document. From a planning standpoint, the group felt that at least two additional meetings are needed to be able to consider all of the revisions that are being proposed – after staff provides the document. *Staff Response: The plan is to provide the group with a “track-changes” version of the proposed revisions to the regulation for their review and consideration.* The request was made to provide a clean “tack-change” version that would only have a single set of track-changes instead of looking like it came from multiple reviewers – one single set of changes should be identified – those that are being proposed for consideration only one color for the changes – not multiple colors as has been presented in the partial documents that have been received to date. The request was made for a version to be posted today and distributed to the group as soon as possible and that a couple of weeks be given for the group to digest and review and consider the totality of the proposed changes. *Staff Response: Everything except the proposed changes related to surface water withdrawals will be posted and provided to the group as soon as possible.*

Staff Note: We are willing to take the time to work through this but the concern is that we are going to be running into holidays and the General Assembly Session very soon – with that caveat, we will keep working on the documents as long as we need to but we can’t have people saying that they cannot meet after December 10th, because we are on vacation or whatever, or we can’t meet after January 15th because of the General Assembly. We are just going to have to be flexible.

- **RE: Proposed revisions related to surface water withdrawals:** A question was raised as to why the revisions to the surface water withdrawal requirements were still on the table? Who wants these revisions? Can staff live with what we already have? It was noted that in the initial meetings this area was considered a low priority. *Staff Response: There are some concerns in-house related to the language related to surface water withdrawals. Staff feels that there is a need for more clarity so that we can do our job better.* A suggestion was made that with the current time constraints that maybe DEQ could just drop these proposals and move ahead. *Staff Response: Maybe.* It was noted that for some that had sat through the discussions on surface water withdrawals that it is apparent that DEQ has some concerns with the mechanism and processes associated with the existing program and wanted to make some modifications. But let’s take the time to do it right or not do it at all. It is evident that DEQ would like to tweak that part of the regulations to bring it in line with their current management and administration of that portion of the regulations.
- **RE: Meeting Schedule:** It was suggested that additional meetings needed to be scheduled sooner rather than later. *Staff Response: Staff will check available dates for mid- to late-November for the next meeting of the Advisory Group.*

ACTION ITEM: Staff will check available dates for a meeting of the Advisory Group for mid- to late-November.

7. Review of Track-Change Revisions to 9VAC25-210 – Not including surface water withdrawal topics (Brenda Winn):

Brenda Winn introduced the proposed revisions to 9VAC25-210. She noted that the track-change document that would be reviewed today did not include any of the surface water withdrawal topics. She noted the following:

- Staff has reviewed the homework assignments that have been returned and taken into consideration the comments that have been provided regarding the proposed language. Staff called the ball on whether the comment or suggestion was pretty straight forward and reasonable and in those cases incorporated those recommendations into the track-change document. The color-coding in Gray represented that effort. The yellow highlighting is issues that staff felt were a little past that classification and maybe needed some more discussion based on either the comments from the homework assignments or at meetings of the Advisory Group or that staff brought up.
- What is being presented is one document 9VAC25-210 without the surface water withdrawal revision proposals in track-change format. There is a place-holder for inclusion of those provisions once those decisions have been made.
- The plan for today is to focus on those items that are marked in highlight because those represent something different then what the group saw in the homework assignments exercises.

Group Discussions included the following:

- Are the gray and yellow highlighted areas the big changes that the Advisory Group has not seem? *Staff Response: Yes or there may be changes that you have seen where there is some disagreement over what that change should be. There may be some differing opinion as to what the change should be based on the comments received.*
- On the homework assignments – have they been received from most of the members of the Advisory Group? *Staff Response: We have gotten a number of them back but will need to check to see who has not returned the assignments.*

Staff Note: Homework Assignment submittals/responses and/or comments related to proposed revisions have been received to date from: Steven Begg; Nina-Mary Butler; Jason Ericson; Katie Frazier; Bob Kerr; Mike Rolband; Peggy Sanner; Beth Sprinkle; and Andrea Wortzel.

- The suggestion was made that the presentation today should start off focused on the highlighted items and if there is a need to address other areas then we can also include them in the discussions.
- A request was made for the Advisory Group to get a copy of the track-change version of the proposed revisions. *Staff Response: Whether or not the group wants the highlights to remain in the copy you receive is up to the group.* It was suggested that it might be good to include the highlights in the version that is distributed to the group. It was suggested that the version presented today could be posted on the webpage in addition to a cleaner version for review.

Staff Response: Staff asked that if the group was going to resubmit anything or any additional proposed edits to the track-change document that they need to make it clear what they are changing – it could be handled through the "comment" feature of the review function of the document. The recommendation was made that all of the changes be included in one single document and that color coded highlights would be used to designate the changes that have been made to date and any changes that are made as a result of today's discussions. Staff Response: The preference is to use one document with possible multiple color coding options as suggested. Green highlights will be used to designate changes that are proposed during today's discussions. A request was made for a hard copy of the presentation today. Staff Response: Given the size of the document (currently 105 pages), staff decided not to provide hard copies for today's meeting but has planned on showing the proposed changes on the screen during the discussions. Following this meeting a copy of the track-change document will be posted on the webpage and a copy will also be distributed to the VWP CAG Distribution List as soon as possible.

Her presentation included the following proposed revisions to the Definitions Section 9VAC25-210-10:

“Administrative withdrawal” means a decision by the board permanently discontinuing the review or processing of a VWP permit application or request to modify a VWP permit.

- *A recommendation had been made to tweak the language "a decision by" the board...*
- *It was noted that this wording change will be seen again in the wording change for the sister definition for "suspension".*

"Compensation" or "compensatory mitigation" means actions taken that provide some form of substitute aquatic resource for the impacted aquatic resource. [vdot proposal: "Compensation" or "compensatory mitigation" means actions taken that offsets loss of functions or values for the impacted aquatic resource. Compensation may include [?.but is not limited to.] out-of-kind strategies with water quality benefits, habitat value or other, desirable characteristics.] [does this define out-of-kind more so than all comp?]

- *The first part of the definition (non-yellow) is what was proposed by staff. The highlighted text is the alternative language that has been proposed by VDOT.*
- *What was the original proposal? Staff Response: The original proposal was to go with the existing language – so no track-changes. We can either keep the existing language or accept the recommended changes or a combination of the two.*
- *It was noted that on first review that the recommendation appears to be a positive one. The concern however would be that whether by identifying "out-of-kind" strategies that it might appear to limit it. The suggested second sentence gives rise to some questions, but it appears to be moving in the right direction. Staff Response: What we heard was that the second sentence might limiting. It could be interpreted to say that "compensation may only include out-of-kind*

strategies. The wording was being proposed as a way to capture other possible strategies not to limit the options.

- It was noted that the second sentence of the recommended language is almost like a definition of "out-of-kind" compensation. Why then aren't we saying that compensation includes out-of-kind; in-kind etc? Why are we singling out just "out-of-kind" to note specifically? It doesn't appear to be inclusion enough. The intent of the proposed revision was to make it as inclusive as we could to allow for other unique forms of compensation strategies to be included. The original definition was focusing solely on aquatic resources. *Staff Response: Should we just delete the second sentence in the proposed revision?*
- It was suggested that the note that has been included should be retained in the version that is distributed to the group as a reminder of what the concerns were during this discussion to help in the review of the proposed changes.
- A recommendation was made that the wording should be "including, but not limited to..."

"Conversion" means those impacts to surface waters that permanently change an existing wetland type to a different wetland type.

- *The highlighted text is a recommended wordsmithing of the proposed definition. The word "permanently" was added from the original proposal.*

"Cross-sectional ~~sketch drawing~~" means a scaled graph or plot that represents the plane made by cutting across an object at right angles to its length ~~of ground elevation across a waterbody or a portion of it, usually along a line perpendicular to the waterbody or direction of flow.~~ For purposes of this regulation, objects may include, but are not limited to, a surface waterbody or a portion of it, a man-made channel, an above-ground structure, a below-ground structure, a geographical feature, or the ground surface itself.

- *A comment was received related to the proposed addition of language to the existing definition of "cross-sectional drawing" to put it back the way the definition originally read.*
- It was noted that the language that had been added actually contradicted the language in the second sentence of the definition.

"Discharge" means, when used without qualification, a discharge of a pollutant, or any addition of any pollutant or combination of pollutants, to ~~state waters or waters of the contiguous zone or ocean other than a discharge from a vessel or other floating craft when being used as a means of transportation.~~

- *Staff looked at this definition internally and discussed it with our legal folks and couldn't figure out why all of the extra language was included in the definition, given that we already define "state waters". The thought that this additional language might confuse matters and appears to be archaic so we are proposing that it be modified through the deletion of the additional language that appears after "state waters".*

"Dredged material" means material that is excavated or dredged from beneath the surface of the waterswater.

"Dredging" means a form of excavation in which material is removed or relocated from beneath the surface of the waterswater.

- *This original pair of definitions were originally proposed for modification but it was suggested that making the proposed changes we are excluding this to be applicable to wetlands which was not the intent, so the proposal now is to put the definitions back to the way they were originally.*

"Impairment" means the damage, loss or degradation of the functions and values of state waters. [suggestion made that if the phrase isn't problematic, don't change it - global]

- *This proposed change ties into a comment that we have heard from several folks regarding the clause "functions and values" concept. The comment has been that this phrase is really not applicable. It is scattered out throughout this regulation and unless there is a very good specific reason you want to use that phrase – it's not reflected in our Code- so we should probable be looking to get rid of that language wherever it pops up in the regulation. The wording of the compensation definition also uses this wording – so if the decision is made to delete this terminology then it also have to be made there as well as the other places it occurs in the regulation.*
- *A question was raised as to whether this terminology has caused any confusion to date? Staff Response: Not that we are aware – we are looking at this possible revision because this is not reflected in the Code. The Code speaks to "acreage and functions" rather than "functions and values". It was recommended that if the current language is not causing any troubles then don't change it. If the phrase is not problematic then don't change it. It was noted that this would be in line with the original charge of not trying to fix or change something that is working and is not broken. Staff Response: Note that are a number of places throughout the current track-changes document where this deletion has been indicated – will need to do a global search to undo this recommended deletion.*

"Legal name" means the full legal name of an individual, business, or other organization. For an individual, legal name means the first name, middle initial, last name, and suffix. For a [?an entity authorized to do business in Virginia business or other organization], the legal name means the exact name set forth in the entity's articles of incorporation, organization or trust, or formation agreement, as applicable.

- *The original proposal was to insert the word "Virginia" in front of "business or other organization".*

- A question was raised over making this change and the impact on "non-Virginia" businesses. It was noted that you can do business in Virginia but be permitted in another state.
- It was suggested that the additional phrase "authorized to do business in Virginia" needs to be added. The terms "business or other organization" also need the revised wording for the second sentence was recommended to be: "For an entity authorized to do business in Virginia, the legal name means..."

"Non-tidal wetland" means those wetlands other than tidal wetlands that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions, as defined by the U.S. Environmental Protection Agency pursuant to § 404 of the federal Clean Water Act in 33 CFR 328.3(b). Wetlands generally include swamps, marshes, bogs, and similar areas.

- *A suggestion has been made to add in the last sentence – "Wetlands generally include swamps, marshes, bogs, and similar areas". This wording comes straight from the Corps regulation.*

"Ordinary high water mark" means a line on the shore established by the fluctuations of water and indicated by physical characteristics such as clear, natural line impressed on the bank; shelving; changes in the character of soil; ~~destruction of [terrestrial] vegetation;~~ or the presence of litter and debris; or other appropriate means that consider the characteristics of the surrounding areas. **match the definition in Corps' regulations**

- *There were some suggestions to strike the modifiers of "vegetation" and the last clause and insert instead the wording "or the presence of litter and debris".*
- The suggestion was made that DEQ should just match this with the Corps definition for "ordinary high water mark". It was suggested to use the same identical definition as that used by the Corps.

"Permittee-responsible compensation" means an aquatic resource restoration, establishment, enhancement, or preservation activity [vdot proposal: or other **?water quality or habitat improvement activity**] undertaken by the permittee to provide compensatory mitigation.

- *There was a VDOT proposal to include the wording "or other activity" in the definition of "permittee-responsible compensation".*
- *Were there any thoughts as to what might not be included? It was noted that the definition seems to focus solely on aquatic resources and the proposed revision was an effort to expand that area of focus to cover other types of activities outside of the realm of "aquatic resources".*
- *It was suggested that the concept of improvement of water quality needs to be included. The group discussed this concept and suggested that the phrase "water quality or habitat improvement" should be added to the definition to clarify what is intended by "or other activity". The proposed additional language would be "or other water quality or habitat improvement activity".*

"Riprap" means a layer of nonerodible material such as stone or chunks of concrete.

- *The original proposal was to delete the definition of "riprap" but a suggestion was made that if it wasn't causing any problems that it should be left in the definitions, so it is being proposed to be retained.*

"Suspend" or "suspension" means a decision by the board or applicant ~~stopping~~suspending the review or processing of a permit application or request to modify a permit or permit authorization until such time that information requested by the board is provided, reviewed, and deemed adequate to allow the review or processing of an application or request for modification to continue.

- *As noted above in the discussion about the changes to the definition of "administrative withdrawal" that there has been some wordsmithing to add the phrase "a decision by" to the definition.*

"Temporary impacts" means ~~these impacts to wetlands or other surface waters, including wetlands, that cumulatively do not cause a permanent alteration of the physical, chemical, or biological properties of the surface water waters or of the functions and values of a wetland the permanent alteration or degradation of existing wetland acreage or functions.~~ Temporary impacts include activities in which the ~~ground-impact area~~ is restored to its preconstruction contours and elevations, such that previous ~~acreage and functions and values~~ are restored. [cbf proposal: **acreage limit should be added – group did not think acreage appropriate for definition but rather in reg text re: limits, etc**]

- *A recommendation was made to strike the word "cumulatively". It was noted that there was some interest in why this was suggested. It was noted that there was some unknown about the way the term was going to be used. It was also noted that the term "cumulatively" is not included in the current definition.*
- *A question was raised as to why the phrase "the permanent alteration or degradation of existing wetland acreage or functions" was added. Staff Response: That resulted from one of the homework assignments and that the addition post-homework is the term "permanent". This is a change from the original. Why is this phrase necessary? Staff Response: This was added to replace the deleted phrase "of the functions and values of a wetland". This includes some wordsmithing and wording suggestions.*
- *It was noted that an additional recommendation was made to add an "acreage" limit to the definition related to "temporary impacts". It was suggested that any acreage limit should be included in the permit and not in the regulation. The group agreed that any acreage limit should be in the permit not in the regulation.*

“Watershed approach” means an analytical process for making compensatory mitigation decisions that support the sustainability or improvement of aquatic resources in a watershed and that ensures authorized impacts and mitigation have been considered on a watershed scale.

- *There was a suggestion made to tack on the phrase "and that ensures authorized impacts and mitigation have been considered on a watershed scale" to the end of the definition of "watershed approach".*
- This suggestion was made to try to identify what the purpose of the process identified in the original version of the definition was. This suggested language was based on that a description of the "watershed approach" found in the 2008 Federal Regulatory Process.

8. LUNCH BREAK: 12:05 – 1:05

9. Plan for the Balance of the Day (Melanie Davenport):

Melanie Davenport welcomes everyone back from lunch. She noted that she just wanted to make clear that the plan for the rest of the day is to keep working as much as we can in going through the red-line (track-change) document as long as we can (until 4:00 P.M.). Regardless of where we are in going through this today, this document will be posted to the webpage tomorrow (Thursday, October 16th) and emailed out to everybody. Now you do have to understand that embedded in it are still going to be notations about keeping or changing this or that – there just won't be enough time between the end of the meeting today and the distribution tomorrow to make those edits. We will get this document as it exists by the end of this meeting to you tomorrow morning. Recognizing that there are likely to be several things where we have not reached consensus.

10. Review of Track-Change Revisions to 9VAC25-210 – Not including surface water withdrawal topics – CONTINUED (Brenda Winn):

Brenda Winn continued presenting the proposed revisions to 9VAC25-210 to the group. Her presentation included the following:

Proposed revisions to 9VAC25-210-45 included the following:

9VAC25-210-45. Surface waters delineations.

A. Wetlands. Each wetland delineation **including those for isolated wetlands,** shall be conducted in accordance with the USACE—United States Army Corps of Engineers (USACE) "Wetland Delineation Manual, Technical Report Y-87-1, January 1987, Final Report" (Federal Manual) and [any regional wetland supplements approved for use by USACE.](#) ~~The~~These Federal Manual—Manuals shall be interpreted in a manner consistent with USACE guidance and the requirements of this regulation, and any delineation guidance adopted by the board as necessary to ensure consistency with the USACE implementation of delineation practices. [USACE regulatory guidance letters or DEQ policy or guidance may be used to supplement preparation of wetlands delineations.](#)

B. Other surface waters. Delineations for surface waters other than wetlands may be conducted in accordance with USACE or DEQ policy or USACE or DEQ guidance and shall take into consideration the location of an ordinary high water mark, if applicable. Other surface waters include, but are not limited to, isolated wetlands, [certain [?or jurisdictional]ditches], streams, open water, or areas of submerged aquatic vegetation. [?do we need last sentence][?would deq regulate ditches other than those regulated by corps][state which ditches are regulated by deq] [most leaning toward deleting last sentence]

- *Two suggestions were received to address how we deal with "other surface waters". The options were the use of the term "certain" or the term "jurisdictional" to modify "ditches". Staff opted to propose the use of the term "certain". But you are defining what is a surface water. So if you are saying "certain" ditches then we need to know "which" ditches. What ditches is the state going to regulate? It was suggested that is those that are "jurisdictional". If you are going to say "jurisdictional" are you talking about Army Corps Jurisdictional? Is it all ditches? The group discussed the inclusion of "ditches" and what that meant and which ditches were being referred to.*
- *The overarching issue is that some ditches are regulated by the Corps and some are not. Are there ditches that DEQ intends to regulate that are not regulated by the Corps? Staff Response: That depends on how "waters of the US" ends up being defined by the Corps.*
- *A concern was noted that by inclusion of the term "certain" that it could open it up to include every farm ditch.*
- *The word "ditches" was there before and the suggestion was made to modify it. So are we suggesting that we just eliminate the modifier or change the modifier? The suggestion was to just insert the word "jurisdictional".*
- *It was noted that this wouldn't apply to every farm ditch; it would apply to every farm ditch that someone is proposing to convert from a farm to a development. It was suggested that was not a true statement because a large number of ditches have been delineated that were not jurisdictional. This is for people who are going to submit a permit.*
- *A concern over the title of this subsection was noted – it is not really "other surface waters" it is the delineation of "other surface waters".*
- *The question was raised as to whether the last sentence is needed?*
- *It looks like what is being said is that not all ditches are regulated by DEQ. Someone else said that it only applies to ditches that are regulated by the Army Corps are going to be regulated by DEQ. If that is the case then the modifier should be "ditches under the jurisdiction of the Army Corps of Engineers, then it would be crystal clear what DEQ regulates. The reason this was included originally was because of "isolated wetlands" when the regulation was first formulated. We need to be crystal clear as to what state government is going to regulate.*
- *Maybe we should just delete the last sentence of B. Staff Response: The purpose of this proposal was to allow DEQ to be clear as to what features they wanted on a delineation map.*

- A suggestion was offered to modify the last sentence with the addition of the phrase "under the Jurisdiction of the US Army Corps of Engineers" after the word "ditches". *Staff Response: That wouldn't be appropriate since this is trying to address the "other" delineations that the State may be interested in that the US Army Corps is not.* The State does not want to tie their jurisdiction to the jurisdiction of the Corps, even though right now that is the procedure that is being followed related to "ordinary high water mark" on ditches.
- The state is being consistent with the Corps determination in the field both with the limits of jurisdictional wetlands as well as limits of jurisdictional ditches. Just like the state is on the limits of perennial and intermittent streams and open waters that don't have wetlands next to them. The state and the Corps are in agreement on the limits of everything. *Staff Response: The agency would rather tie this to something that is under DEQ's jurisdiction and DEQ's definition.* Then tell us "which" ditches" DEQ is going to regulate. The key if a regulatory program is going to work effectively is determining as a first step "what are you going to regulate?" Then you can determine what activities you are going to regulate and what restrictions you are going to have. If you can't agree in writing as to what you are going to regulate you are going to lead to future fights and disagreements.
- It was suggested that historically that DEQ has defined the procedures and methods and what they are going to regulate, not in the regulation but in guidance or a memorandum between DEQ and the Corps on how they are going to regulate to perform wetland delineations. Not sure that any of these details wants to be or needs to be in a regulation.
- The reason why this wasn't in the regulations was that there was a number of things that DEQ didn't use to regulate but they did it by policy and memorandum so that the expansion of authorities did not go through the regulatory process. Now with the regulation open there is an opportunity to put it in regulation. What is the government going to restrict people's rights to do now? The big question is what does DEQ want to regulate through these proposed revisions? We can agree that they can do all of them but it needs to be made clear to the public at large as to what DEQ wants to or intends to regulate. *Staff Response: But is it really a jurisdiction threshold or is this simply that we want to know what water features are there so that we can figure out what is jurisdictional?*
- It looks like the last sentence may be okay – just leave it at jurisdictional ditches for the time being. If "jurisdictional" means the Army Corps then just say it. There was disagreement over the use of the term "jurisdictional" and whether it always refers to the jurisdiction of the Army Corps. It was suggested that if you are going to define what a "jurisdictional ditch" is then you need to include a whole section in the regulations, and we are not going to be able to define that today. That detail would need to be somewhere else rather than where you delineate surface water.
- Does DEQ have a policy or guidance on ditches? *Staff Response: Yes, there is a DEQ Ditch Guidance Memo – the Ditch Guidance.* Could we say "any ditches" that are identified in accordance with the DEQ Ditch Guidance or DEQ Policy? Would DEQ reference a memorandum in a regulation? *Staff Response: No.*

- Couldn't we just leave it as "the delineations ...may be conducted in accordance with ...DEQ policy or...DEQ guidance?"
- The problem was still raised regarding the use of the term "certain" ditches – "which" ditches? It doesn't say "all" ditches it says certain ditches.
- What is a "ditch" that DEQ wants to regulate? Is it a ditched stream? Is it a canal? Is it a man-made canal? Does it have to have water in it? Does it only have to have stormwater in it? *Staff Response: This is really not about defining what a ditch is – it is just about what we want to see on the map.*
- If the permittee were to include every ditch whether jurisdictional or not on the map, is DEQ going to question every ditch shown?
- **RE: Reference to isolated wetlands:** Shouldn't the reference to "isolated wetlands be in "A" instead of "B"? The recommendation was made to move the reference to "isolated wetlands" from "A" to "B" – since "A" is linked to just the technical criteria. The group discussed whether the reference to "isolated wetlands" needed to be included at all in "A". It was noted that if you don't reference it and show that they have to be shown then they may not be included. It was recommended that the reference to "isolated wetlands" be included in "A".
- *Staff Note: The thought was that the second paragraph included as "B" would catch those delineations that would not be captured by the Corps.* Paragraph "B" is also there because the DEQ is regulating streams as the Corps is now, which wasn't necessarily the case a number of years ago. The wetlands delineation manual is not applicable to defining the limits of a stream that doesn't have wetlands next to it. If there is a babbling brook with no wetlands next to it then how do you define that as a surface water? You would typically use the "ordinary high water mark" or other criteria – that is what "B" is trying to address.
- *Staff Note: If, as noted, the information in the second sentence in "B" is addressed in the first sentence in "B" with the reference to DEQ guidance, then do we even need to include the second sentence? Why not just take the second sentence out?* It was agreed by the group that in this case you don't need to provide examples – it is clearer without the specificity of the second sentence. It was recommended that the second sentence be deleted.

9VAC25-210-50. Prohibitions and requirements for VWP permits.

A. Except in compliance with a VWP permit, unless the activity is otherwise exempted or excluded, no person shall dredge, fill or discharge any pollutant into, or adjacent to surface waters; withdraw surface water; otherwise alter the physical, chemical or biological properties of surfacestate waters and make them detrimental to the public health, or to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, or for recreation, or for other uses; excavate in wetlands; or on or after October 1, 2001, conduct the following activities in a wetland:

1. New activities to cause draining that significantly alters or degrades existing wetland acreage or functions;
2. Filling or dumping;
3. Permanent flooding or impounding; or

4. New activities that cause significant alteration or degradation of existing wetland acreage or functions.

B. No VWP permit shall be issued for the following:

1. Where the proposed activity or the terms or conditions of the VWP permit do not comply with state law or regulations including but not limited to § 10.1-1408.5 of the Code of Virginia;
2. For the discharge of any radiological, chemical or biological warfare agent or high level radioactive material into surface waters.

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- *There were a couple of comments regarding a search to replace the phrase "surface waters" with "state waters". It was noted that the phrase "alter the physical, chemical or biological properties of" comes from the Code and it uses the phrase "state waters" not "surface waters". The proposal is to make it match.*
 - *Aren't groundwaters, state waters? Staff Response: Yes, they are. And we don't need a VWP permit for withdrawal of groundwater. Staff Response: Correct, we are not issuing permits for groundwater.*

9VAC25-210-55. Statewide information requirements.

The board may request, and any owner shall provide if requested, any pertinent information as may be necessary to determine the effect of his discharge on the quality of state waters, or such other information as may be necessary to accomplish the purposes of this chapter.

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- *9VAC25-210-55 is the information provision that had been discussed at a previous meeting and the phrase "his discharge" was discussed. The Code does say "his discharge" so we are proposing to retain the originally proposed verbiage, even though it is archaic language. The last clause of this sentence is meant to cover other activities that VWP regulates.*

9VAC25-210-60. Exclusions.

A. The following activities do not require a VWP permit but may require other permits under state and federal law. Upon request by the board, any person claiming one of these exclusions shall demonstrate to the satisfaction of the board that ~~they qualify~~ he or she qualifies for the exclusion. Exclusions pertaining to surface water withdrawals are established in 9VAC25-210-(tbd).

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- *The changes proposed here are wordsmithing suggestions.*

9VAC25-210-60. Exclusions.

A. The following activities do not require a VWP permit...

5. Maintenance, including emergency reconstruction of recently damaged parts of currently serviceable structures, such as dikes, groins, levees, dams, riprap breakwaters, causeways, bridge abutments or approaches, and transportation, and purpose-built stormwater and utility structures. Maintenance does not include modifications that change the character, scope, or size ~~or impacts – ?delete; impacts viewed by some as being included in character, scope and size~~ of the original design. In order to qualify for this exclusion, emergency reconstruction shall occur ~~within a reasonable period of time~~ as soon as practicable after damage occurs. ~~[practicable may include costs to some][perhaps deadline needed][practicable is defined in reg] [should maintenance be separated from emergency reconstruction][nwp3 allows up to 2 yrs to repair] – leaning toward using suggested language~~

- *The recommendation here was to add the text: "Maintenance does not include modifications that change the character, scope, or size or impacts of the original design."*
- So if you have a stormwater facility that is filled in with sediment and now has wetlands – you dredge the facility and now you have increased the impacts to the wetlands because the wetlands weren't there in the beginning. You could have the same character, scope and size stormwater pond when you dredge it, but the impact is now different than originally designed because there is now a wetland that wasn't there when the facility was originally designed and built. The rationale for taking or not taking that new impact into account was discussed by the group. The question was raised as to whether it was exempt or not. It was suggested that the phrase "or impacts" should be deleted. As long as it is the same scope, size and character as the original design then maintenance is allowed. It was argued that the intent of the maintenance exclusion is that maintenance is allowed as long as it does not change the nature or character or impacts of the original design. There was disagreement over the removal of the phrase "or impacts". It was argued that "impacts" are addressed under the consideration of "character, scope and size".
- The group discussed the phrase "within a reasonable period of time". It was suggested that the phrase was meaningless. The term "practicable" includes factors of technology; logistics; and costs. A recommendation was made to change that phrase to "as soon as practicable". The possibility of including a deadline time limit was discussed. The group discussed the distinction between maintenance and emergency repair. The group discussed the inclusion of "emergency reconstruction" where the Corps allows up to 2 years in the Nationwide Permits. Concern was noted over the idea of including a time limit. *Staff Response: This is language to address exclusion, so how is DEQ going to approve a time line or schedule that they are not likely to see? Staff can't recall ever having a problem with the language as it currently exists. There are normally no time restrictions related to emergency maintenance and repair. This is almost verbatim from the Nationwide Permits. Why would we want to put a hard date in the regulation?* It was noted that the Corps exemption uses the phrase "reasonable period". The old

wording was based on the Corps wording. The term "practicable" is better than "reasonable". It was recommended that the term should be "as soon as practicable".

9VAC25-210-60. Exclusions.

A. The following activities do not require a VWP permit...

6. Impacts to open waters that do not have a detrimental effect on public health, animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, recreation or other uses. [cbf suggestion: Impacts to open waters that do not alter the physical, chemical, or biological properties of state waters or have a detrimental effect on public health, animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, recreation or other uses.]

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- *The suggestion was made that was counter to the intent of the exclusion. The intent of the exclusion was to exclude some of the activities in open waters from permitting. The comment was made by CBF to change the wording but the suggested change would in fact make the whole exclusion obsolete. The suggestion was to add the phrase "alter the physical, chemical, or biological properties of state waters". If you add "alter the physical, chemical, or biological properties of state waters" then that would negate the purpose of the exclusion. This was designed to have a exclusion for small dredging projects that really don't have an impact that anyone cares about. It would impact "old farm ponds" and small fill or dredge projects. This is not very commonly used. There was disagreement over whether the additional phrase should be included or not.*

9VAC25-210-60. Exclusions.

A. The following activities do not require a VWP permit...

7. Flooding or back-flooding impacts to surface waters resulting from the construction of temporary sedimentation basins on a construction site, when such structures are necessary for erosion and sediment control or stormwater management purposes. The term "construction site" means the site where any land-disturbing activity is physically located or conducted for the purpose of erection of buildings, roads, and utilities and other discrete structures, and includes the locations of on-site or off-site project-specific support activities (for example, concrete or asphalt batch plants, equipment staging yards, material storage areas, excavated material disposal areas, or borrow areas). [put definition in -10 instead][use same definition as in stmrw regs 9vac25-880-1][need to revisit what's included to cover things like recreational facilities] – leaning to putting in definition section and making match stmrwtr

-
- *This proposal is an attempt to clarify what was discussed at a previous meeting. This is a movement of text from the original 9VAC25-210-60 A 11 that has been revised.*
 - *The possible impacts of this language were discussed. An example of the construction of "ball fields" was given.*

- A recommendation was made to just create a definition of "Construction site" and put it in the definition section instead of including it in this section. It needs to be referenced in the exclusion section and needs to be consistent with the VSMP regulations.
- A concern was raised over the ability to build a park or a ball field with this language included as proposed. Need to be clear as to how "recreational facilities" would be addressed.
- The use or inclusion of the term "infrastructure" was discussed by the group. There was some concern noted over the use of the term "infrastructure". It was noted that the phrase "other discrete structures" brings to mind a 3 dimensional structure.
- It was recommended that the definition of "construction activity" contained in the construction general permit should be included/used.

9VAC25-870-10: "Construction activity" means any clearing, grading or excavation associated with large construction activity or associated with small construction activity.

9VAC25-880-1: "Construction site" means the land where any land-disturbing activity is physically located or conducted, including any adjacent land used or preserved in connection with the land-disturbing activity.

ACTION ITEM: Staff will work on language for this exclusion and revisit what is included to cover things like recreational facilities.

9VAC25-210-65. Continuation of expiring permits Administrative Continuance.

Where the permittee has submitted a timely and complete application and where, through no fault of the permittee, the board does not issue or issue with conditions a new VWP permit or the board does not provide notice of its tentative decision to deny the application before the existing VWP permit expires, the conditions of the expiring VWP permit may be administratively continued in full force and effect until the effective date of a new permit. [link timely with the x days before language elsewhere in reg](#)

- *This describes what we were discussing this morning as an "administrative continuance". We are proposing to put this provision in the main regulation and each of the general permit regulations. The proposed wording is not worded exactly like that in the Code. A better title might be "Administrative Continuance".*
- *Is this in the current regulation? Staff Response: No – but it tracks what is in other DEQ permit regulations. It creates the ability for DEQ to administratively continue any permit.*
- *It was noted that in the past regulations DEQ had a provision as to when you have to submit a permit application – how much in advance of an impact. Staff Response: Yes, we still do – it is 60 days. It was suggested that the term "timely" should be linked to that timing requirement. Staff Response: In VPDES, timely is defined as 180 days prior to expiration. The VWP time period is 60 days. The 60 and 180 day figures were in existing language.*

- The recommendation was made to link the term "timely" back with the "number days before" language found elsewhere in the regulations. It was noted that "timely" may mean different things depending on whether it is an IP or a GP.

9VAC25-210-80. Application for a VWP permit.

B. Informational requirements for all VWP individual permit applications are identified in this subsection with the exception of applications for emergency VWP permits to address a public water supply emergency, for which the information required in 9VAC25-210-(tbd) shall be submitted. In addition to the information in this sub-section, applications involving a surface water withdrawal or a Federal Energy Regulatory Commission (FERC) license or re-license **associated with a surface water withdrawal** shall also submit the information required in 9VAC25-210-(tbd). The board may request additional information as needed to evaluate compliance with this chapter.

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- *A suggestion was received to clarify the reference to FERC with the addition of the phrase "associated with a surface water withdrawal". In addition the term "shall" is being changed to "may" related to the board requesting additional information.*

9VAC25-210-80. Application for a VWP permit.

B. Informational requirements for...

1. A complete VWP individual permit application, at a minimum, consists of the following information:

e. The following information for the project site location, and **any related permittee-responsible** compensatory mitigation site, if applicable:

(1) The physical street address, nearest street, or nearest route number; city or county; zip code; and, if applicable, parcel number of the site(s).

(2) Name of the impacted waterbody or waterbodies, or receiving waters, as applicable, at the site(s).

(3) The latitude and longitude (to the nearest second) at the center of the site(s).

(4) The fourth order subbasin, as defined by the hydrologic unit boundaries of the National Watershed Boundary Dataset, for the site(s).

(5) A detailed map depicting the location of the site(s), including the project boundary ~~all surface waters, and all preservation areas on the site(s)~~. The map (for example, a United States Geologic Survey topographic quadrangle map) should be of sufficient detail to easily locate the site(s) for inspection.

(6) GIS-compatible shapefile(s) [if available] of the project boundary and all existing preservation areas on the site(s), in accordance with DEQ guidance, unless otherwise approved by or coordinated with DEQ. [Each GIS-compatible shapefile shall: i) contain a minimum of two (2) coordinate pairs (grid ticks or property corners); ii) be projected using the Virginia State Plane Coordinate System (NAD 1983), North or South Zone, as appropriate, in the units of United States Feet; iii) contain a projections file (file extension .prj); and iv) consist of closed polygons with attribute data. The GIS data shall be based upon the surveyed boundary, conducted by a licensed land surveyor or a licensed

professional engineer using traditional surveying procedures, and have a horizontal accuracy of within +/- 0.2 (0.25) feet of the surveyed boundary.] [keep requirement for shapefile but remove the specific criteria, which could be put in guidance in more detail] [make this a deq-waivable reqmt]

- *A suggestion was received to add the term "any related permittee-responsible" to refer to compensatory mitigation site.*
- *A suggestion was received to add the phrase "or nearest route number" and "if applicable" to the information requirements in "1 e (1)".*
- *It was suggested that we needed to clarify and specify which HUC unit we want – we had talked about that it should be the fourth order – but the question came up as to whether it was referred to as the fourth order HUC in the Code – the phrase that is used is "fourth order subbasin, as defined by the hydrologic unit boundaries of the National Watershed Boundary Dataset". The wording has been revised in "1 3 (4)" to reflect what is used in the Code. This edit appears more than once in the proposed regulation.*
- *A question was raised as to how that compares to what is in the VSMP regulations.*
- *A suggestion was made that the reference in "1 e (5)" to showing "all surface waters and all preservation areas on the site(s)" should be deleted. Staff has confirmed that that phrase is not needed so it is being deleted – it is just a "cut-and-paste" error.*
- *"1 e (6)" addresses GIS-compatible shapefiles. In past meetings we have gotten stuck on the whole "accuracy" issue. There were a number of conflicting suggestions made as to how to address the accuracy issue.*
- *The group discussed the suggestions made and it was suggested that it should be required but you should give up trying to define it in the regulations. It was suggested that the specific criteria recommendations should not be included in the regulation but were better suited to be included in guidance. It was also suggested that this be a DEQ waive-able requirement. The recommendation was made to keep the requirement for shapefiles but to remove the specific criteria, which could be addressed in guidance in greater detail. The recommendation was made to add the phrase "in accordance with DEQ guidance" instead of trying to include all of the specific criteria.*
- *It was also suggested that the phrase "if available" should be included. It was noted that this should be a DEQ waive-able requirement rather than "if available".*
- *It was noted that there would be more freedom to ask for other things if specified in guidance rather than in the regulation.*

9VAC25-210-80. Application for a VWP permit.

B. Informational requirements for...

1. A complete VWP individual permit application, at a minimum, consists of the following information:

f. A **complete** narrative description of the project, including project purpose and need.

- *A suggestion was made that the word "complete" should be deleted related to the phrase "narrative description".*

9VAC25-210-80. Application for a VWP permit.

B. Informational requirements for...

1. A complete VWP individual permit application, at a minimum, consists of the following information:

g. An alternatives analysis for the proposed project detailing the measures taken during project design and development to first avoid and then minimize impacts to surface waters to the maximum extent practicable in accordance with the Guideline for Specification of Disposal Sites for Dredged or Fill Material, 40 CFR Part 230 (Federal Register, December 24, 1980). Avoidance and minimization includes, but is not limited to, ~~steps~~measures taken to reduce the size, scope, configuration, or density of the proposed project, including review of alternative sites where required for the project, which would avoid or result in less adverse impact to surface waters, and documentation demonstrating the reason the applicant determined less damaging alternatives are not practicable. ~~in accordance with the Guideline for Specification of Disposal Sites for Dredged or Fill Material, 40 CFR Part 230 (Federal Register, December 24, 1980) to first avoid then minimize adverse impacts to surface waters to the maximum extent practicable.~~ The analysis shall demonstrate to the satisfaction of the board that avoidance and minimization opportunities have been identified and applied to the proposed activity and that the proposed activity in terms of impacts to state waters and fish and wildlife resources is the least environmentally damaging practicable alternative. ~~The avoidance and minimization analysis shall include, but will not be limited to, documentation of steps taken or evaluated to reduce the size, scope, configuration, or density of the proposed project, including review of alternative sites where required for the project, which would avoid or result in less adverse impact to surface waters, and documentation demonstrating the reason the applicant determined less damaging alternatives are not practicable.~~

-
- *This section addresses the alternative analysis provisions for the proposed project. There comments received that said that this whole section didn't make any sense the way it was worded. There was clarification needed. There has been some wordsmithing to try to clarify the provisions. The term "first avoid and then minimize impacts" is a term used in the noted federal reference. The term "steps" has been replaced with the term "measures" to be consistent with language used in the regulation.*

9VAC25-210-80. Application for a VWP permit.

B. Informational requirements for...

1. A complete VWP individual permit application, at a minimum, consists of the following information:

h. A narrative description of all impacts proposed to surface waters, including the type of activity to be conducted in surface waters, any physical alteration to surface waters, and all surface water impacts associated with the project. Surface water impacts shall be identified as follows:

(1) Wetland impacts quantified by type in acres [to the hundredths decimal place] or square feet (rounded to the nearest whole number) and identified according to their Cowardin classification.[make this edit to each below] [look at jpa to see if it specifies decimals or rounding]

(2) Stream impacts quantified in linear feet and square feet to the hundredths decimal place; identified according to their Cowardin classification; and when compensation is required, assessed using the Unified Stream Methodology [or most current accepted DEQ stream assessment methodology].[cannot reference in reg something that doesn't exist yet – check with cindy]

(3) Open water impacts identified and quantified by type in acres to the hundredths decimal place or square feet or acres to the hundredths decimal place rounded to the nearest whole number.

(4) A copy of the preliminary or approved jurisdictional determination, if available, or the preliminary jurisdictional determination from the United States Army Corps of Engineers (USACE), United States Department of Agriculture Natural Resources Conservation Service (NRCS), or DEQ, or other correspondence from the USACE, NRCS, or DEQ indicating approval of the boundary of applicable jurisdictional surface waters, including wetlands data sheets if applicable, and the latitude and longitude (to the nearest second) of the center of the project site. [A determination or other correspondence provided by one agency shall not automatically convey approval by any other agency- [delete last sentence]]

-
- The group discussed the use of acres to the hundredths decimal place and square feet rounded to the nearest whole number. *Staff Response: Staff will make the notation changes as discussed throughout this section.*
 - A suggestion was made to include reference to the "most current accepted DEQ stream assessment methodology" into "h (2)". It was noted that we cannot incorporate something in the regulations that doesn't currently exist.
 - A suggestion was made to include a preference for a copy of the approved jurisdictional determination, if available, or the preliminary jurisdictional determination.
 - A suggestion had been received to insert the word "surface" related to jurisdictional "surface" waters in "h (4)".
 - A suggestion was made to delete the proposed addition of the phrase "and the latitude and longitude (to the nearest second) of the center of the project site" since it is requested elsewhere in the regulations and it would duplicative to ask for it again here.
 - A suggestion was made to add a sentence to "h (4)" which read: "A determination or other correspondence provided by one agency shall not automatically convey approval by any other agency." The group discussed the addition of this sentence and it was recommended that it be deleted as being redundant and stating the obvious. Why put more words in then are needed? A

recommendation was made to strike the last sentence if it doesn't add anything. There was concurrence to strike the last sentence.

11. BREAK: 2:40 – 2:55

12. Review of Track-Change Revisions to 9VAC25-210 – Not including surface water withdrawal topics – CONTINUED (Brenda Winn):

Brenda Winn continued presenting the proposed revisions to 9VAC25-210 to the group. Her presentation included the following:

B. Informational requirements for...

1. A complete VWP individual permit application, at a minimum, consists of the following information:

h. ...

(5) A delineation map, and GIS-compatible shapefile(s) of the delineation map, that depicts the geographic area(s) of all delineated and approved surface water boundaries in accordance with 9VAC25-210-45; describes such areas in accordance with subsections B 1 h (1) through B 1 h (3) of this section; and quantifies and describes any other surface waters, according to their Cowardin classification or similar terminology, if applicable. The GIS-compatible shapefile(s) shall follow the specifications described in subsection B 1 e (6) of this section. The requirement for a delineation map may be waived by DEQ on a case-by-case basis. [see above comments]

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- *The changes related to the GIS shapefiles that were discussed previously will be incorporated into the language in this section - "h (5)".*

B. Informational requirements for...

1. A complete VWP individual permit application, at a minimum, consists of the following information:

i. Plan view drawing(s) of the project site sufficient to assess the project, including at a minimum the following:

(1) North arrow, graphic scale, existing and proposed contours.

(2) Limits of proposed impacts to surface waters.

(3) Location of all existing and proposed structures.

(4) All delineated wetlands and all jurisdictional surface waters on the site, including the Cowardin classification for those surface waters and waterway name (if designated); ebb and flood or direction of flow; ordinary high water mark in nontidal areas; and mean low water and mean high water lines in tidal areas.

(5) The limits of any Chesapeake Bay Resource Protection Areas (RPAs), unless exempt from the Chesapeake Bay Preservation Act.

(6) The limits of any areas that are under a deed restriction, conservation easement, restrictive covenant, or other land use protective instrument (protected areas).

- *This section deals with the plan view drawing information requirements.*
- *For the list of items (1) through (6) there were some reorganization suggestions – the text is as was originally proposed but the order of the items has been changed and some of the content has been reorganized. These are basically editorial and wordsmithing suggestions.*

B. Informational requirements for...

1. A complete VWP individual permit application, at a minimum, consists of the following information:

j. Cross-sectional drawing(s) of each proposed impact area, which include, at a minimum, north arrow, graphic scale, existing structures, existing and proposed contour elevations, limit of surface water areas, ebb and flood or direction of flow (if applicable), ordinary high water mark in nontidal areas, mean low water and mean high water lines in tidal areas, impact limits, and location of all existing and proposed structures. Profile drawing(s) with the above information may be required on a case-by-case basis to demonstrate minimization of impacts.

- *This section deals with the informational requirements related to "cross-sectional drawing(s)". There were some comments made that "north arrow" is not applicable on a cross-section and "contours" and "ebb and flood or direction of flow" were not applicable on a cross-sectional drawing.*
- *A recommendation was made to delete the word "contours" after "existing and proposed" and replace it with "elevations". Contours only exist in a "plan view" drawing.*

- A recommendation was made to add the phrase "if applicable" after "ebb and flood or direction of flow". It should be "(if applicable)".

B. Informational requirements for...

1. A complete VWP individual permit application, at a minimum, consists of the following information:

m. ...A compensatory mitigation plan to achieve no net loss of wetland acreage and functions or stream functions and water quality benefits.

(1) If permittee-responsible compensation **for wetland impacts [should allow out of kind]** is proposed, a conceptual wetland compensatory mitigation plan must be submitted in order for an application to be deemed complete and shall include at a minimum: the goals and objectives in terms of replacement of wetland acreage and functions; a detailed location map including latitude and longitude (to the nearest second) and the fourth order subbasin, as defined by the hydrologic unit boundaries of the National Watershed Boundary Dataset, at the center of the site; a description of the surrounding land use; a hydrologic analysis including a draft water budget **for non-tidal areas** based on expected monthly inputs and outputs which will project water level elevations for a typical year, a dry year and a wet year; groundwater elevation data, if available, or the proposed location of groundwater monitoring wells to collect these data; wetland delineation confirmation and data sheets and maps for existing surface water areas on the proposed site(s); a conceptual grading plan; a conceptual planting scheme including suggested plant species and zonation of each vegetation type proposed; a description of existing soils including general information on both topsoil and subsoil conditions, permeability, and the need for soil amendments; a draft design of any water control structures; inclusion of buffer areas; ~~and~~ a description of any structures and features necessary for the success of the site; the schedule for compensatory mitigation site construction; ~~and proposed language for protecting the compensation site or sites, including all surface waters and buffer areas within its boundaries, in perpetuity in accordance with subsection B 1 m (4) of this section~~ and measures for the control of undesirable species.

-
- *"B 1 m" is the compensation plan section in the complete application section of the regulation. Paragraph (1) addresses wetlands. A suggestion had been received to include the phrase "for wetland impacts" just after "If permittee-responsible compensation" in order to clarify that we are all talking about the same thing.*
 - *It was noted that the "fourth order subbasin" language from today's previous discussions also appears in this section.*
 - *A comment was made related to the "draft water budget" wording and the recommendation was made to include the phrase "for non-tidal areas" after the word "budget". This is a clarification since draft water budgets only apply to non-tidal areas.*
 - *A suggestion was made that this should also provide a mechanism to allow for "out-of-kind" mitigation. There should be an ability to do "out-of-kind" mitigation. There should*

be a mechanism to be able to mitigate for wetland impacts with something other than wetlands. It was agreed that compensation for wetland impacts could be "out-of-kind".

- The definition of "compensation" allows for "out-of-kind" mitigation – somewhere in this document we need to link the definition to the plan to include "out-of-kind".
- *The portion of the last sentence related to the "proposed language for protecting the compensation site" is being stricken here because it is already addressed elsewhere in the requirements.*

B. Informational requirements for...

1. A complete VWP individual permit application, at a minimum, consists of the following information:

m. ...A compensatory mitigation plan to achieve no net loss of wetland acreage and functions or stream functions and water quality benefits.

(2) If permittee-responsible compensation for stream impacts [same comment as in wetlands paragraph] is proposed, a conceptual stream compensatory mitigation plan must be submitted in order for an application to be deemed complete, and shall include at a minimum: the goals and objectives in terms of water quality benefits and replacement of stream functions; a detailed location map including the latitude and longitude (to the nearest second) and the fourth order subbasin, as defined by the hydrologic unit boundaries of the National Watershed Boundary Dataset, at the center of the site; a description of the surrounding land use; the proposed stream segment restoration locations including plan view and cross-section drawings; the stream deficiencies that need to be addressed; data obtained from a DEQ-approved, stream impact assessment methodology such as the Unified Stream Methodology; the proposed restoration measures to be employed including channel measurements, proposed design flows, types of instream structures, and conceptual planting scheme; reference stream data, if available; inclusion of buffer areas; schedule for restoration activities; and ~~proposed language for protecting the compensation site or sites, including all surface waters and buffer areas within its boundaries, in perpetuity in accordance with subsection B 1 m (4) of this section~~ measures for the control of undesirable species.

-
- *This section deals with permittee-responsible compensation for stream impacts. The same edits as noted for the "wetlands impacts" section discussed above are proposed to be made to this section.*
 - *A suggestion was received to include "data obtained from a DEQ-approved stream impact assessment methodology" in the information requirements.*

B. Informational requirements for...

1. A complete VWP individual permit application, at a minimum, consists of the following information:

m. ...A compensatory mitigation plan to achieve no net loss of wetland acreage and functions or stream functions and water quality benefits.

(3) For permittee-responsible compensation, the permittee shall provide protection in perpetuity of compensatory mitigation areas in accordance with 9VAC25-210-116 B 3 ~~prior to commencing the activities~~ [needed, do not delete] authorized by the VWP permit or permit authorization.

- *This section deals with the "protection mechanism". A suggestion had been received to strike the phrase "prior to commencing the activities". There apparently was a timing issue that was the concern.*
 - It was noted that there was not an apparent timing issue – historically there have been many instances where people take the impacts and never have actually acquired the easements or the land needed for compensation, and then enforcement action is almost impossible. You need to "record the document" before you take the impacts. The recommendation was made to leave the phrase "prior to commencing the activities" in the section.
-

B. Informational requirements for...

1. A complete VWP individual permit application, at a minimum, consists of the following information:

m. ...A compensatory mitigation plan to achieve no net loss of wetland acreage and functions or stream functions and water quality benefits.

(3) For permittee-responsible compensation...

(a) For the purposes of a complete application, the permittee shall describe the intended protection mechanism(s). [cbf proposal: list mechanisms] ~~Proof of recordation of the mechanisms, or similar proof that the mechanisms are initiated, shall be submitted to DEQ in accordance with the approved final compensatory mitigation plan.~~ [such as but not limited to, x,y,z]

- *The sentence regarding the "proof of recordation of the mechanisms" is being struck because it is being moved into another section which talks about the final plan.*
- *A suggestion had been received to actually provide a list of the mechanisms as part of the description of the intended protection mechanism(s). There are several different mechanisms so it might be difficult to be all inclusive. It was suggested that a "list of the usual suspects" could be included in the regulation, such as restrictive covenants and easements.*

ACTION ITEM: Staff will determine if a list of "protection mechanisms" can be gathered and see if they can be included in some way in the regulations.

- A recommendation was made to include the phrase "such as but not limited to" and then provide some examples of the commonly used protection mechanisms.

B. Informational requirements for...

1. A complete VWP individual permit application, at a minimum, consists of the following information:

m. ...A compensatory mitigation plan to achieve no net loss of wetland acreage and functions or stream functions and water quality benefits.

(3) For permittee-responsible compensation...

(b) If approved by DEQ, the long-term protection for permittee-responsible compensation on government property may be provided through federal facility management plans, or integrated natural resources management plans, or other alternate management plans submitted by a government agency or public authority. In cases where an alternate mechanism of long-term management is submitted for DEQ approval (e.g., a documented commitment from a government agency or public authority), financial assurances will not be necessary for that permittee-responsible compensation on government property. [comment made that financial assurances not req'd for others – suggestion based on Rule] [the financial assurance piece may be better located in final plan section]

-
- *This section addresses long-term protection mechanism on government property. A suggestion was received from VDOT regarding the addition of language related to "other alternate management plans" and "and alternate mechanisms of long-term management submitted for DEQ approval".*
 - This concern was noted and covered in a previous meeting of the Advisory Group. VDOT is currently working with the Corps to get into a MOA regarding the "providing of financial assurance" for government projects. VDOT has money in their budget right now to cover this need on an annual basis – just want to make sure that the language in the mitigation rule and what VDOT is currently coordination with the Corps is adequately addressed in the DEQ regulations.
 - A question was raised as to why this is being pointed out by VDOT here since financial assurance is not currently being required for anyone else in this section. VDOT noted that they just want to make sure that their situation is covered and is included in the regulation.
 - It was suggested that the language related to "financial assurance" might be better located in the "final mitigation plan section" of the regulation. VDOT agreed that this clarification language can be moved as long as it is addressed elsewhere.

B. Informational requirements for...

1. A complete VWP individual permit application, at a minimum, consists of the following information:

m. ...A compensatory mitigation plan to achieve no net loss of wetland acreage and functions or stream functions and water quality benefits.

(3) For permittee-responsible compensation...

(d) The mechanism of protection shall include a provision for access to the site ~~from a public road~~. [issues raised about use of public road and extension of easements]

-
- *A suggestion had been received to include the phrase "from a public road" to this section regarding "access" to the site.*
 - The intent here is that so the site is not land-locked. Concerns were raised regarding "use of a public road" and "extension of easements". It was noted that quarries don't necessarily have access from a public road and there are compensatory sites that are well within those boundaries, so it would be hard to say that someone has access to them from a public road.
 - The real issue that needs to be provided for is a DEQ "right of access" to the site.
 - The group discussed the various interpretations of "access", including provision of easements, etc.
 - The recommendation was made to strike the suggested phrase "from a public road".

B. Informational requirements for...

1. A complete VWP individual permit application, at a minimum, consists of the following information:

n. A written ~~[disclosure description and a graphical depiction]~~ identifying all upland areas including buffers, wetlands, open water, other surface waters, and compensation areas, located within the proposed project boundary or permittee-responsible compensation areas, that are under a deed restriction, conservation easement, restrictive covenant, or other land use protective instrument (protected areas). Such ~~[disclosure description and a graphical depiction]~~ shall include the nature of the prohibited activities within the protected areas and the limits of any Chesapeake Bay Resource Protection Areas (RPAs), [unless proposed impact is an exempt use under the ~~[cite Chesapeake Bay Preservation Act]~~ as additional state or local requirements may apply if the project is located within an RPA.

- *This section addresses a written disclosure requirement. A comment was made that this shouldn't be required as part of the informational requirements for a complete application. This is in the application.*
- A recommendation was made to change the term "disclosure" to "description". It was also recommended to add the phrase "and a graphical depiction". The group discussed that a map would be useful and should be required as part of the informational requirements. A graphical depiction is a map with numbers.
- A recommendation was made to include the phrase "unless the proposed impact is an exempt use under the Chesapeake Bay Preservation Act as additional state or local requirements may apply if the project is located within a RPA." It was also suggested that the Chesapeake Bay Preservation Act should be cited. The group discussed the mechanism for designation as an "exempt use" and the need to provide the correct citation.

B. Informational requirements for...

1. A complete VWP individual permit application, at a minimum, consists of the following information:
 - o. Information for all riparian landowners located within one-half mile downstream from each proposed impact area in non-tidal areas and one-quarter mile upstream and downstream in tidal areas, and for all landowners located adjacent to proposed impact areas. The information must include, at a minimum, the following: Property owner's name, mailing address (street name, city, state and zip code), property parcel number(s) used by the locality, and a map depicting those property parcels. **[consider adding waiver for this reqmt for state agencies]**

-
- *This section addresses the requirement for "information for all riparian landowners".*
 - It was noted that the requirement used to be one-quarter mile "upstream and downstream" in tidal areas. It was recommended that it needed to be revised to include both the "upstream" as well as the "downstream" requirement.

- It was noted that this is a requirement of the Board not the permittee so it could be deleted. It was noted however that in a large number of cases this is done by the applicant and/or his consultant so that the permit can be issued faster.
- It was suggested that DEQ might need to consider including a waiver option for state agencies for this requirement. VDOT noted that they do not provide this information now.
- *There are specific requirements in the Code regarding providing this information and what the Boards requirements were.* It was noted that Industry fought the requirement that the Board was to provide this information and ultimately got permission that they could also provide this information as a means to accelerate the permitting process and save time. *Staff Response: The JPA provides a mechanism where this data can be provided to speed up the process and most people provide this information.*
- *In the JPA is specifies "adjacent riparian landowners".*

C. ...

An analysis of the functions [?and values] of wetlands proposed to be impacted may be required by DEQ. When required, the method selected for the analysis shall assess water quality [and/or] habitat metrics and shall be approved by DEQ for use in advance of conducting the analysis. [comment made to include what methods deq wants, such as VIMS for nontidal waters across state] [comment also for deq to use the assessment results][noted staff training needed on methods] [comment made to delete the reqmt for func assmt]

1. No analysis shall be required when wetland impacts being considered under a VWP individual permit or general permit authorization total 1.00 acre or less.

2. Analysis shall be required when wetland impacts being considered under a VWP individual permit or general permit authorization total 1.01 acres or more and when any of the following applies:

a. Proposed compensatory mitigation consists of permittee-responsible compensation.

b. Proposed compensatory mitigation consists of mitigation bank or in-lieu fee fund credits at less than the standard mitigation ratios of 2:1 forest, 1.5:1 scrub-shrub, and 1:1 emergent.

c. Impacted wetlands are underlain by histosols.

d. Impacted wetlands are composed of 10% or more, singularly or in combination based upon either basal area or percent areal cover in the area of impact, in a vegetative stratum: Atlantic white cedar (*Chamaecyparis thyoides*), bald cypress (*Taxodium distichum*), water tupelo (*Nyssa aquatica*), or overcup oak (*Quercus lyrata*).

e. Proposed out-of-kind compensatory mitigation that includes emergent wetlands as replacement for forested wetlands or that includes water quality enhancements as replacement for wetlands.

- *This is the new Section C which deals with "functional assessments" provisions. This language is different from what had been previously proposed. We talked about adding this language and about adding (e) at the bottom of the section. Some comments were received that indicated that there was still some concern about the language that is being proposed.*
- The group discussed the concepts of when analysis would be required and when it would not be required.
- The need for a functional analysis was discussed. It was noted that the proposed "2 a – e" goes a long way to address concerns that have been raised related to when a "functional analysis" is required.
- The requirement for a functional analysis was discussed and it was noted that yes they were being provided for anything over an acre but regarding the question of whether they were being used for anything – the answer is no. It was noted that they should continue to be provided and that they should be used. There should be an effective tool for assessing when a proposed project that impacts wetlands will take into account all functions of the wetlands.
- If there are standard mitigation ratios in effect when for standard impacts what possible rationale is there for having to do a functional assessment for something that you have a standard established for? It was noted that a "standard" is a short-cut tool but it doesn't provide much information for DEQ to use. It was noted that DEQ should not be deprived of information that it could use to protect wetlands and functions.
- A recommendation was made to change the "and" to "or" in the 3rd sentence so that it would read "shall assess water quality or habitat matrix". This was discussed at a previous meeting.
- A question was raised regarding "what method are you going to use" – "what method is required"? It noted that it is hard to support the proposed language unless it is known what method is going to be used or required. How can you do a regulation and tell us to do something when you don't designate the method? Need to consider inclusion of or designation of some preferred methods that DEQ wants to see used. The current language says that method shall be approved by DEQ in advance. What does DEQ want? You don't have the right to regulate something when you don't know what you want.
- The group discussed the concept of identifying possible options to be used to for analysis. It was suggested that DEQ provide a suite of options to use for what situations. *Staff Response: Does that mean the development of a list of 50 or more options to be included as an appendix to the regulations?* It doesn't have to be 50. The issue is that DEQ doesn't use the stuff that is submitted anyhow, so just tell us that say if you have an emergent marsh you are going to use "Wet 2.1", if it is a forested wetland you use such and such method, etc. DEQ should have the discretion to use different methods depending on the circumstances. It was noted that DEQ doesn't have the staff that is trained on the use of these various methods. It was suggested that the VIMS method could be specified as the preferred method in certain circumstances.
- *The quality of the functional assessment is the key.*
- A question was raised as to whether the "approved by DEQ in advance" requirement could be handled through an exchange of emails? *Staff Response: Probably not on a next day turnaround*

basis. In years past, we tried to get positions or guidance on what models we should or shouldn't be using to address these issues – there was never a quick and a definitive response. Staff is not experts on the available methods so training would be needed.

- The group discussed the need for identification of preferred methods by DEQ.
- It was suggested that with the back and forth discussions that maybe we should just delete the requirement for a functional assessment. Not sure what benefit there is going to be from requiring this to be done.
- It was noted that with the functional assessments that have been done in the past that there have never been any comments made regarding the assessment. There is no one at DEQ that has an expertise in function and value assessments.
- There is a need for a white paper regarding functional assessments or a functional assessment method that is linked to the program.

C. Additional information. The board **may** require additional information if needed to evaluate compliance with this chapter.

- *This edit is a change from "shall" to "may" as noted previously.*

D. Incomplete application. Where an application is not accepted as complete by the board within 15 days of receipt, the board shall require the submission of additional information from the applicant and may suspend processing of any application until such time as the applicant has supplied the requested information and the board considers the application complete. Where the applicant becomes aware that he omitted one or more relevant facts from a VWP permit application or submitted incorrect information in a VWP permit application or in any report to the board, the applicant shall immediately submit such facts or the correct information. A revised application with new information shall be deemed a new application for purpose of reviews but shall not require an additional notice or an additional permit application fee. An incomplete permit application may be administratively withdrawn from processing by the board for failure to provide the required information after 60 days from the date of the latest written information request made by the board. An applicant may request a suspension of application review by the board **during any 15-day completeness** review period. ~~FailureSubmission~~ by the applicant ~~to make~~making such a request shall not preclude the board from administratively withdrawing an incomplete application. Resubmittal of a permit application for the same or similar project, after such time that the original permit application was administratively withdrawn, shall require submittal of an additional permit application fee.

- *This section deals with an "incomplete application" subsection that is included in the "complete application" portion of the regulations. These edits were discussed during a previous meeting. A suggestion was had to strike the phrase "during any 15-day completeness". The balances of the changes are wordsmithing changes.*
- The reason for the proposed edit was the result of a question of why can't the applicant requests a suspension of the application review anytime in the process? The recommendation for removal of the phrase "during any 15-day completeness" was supported.

13. Public Comment/Meeting Wrap-Up (Bill Norris/Mike Murphy):

Bill Norris asked for Public Comment. One public comment was made:

- There were some concerns raised to staff about the way the compensation hierarchy was stated in the proposed regulation revisions. It may be a little premature to get to this since we have not gotten to that section of the proposed revisions. Now that we are having another meeting there will be an opportunity to discuss this further. There may be a need to make comments or recommendations for additional revisions after the proposed language is provided to the group. *Staff Note: The proposed language will be included in the materials that will be posted to the webpage and distributed to the distribution list.*
- Can an additional meeting be scheduled to consider the revisions that we have not covered and to address the proposed revisions? *Staff Response: Staff will work on scheduling an additional meeting of the group to discuss the additional proposed revisions.*
- Some of the more successful advisory groups have been those where a complete document with all of the proposed regulatory revisions has been provided to the group several days or weeks in advance of a meeting. So if you could not only provide the group with a document of what we went over today and the balance of the proposed revisions but take a little more time and figure out what you as DEQ want so that you can provide us with a complete document that has all of the changes that you want to make identified, then people could read it in advance and be prepared – then we could have a meeting where we could go through page by page and be more productive. A good couple of weeks need to be allowed for the group to review the document for this to be more effective. *Staff Response: We are still going to send out the document tomorrow. The process we have been following is that instead of providing a lot of detail we have been trying to float the broader concepts in an effort to get you help in identifying those things that might work and those that won't, so it has been a little different than some of the other advisory groups.* It was noted that this process hasn't worked so well for some members of the group.
- The group expressed a desire to see a full version of the proposed revisions in a complete document in advance of a meeting where the materials would be reviewed and considered. It was noted that it didn't necessarily need to include the proposed revisions related to surface water withdrawals.
- It was suggested that DEQ utilize a Doodle-Poll to aid in the identification of a future meeting date.

14. Next Meetings (Bill Norris)

The next meeting of the VWP Citizen Advisory Group is scheduled for Monday, November 3, 2014 – 2nd Special Meeting of the VWP Advisory Group to discuss VWP Proposed Revisions related to Surface Water Withdrawals – DEQ Piedmont Regional Office – Training Room – Sign-In: 9:15 A.M. – Meeting Start Time: 9:30 A.M.

An additional VWP Citizen Advisory Group meeting has been scheduled for Monday, December 8, 2014 – DEQ Piedmont Regional Office – Training Room – Sign-In: 9:15 A.M. – Meeting Start Time: 9:30 A.M.

15. Meeting Adjournment:

The meeting was adjourned at approximately 4:15 P.M.