

NOIRA Public Meeting – Amendments to the Virginia Water Protection Permit Regulation

Wednesday, February 23, 2005 – 3:00 P.M.

**Location: Virginia Department of Environmental Quality
629 East Main Street
Richmond, VA
1st Floor Conference Room**

Purpose: A public meeting to receive comments on the notice of intent to amend the Virginia Water Protection Permit Regulation. The Notice of Intent appears in the Virginia Register of Regulations on January 24, 2005.

Meeting Minutes

Meeting Attendees:

- **Kay Slaughter – SELC**
- **Kathy Wilson Jones – City of Richmond**
- **Scott Kudlas – DEQ Staff**
- **Joe Hassell – DEQ Staff**
- **Catherine Harold – DEQ Staff**
- **Bill Norris – DEQ Staff**

Scott Kudlas opened the NOIRA Public Meeting and welcomed the meeting attendees. He indicated that this was an opportunity to discuss issues associated with the Intended Regulatory Action which was published in the January 24, 2005 Virginia Register of Regulations.

The purpose of the proposed action is to amend and revise the Virginia Water Protection Permit (VWPP) Regulation and to consider whether a number of changes should be made to the Regulations. The meeting was being conducted in order to review and to take comments on the following proposed changes:

1. **To incorporate changes to the Code of Virginia relating to the emergency permitting of water withdrawal projects. The basis of**

this proposed change is 2003 legislation that revised the VWP statute to allow the issuance of expedited water withdrawal permits during drought to address inadequate public water supplies. Even though this legislative change was self-implementing, it was decided to include it in the revised regulations in order to spell out the administrative requirements and for consistency.

- 2. To incorporate the U.S. Supreme Court's ruling in Virginia vs. Maryland. The ruling held that Virginia activities in the Potomac River do not require Maryland permits. There are a number of existing withdrawals whose grandfathering status needs to be determined and how to transition these activities to Virginia permits. Administrative procedures such as coordination with Maryland agencies and interstate agreements, such as the Low Flow Allocation Agreement will also be taken into consideration.**
- 3. To include changes already made to the general permit regulations that corrected administrative procedures, clarified application and permitting requirements, and allowed for a more efficient application review process. There have been a number of changes to the wetlands general permits that resulted in changes in terminology, language, and application filing requirements. These changes in the general permit regulation became effective on January 26, 2005. The intent is to incorporate these changes into the main VWPP regulations. Changes made to the general permit such as a conceptual mitigation plan and alternative analysis for mitigation need also need to be modified in the main VWP regulation.**
- 4. To implement a formal pre-application scoping process for water supply projects. DEQ is considering a mandatory pre-application process so that the most viable projects would be submitted for permit applications. This would apply only to water supply projects. We also need to evaluate the impact of Senate Bill 1248 (2005), on the development of a pre-application process. This bill has passed both the House and the Senate but has yet to be signed by the Governor.**
- 5. To clarify the requirement for cumulative impact assessment for water supply projects. There is a need to clarify what is meant by cumulative impacts for water supply projects and how they will be evaluated. What information is needed to consider the impact of**

water withdrawals on flows needed to support in-stream and off-stream beneficial uses. Need to discuss with the work group the current methodology used to look at impacts and flows. There is a need to evaluate the submission standards currently used in the process.

6. To clarify requirements for alternatives analysis for water supply projects. There is a need to evaluate the submission standards currently used in the process. There also needs to be a discussion of how localities actually determine their alternatives. There are also some concerns over the use of different need generating techniques such as “gallons per acre of land use type”. There needs to be a discussion about acceptable methods. There should also be a discussion of the planning horizon as it relates to the permitting horizon.
7. To investigate ways to simplify, clarify and improve coordination of state agency reviews and comments for water supply projects. There is a need to clarify agency coordination on larger scale projects, especially for those agencies that issue their own permits. Reasonable time frames for permit issuance also need to be developed. DEQ, MRC, the Health Department and DCR (Dam Safety Permits) all need to be considered in this evaluation. SB 1248 (2005) may have some impact on these discussions (for example, it calls generally for the issuance of permits by MRC and DEQ to be issued within 1 year of each other).
8. To clarify who does and does not need a permit for a water withdrawal by more clearly defining certain terms in light of the statutory “grandfathering” of certain withdrawals. The terms of “existing withdrawals”; “increased withdrawals”; and “new withdrawals” need to be more clearly defined. There are a number of different classes of water withdrawal that the VWP wasn’t designed to address and should be discussed. The issues of “grandfathered withdrawals” and “cumulative impact analysis” need to be addressed to determine who is to be grandfathered and at what withdrawal rate.
9. To clarify the process and criteria for establishing minimum instream flow requirements and evaluation of responses during

drought conditions. What was envisioned here was looking at instances such as those that occurred during the last drought where requests were received for exemptions to MIF permit conditions due to the drought conditions. The issue is under what conditions should exemptions be granted, if any.

General discussion followed this presentation of the regulatory issues for consideration. An advisory committee has been assembled, but there is still an opportunity for others that may be interested in participating in the development and review of the Virginia Water Protection Permit Regulation Amendments. The 1st Meeting of the Technical Advisory Committee is scheduled for Monday, February 28, 2005 at 9:30 A.M. at the DEQ Piedmont Regional Office. The plan for the work group meeting is to introduce the proposed amendment areas, review the history of the VWP Program, walk through the administrative changes from the general permit and the emergency withdrawal language.

There was discussion that the “grandfathering” issues will be the most contested. A question was asked regarding how many grandfathered withdrawals are there? And, what is the split of “public water” versus “Industry”? There are approximately 500 withdrawals that are currently grandfathered. According to the water use data system, Industry withdrawals account for approximately 10 to 20% of the withdrawals.

There was additional discussion regarding cumulative impact. The intent is to provide guidance so that “cumulative impact” analysis conducted through the permitting process is consistent with the state water supply planning regulation. Parameters are needed for localities to use for their planning for water supplies.

The attendees thanked staff for the review of the proposed amendment areas.

No formal comments were entered.

Respectfully Submitted by: William K. Norris
Environmental Program Planner

Friday, February 25, 2005