

VWPP – WATER SUPPLY PERMITTING WORK GROUP

MEETING

AMENDMENTS

TO THE

VIRGINIA WATER PROTECTION PERMIT REGULATIONS

Richmond Regional PDC
Monday, April 4, 2005

Meeting Minutes

Meeting Attendees	
VWPP Water Supply Work Group	Interested Parties
Bos, Bob	Goldberg, Traci
Carlock, John	Jackson, Patti
Crowder, Charlie	Jackson, Ray
Dunscumb, Judy	Land, Larry
Field, John	Mitchell, Becky
Foster, Larry	Pollard, Speaker
Hayes, Tim	Reid, Terry
Imhoff, Ed	Tinsley, Stephanie
Jennings, Ann	Staff
Kiernan, Brian	Frahm, Kathy (DEQ)
Orth, Donald	Gilinsky, Ellen (DEQ)
Petrini, Art	Hassell, Joseph (DEQ)
Sanders, Frank	Hulburt, Barbara (The McCammon Group)
Strickland, Wayne	Kudlas, Scott (DEQ) (Team Leader)
Taylor, Cathy	Linker, Rick (DEQ)
Weeks, Richard	Norris, William (DEQ)
Resource Group	Rubin, Mark (The McCammon Group)
Gray, Tom	Wagner, Terry (DEQ)
Kauffman, John	

- 1. Welcome and Introductions:** Barbara Hulburt opened the meeting and asked for brief introductions from the meeting attendees. She noted that this part of the meeting was scheduled in order to bring those work group members who were unable to attend the last meeting due to the inclement weather up to speed. Rick Weeks welcomed the Work Group members and interested parties to the meeting. He expressed his appreciation for the dedication of the Work Group members. He noted that we hope to have draft regulations by the first of October.

- 2. Process and Expectations:** Mark Rubin briefly discussed the goal of the Work Group which is to finalize draft amendments to the VWPP Regulations. He presented the concept of a “Consensus-Based Process” and the issues associated with this process. He noted that the value of this process was that the group could spend time now working through issues so that the final product could flow through the process smoothly. He stressed that the goal of the consensus process was to get to a place where we can meet as many of the individual’s interests as possible so that we can arrive at a workable solution. He also noted that the group would benefit from the expertise represented by the work group members, the interests and thought processes of the organizations represented, and the dynamics of the conversations, discussions and interactions of all those involved in this process.

- 3. Review of NOIRA and Administrative Amendments:** Scott Kudlas presented a brief review of the NOIRA process for the Virginia Water Protection Permit Regulations Amendments. He noted that the 9 issues identified in the NOIRA form the basis of what the Work Group will be addressing over the next several months. He explained that the NOIRA was designed to allow the Work Group to consider whether the following changes should be made:

 - a)** To incorporate changes to the Code of Virginia relating to the emergency permitting of water withdrawal projects (Allows the SWCB to issue emergency permits for new or increased withdrawals under certain conditions.);

 - b)** To incorporate the U.S. Supreme Court’s ruling in Virginia vs. Maryland (Need to look at the status of Virginia Withdrawals, grandfathering, coordination between states and impact on the “low flow allocation” agreement.);

 - c)** To incorporate 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 (Need to carry forward changes from the “general permits” into the main VWPP Regulation.);

 - d)** To implement a formal pre-application scoping process for water supply projects;

 - e)** To clarify the requirement for cumulative impact assessment for water supply projects (Need to define the information requirements and to address changes to the submission standards to evaluate impacts.);

 - f)** To clarify requirements for alternative analysis for water supply projects (Need to identify ways that water is acquired, how water needs are met,

what information is required, what submission standards should be developed and clarify planning period differences.);

- g) To investigate ways to simplify, clarify, and improve coordination of state agency reviews and comments for water supply projects (Need to discuss ways to address coordination concerns and to streamline the coordination process.);
- h) 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 (Need to evaluate the need to clarify certain terms; including “new withdrawal”, “existing withdrawal” and “increased withdrawal”.); and,
- i) To clarify the process and criteria for establishing minimum in-stream flow requirements and evaluation of responses during drought conditions.

Staff then reviewed the proposed changes to the VWPP Water Protection Permit Regulation which had been developed based on changes to the General Permit Regulation, Staff Comments and VWPP Work group Recommendations with the Work Group. (*Handouts: Summary – Proposed Changes to 9 VAC 25-210-10 et seq.; Detailed List of Proposed Changes; and Draft Regulation*)

- 4. **Whole Group Introductions:** Barbara Hulburt, noting that the interests represented by this group were paramount to the success of this effort, requested that each Work Group member introduce themselves and share some detailed information about their interests and what brought them to the table.
- 5. **Ground Rules and Process:** Mark Rubin explained the ground rules and process for the Work Group. He noted that typically disputes arise when committee members focus on each other rather than on the issue or problem at hand. He stressed that we would be attempting to take the disputes or contentions that arise and put them out as a “problem to be solved”. The need is to get people to start to focus on the problem rather than focusing on each other. He noted that the key is to identify the interests and then to create the best solution that addresses as many of the interests as possible.

The concept of “consensus product” was discussed by the group. It was noted that the general notion of consensus is that members of the group can “live with” the end product, even though it might not completely address all of their interests or concerns. It was noted that it was important for members of the group to feel that all points of view had been brought to the table and considered, then a solution that everyone could live with would be more likely.

Barbara Hulburt noted that the goal of the group should be to focus on each issue as it is discussed and that the meeting attendees should listen to what is being said, i.e., only one person should be speaking at a time. She asked that if there

was a disagreement with what was being discussed at the table that it be “discussed at the table”. This will help to recognize all areas of interests and concerns and will help move the process forward.

She discussed the concept of “the empty chair” as a means for those attendees who weren’t members of the work group to express their interests and concerns throughout this process. She also requested that all cell phones be turned off if possible and if put on “page” that any conversations should take place out of the room. She also noted that she and Mark would try to be respectful of the time scheduled for each topic area and would try to recognize the need for periodic breaks, but that the meeting attendees should feel free to get up and move around when they need to.

Barbara Hulburt noted that the use of smaller sub-committees which was used successfully during the last TAC would also be used during the course of the Work Group’s meetings. She introduced the concept of a facilitation tool known as the “blue wall,” which would be used to help shape the agendas for the small groups, whose meetings would need to take place between the main Work Group meetings. She noted that there will be a feedback loop for information to and from the large group and the small groups, and that everyone will have an opportunity to interact in each of the issues being discussed.

6. Review and Discussion of Proposed Emergency Water Supply Permit

Language: Scott Kudlas introduced the key points of the proposed language changes to address emergency water supply permits. He noted that the key points were that the emergency permits were available only to those individuals who needed a new or increased water withdrawal to address insufficient drinking water supplies caused by a drought; where there is a substantial threat to public health and safety, and where implemented mandatory conservation measures have failed to avert a substantial threat to public health and safety. He noted that new definitions for “Emergency Virginia Water Protection Permit”; “Mandatory Conservation Measures”; and “Water Supply Emergency” were being proposed to help address this issue.

Joe Hassell presented the language changes dealing with “emergency permits” to the group. (*Handout: Virginia Water Protection Permit Program Regulation – Emergency Permit Language Additions*) These proposed changes were discussed by the Work Group and it was recommended that the language from the Drought Assessment and Response (??) Document should be examined for possible clarification language or for possible incorporation by reference into the VWPP Regulation.

It was also noted that the statute contained language requiring that an application for a Virginia Water Protection Permit had to be applied for “not later than 14 days after the issuance of the emergency permit.” It was suggested that this language should also be included in the proposed amendments to the VWPP (9

VAC 25-210-80. A. How to apply. The Work Group discussed the issues of how an applicant shows that it is in an emergency situation and how drought is defined for purposes of this section, since there can be localized conditions that result in a drought situation. Also discussed was the issue of what level of historical drought should be planned for. .

A concern was expressed about wanting to ensure that “poor management” of resources does not result in a situation in which the state would have to address an emergency situation. It was stressed that a set of steps in the regulatory process should be identified to address the need for an emergency permit. The Work Group discussed the concept of “drought” and the need for an “emergency permit” and decided to table the discussion until the definitions and details of the Drought Assessment Plan can be distributed to the group.

- 7. Expectations, issues and concerns for Small Group Work:** Barbara Hulburt noted that the issues spelled out in the NOIRA and being addressed by the Work group had been organized into four key subject areas. The Small Group Assignments include the following: Permit Process; Cumulative Impacts; Alternatives Analysis. (*Handout: VWP WSP Work group – Small Group Assignments*) She asked each of the Work Group members and Interested Parties to look at these areas and the issues contained in the NOIRA and to develop concerns and issues that they would like to see addressed in each of these four main areas. This information was placed on the “blue wall” in each of the assignment areas for use in the development of the agenda and goals for each of the small groups. She noted that the goal of the small group meetings this afternoon was to start looking at agenda-setting and priority-setting for each of the groups and to identify what information and/or resources each small group needs to meet their agenda and priorities. She noted that these small groups would need to set up meetings between the large group meetings to be able to address the issues being examined. It was noted that either Barbara Hulburt or Mark Rubin plan to be at each of the subcommittee meetings if possible. The work group members discussed other issues that had not been specifically spelled out in each of the small group assignments. It was noted that issues not specifically addressed by the small groups would be brought to the full work group and that issues raised by the small groups would also be periodically brought before the full work group.
- 8. First Small Group Meetings:** Barbara Hulburt reviewed the issues placed on the “blue wall” with the group. The small groups were then excused to begin their deliberations on their agendas and priority setting.