

Meeting Minutes
Thursday, May 28, 2020
Water Quality Management Planning Regulation Amendment
Regulatory Advisory Panel (RAP)
Electronic-only Meeting on GoToWebinar

Members Present: Grace LeRose, Allison Dienes, Tim Castillo, Scott Morris, Ben Shoemaker, Frank Harksen, Dickie Thompson, Timothy Mitchell, James Grandstaff, Chris Pomeroy, Andrew Parker, Joseph Wood, Jamison Brunkow, and Patrick Calvert.

Members Absent: Dr. Evelyn Mahieu, Ted Henifin.

Other Attendees: Patrick Fanning (alternate for Evelyn Mahieu), Jim Pletl (alternate for Ted Henifin), Wendy Eikenberry (present online with Tim Castillo), Melanie Davenport, Drew Hammond, John Kennedy, Allan Brockenbrough, Dr. Tish Robertson, Austen Stevens, Gary Graham, Alison Thompson, Jutta Schneider, Lewis Linker, Jian Shen, Clifton Bell, Cindy Berndt, Erica Duncan, KC Filipino, Normand Goulet, Steven Herzog, Lawrence Hoffman, Anna Killius, Adrienne Kotula, Amanda Marsh, Jeff McBride, Erin Reilly, Mitchell Smiley, and Theresa O'Quinn.

The meeting convened at 10:13 a.m. and adjourned at 3:09 p.m.

1. **Welcome, Meeting Logistics, Charge of the RAP, and Introductions** [Melanie Davenport, DEQ]. Ms. Davenport reviewed the final Agenda (Attachment 1); welcomed the RAP members and alternates (Attachment 2) and other meeting attendees; and introduced the DEQ staff members that were managing the on-line meeting from the DEQ Central Office. Ms. Davenport reviewed the purpose and function of the RAP; explained the public participation pitfalls and requirements of the RAP (Attachment 3); specified the legal basis for conducting this public meeting on-line; and highlighted the protocols that will be used to conduct the meeting (Attachment 4). Ms. Davenport also reviewed the three elements that the RAP is charged with accomplishing (from the Notice of Intended Regulatory Action, [Va. R. Volume 36, Issue 7](#), p. 986, published on November 25, 2019).
2. **James River Chlorophyll-A** [John Kennedy and Dr. Tish Robertson, DEQ]. Using Attachment 5, Mr. Kennedy introduced the new James River Chlorophyll Criteria and assessment methodology (effective 1/9/20), along with the water quality modeling results for various point source nutrient reduction scenarios. Dr. Robertson discussed the model, the data collection, the differences between scenarios modeled, and the results of the modeling. Mr. Kennedy then summarized the findings and the next steps necessary to understand the results.
3. **Industrial Wasteload Allocations** [Allan Brockenbrough, DEQ]. Using Attachment 6, Mr. Brockenbrough reviewed the requirement for the 10-year review of wasteload allocations (WLAs), with a view toward seeing if it was possible to free up allocations for future economic development as part of that review. He discussed several industrial groups from which allocations might be found and discussed a number of facilities within those groups. He also discussed three municipal facilities in the James River Basin that have

WLAs based on a design flow greater than their currently permitted design flow and suggested that these discrepancies could be addressed. Andrew Parker of VMA requested an opportunity to address the industrial WLAs allocations at the next RAP meeting.

4. **Municipal Floating Wasteload Allocations** [Allan Brockenbrough, DEQ]. Using Attachment 6, Mr. Brockenbrough explained the concept of floating WLAs for municipal wastewater treatment plants as proposed under Initiative #52 of Virginia's Phase III Watershed Implementation Plan for the Chesapeake Bay TMDL. The WLAs would "float" from year to year based on the amount of wastewater treated. Basing the floating WLA on treated flow rather than discharged flow would avoid penalizing facilities that reduce their discharge through reclamation and reuse. He also presented provisions intended to address CSO communities as well as the diversion of flows from HRSD's Chesapeake-Elizabeth WWTP outside of the Chesapeake Bay watershed. He identified four issues that need to be discussed by the RAP:
 - Whether to apply the floating WLAs to all significant municipal facilities or just a subset of the larger facilities?
 - What happens to the "capacity" WLA (the difference between the existing WLA and the floating WLA)?
 - Capacity WLA changes from year-to-year until the floating WLA exceeds the existing WLA. Capacity WLAs are held in the Nutrient Offset Fund.
 - Can capacity credits or WLA be traded to accommodate new and expanding point sources registered under the GP?
 - Can capacity credits or WLA be traded to meet the needs of the MS4 sector or will there be sufficient credits under the floating WLAs?

Chris Pomeroy expressed concern about the sequence of activities in light of the new Appropriations Act requirement for a reevaluation of the WIP3 Initiative 52 floating cap concept enacted with agreement of the Northam Administration and various stakeholders after this rulemaking began. He also requested and would be prepared to present VAMWA's recommended alternatives to the floating cap proposal at the next RAP meeting. DEQ agreed to receive this presentation as part of the June 10 agenda. Alternatives to the floating WLA proposal will be discussed by this RAP as well as in a second stakeholder's workgroup to be formed in response to a provision in the state budget requiring development of a report on cost-effective options to achieving reductions from the wastewater sector.

5. **Additional Discussion** [Allan Brockenbrough, DEQ]. At the request of some RAP members, Mr. Brockenbrough presented and discussed his work evaluating the impact of the proposed floating WLAs on the trading market using 2018 discharge data (Attachment 7). He indicated that the evaluation was a worst-case scenario, as it did not include any upgrades or changes in performance that will be made in response to the floating WLA proposal. He also cautioned that this spreadsheet had not undergone a QAQC check and urged anyone to report any errors to him.

A [recording of the meeting](#) is available for review on-line.

Attachments:

1. Final Meeting 1 Agenda.
2. Regulatory Advisory Panel. (RAP membership List).
3. The Role of the Regulatory Advisory Panel in the Regulatory Process.
4. Guidelines for Discussions.
5. Assessment Results of Management Scenarios using the VIMS James River Water Quality Model.
6. Regulatory Advisory Panel Meeting Proposed Amendments to 9VAC25-720 Water Quality Management Planning Regulation.
7. 2018 Nutrient Load Analysis.

Attachment 1

Final Agenda

Water Quality Management Planning Regulation Regulatory Advisory Panel (RAP)
Meeting No. 1 – May 28, 2020

1. Meeting Logistics
2. Welcome
3. Charge of the RAP
4. Introductions
5. James River Chlorophyll-a
6. Industrial Wasteload Allocations
7. Municipal Floating Wasteload Allocations

Attachment 2

**COMMONWEALTH OF VIRGINIA
STATE WATER CONTROL BOARD**

**REGULATORY ADVISORY PANEL
CONCERNING
WATER QUALITY MANAGEMENT PLANNING REGULATION AMENDMENT
(9VAC25-720)**

Panel Facilitators

Allen Brockenbrough, DEQ
John Kennedy, DEQ

Regulated Community, Municipal

Grace LeRose, City of Richmond DPU	Alt: Patrick Fanning, Troutman Sanders
Dr. Evelyn Mahieu, Prince William County SA	Alt: Patrick Fanning, Troutman Sanders
Allison Deines, Alexandria Renew Enterprises	
Tim Castillo, Augusta County SA	Alt: Wendy Eikenberry
Scott Morris, Chesterfield County Utility Dept.	Alt: Jeff McBride
Ben Shoemaker, Fauquier County WSA	Alt: Cheryl St. Amant
Frank Harksen, Hanover County	Alt: Steven Herzog
Dickie Thompson, Hopewell Water Renewal	Alt: Jerry Byerly
Timothy Mitchell, Lynchburg Water Resources	Alt: Greg Poff
James Grandstaff, Henrico County DPU	Alt: Erica Duncan
Ted Henifin, HRSD	Alt: Jim Pletl

Trade Group/Regulated Community, Municipal

Chris Pomeroy, VA Assoc. of Municipal Water Agencies, Inc.

Trade Group/Regulated Community, Industrial

Andrew Parker, AdvanSix, VMA	Alt: Andrea Wortzel, Troutman Sanders, VMA
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Environmental Groups

Patrick Calvert, Virginia Conservation Network	
Jameson Brunkow, James River Association	Alt: Anna Killius
Joseph Wood, Chesapeake Bay Foundation	Alt: Peggy Sanner

DEQ Staff

Gary Graham, DEQ, Agency Contact

THE ROLE OF THE REGULATORY ADVISORY PANEL IN THE REGULATORY PROCESS

The purpose of the regulatory advisory panel (RAP) is to assist in the development of a proposed regulation. This panel has been formed to balance the concerns of all those interested in this particular regulation. All such concerns will be addressed by the panel, and any member is free to advance any opinion.

DEQ staff members within this panel are also free to advance any opinion, but these opinions are not those of DEQ management. Of DEQ staff on the group, the Office of Regulatory Affairs will coordinate panel activities, provide staff support, draft the regulation, and act as the panel's liaison to DEQ management, the State Water Control Board, and the Office of Attorney General.

RAP meetings are public meetings. Any member of the public may attend and observe the proceedings; however, only RAP members may participate.

The role of the panel is **advisory**. The panel's function is to make recommendations to DEQ management and to the State Water Control Board on a specific action. **Neither DEQ nor the board is obligated to accept the panel's recommendation.**

The panel's primary responsibility is to collaboratively contribute to a regulation that is in the in the best interests of the Commonwealth as a whole. Because the panel represents many different interests, all members should expect to compromise in order to accomplish the panel's mission. If the panel cannot reach consensus, Office of Regulatory Affairs staff will present the differing opinions to DEQ management and the board. **A divided opinion will significantly decrease the panel's impact.**

After the panel makes its recommendations, DEQ management will develop the department's position, which will be sent to the board prior to the meeting at which it addresses this issue. In turn, the board will decide if DEQ's recommendation should be modified before the proposed regulation is promulgated for public comment.

The documentation sent to the board before the meeting will also be sent to the RAP. As with all other members of the public, members of the panel are free to attend the meeting at which DEQ will present its recommendation, but the board will not receive comment at that time. Public comment will be received only after the proposed regulation has been promulgated for public comment.

After the board approves the promulgation of the proposal, the proposed regulation will undergo executive review and then be published in the Virginia Register, marking the beginning of a 60-day comment period. During this period, any member of the public may comment on the proposed regulation. These comments will be forwarded to the board and will be responded to in the public record. Any member of the RAP, like any other member of the public, is free to express any opinion on the proposed regulation.

The key steps in the regulation development process are provided in the following table.

Virginia Regulation Adoption Process - Key Steps

The maximum or minimum number of days allotted to accomplish each step as mandated by law or executive order is indicated after each step, as applicable.

Regulatory action notification stage.

1. Agency makes determination to promulgate regulation.
2. Agency prepares and submits preliminary determination for proposal to Secretary of Natural Resources and Department of Planning and Budget (DPB).
3. DPB conducts policy review of preliminary determination (14 days maximum).
4. DPB Advises Secretary and Governor as to whether proposal complies with executive policy.
5. Secretary notifies Governor of preliminary decision on proposal.
6. Governor notifies Secretary of final decision on proposal.
7. Secretary gives agency approval to publish Notice of Intended Regulatory Action (NOIRA).
8. Agency prepares and transmits NOIRA to Registrar of Regulations (14 days maximum).
9. Registrar publishes NOIRA in Virginia Register (20 days minimum).
10. Public comment period opens (30 days maximum for steps 10, 11, and 12).
11. Agency holds public meeting.
12. NOIRA comment period closes.

Proposed regulation development and promulgation stage.

13. Agency prepares (**in conjunction with regulatory advisory panel**, if any) proposed regulation (**180 days maximum** for steps 13, 14, 15 and 16).
14. Agency presents proposed regulation to board for publication approval.
15. Attorney General sends statutory authority statement to agency.
16. Agency prepares and submits regulatory review package to DPB and Secretary.
17. DPB conducts policy review and prepares economic impact analysis (45 days maximum).
18. DPB sends Registrar and agency copy of economic impact analysis.
19. Agency prepares response to DPB economic impact analysis.
20. DPB advises Secretary and Governor as to whether proposal complies with executive policy.
21. Secretary notifies Governor of preliminary decision on proposed regulation.
22. Governor notifies Secretary of final decision on proposed regulation.
23. Secretary gives agency approval to submit regulatory review package to Registrar.
24. Agency submits regulatory review package to Registrar (14 days maximum).
25. Proposed regulation published in Virginia Register (20 days minimum).
26. Public comment period opens (60 days minimum for steps 26, 27, 28, and 29).
27. Public hearing(s) held on proposed regulation.
28. Governor submits comments to Virginia Register for publication.
29. Public comment period closes.

Final regulation development and promulgation stage.

30. Agency addresses public comments and prepares changes to proposed regulation (120 days maximum for steps 30, 31, 32, and 33).
31. Agency submits proposed regulation with any suggested changes to Board for approval as final regulation.
32. Attorney General sends statutory authority statement to agency.
33. Agency transmits final regulation to Virginia Register for publication.
34. Registrar publishes final regulation in Virginia Register (20 days minimum).
35. Final adoption period commences (30 days minimum for steps 35 and 36).
36. Final adoption period ends.
37. Final regulation becomes effective immediately or on date specified by agency.

Attachment 4

GUIDELINES FOR DISCUSSIONS

- Listen with an open mind and heart - it allows deeper understanding and, therefore, progress.
- Speak one at a time; interruptions and side conversations are distracting and disrespectful to the speaker. "Caucus" or private conversation between members of the audience and people at the table may take place during breaks or at lunch, not during the work of the group.
- Be concise and try to speak only once on a particular issue, unless you have new or different information to share.
- Simply note your agreement with what someone else has said if you feel that it is important to do so, it is not necessary to repeat it.
- If you miss a meeting, get up to speed before the next one as the group cannot afford the luxury of starting over.
- Focus on the issue, not the speaker - personalizing makes it impossible to listen effectively.
- Present options for solutions at the same time you present the problems you see.
- Stay positive; despairing of the group's inability to reach agreement will almost certainly make it so.
- Turn off all beepers and cell phones; take or make all calls outside the room.

Attachment 5

Assessment Results of Management Scenarios using the VIMS James River Water Quality Model

Attachment 6

Regulatory Advisory Panel Meeting Proposed Amendments to 9VAC25-720 Water
Quality Management Planning Regulation

Attachment 7

2018 Nutrient Load Analysis

(A work-in-progress)