

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

CITIZEN ADVISORY GROUP

MEETING #9 - NOTES - DRAFT

MEETING THURSDAY, JANUARY 8, 2015 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	Phil Abraham – Vectre Corp.	Melanie Davenport
Jason P. Ericson – Dominion Resources Services, Inc.	Tom Broderick – Loudoun Water	Dave Davis
Karen Johnson – The Nature Conservancy (TNC)	Alicia Connelly – City of Norfolk	Sarah Marsala
Bob Kerr – Kerr Environmental	John DeResa – Prince William County Service Authority	Mike Murphy
Greg Prelewicz – Fairfax Water	Jason Early – Clear Creek Associates	Bill Norris
Mike Rolband – Virginia Homebuilders Association	Christopher Gill – City of Norfolk	Ann Regn
Beth Silverman Sprenkle – EEE Consulting, Inc.	Chris Harbin – City of Norfolk	Brenda Winn
William T. (Tom) Walker – US Army Corps of Engineers	Tracey Harmon – Virginia Department of Transportation	<i>OTHER DEQ STAFF</i>
Joe Wood – CBF (Alternate for Peggy Sanner)	Steven Herzog – Hanover County Department of Public Utilities	Lee Crowell
Andrea Wortzel – Troutman Sanders – Alternate for Nina Butler	Thaddeus J. Kraska – Townes Site Engineering	Allison Dunaway
	Craig Maples – City of Chesapeake	Steve Hardwick
	T.J. Mascia – Troutman Sanders LLP	Bert Parolari
	Mark Williams – LUCK Companies	

NOTE: Citizen Advisory Group Members NOT in attendance: Nina Butler – Virginia Manufacturers Association/Mission H2O; Katie Frazier – Virginia Agribusiness Council; Peggy Sanner – Chesapeake Bay Foundation (CBF); Skip Stiles – Wetlands Watch

1. Introductory Comments – Discussion of Process and Schedule for the Day (Bill Norris):

Bill Norris welcomed all of the meeting attendees to the 9th meeting of the VWP Citizen Advisory Group. He thanked everyone for their commitment to and their participation in the process.

2. Welcome & Introductions – Opening Statements (Melanie Davenport):

Melanie Davenport thanked everyone for coming to today's meeting and their continued contributions to the process. She noted that this is the last meeting of the VWP Citizens Advisory Group. She pointed out to the group that there may have been some confusion over the comments that had been submitted

and discussed as part of the development of this proposed regulation are not part of the official record for the purpose of the regulation development. So if there are issues that came up that you commented to us on that either you liked what we did or didn't agreed with what we did or if you feel the proposed regulation isn't what any of us talked about, if you want to be heard and have comments on that then you have to submit comments during an official public comment period. We may have been less than definite on whether the comments that have been submitted to date go to the public record – they do not. In fact no one knows for sure what that final proposed text is going to look like at this stage of the process.

Our plan is to work through everything as noted on the agenda. Brenda Winn noted that the plan is to go through 690 and then briefly go through the remaining General Permits and then go back to review some proposed changes to the main regulation – 210.

Melanie noted that her plan was to provide a wrap-up at the end the meeting regarding final process and Water Board meeting dates, etc.

Discussions included:

- A question was raised over the need for a lot of advisory groups to arrive at a consensus on some version of the proposed revisions to a regulation before moving forward. Given that there are still quite a bit of concerns about the proposed revisions that remain, is that not the case here? *Staff Response: There have been advisory groups within other agencies where there is actually a vote of the group regarding consensus on proposed revisions – that is not normally part of the advisory group process within DEQ. Staff has discussed internally as to what “consensus” actually is and what it represents as part of the Advisory Group and Regulatory development process. There are issues that DEQ feels strongly about working out and resolving with regard to the permitting program moving forward. We have to see what everyone says about all of the proposed revisions and then make a decision internally as to what we move forward with and present as proposed to the State Water Control Board. On those issues where we can have a conversation and tweak the concept and come up with a consensus then great but the agency can still propose something where there was not a consensus if we feel strongly that that the revisions are needed to move the program forward.*
- *Staff Note: In this process, the staff does tell the Water Board during the presentation of the proposed regulation those areas where we do not have consensus or agreement from the advisory group. Staff will be preparing a summary of all of the proposed revisions for presentation to the Board and that material will also be shared with the members of the advisory group prior to the public comment period. The purpose of going to the Board this time is to get the permission to go to public comment on the proposed revisions. There may be a fairly large amount of time between when we present the materials to the Board and ultimately get Executive Approval to go to Public Comment.*
- A question was raised over whether in saying that this was the last meeting of the group, does that include the Surface Water Withdrawal part too? *Staff Response: Yes, it does.*

Melanie noted that she was going to thank everyone and dismiss everyone at the end of today's meeting, but given the questions that are being raised, she will present her final wrap-up comments on the process now. She noted the following:

- There are a handful of technical substantive issues that still lingering in the water withdrawal section. There seems to be agreement on pulling those provisions out of the main regulation and moving to their own section/part of the regulation. For the purposes of this discussion let's make the assumption that we will pull the surface water withdrawal requirements into their own section or part of the regulation. Then the question is do we proceed with proposing changes? Or do we keep the substance the way it is? Staff is planning to meet with the Agency Director to sit down and discuss where we are with this regulation and to share with him where we have points of consensus and where there are still areas where the group has concerns or areas where there is disagreement over the proposed approach of proposed revision. On the substantive changes to the surface water withdrawal sections, we will either decide to keep it the way it is or decide to move forward with the proposed changes. Then we will take comments during the public comment period.
- This is the last meeting of this advisory group.
- A memorandum had to be developed and submitted to the Secretary of Natural Resources explaining why we failed to meet the mandated deadline (180 days) for this regulatory action. In that memo, we did discuss the complexity of the proposals and the number of General Permits involved, etc. as justification for exceeding the deadline.
- The next State Water Control Board is scheduled for March 30th.
- There is no opportunity to address the Board during the staff presentation or Board vote on a proposed regulation.
- After the Board proposes that the regulation move forward as proposed it then moves into Executive Review which is a time period over which the agency has no control so we do not know how long following Board approval before approval of going to a public comment period will be received.

Dave Davis informed the group that the fall-back plan for this process if 210 gets hung-up in Executive Review is to move forward with the reauthorization of the General Permit just as they are since they do not require Executive Review so that they do not expire with the only change being new dates.

3. Notes from Previous Meeting – December 8, 2014 (Bill Norris):

Bill Norris noted that he had distributed the notes from the 8th meeting of the VWP Citizen Advisory Group that was held on Monday, December 8th. He asked for any edits to those meeting notes. No edits were proposed.

ACTION ITEM: The meeting notes will be posted as “final” to Town Hall.

4. Introductions (Melanie Davenport):

Melanie Davenport asked for introductions from the members of the Advisory Group and members of the Interested Public.

5. Review Proposed VWP General Permit Regulation – 9VAC25-690 (Brenda Winn):

Brenda Winn noted that the group has gone through the proposed revisions to the main regulation 9VAC25-210 and the plan is to transfer those changes to the General Permits. She noted that a lot of the language that will be discussed today will look and sound very familiar. She provided an overview of the proposed VWP General Permit Regulation language and the concepts behind the proposed revisions to the General Permits. The group reviewed the proposed revisions section by section.

6. BREAK: 11:00 – 11:10:

7. Review Proposed VWP General Permit Regulation – 9VAC25-690 (Brenda Winn) - Continued:

Brenda Winn continued review of the proposed changes to the General Permit – the group continued their discussions on the proposed revisions section by section.

8. Lunch Break: 12:05 – 12:55:

9. Review Proposed VWP General Permit Regulation – 9VAC25-690 (Brenda Winn) - Continued:

Brenda Winn continued review of the proposed changes to the General Permit – the group continued their discussions on the proposed revisions section by section.

10. Review of other Proposed VWP General Permit Regulations (Brenda Winn):

Brenda Winn briefly reviewed some additional proposed changes to the other General Permits.

11. BREAK – 1:55 – 2:06:

12. Review of Latest Proposed Revisions to 9VAC25-210-300 (Sarah Marsala):

Sarah Marsala provided an overview of the latest proposed revisions to the surface water withdrawal sections starting at 9VAC25-210-300. The group discussed the latest proposed revisions.

- Definition of “Consumptive Use” – Agreement to use the definition: “means any use of water withdrawn from a surface water other than a nonconsumptive use.
- Definition of “instream flow” – Agreement to use the definition: “means the existing volume of water flowing in a stream or waterbody including any seasonal variations of water levels and flow.” There was a general consensus to use the term “existing” instead of “normal”.
- Definition of “intake structure” – Consensus to retain the original definition as proposed in the regulation.
- Definition of “safe yield” – The group discussed a number of proposed revisions and there was a general preference to revise the definition to read: “means the highest average annual volumetric rate of water that can be withdrawn by a surface water withdrawal during the Drought of Record since 1930 under specific operational conditions established in a Virginia Water Protection permit, when applicable.” The group raised a concern about the term being proposed to be removed from the VDH regulations. The group discussed the concept of “safe yield”. *Staff noted that there has been a lot of coordination with VDH and what is being proposed is essentially how DEQ is currently doing business.* The group raised concerns over the impact of the deletion of the definition of safe yield from VDH and the proposed definition in the DEQ regulation on the concept of “grandfathering”. The group discussed the concept of “safe yield” and existing “Water Works Operating Permits”. The VDH concept of “system capacity” as discussed by the VDH RAP was raised and discussed briefly by the group.
- Definition of “Surface Water withdrawal system” – The preference if the group was to retain the original definition and not make the revisions that had been proposed by staff. The group had a lengthy discussions over the possible implications of using a revised definition. The general agreement was to revert back to the original definition.
- Definition of “Public water supply” – The group discussed going back to the original definition and not including reference to “industrial and commercial uses”.
- 9VAC25-210-380 A 4: This section was revised since the version seen by the group in November – based on comments that had been received. The section would read: “4. A revision to the purpose of the surface water withdrawal that proposes to include a new use(s) that was not identified in the permit application or a modification of the existing authorized use(s) such that the use description in the permit application and permit is no longer applicable.
- 9VAC25-210-380 B originally contained a “kick-out provision” that read “The board, at its discretion, may require that the changes proposed under a minor modification be processed as a modification in accordance with 9VAC25-210-180 C. Based on comments received staff is proposing to delete the “kick-out provision”.
- 9VAC25-210-380 B 3: The group discussed a proposed change to this language and generally agreed to revise the text to read: “3. Changes to the permitted project that cause no more than a minimal change to the instream flow requirements with no potential to result in a detrimental effect to existing beneficial uses.”

A question was raised over what kind of documentation would be made of the reasons and rational for the proposed changes to the regulation – how will someone who is not directly involved in these

discussions know why certain changes were made or not made and the rational and process for moving forward. *Staff Response: Staff noted that documentation would be provided to the Board in the Board memo as well as in the required Town Hall documents and the Staff presentation which would include as much detail as needed to identify the discussions and concerns and rational for making the proposed revisions to the regulations during the entire regulatory process.* A request was made that DEQ staff include materials in their Board materials related to the issue of addressing safe yield; grandfathering and the potential impact and implications of the changes being proposed by VDH related to water works permits and the determination of safe yields and the determination of “system capacity”. *Staff Response: Staff will try to include a discussion of the coordination with VDH related to “safe yield”.* The group asked for staff to include as much detail as possible in the materials presented as documentation to the Board.

13. Public Comment – 3:30 P.M. (Bill Norris):

Bill Norris asked for Public Comment. Two public comments were offered:

- **T.J. Mascia – Troutman Sanders/Mitigation Banking:** He noted that there are some pieces of proposed legislation which may adversely impact conservation easements and the mitigation banking process. There may also be some budget proposals with implications that need to be considered. (HB1488 and HB1572)
- **Steve Herzog – Hanover County Department of Public Utilities:** If there is a grandfathered intake can it obtain a VWP permit if it wants to or is it excluded? *Staff Response: They are allowed to if they desire to apply for one.* Related to grandfathered withdrawals – We have to have an understanding that with the VWP draft regulation and the proposed VDH revised regulations really adequately address the grandfathering issues related to the determination of safe yield and system capacity. The extreme condition of being able to “suck the river dry” is a concern. There needs to be an effort to clarify what safe yield is and how it is going to be addressed with the proposed changes to the regulations of two different agencies (DEQ and VDH). How the determination of safe yield will be handled and addressed in the future needs to be answered. A suggestion was made that instead of leaving it nebulous that DEQ should identify in the regulations all of the grandfathered users and their grandfathered amounts so that it would be clear as to what the grandfathered volume is for each intake. Reference was made to the State’s Water Resource (Supply) Plans and the idea that it would combine all of the individual and regional water supply plans and maybe be able to determine those numbers and be able to evaluate the landscape across the Commonwealth. *Staff Note: The water supply plan is envisioned as a planning tool but the program has no regulatory mechanism or ability.*

14. Meeting Wrap-Up (Melanie Davenport):

Melanie Davenport thanked everyone for their participation and their assistance and patience throughout this regulatory process. She thanked everyone for their service to the Commonwealth and to DEQ.

She noted again that the Proposed Regulation will be presented to the Water Board at their meeting on March 30th and that there will not be an opportunity for public comment at that meeting. Once you see the “proposed” version of the regulation and you have comments please submit them during the Public Comment period that will be announced. If you comment during the public comment period then you are eligible to speak to the Board. A notice of Public Comment will be forwarded to the Advisory Group. Everyone is welcome to come and hear the staff presentation and discussions of the Board at the March meeting but there will not be an opportunity to make public comments.

15. Meeting Adjournment:

The meeting was adjourned at approximately 4:00 P.M.