

Meeting Minutes
Thursday, February 20, 2020

Eastern Shore Surficial Aquifer General Permit Regulatory Advisory Panel (RAP)
Cape Charles Civic Center
500 Tazewell Avenue, Cape Charles, Virginia

Members Signed In as Present: Sue Mastyl, Paul Muhly, Dave Lovell, Brett Mariner, Jessica Steelman, Curtis Consolvo, John Coker, Holly Porter, and Britt McMillan.

Members Present but not Signed In: Ed Tankard.

Members Absent: Jay Ford and Steve Levitsky.

Other Participants: Scott Kudlas (facilitator), Jutta Schneider, Tony Cario, Gary Graham, Shannon Alexander, and Tony Banks.

The meeting convened at 10:03 a.m. and adjourned at 11:49 a.m.

1. Welcome and Introductions [Scott Kudlas and Gary Graham, DEQ]. Mr. Kudlas welcomed the RAP members to the meeting and Mr. Graham reviewed the purpose and pitfalls of the RAP. Members introduced themselves. The tentative agenda for the meeting had previously been emailed to members (Attachment 1). Meeting materials (Attachments 2 and 3) had also been emailed to the members and were available in the meeting room for public attendees. Guidelines for Discussion (Attachment 4) and the RAP membership list (Attachment 5) were also handed out before the meeting.
2. Review and discussion of Senate Bill 1599 (2019) [Scott Kudlas, DEQ]. The legislation SB1599 was handed out at the meeting (Attachment 6). Mr. Kudlas reviewed the legislation and the five categories of incentives that can be used to incentivize the use of the surficial aquifer on Virginia's Eastern Shore.
 - a. An extended permit term up to 20 years. Fifteen years represents is the best permit term. A shorter general permit term provides little incentive and longer terms give less time to adjust the general permit regulation to adjust to adverse or unexpected changes in the aquifers.
 - b. An accelerated permit process. A general permit is a permit-by-rule, so that the terms of the permit are all in the General Permit regulation. Application review is quick compared to other permits (usually about 30 days). Also, the entire General Permit Regulation expires at the permit term and the General Permit Regulation has to be reissued as a new regulation. Facilities covered by the General Permit Regulation operate under the terms of the general permit only for the remainder of the term of the General Permit Regulation. Some members

felt that since they operate under a normal permit that a general permit would not be applicable to them, so a General Permit Regulation provides no incentive for them to switch.

- c. Discounted permit fees. Discounting permit fees pose some challenges for DEQ. Normally permit fees cover 30-40% of the program. Permits for this program cover less than 6% and are relatively small (about \$9000). Many facilities pay no fees. Member discussion indicated that reducing permit fees would provide little incentive to switch to the surficial aquifer, especially since the water treatment costs are usually so much larger than the permit fees.
 - d. Other subsidies. Funding for other subsidies does not exist in the new budget proposals. Therefore, this option is unlikely to provide incentives.
 - e. Other incentives. Concern was expressed about the many technical issues that represented barriers to using the surficial aquifer that need to be addressed. No other incentive options were identified by the members.
3. Driving Factors for the Legislation [Shannon Alexander, Eastern Shore Groundwater Committee]. Ms. Alexander presented slides (Attachment 6) and discussed the reasons that were the driving force behind the legislation (SB 1599). In summary, the surficial aquifer provides a more easily replenished source of low pressure, good quality water for the Eastern Shore. If used as an alternative to using water from deeper aquifers that do not replenish as easily, then then local water supply becomes more sustainable and the water quality of the deeper aquifers is not as likely to degrade from overuse. Members discussed how the local variability of water quality in both the surficial and deep aquifers (as pointed out in the presentation) might dictate whether using the surficial aquifer is economically feasible. Another concern was that if the choice was to operate under one permit or the other, facilities would choose not to switch to operating under a general permit. Members also discussed the possibility if the General Permit Regulation did not prevent operating under a normal permit also, that mixing water from the deeper aquifer and the surficial aquifer could solve local water quality problems and reduce treatment costs, which could be an incentive to use more of the surficial aquifer.
 4. Development of a General Permit [Scott Kudlas, DEQ]. Mr. Kudlas pointed out that the accelerated permit process is the only viable incentive out of the options offered in the legislation and that development of a General Permit Regulation is the best way to accelerate the permit process. Development of a general permit will require:
 - a. An amendment to 9VAC25-610 to authorize a General Permit Regulation. Other State Water Control Board (SWCB) regulations have existing language that work well and that can be adapted for authorizing this general permit.
 - b. A new General Permit Regulation (proposed as 9VAC25-910) to contain the terms and conditions that would normally be in a permit and under which facilities can operate. These terms and conditions need to be selected to protect the water supply yet provide the needed flexibility and incentive to increase the use of the surficial aquifer.
 5. Review of a strawman to amend 9VAC25-610 to authorize General Permit Development [Scott Kudlas, DEQ]. A strawman for proposed amendment language to 9VAC25-610

(Attachment 7) was handed out to members at the meeting and made available to members of the public attending the meeting. The proposed changes to 9VAC25-610 include:

- a. A new definition of “general permit.” Language in an existing definition of “General Permit” in SWCB water discharge regulations was revised to apply to groundwater withdrawal instead of discharges.
 - b. A new section “9VAC25-610-95. General Permits.”
 - i. Proposed new subsections A, D, F, and G are standard language in other SWCB Regulations that authorize a General Permit Regulation, adapted for groundwater withdrawal.
 - ii. Proposed new subsection B covers situations in which the general permit may not be appropriate or when unintended consequences dictate that an individual permit is more appropriate.
 - iii. Proposed new subsection C is standard language from other SWCB general permit regulations.
6. Concerns for additional consideration:
- a. Can DEQ provide support for grant applications to encourage surficial aquifer use?
 - b. Will a facility need both a general and individual permit? Or will it be a choice to get one or the other?
 - c. General concern was expressed about the long time frame to obtain permits.
 - d. The surficial aquifer needs more treatment than the deeper aquifer. This is costly and often a concern for poultry operations.
 - e. Surficial aquifer withdrawals generally have a smaller Area of Impact.
 - f. Explore the possibility of taking groundwater from multiple aquifers in combination with the Surficial. Can an individual permit be avoided if also using less than 300,000 gallons/month from the Yorktown Eastover Aquifer?
7. Action Item: Members will review the strawman and be ready to discuss it and suggest changes at the March 4th meeting in Tidewater.

Attachments:

1. Tentative Meeting Agenda.
2. The Role of the Regulatory Advisory Panel in the Regulatory Process.
3. Public Participation Report for the NOIRA concerning Regulation Amendments Covering the Eastern Shore Surficial Aquifer General Permit.
4. Guidelines for Discussion.
5. Regulatory Advisory Panel. (RAP membership List)
6. Senate Bill 1599 (2019)
7. Eastern Shore Groundwater Committee Presentation Slides: Driving Factors for the Legislation.
8. Strawman for Base Regulation Changes (9VAC25-610).

TENTATIVE AGENDA
ESGWMA Surficial Groundwater General Permit Regulatory Advisory
Panel

Introductions

Review and Discuss SB 1599 (2019) Charge

- A. Provide incentives for greater use of the surficial aquifer
 - 1. Extended permit term up to 20 years
 - 2. An accelerated permit process
 - 3. Discounted permit fees
 - 4. Other subsidies
 - 5. Other incentives

Presentation: Eastern Shore Groundwater Committee

- B. Driving factors for legislation

NOIRA was for the creation of a surficial aquifer general permit

- A. Primary option available to DEQ at this time is a General Permit
 - 1. Accelerated process
- B. Must take two actions
 - 1. Amend the base regulation to authorize a general permit
 - 2. Draft the general permit and its conditions

Review of strawman to amend 9 VAC 25-610 to authorize General Permit Development

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.

**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF ENVIRONMENTAL QUALITY**

INTRA AGENCY MEMORANDUM

TO: File

FROM: Gary Graham

SUBJECT: Public Participation Report for Intended Regulatory Action concerning Regulation Amendments covering the Eastern Shore Surficial Aquifer General Permit

DATE: February 7, 2020

BACKGROUND

In accordance with the Board's regulatory public participation procedures (9VAC25 Chapter 10), the Department published a notice of intended regulatory action for regulations concerning an Eastern Shore surficial aquifer general permit.

CERTIFICATION OF PUBLIC NOTICE

Notice of the intended regulatory action was given to the public in the Virginia Register on November 11, 2019 (attached). Accordingly, a public comment period was held from November 11, 2019 to January 6, 2020 to receive any public input concerning the above intended regulatory action.

SUMMARY OF PUBLIC PARTICIPATION ACTIVITIES

Seven sets of written comments were received during the public comment period. The complete text of all comments is also attached.

NOTICES OF INTENDED REGULATORY ACTION

TITLE 9. ENVIRONMENT

STATE WATER CONTROL BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Water Control Board intends to consider amending **9VAC25-610, Groundwater Withdrawal Regulations** and adopting a new chapter, **9VAC25-910, General Permit for Use of Surficial Aquifer on the Eastern Shore**. The purpose of the proposed action is to authorize the development of a general permit and create a new general permit regulation to promote use of the surficial aquifer on the Eastern Shore for nonpotable purposes.

The agency does not intend to hold a public hearing on the proposed action after publication in the Virginia Register.

Statutory Authority: § 62.1-262.1 of the Code of Virginia.

Public Comment Deadline: January 6, 2020.

Agency Contact: Scott Kudlas, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4456, or email scott.kudlas@deq.virginia.gov.

VA.R. Doc. No. R20-6091; Filed October 22, 2019, 12:08 p.m.

Public Comment Deadline: December 11, 2019.

Agency Contact: Jaime Hoyle, Executive Director, Board of Counseling, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4406, FAX (804) 527-4435, or email jaimе.һoуlе@dһp.virginia.gov.

VA.R. Doc. No. R20-6208; Filed October 15, 2019, 3:39 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF COUNSELING

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Counseling intends to consider amending **18VAC115-40, Regulations Governing the Certification of Rehabilitation Providers**. The purpose of the proposed action is to update regulations, clarify language, and achieve some consistency among standards of practice and renewal requirements for certified and registered professions. The board will consider requiring hours of continuing education for renewal and adding grounds for disciplinary actions that are found in all other chapters for other professions regulated by the board.

This Notice of Intended Regulatory Action serves as the report of the findings of the regulatory review pursuant to § 2.2-4007.1 of the Code of Virginia.

The agency intends to hold a public hearing on the proposed action after publication in the Virginia Register.

Statutory Authority: § 54.1-2400 of the Code of Virginia.

From: **Elaine Meil** <emeil@a-npdc.org>
Date: Mon, Dec 9, 2019 at 10:53 AM
Subject: Columbia NOIRA Comments
To: Kudlas, Scott (DEQ) <scott.kudlas@deq.virginia.gov>
Cc: Shannon Alexander <salexander@a-npdc.org>, Jessica Steelman <jsteelman@a-npdc.org>

Hello Scott,

The Groundwater Committee have posted the following comments on the Townhall website for the Columbia incentives NOIRA but I wanted to make sure you had it in your email as well. Also, Shannon has been promoted to Director of Planning and Jessica Steelman is our new Coastal Planner and she will be staffing the Ground Water Committee in the future, both copied on this message. I hope you and your staff have a merry Christmas.

Elaine

Dear Mr. Kudlas;

The Eastern Shore of Virginia Ground Water Committee (Committee) met and approved of the following six comments for 9VAC25-910 & 9VAC25-610 Notice of Intended Regulatory Action. These comments and requests are intended to make a simple, clear, and timely process that increases the incentive for users to promote Columbia Aquifer use on the Eastern Shore and by doing so preserve the Yorktown Aquifer.

1. Wells with a depth or 80' or less should be considered Columbia wells and regulated under the general permit. This depth would describe the Columbia in most areas of the Eastern Shore.
2. Applicants should estimate the withdrawal amount for mitigation purposes. The justification of this request should be kept as simple as possible. The committee requests the justification be applicant declaration.
3. The permit term should be 15 years or 30 years. The Committee prefers 15 years.
4. The Committee requests DEQ to establish one general permit reporting schedule for all applicants based on a quarterly meter reading. The general permit should include an election for the applicants to receive prompts from DEQ by email or mail. Applicants should be prompted by DEQ on a quarterly basis to read their meters and receive DEQ follow up when applicants fail to report back. No other reporting should be required.
5. An automated technical evaluation should be completed by DEQ based on a latitude and longitude description of the well.
6. The general permit shall be issued upon completion of the application within 60 days.

The following items were considered by the Committee at the November 19, 2019 meeting. Member Muhly made the motion. Seconded by Member Hershey the motion passed unanimously.

Thank you for this opportunity to submit these comments and requests.

Elaine K. N. Meil

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Elaine K. N. Meil
Accomack-Northampton Planning District Commission
PO Box 417
Accomac, Virginia 23301
757-787-2936 x116

Copy of Ms. Meil's comment on Virginia Regulatory Town Hall 12/9/19 10:47 am:

Commenter: Elaine K. N. Meil, Eastern Shore of Virginia Groundwater Committee

Columbia NOIRA Comments

Dear Mr. Kudlas;

The Eastern Shore of Virginia Ground Water Committee (Committee) met and approved of the following six comments for 9VAC25-910 & 9VAC25-610 Notice of Intended Regulatory Action. These comments and requests are intended to make a simple, clear, and timely process that increases the incentive for users to promote Columbia Aquifer use on the Eastern Shore and by doing so preserve the Yorktown Aquifer.

1. Wells with a depth or 80' or less should be considered Columbia wells and regulated under the general permit. This depth would describe the Columbia in most areas of the Eastern Shore.
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Thank you for this opportunity to submit these comments and requests.

Elaine K. N. Meil

Secretary, Eastern Shore of Virginia Groundwater Committee

----- Forwarded message -----

From: **Hobey Bauhan** <hobey@vapoultry.com>

Date: Fri, Nov 22, 2019 at 11:57 AM

Subject: FW: NOIRA - General Permit for Use of Surficial Aquifer on the Eastern Shore

To: Kudlas, Scott (DEQ) <Scott.Kudlas@deq.virginia.gov>

Cc: Holly Porter <porter@dpichicken.com>

Good morning, Scott. Virginia Poultry Federation (VPF) shares the interest conveyed by Delmarva Poultry Industry, Inc. in this NOIRA. VPF and DPI have worked closely on groundwater issues, and I would like to express VPF's strong support for Ms. Porter's request to participate on the regulatory advisory panel. VPF is not asking to be on the panel but we will follow the discussions and provide input as appropriate. Thank you for your consideration.

Hobey Bauhan, President
Virginia Poultry Federation
P.O. Box 2277
Harrisonburg, VA 22801
540-433-2451 (O)/540-478-8199 (M)
www.vapoultry.com

From: **Holly Porter** <porter@dpichicken.com>
Date: Thu, Nov 21, 2019 at 11:05 AM
Subject: NOIRA - General Permit for Use of Surficial Aquifer on the Eastern Shore
To: scott.kudlas@deq.virginia.gov <scott.kudlas@deq.virginia.gov>
Cc: Hobey Bauhan <hobey@vapoultry.com>

Mr. Kudlas,

I am writing to you asking to participate on the regulatory advisory panel in regards to the development of a general permit for the use of the surficial aquifer on the Eastern Shore. As the executive director of the Delmarva Poultry Industry, Inc., our grower-members and the chicken companies that work and live on the Eastern Shore of Virginia that we represent have a vested interest in this general permit. DPI was supportive of the legislation and we would like to be part of the conversation in the regulation that is implemented.

I appreciate your consideration and look forward to hearing from you.

Holly

Holly Porter | Executive Director
Delmarva Poultry Industry, Inc.
16686 County Seat Highway
Georgetown, DE 19947
porter@dpichicken.com
O: 302-856-9037, ext. 106 | C: 302-222-4069
dpichicken.org | [Facebook](#) | Twitter: [@dpichicken](#)



January 3, 2020

BY ELECTRONIC MAIL
Scott.kudlas@deq.virginia.gov

Scott Kudlas
Virginia Department of Environmental Quality
P.O. Box 1105
Richmond, VA 23218

Re: Creation of a General Permit for Use of the Surficial Aquifer on the Eastern Shore

Dear Scott:

I am writing on behalf of Mission H2O regarding the Notice of Intended Regulatory Action (“NOIRA”) issued on November 11, 2019 relating to the creation of a general permit for use of the surficial aquifer on the Eastern Shore. Mission H2O’s membership includes municipal, industrial and agricultural water users, all of whom withdraw and use water. Many of our members rely upon groundwater as their water source and are located in groundwater management areas, including the Eastern Shore Groundwater Management Area.

Mission H2O supported the legislation (SB 1599) directing the State Water Control Board to adopt regulations to provide incentives for the withdrawal of groundwater from the surficial aquifer in the Eastern Shore Groundwater Management Area. Our members support the idea of a general permit, and believe that there are other helpful incentives that should be considered as part of this process.

Mission H2O requests a representative on the Regulatory Advisory Panel being formed pursuant to the NOIRA. I would be happy to serve in that capacity.

Thank you for the opportunity to provide these comments. Our members look forward to working with DEQ on this important issue.

Sincerely,

Andrea W. Wortzel
Troutman Sanders
1001 Haxall Point
Richmond, Virginia 23219
(804) 697-1406
andrea.wortzel@troutman.com



cc: Mission H2O Members

From: njtllc@yahoo.com <njtllc@yahoo.com>

Date: Mon, Dec 30, 2019 at 1:18 PM

Subject: SB1599 TAC

To: scott.kudlas@deq.virginia.gov <scott.kudlas@deq.virginia.gov>

Good afternoon Scott,

I am writing to ask if you need another member for the SB 1599 TAC? As an Eastern Shore poultry grower with new GWPs and a grain farmer using surface water, I feel that I can assist with real solutions to protect our ground water supply. I am also a Eastern Shore Soil and Water District Director, although I would have to ask the board for a vote to "represent" them, this would be a opportunity to include another valuable resource on the Eastern Shore.

Thank you for you consideration.

Nick Thomas

From: **Shannon Alexander** <salexander@a-npdc.org>

Date: Mon, Jan 6, 2020 at 1:59 PM

Subject: RAP

To: Scott Kudlas <scott.kudlas@deq.virginia.gov>

Cc: Joseph Grist <joseph.grist@deq.virginia.gov>, Elaine K. N. Meil <emeil@a-npdc.org>

Good afternoon Scott,

Hope 2020 is treating you well thus far.

I think that we've been quite clear that the Ground Water Committee would like extensive representation on the RAP with regard to the Columbia's use in the Eastern Shore of Virginia Groundwater Management Area, however, I would like to confirm this request. The Committee made a motion to request that all voting members of the Committee and the Committee Consultant, Britt McMillan, are all included in the RAP. Additionally, there was a need expressed to have the RAP meet on the Eastern Shore, since it is an Eastern Shore specific topic.

Thanks so much and hope you're well,

--

Joseph Grist

Water Withdrawal Permitting and Compliance Manager

Department of Environmental Quality

1111 East Main Street

Richmond, Virginia

(804) 698-4031

Joseph.Grist@deq.virginia.gov

www.deq.virginia.gov

From: **SUSAN MASTYL** <smastyl@msn.com>
Date: Tue, Dec 17, 2019 at 12:27 PM
Subject: Participation on Regulatory Advisory Panel for SB 1599
To: scott.kudlas@deq.virginia.gov <scott.kudlas@deq.virginia.gov>
Cc: joseph.grist@deq.virginia.gov <joseph.grist@deq.virginia.gov>, johncoker@aol.com
<johncoker@aol.com>

Dear Scott,

I wanted to let you know that I'm interested in participating in the advisory panel to develop the regulation for incentivizing folks to use the surficial aquifer here on the Shore. I would appreciate your keeping me posted on the timeline for this, so I can make myself available for meetings.

Thanks -- have a great holiday.

Sue Mastyl, President, Virginia Eastern Shore Clean Water Council
14329 Mears Circle
P.O. Box 112
Harborton, VA
(757) 442-6644
smastyl@msn.com

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.

**COMMONWEALTH OF VIRGINIA
STATE WATER CONTROL BOARD**

**REGULATORY ADVISORY PANEL
CONCERNING**

**EASTERN SHORE SURFICIAL AQUIFER GENERAL PERMIT
(9VAC25 CHAPTERS 610 and 910)**

Panel Facilitator

Scott Kudlas, DEQ

Regulated Community

Holly Porter, Delmarva poultry Industry, Inc.
Steve Levitsky, Perdue Farms
Ed Tankard, Tankard Nurseries
Dave Lovell
Brett Mariner, Somerset Well Drilling

Environmental Groups

Susan Mastyl, Virginia Eastern Shore Clean Water Council
Jay Ford, Chesapeake Bay Foundation

Local Community Groups

Paul Muhly, Eastern Shore of Virginia Groundwater Committee, Accomack Board of Supervisors
John Coker, Eastern Shore of Virginia Groundwater Committee, Northampton Board of Supervisors
Jessica Steelman, Accomack-Northampton Planning District Commission

Consultants

Britt McMillan, Arcadis
Curtis Consolvo, GeoResources

DEQ Staff

Gary Graham, DEQ and Agency Contact

**VIRGINIA ACTS OF ASSEMBLY -- 2019 SESSION
CHAPTER 755**

An Act to amend and reenact § 62.1-255 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 62.1-262.1, relating to ground water withdrawal; Eastern Shore Groundwater Management Area; incentives for use.

[S 1599]

Approved March 21, 2019

Be it enacted by the General Assembly of Virginia:

1. That § 62.1-255 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 62.1-262.1 as follows:

§ 62.1-255. Definitions.

As used in this chapter, unless the context requires otherwise:

"Beneficial use" includes, but is not limited to, domestic (including public water supply), agricultural, commercial, and industrial uses.

"Board" means the State Water Control Board.

"Department" means the Department of Environmental Quality.

"Eastern Shore Groundwater Management Area" means the ground water management area declared by the Board encompassing the Counties of Accomack and Northampton.

"Ground water" means any water, except capillary moisture, beneath the land surface in the zone of saturation or beneath the bed of any stream, lake, reservoir or other body of surface water wholly or partially within the boundaries of this *the* Commonwealth, whatever the subsurface geologic structure in

which such water stands, flows, percolates or otherwise occurs.

"Ground water withdrawal permit" means a certificate issued by the Board permitting the withdrawal of a specified quantity of ground water in a ground water management area.

"Person" means any and all persons, including individuals, firms, partnerships, associations, public or private institutions, municipalities or political subdivisions, governmental agencies, or private or public corporations organized under the laws of this *the* Commonwealth or any other state or country.

"Surficial aquifer" means the upper surface of a zone of saturation, where the body of ground water is not confined by an overlying impermeable zone.

§ 62.1-262.1. Permits for withdrawals from Eastern Shore Groundwater Management Area.

The Board shall adopt regulations to provide incentives for the withdrawal of ground water from the surficial aquifer in the Eastern Shore Groundwater Management Area rather than from the deep aquifer in such management area. Notwithstanding the provisions of subsection C of § 62.1-266, such incentives may include extended permit terms of as long as 20 years, an accelerated permit process, discounted permit fees, other subsidies, or other incentives.

Attachment 7:

Eastern Shore Groundwater Committee Presentation Slides:
“Driving Factors for the Legislation”

Groundwater on the Eastern Shore



Regulatory Advisory Panel Presentation February 20, 2020



MANAGEMENT PROGRAM

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Presentation Overview

- ▶ A-NPDC & Ground Water Committee Purpose
- ▶ Groundwater Management and Planning
- ▶ Local Groundwater Conditions
- ▶ Threats to Our Groundwater Quality
 - ▶ Differences between aquifers within our system



A-NPDC Overview and Purpose

- ▶ Commonwealth created 21 PDCs in 1970 to address regional issues by fostering cooperation amongst localities and cooperation between state & localities
- ▶ Accomack-Northampton District:
 - ▶ Members: 2 Counties and Town of Chincoteague
 - ▶ Also provides services to 18 other towns
- ▶ Affiliate Organizations:
 - ▶ A-N Regional Housing Authority → provides privately or authority-owned rental housing
 - ▶ ESV Housing Alliance → improving housing for homeowners
 - ▶ A-NPDC →
 - ▶ Community Development
 - ▶ Economic Development
 - ▶ Transportation Planning
 - ▶ Environmental Planning → Ground Water Committee; Climate Adaptation Working Group; GreenWorks



Eastern Shore of Virginia Ground Water Committee

- ▶ Formed in 1990 by Accomack & Northampton Counties
- ▶ 11-members:
 - ▶ 2 County Administrators, 4 County Supervisors, 4 County-appointed members, A-NPDC Executive Director
- ▶ Contracts consulting hydrogeologist to advise Committee: Britt McMillan, ARCADIS
- ▶ **ESVA Ground Water Resource Protection and Preservation Plan**
 - ▶ Original 1992; Updated 2013
 - ▶ Regional plan to ensure adequate & safe drinking water for citizens
- ▶ **Water Supply Plans - Accomack & Northampton Counties**
 - ▶ Regulations: 9 VAC 25-780
 - ▶ Adopted in 2011
 - ▶ Updates were submitted to VDEQ in late 2018



Water Supply Plans & the ESVA Groundwater Resource Protection and Preservation Plan



- ▶ A-NPDC prepares for each County
- ▶ WSPs: Previously submitted in 2011, last updates submitted to DEQ in late 2018
- ▶ P&P Plan: Originally adopted in 1992 and Updated in 2013

Reported Use & Projected Demands

LOCALITY/TYPE	2010 Reported Use (MGD)	2040 Projected Demand (MGD)	Percent Change (2010-2040)
Northampton			
Community Water Systems	0.35	0.69	97%
Large Self-Supplied >300,000	0.04	0.06	50%
Small Self-Supplied <300,000	0.94	0.78	- 17%
Agricultural >300,000	1.65	1.65	0%
Subtotal	2.98	3.18	7%
Accomack (includes Chincoteague)			
Community Water Systems	0.94	1.45	54%
Large Self-Supplied >300,000	2.88	3.14	9%
Small Self-Supplied <300,000	3.09	2.86	- 7%
Agricultural >300,000	3.89	3.89	0%
Subtotal	10.80	11.34	5%
Eastern Shore Total	13.78	14.52	5%

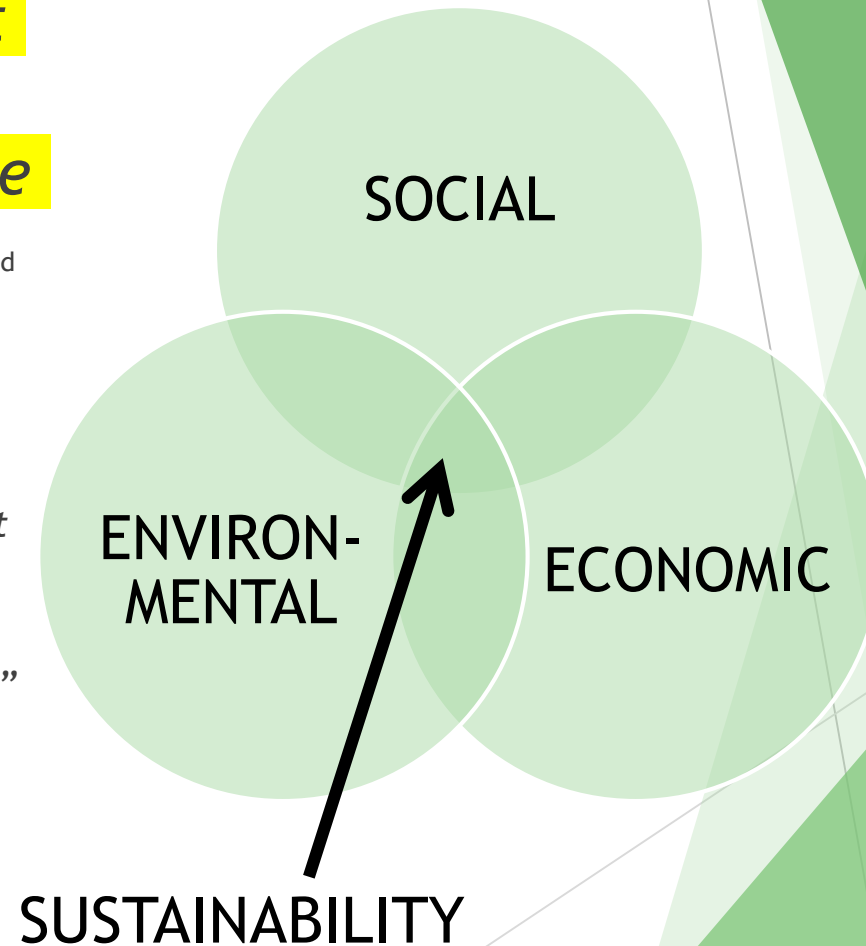


Definitions of Sustainable Development

- ▶ **Our operating definition: “...development that meets the needs of the present without compromising the ability of future generations to meet their own needs.”** (United

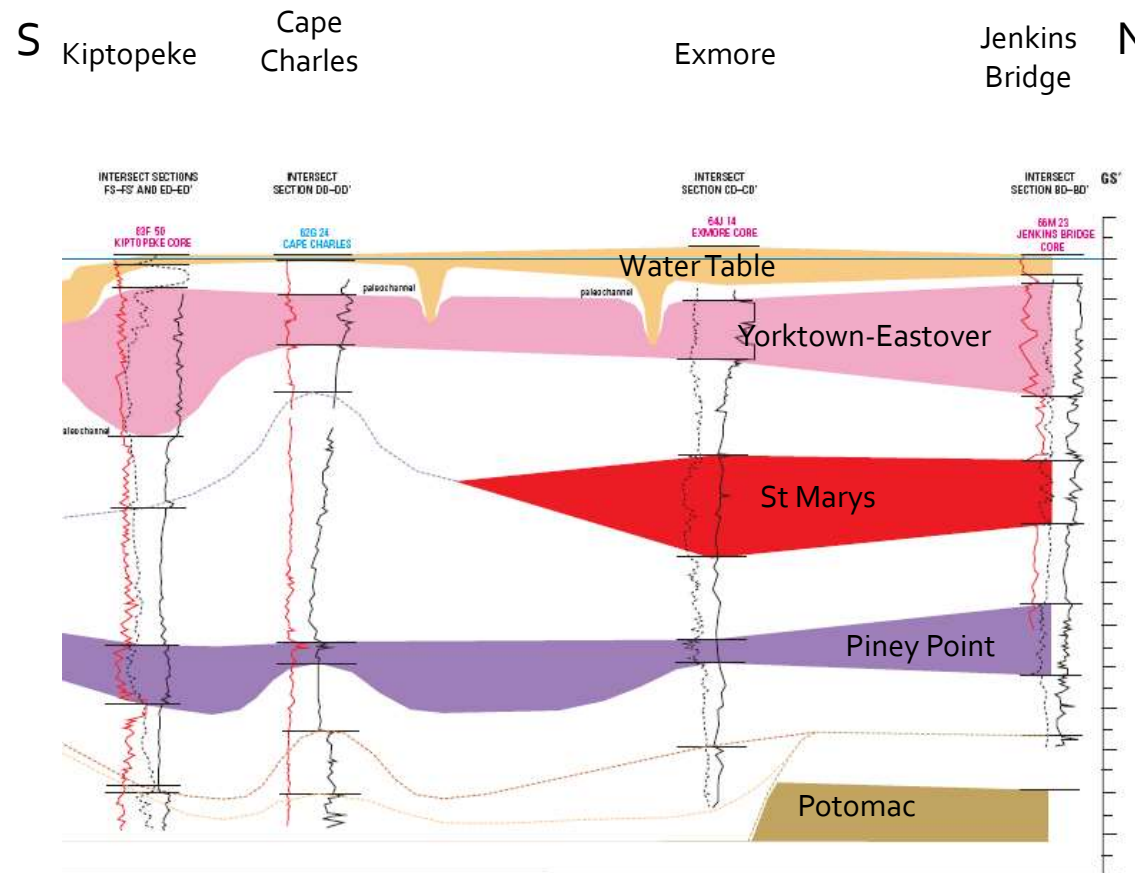
Nation's World Commission on Environment and Development 1987)

- ▶ **And older definition for meeting the following conditions:**
 - ▶ 1. “Renewable resources such as fish, soil, and groundwater must be used no faster than the rate at which they regenerate.”
 - ▶ 2. “Pollution and wastes must be emitted no faster than natural systems can absorb them, recycle them, or render them harmless.”
(Herman E. Daly, 1971)
- ▶ For groundwater, “used no faster than the rate at which they regenerate” is not practical unless taken into context with a complex water balance.



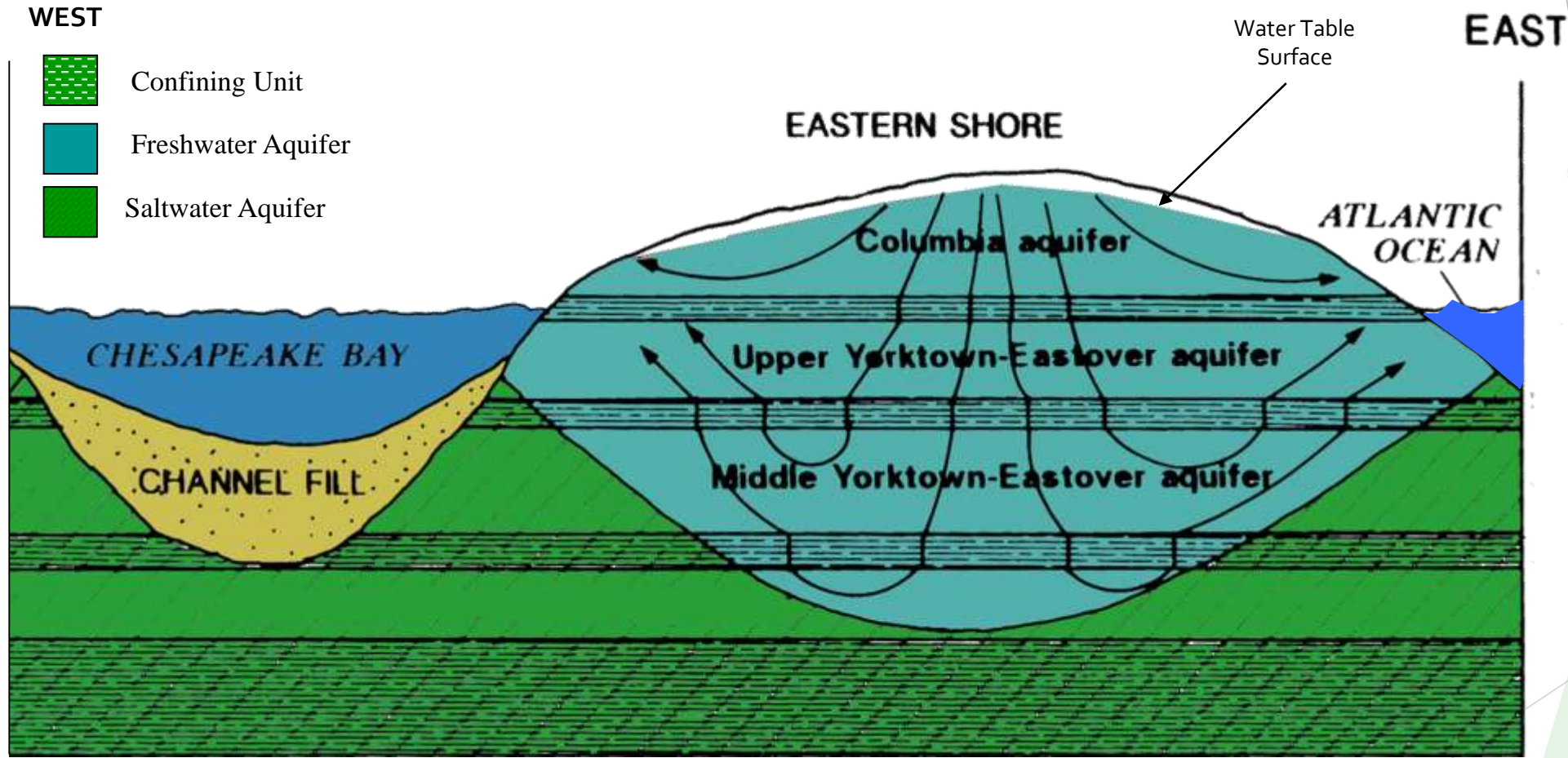
All Groundwater Aquifers on the Eastern Shore

- **Fresh Groundwater is restricted to the Surficial (Water Table) aquifer and significant portions of the Yorktown-Eastover aquifer**
- **Brackish groundwater is found in portions of the Yorktown-Eastover, all of the St. Marys Aquifer, Piney Point, and Potomac aquifers**
- **The Surficial, Yorktown-Eastover, and Piney Point aquifers are found throughout the Eastern Shore**
- **St. Marys and Potomac Aquifers are absent in the southern portion of the Shore**



Source: McFarland and Bruce, 2006

EPA-designated Sole Source Aquifer

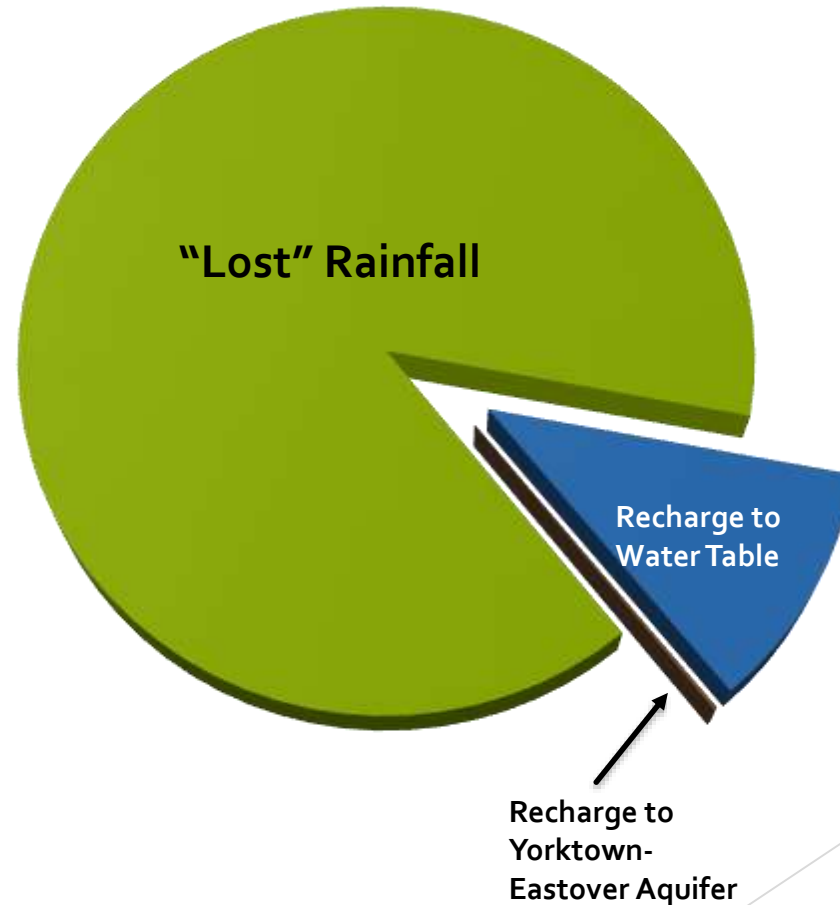


Fresh ground water is restricted to depths less than 350 feet

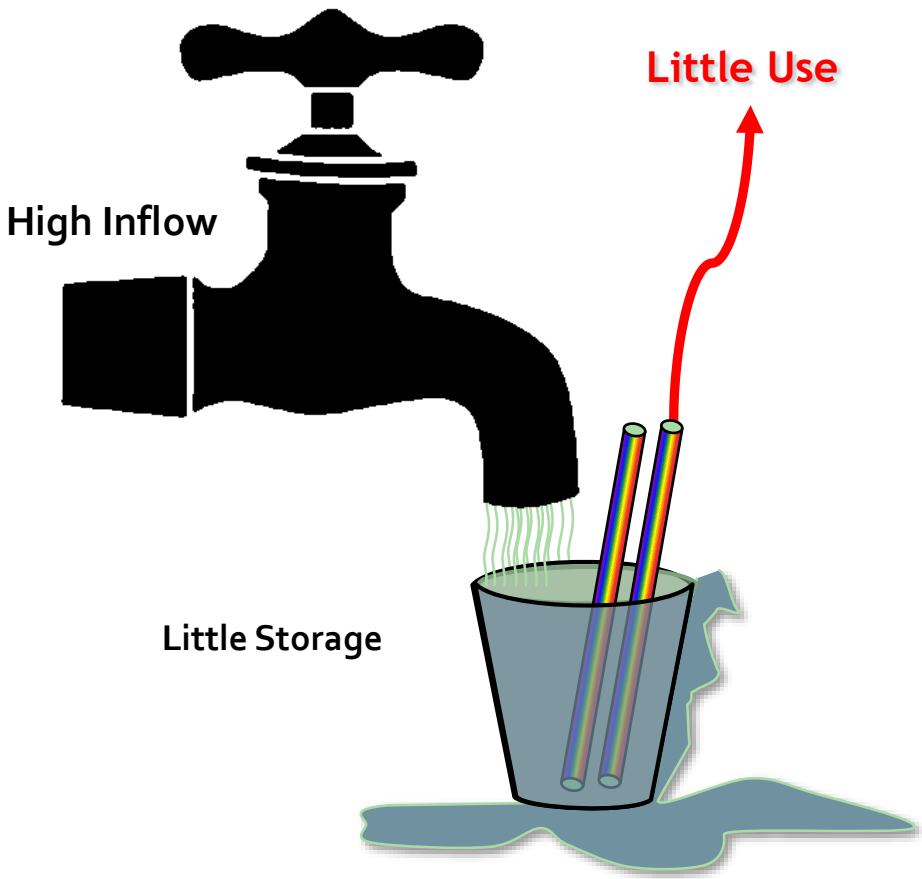


How Much Water Recharges the Aquifers?

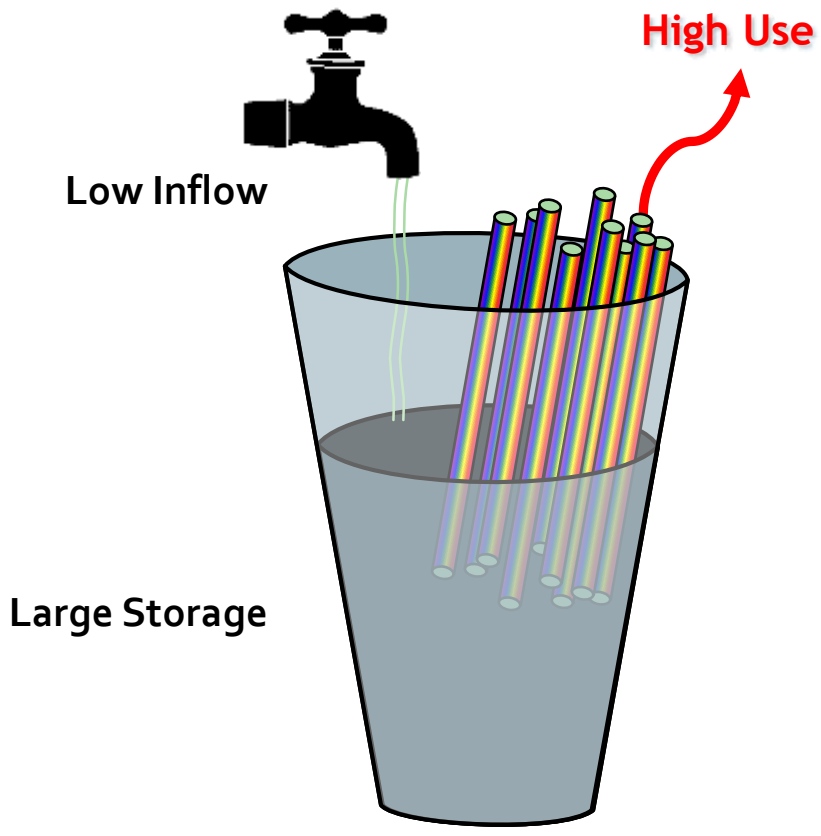
- ▶ All fresh water comes from precipitation falling directly on the Shore
- ▶ About 84% of the precipitation never infiltrates to the groundwater
- **Limited Recharge:**
 - Of the 44-inches of annual precipitation only 12% infiltrates to the water table (~200 B gal/yr avg)
 - Of the water that makes it to the water table, only about 1% recharges the confined aquifer (~3 B gal/yr)



Columbia Aquifer / Yorktown-Eastover Dilemma



COLUMBIA AQUIFER (WATER TABLE)

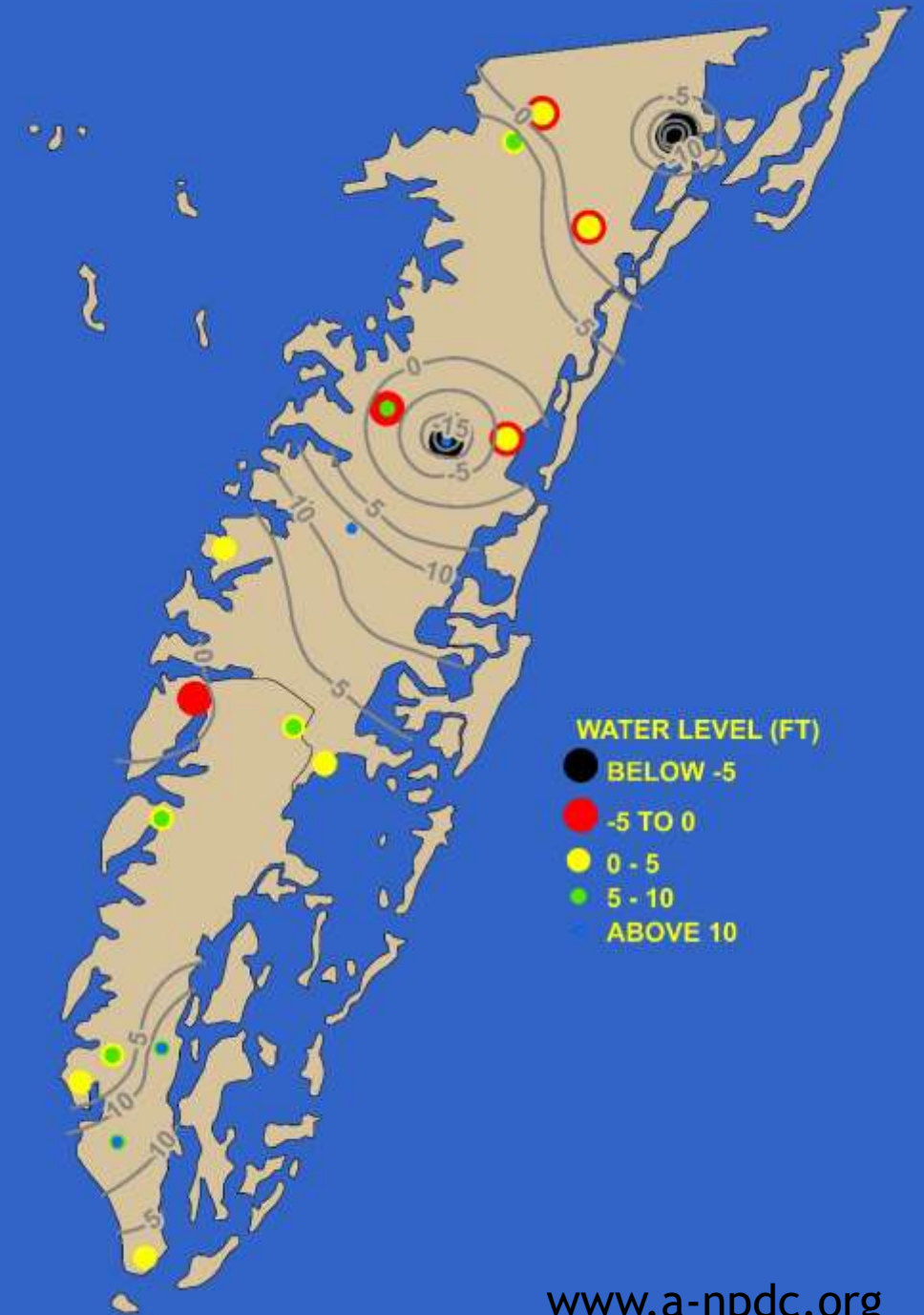
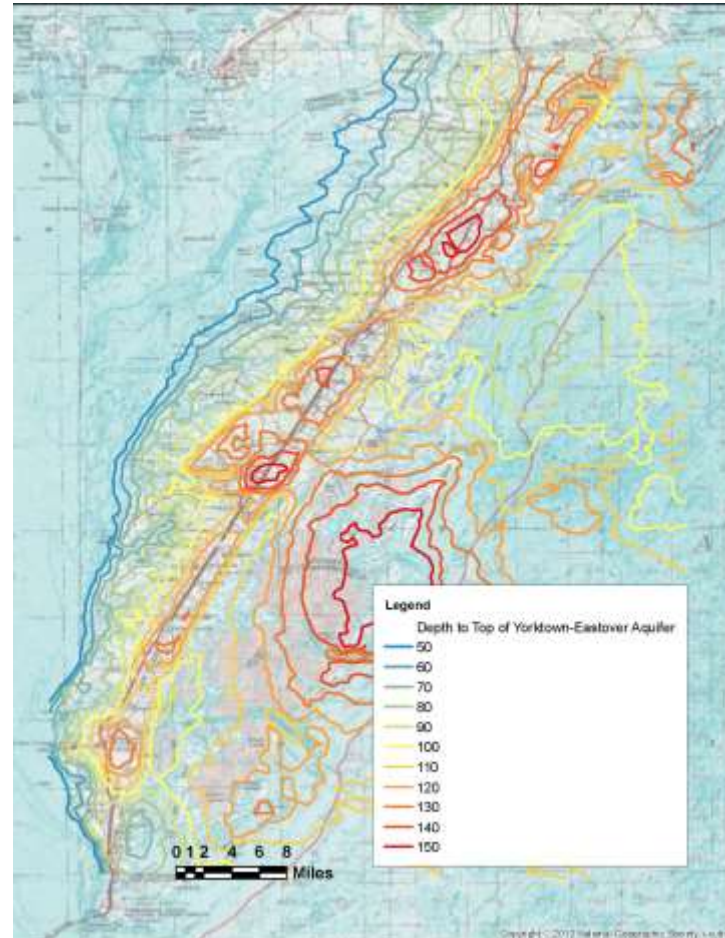


YORKTOWN-EASTOVER AQUIFER (DEEP)



The State of Confined Groundwater Wells in the Eastern Shore

- Eastern Shore confined water levels are mostly above sea level
- There are three areas (shown in red) where confined water levels are at, or below sea level



Threats to Ground Water Quality & Quantity on the Eastern Shore

- ▶ Surficial Aquifer
 - ▶ Quality → Surface Activities
 - ▶ Quantity → Drought
- ▶ Confined Aquifers
 - ▶ Quality → Over-pumping
 - ▶ Quantity → Over-pumping



Potential Threats to Surficial Water Quality

Sources:

Agriculture / Livestock

- Nutrients (Fertilizers)
- Pesticides / Herbicides
- On-site waste disposal

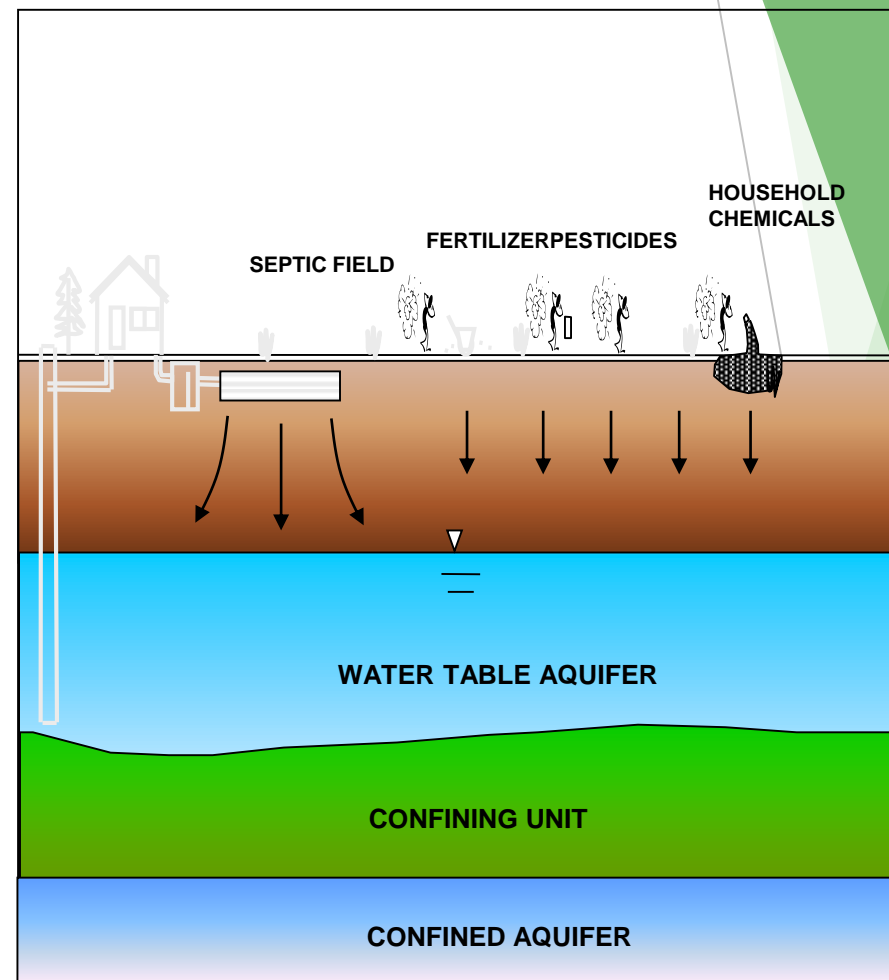
Waste Units

- *Septic Systems / Drain Fields*
- Public Sewers
- Underground Storage Tanks (USTs)

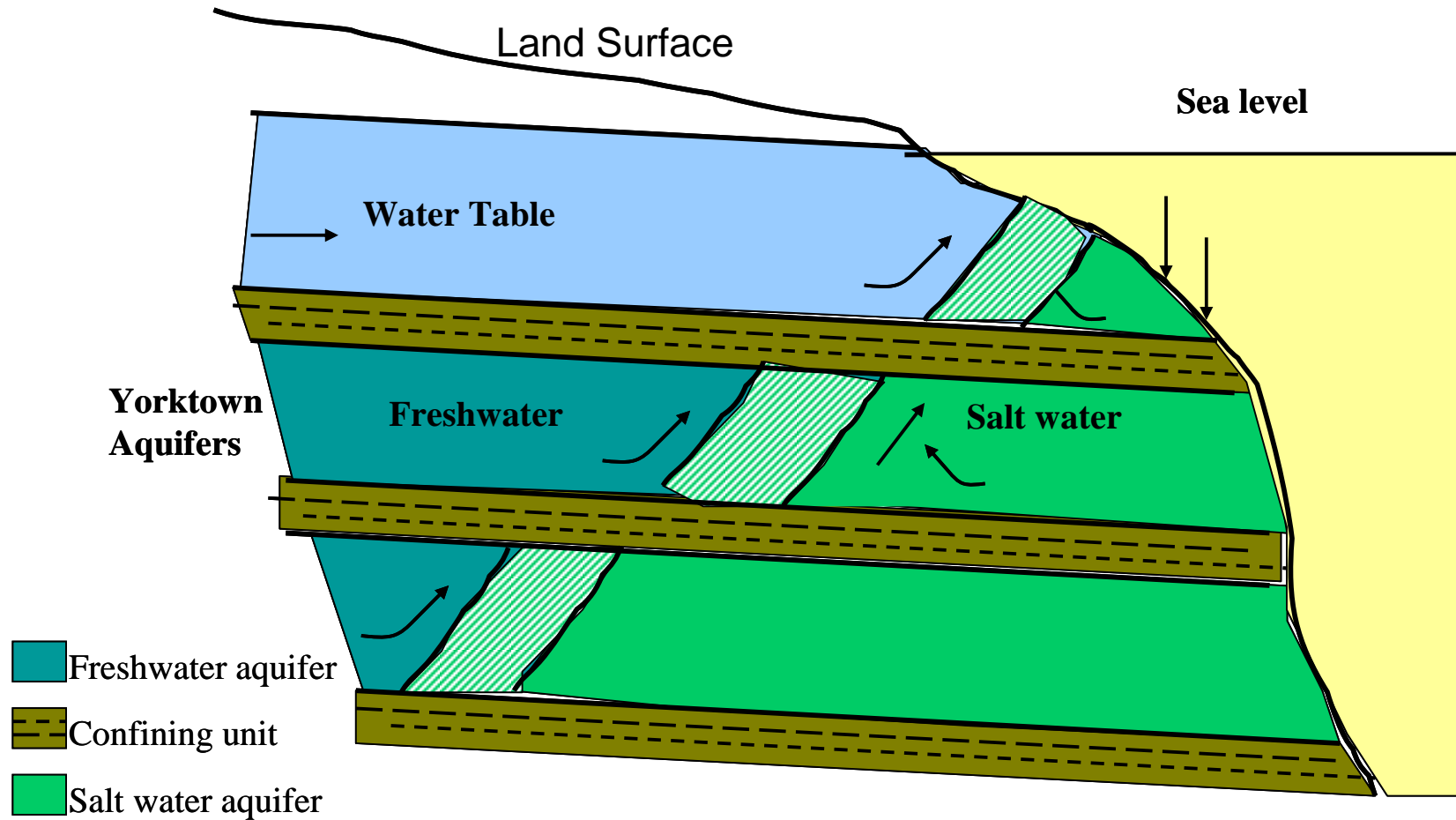
Residential

- *Nutrients / Pesticides - Herbicides*
- *Petroleum and solvents*

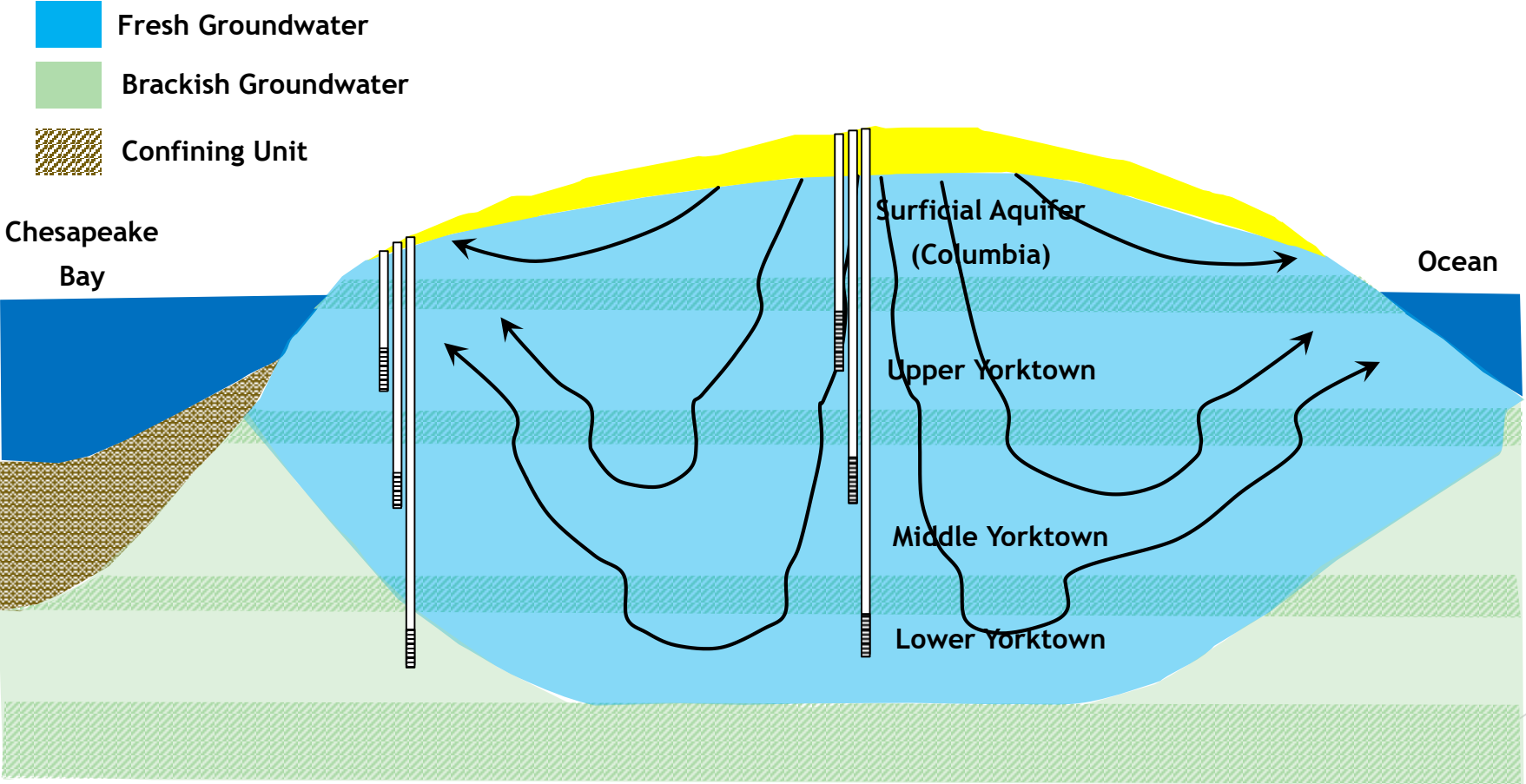
Function of amount (loading) and area of application



Potential Threats to Yorktown-Eastover Aquifer Water Quality

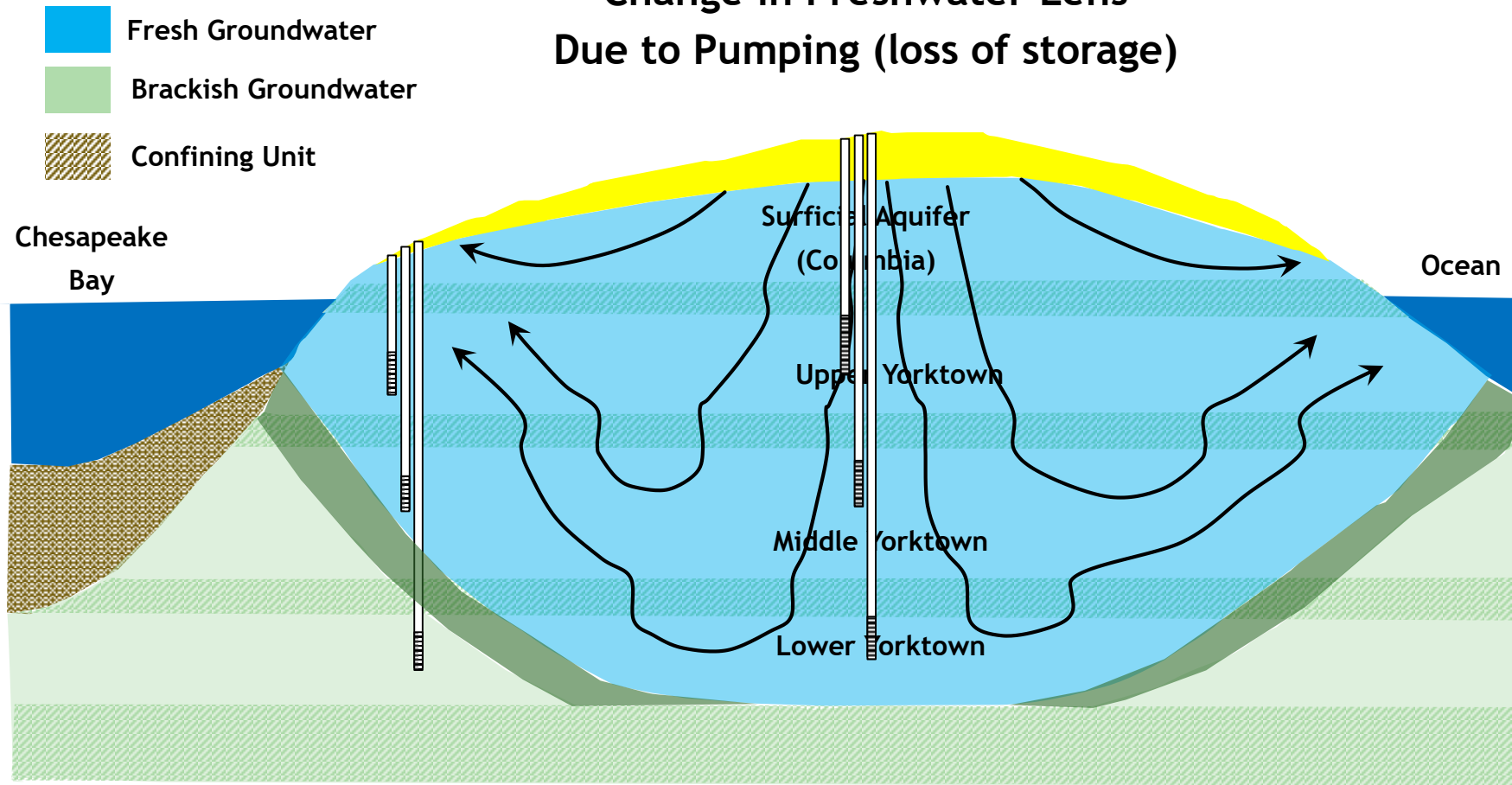


The most significant threat on the Shore due to over pumping is Saltwater Intrusion

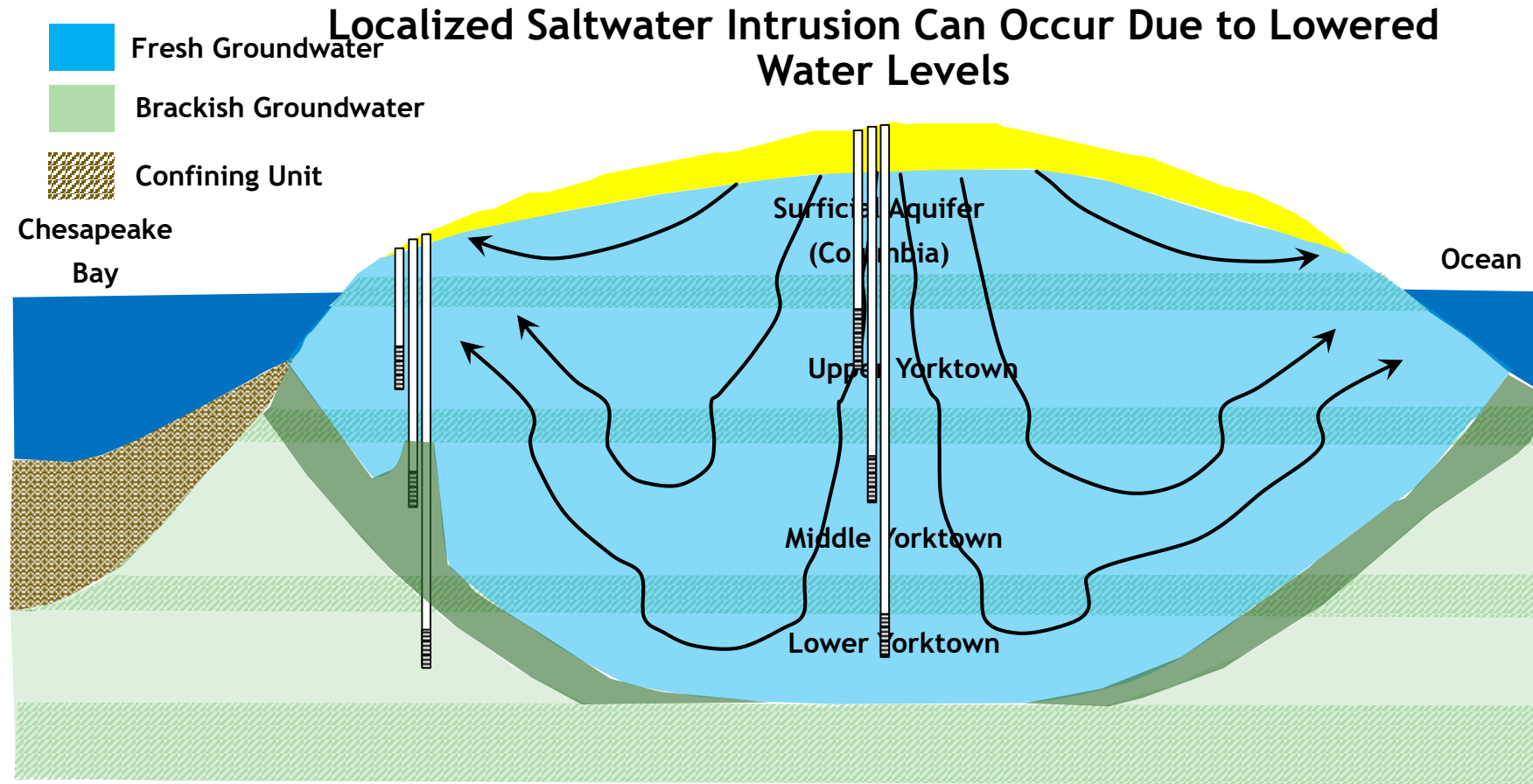


Regionally, a smaller freshwater lens is the greatest threat.

Change in Freshwater Lens Due to Pumping (loss of storage)

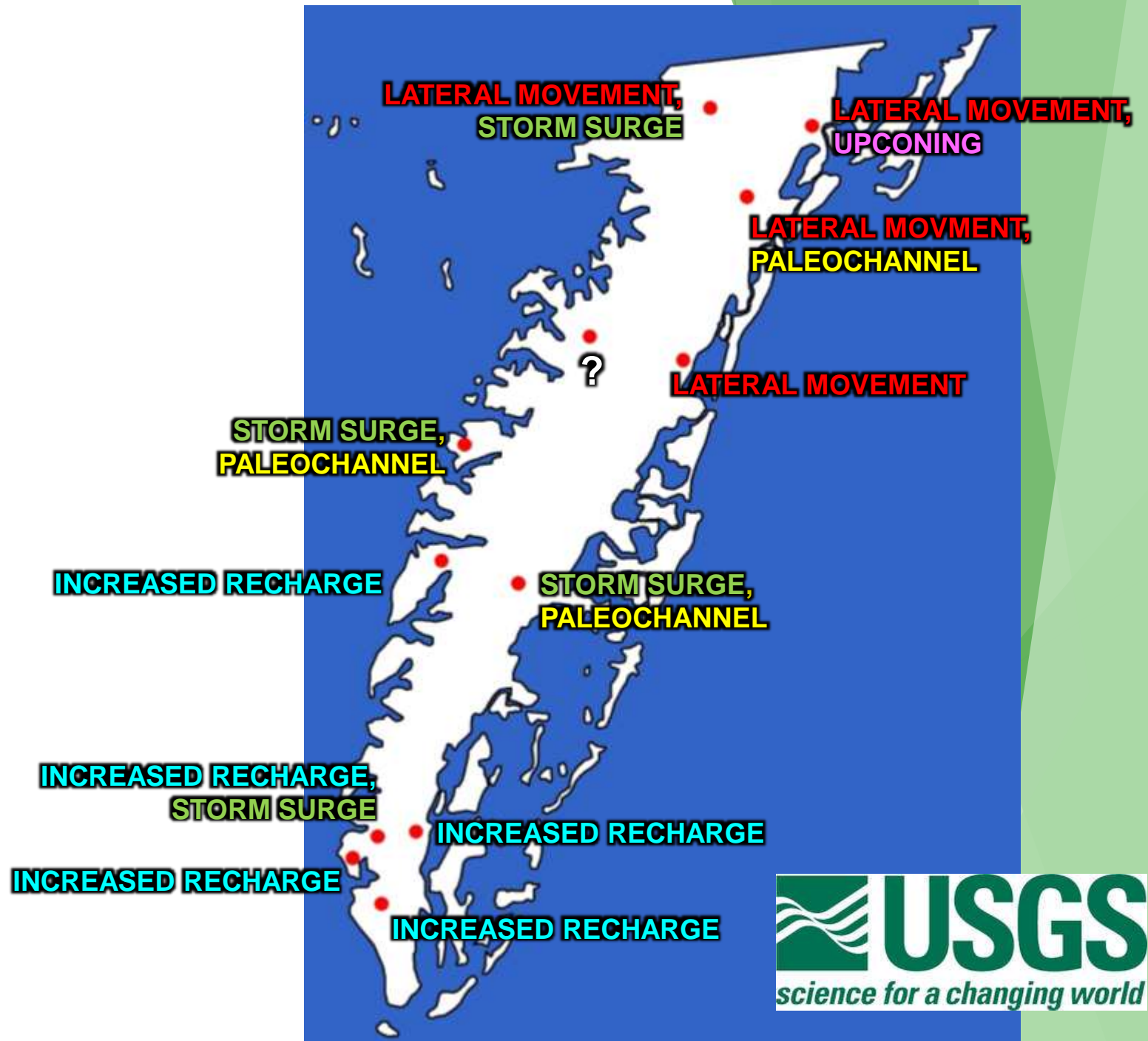


Locally, saltwater intrusion from upconing due to lowered water levels is a greater threat.



Recent Research

- ▶ USGS logged 12 wells with the same method in August of 2008 & 2016, 2017, 2018, 2019
 - ▶ Small salinity changes in most wells
- ▶ Intend to contract USGS to sample annually indefinitely, at least 5 consecutive years needed to get a better understanding of trends and causes of salinity changes



Surficial (Columbia) Aquifer -vs- Yorktown-Eastover (Confined) Aquifer

▶ Surficial Aquifer

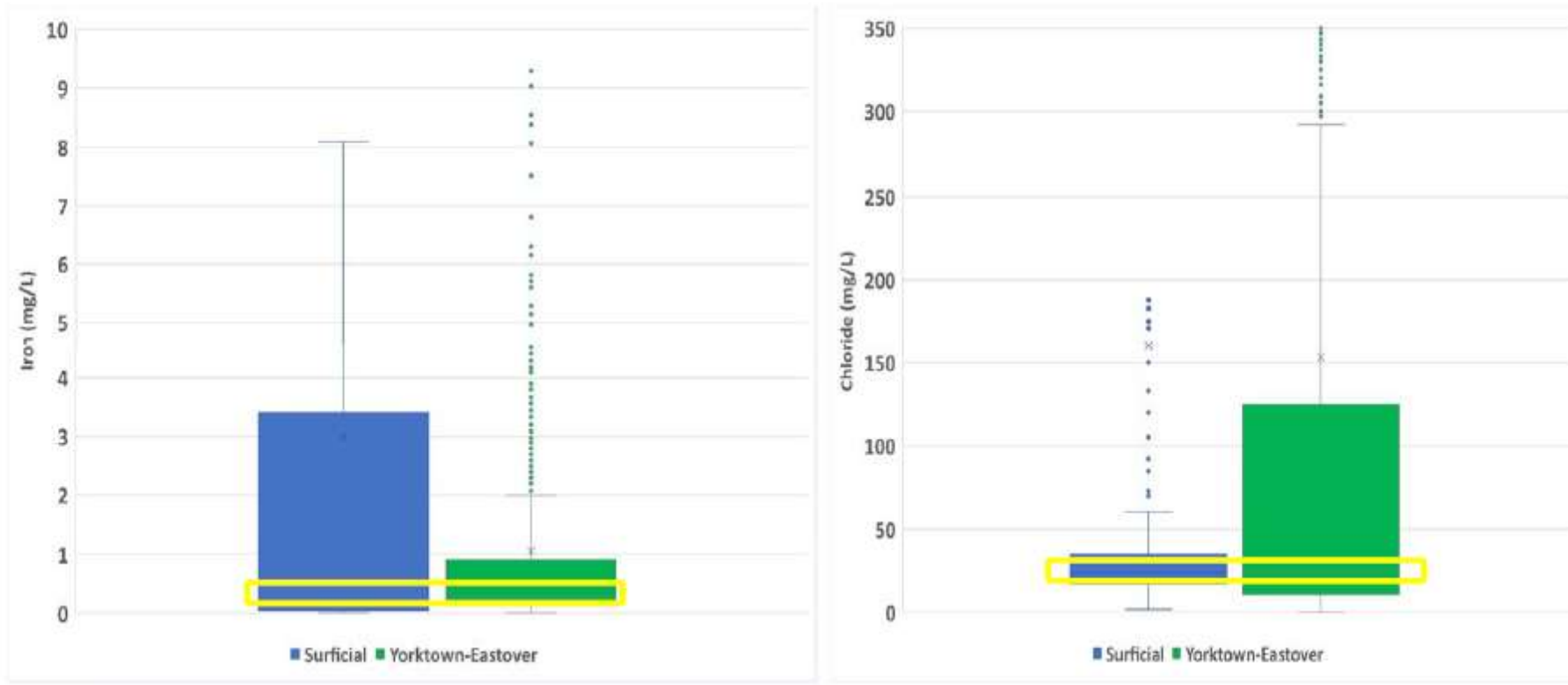
- ▶ Water is not 'under pressure'
- ▶ Well yield often thought to be lower than comparable confined aquifers
- ▶ Recharged directly by precipitation
- ▶ More vulnerable to contamination from surface activities

▶ Yorktown-Eastover Aquifer

- ▶ Water is under pressure, confined by overlying layer(s) of silt and clay
- ▶ Recharged from slower vertical flow through the confining unit
- ▶ More vulnerable to salt water intrusion



While not the same, both Surficial and Yorktown-Eastover aquifers have water quality concerns



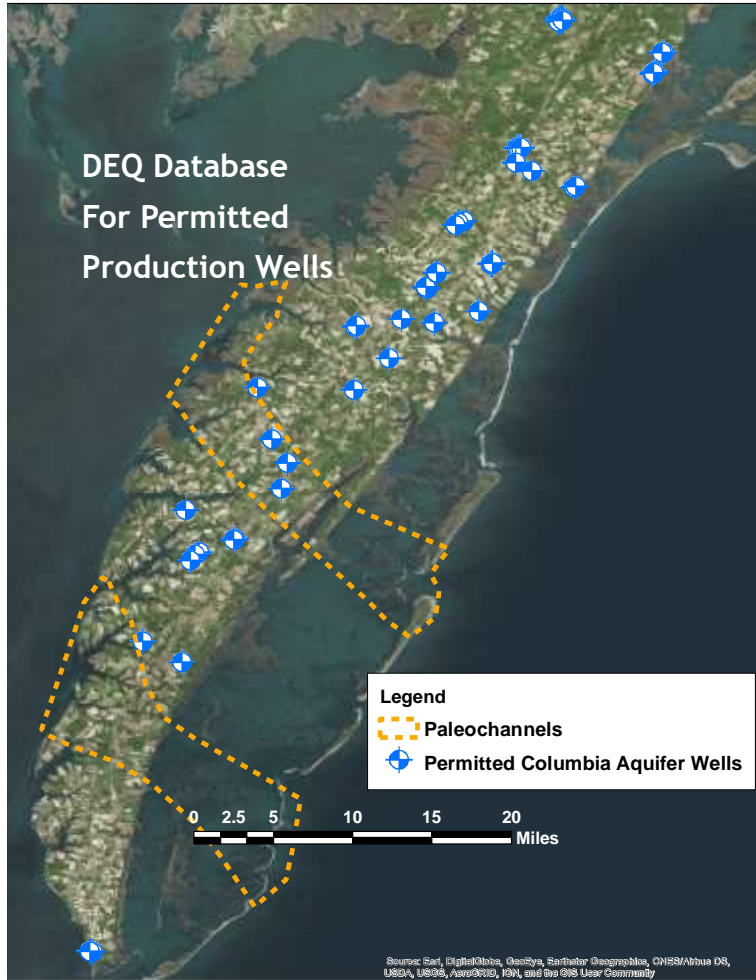
Surficial more likely has higher iron → Yorktown-Eastover more likely has higher salts

Ways to reduce potential for saltwater intrusion

- ▶ **Most effective: maximize use of the Surficial aquifer and surface water ponds.**
- ▶ Where possible withdrawal closer to the center spine where the freshwater lens is thickest.
- ▶ Reduce water use through:
 - ▶ Low flow/Ultra low flow plumbing and high water efficiency systems
 - ▶ Xeriscape landscaping
 - ▶ Maintaining green space that does not require irrigation (cluster development, etc)
 - ▶ LIDD stormwater controls that increase recharge



Existing Permitted Shallow Wells



System Name	Use Type
AL Mathews Farm	Agriculture
Broadleaf Farms	Agriculture
Christian Ames Farm	Agriculture
Drummond	Agriculture
Grapeland Farm	Agriculture
Holly Grove Farm	Agriculture
Home Farm	Agriculture
Lang Farm	Agriculture
Machipongo Farm	Agriculture
Middleton Farm	Agriculture
Northam Somers Farm	Agriculture
Painter Farm	Agriculture
Peach Orchard Farm	Agriculture
Roberts Farm	Agriculture
Sterling Farm	Agriculture
Turner Farm	Agriculture
Wes Powers Farm	Agriculture
Eastern Shore Yacht	Commercial
Sunset Beach Inn	Commercial
Trails End Utility Co Inc	Commercial
CCC	Industrial
Town of Chincoteague	Municipal

49 Shallow wells
 24 Locations
 Majority in Accomack
 County

From available DEQ data, the Surficial aquifer can yield in excess of 40 gpm over most of Accomack County. 40 gpm meets the need for many applications.



- Site specific conditions
- Lack of more extensive yield and quality data due to lack of reporting during well installations.



Steps towards the Surficial & Sustainability

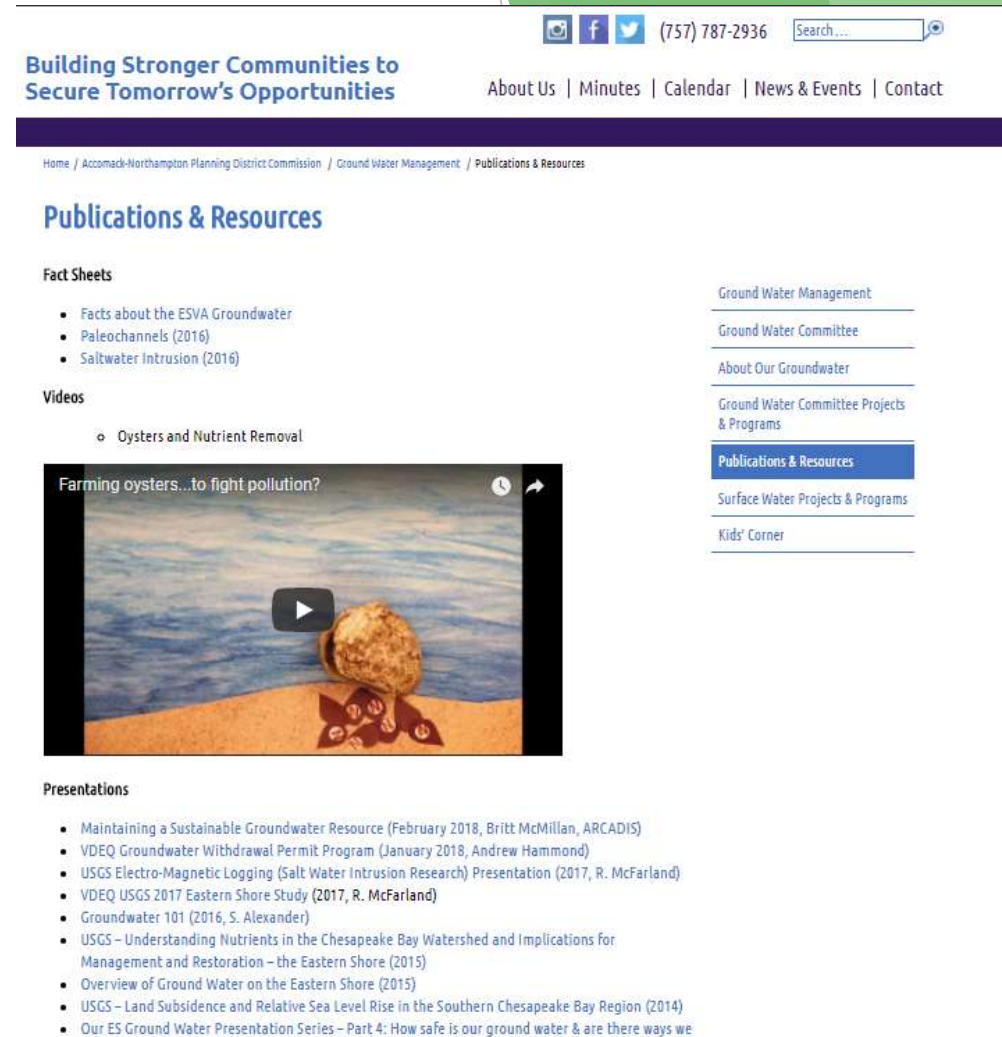
- ▶ Since the Ground Water Committee was established in 1990 it has encouraged use of the Surficial by:
 - ▶ Working with potential resource users
 - ▶ Commenting appropriately on draft groundwater withdrawal permits
 - ▶ Submitting letters to NRCS, VDEQ, EPA, local & state elected officials
 - ▶ Honoring entities/individuals using the resources efficiently & sourcing the Surficial



Eastern Shore of Virginia Ground Water Committee Ground Water Award

- ▶ Established the Award Program in 2004 to publicize local projects, individuals, and entities working towards water conservation, recharge area protection/preservation, aquifer preservation, recycling/reuse of water, pollution prevention and public education/community outreach.
- ▶ **2019 Recipients:** Senator Lewis and Delegate Bloxom
 - ▶ Senator Lewis worked with DEQ to draft SB1599, which directing the SWCB to adopt regulations providing incentives to withdrawal water from the surficial (Columbia) aquifer. The incentives include:
 - ▶ a. extending permit terms as long as 20 years,
 - ▶ b. an accelerated permit process,
 - ▶ c. discounted permit fees, d. other subsidies, or
 - ▶ e. other incentives.
 - ▶ Delegate Bloxom supported the bill through the House.





~Thank you~

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Summary

- Fresh water is limited: Restricted to a groundwater lens less than 350-feet thick and recharged by direct precipitation on the shore and a sole source aquifer.
 - ▶ There is more research needed to accurately predict the effects of groundwater withdrawal
 - ▶ Efficient use of water is important for adjacent users and the longevity of our fresh water aquifer
 - ▶ Proper maintenance of septic systems is important to ensure safe drinking water and clean surface waters
- Freshwater lens is susceptible to over use:
 - ▶ Regionally the smaller lens has not adversely affected the resource.
 - ▶ Lowered water levels has resulted in some very localized saltwater intrusion (upconing).
- Use over the past 10-years has been fairly steady:
 - ▶ Water levels and size of freshwater lens appears to have stabilized.
 - ▶ Based on our current understanding of the aquifers, overall use appears to meet the United Nations definition of “sustainable use”.
- Effects of additional use on the resource will depend on:
 - ▶ Location of the withdrawal and
 - ▶ Aquifer used (with the Surficial aquifer being far more sustainable).



Attachment 8

Strawman for Base Regulation Changes

9VAC25-610-10. Definitions.

Unless a different meaning is required by the context, the following terms as used in this chapter shall have the following meanings:

"General permit" means a groundwater withdrawal permit authorizing the withdrawal of groundwater in a groundwater management area under specified conditions including the size of the withdrawal or the aquifer or confining unit from which the withdrawal is to be made.

9VAC25-610-94. Application for a new permit, expansion of an existing withdrawal, or reapplication for a current permitted withdrawal.

9VAC25-610-95. General permits.

A. The board may issue a general permit by regulation for withdrawals of groundwater within a groundwater management area, as it deems appropriate in accordance with the following:

1. A general permit may be written to cover

a. withdrawals of a certain size

b. withdrawals from a specific aquifer or confining unit

c. other categories of withdrawals deemed appropriate by the board.

2. A general permit must clearly identify the applicable conditions of this chapter for each category or subcategory of withdrawals covered by the permit.

3. The general permit may exclude specified withdrawals or areas from coverage

B. When the board determines on a case-by-case basis that concerns for the aquifer, water quality and the ecosystem services that depend on the groundwater so indicate, the board may require individual applications and individual permits rather than approving coverage under a general permit regulation.

Cases where an individual permit may be required include the following:

1. The wells of two or more groundwater users within the area are interfering or may reasonably be expected to interfere substantially with one another;

2. The available ground water supply has been or may be overdrawn and is impacting ecosystem services that rely on surficial aquifer input;

3. The groundwater in the area has been or may become polluted. Such pollution includes any alteration of the physical, chemical or biological properties of ground water which has a harmful or detrimental effect on the quality or quantity of such waters.

4. Where the applicant or permittee is not in compliance with the conditions of the general permit regulation or coverage; or

5. When an applicant or permittee no longer qualifies for coverage under the general permit.

C. General permit coverage may be revoked from an individual permittee for any of the reasons set forth in 9VAC25-610-300 A subject to appropriate opportunity for a hearing.

D. Activities authorized under a general permit and general permit regulation shall be authorized for the fixed term stated in the applicable general permit and general permit regulation.

E. When an individual permit is issued to a permittee, the applicability of general permit coverage to the individual permittee is automatically terminated on the effective date of the groundwater withdrawal individual permit.

F. When a groundwater withdrawal general permit regulation is issued, which applies to a permittee that is already covered by an individual permit, such person may request exclusion from the provisions of the general permit regulation and subsequent coverage under an individual permit.

G. General permits may be issued, modified, revoked and reissued, or terminated in accordance with the provisions of the Administrative Process Act (Chapter 40 of Title 2.2 of the Code of Virginia, §2.2-4000 et seq.).

9VAC25-610-96. Duty to reapply for a permit.

9VAC25-610-300. Causes for revocation.

A. After public notice and opportunity for a formal hearing pursuant to 9VAC25-230-100 a permit or special exception can be revoked for cause. Causes for revocation are as follows:

1. Noncompliance with any condition of the permit or special exception;
2. Failure to fully disclose all relevant facts or misrepresentation of a material fact in applying for a permit or special exception, or in any other report or document required by the Act, this chapter or permit or special exception conditions;
3. The violation of any regulation or order of the board, or any order of a court, pertaining to groundwater withdrawal;
4. A determination that the withdrawal authorized by the permit or special exception endangers human health or the environment and cannot be regulated to acceptable levels by permit or special exception modification;
5. A material change in the basis on which the permit or special exception was issued that requires either a temporary or permanent reduction, application of special conditions or elimination of any groundwater withdrawal controlled by the permit or special exception.