

REGULATORY ADVISORY PANEL (RAP): HB542

April 12, 2022

Bank of America Building, 3rd Floor Conference Room,
1111 East Main Street, Richmond, VA

MEETING SUMMARY

Meeting Attendees

HB542 RAP MEMBERS & ALTERNATES	
Chad Neese, Southside PDC	Ross Philips, City of Richmond
Beck Stanley (alternate – Kyle Shreve, VA Agribusiness Council)	Pam Baughman, VA Rural Water Association, Louisa County Water Authority
Kelly Evko (alternate), RiverLink	Jon Brindle, Stafford County
Justin Curtis (Alternate) Virginia Municipal Drinking Water Association	Andrea Wortzel (Fairfax Water), Mission H2O
Pam Kenel, Loudoun Water	

NOTE: RAP Members NOT in Attendance: Kevin Byrd, New River Valley Regional Commission; Anne Doyle, A-NPDC; Jay Ford, Chesapeake Bay Foundation; Randy Owen, Virginia Marine Resources Commission; Jessica Phillips, Virginia Regional Tribal Operations Committee – Eastern Division; Dwayne Roadcap, Virginia Department of Health Office of Drinking Water; Brett Vassey, Virginia Manufacturers Association; Jay Ford, Chesapeake Bay Foundation; Eric Lawrence, Frederick Water; Amy Martin, Virginia Department of Wildlife Resources; Robert Cornett, Washington County Service Authority; Eldon James, Virginia Chapter American Planning Association, Rappahannock River Basin Commission; Whitney Katchmark, Hampton Roads Planning District Commission (HRPDC); James Maupin, Virginia Water Well Association (Maupin Drilling); Erin Reilly, James River Association; Michael Ward, Henry County; Martha Moore, VA Farm Bureau

PUBLIC/INTERESTED PARTIES	
Normand Goulet	

DEQ STAFF	
Brandon Bull, Water Policy Manager	Jutta Schneider, Water Planning Division Director
Ryan Green, Water Supply Planning and Analysis Team Lead	Scott Kudlas, Office of Water Supply Director
Bill Norris, Regulatory Analyst	Gouri Mahadwar, Water Supply Planner

Proceedings

1) Welcome

- a) The meeting began at 10:10am and was called to order by Scott Kudlas.

2) Goals

- a) Discuss the Strawman document for proposed revisions to the Local and Regional Water Supply Planning Regulation made since Meeting #5, and poll members for consensus on amendments.

3) Review and Approve Meeting Summary from RAP Meeting #5

- a) A correction was made to the date displaying in the document footer.
- b) More detail from the instream flow discussion was asked to be reflected in the summary.
- c) DEQ noted they would make those changes and the RAP approved the summary with the changes proposed.

4) Public Comment

- a) DEQ asked for public comment. No public comment was offered.

5) Review of Strawman for Proposed Amendments to Local and Regional Water Supply Planning Regulation - Staff reviewed proposed changes throughout the regulation:

a) 9VAC25-780-30. Definitions

- i) Water Authority - A panel member added to the definition, "*is a water supply entity created under § 15.2-5100 et.seq*".

b) 9VAC25-780-45. Designation of Regional Planning Areas

- i) A panel member expressed concern with Louisa County being part of the Middle James 1 planning area. This comment will be reviewed by DEQ.

c) 9VAC25-780-50. Preparation and submission of a program

- i) A panel member suggested that in Section B, regions with ongoing water supply planning processes can manage the process themselves without DEQ's involvement to collect the names of individuals in the regional planning unit. The member expressed preference to maintain the locally driven planning process, and may submit additional comments. DEQ responded that the current language was negotiated with members of the RAP to address the request that the regulation be more explicit on how the regional planning process would take place. This language also better matches the expectation of DEQ's involvement during the planning process.

d) 9VAC25-780-70. Existing water source information

- i) A panel member commented that Section A reads as though existing water sources are considered for each government, whereas the meaning may be that each local government provides water sources, and others may use that data. In response, another member suggested addressing the comment by removing "for each local government" from the last sentence. DEQ will review.
- ii) A panel member commented that grandfathered withdrawals should be included in documenting water sources, especially if instream flow information is included in the plans. This comment was supported by another panel member. DEQ responded that the agency is not prepared to make that change at this time. In later discussion, a panel member asked whether the plans could include grandfathered withdrawals if the region chose to consider

them. DEQ responded that the regulation requires inclusion of withdrawals whether grandfathered or not but specific consideration of grandfathered withdrawals is fine if the region chooses to include that.

e) 9VAC25-780-90. Existing resource information

- i) In Section B 11, a panel member suggested removing “Water availability based on” from the beginning of the sentence, so that instream flow is not singled out given the preceding items listed in Section B. DEQ will review this alongside other comments received on this topic.
- ii) A panel member expressed the preference that the changes to line 11 be stricken altogether because instream flow including impacts to aquatic species in the State Water Resources Plan is not promulgated criteria. DEQ responded that the current edits were to address the previously vague language, and the member stated preference for the original language. Another panel member expressed concern with the previous language because “potential threats to water quantity” could be many things besides instream flow, stating preference for keeping a narrower criteria, and supported the suggestion to remove “Water availability based on” from Section B 11. DEQ will review the feedback.

f) 9VAC25-780-100. Projected water demand information

- i) A panel member asked whether the requirement on local governments would be for the broader area in its jurisdiction or just for the utilities, and whether that would be in guidance. DEQ responded that it would be broader than utilities and in guidance.

g) 9VAC25-780-125. Identification of water supply risks and proposed regional strategies

- i) A panel member commented on the original regulation that the purpose of planning is to assess current resources and projected needs, and alternatives to meet projected needs if current sources are insufficient. Most sources in the plans are already permitted, and risks are about whether current resources can be relied on in the future. DEQ clarified that most sources are not necessarily permitted, at least that distinction is not in the plans.
- ii) Additional comments have been submitted to DEQ for consideration, and DEQ will review.

h) 9VAC25-780-140. Review of regional programs

- i) In Section G, a panel member would like to change “use” to “consideration”, because “use” indicates a requirement for localities to consider the additional information provided by DEQ which could be troublesome administratively and substantively. DEQ has received another comment on this section, and will review in light of both comments.
- ii) A panel member expressed that for the items in Section G 11, the timing and responsibilities of what DEQ is providing to localities vs what localities are providing to DEQ is confusing because some items are listed under both locality and DEQ responsibilities. Another member asked whether the goal of Section G 11 was to identify what should be in the State Water Resources and Supply Plan. DEQ responded that one goal of the original regulation

was to create planning process that made it easier for local governments to get through permitting process, by providing information such as aquatic life impacts that arise in the permitting process. The member preferred that information be packaged by project instead of packaged into each plan. DEQ will look for ways to address these concerns.

i) 9VAC25-780-150. Public notice and public comment period

i) A panel member commented that it is unclear whether public notice is required for both the tentative and final decisions in Section C, and that it's still unclear how the public comment period is going to work.

j) 9VAC25-780 - remaining sections

i) No discussion pertaining to Sections 10, 20, 40, 55, 60, 110, 120, 130, 160, 170, 180, and 190. Any edits in these sections were primarily typos, typographical corrections and replacing the term 'regional program' with 'regional water supply plan' where appropriate.

6) Poll for Support for Proposed Amendments

Scott Kudlas reviewed the responsibilities of the RAP shared at the first meeting - to assist DEQ in the development of a proposed regulation by providing technical advice, assistance, and recommendations consistent with the relevant issues. Consensus is the willingness of each member of the group to be able to say that they can live with the decisions reached and will not actively work against them outside of the process. Consensus is the goal, but not required, and DEQ and the Board are not bound by recommendations of the RAP. Members were asked whether they could support the regulation as it was presented during the meeting. DEQ noted that some comments had been received in between when the most recent draft regulation went out, and RAP Meeting #6. If comments in those sections were critical to supporting the regulation, members were asked to state that as part of their response. Any outstanding issues articulated will be shared with DEQ management and the State Water Control Board, and will be included in the materials produced for their deliberation of the proposed regulation.

Below is a summary of the feedback provided by each attending member of the RAP during the poll for support of the proposed regulation as presented at today's meeting.

a) Chad Neese

- i) There are some remaining topics discussed at this meeting that may be included in the regulation. Most of the previously expressed concerns that are not in the current regulation are to be addressed in guidance.
- ii) Supports the draft regulation.

b) Pam Baughman

- i) The main concerns regarding planning areas and localities being held responsible for other localities not participating in regional planning have been addressed.

- ii) Supports the draft regulation as is, but may not support the document if the Middle James 1 planning area changes.
- c) Kelly Evko
 - i) No major concerns from the economic development perspective.
 - ii) Supports the draft regulation as is, but would want another chance to review if the planning areas change.
- d) Jon Brindle
 - i) The clarity and support added for smaller localities that don't have preexisting regions is appreciated, and the new comments wouldn't change the function of the regulation.
 - ii) Supports the draft regulation.
- e) Justin Curtis (for Chesterfield County)
 - i) Comments were submitted by the Virginia Municipal Drinking Water Association (VMDWA). One comment is that regions should have an opt-out for DEQ involvement in initiating planning and coordinating due the variety of local/regional situations. Second, to clarify the level of effort for planning areas, there should be clarification of what 'readily available information' means. Third, although changes to the risk definition and section to date are appreciated, there are still concerns about how risks are considered vs. incorporated into plans. Those concerns include separating projected deficits and deficit analysis, whether risks are incorporated into a deficit analysis if there is no deficit, and in Section 100 D 4i whether the demand projections with or without water conservation are used to determine deficit.
 - ii) Cannot support the draft regulation as it was presented today pending discussing with members of the VMDWA. Overall, the work done on the regulation is appreciated.
- f) Andrea Wortzel (for Fairfax Water)
 - i) There are several remaining concerns: the top-down approach of planning without alternatives for already established planning systems, the comments submitted on Section 125, the resolution of instream flow (this issue is considered significant), clarification of the difference between locality and DEQ roles/requirements, and that concerns will not be clarified through guidance due to the volume of planned guidance.
 - ii) Does not support the draft regulation as it was presented today, and wants to see how the submitted comments get resolved. Other changes made to the draft regulation are appreciated.
- g) Ross Philips
 - i) If Louisa County remains part of the Middle James 1 planning area, then the draft regulation cannot be supported. The City of Richmond considers the James River water authority project in violation of Virginia law and Richmond's water rights to 337mg/day. Louisa County is in the York basin (by drainage), and sourcing from the James would be an inter-basin transfer and a direct subtraction from instream flow that impacts downstream users. One suggestion on the draft regulation is adding transparency and/or the ability for localities outside of the affected planning areas to provide comment during the process of localities requesting planning area changes. Other concerns include all anticipated changes to the

draft regulation, the way regulated communities will be affected by DEQ's interpretation of the regulation through a large volume of guidance, and the prevalence of instream flow throughout the draft regulation (City of Richmond submitted comments on instream flow that if incorporated would make the instream flow portions of the regulation livable).

ii) Does not support the draft regulation as it was presented today due to the concerns listed above. Negotiated changes in other parts of the draft regulation are appreciated.

h) Pam Kenel

i) The recognition that risks important to water supply are not solely demand based is appreciated. The addition of DEQ information that will be provided to localities is also appreciated because from the perspective of a regulated withdrawal, compiling information that reduces uncertainty in planning and permitting processes is valuable.

ii) Supports the draft regulation.

i) Beck Stanley

i) No comments.

ii) Supports the draft regulation.

7) Wrap-Up & Next Steps

a) DEQ staff will review additional comments received since the draft regulation for this meeting was sent out. After a good faith effort to talk through additional concerns, an updated draft will be sent out to the RAP.

b) The finalized draft is expected to be presented at the June meeting of State Water Control Board.

c) Scott Kudlas reviewed the remaining stages of a regulation process after State Water Control Board approval of the proposed regulation.

The meeting adjourned at 12:20 PM