

## DRAFT

### Waterworks Advisory Committee Meeting Minutes

In Person; Glen Allen Library, 10501 Staples Mill Road, Glen Allen, VA 23060

Wednesday, September 18, 2024, 10:30 a.m.

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**Members Present:** David Van Gelder (Chair), Water Operator; Skip Harper, Virginia Plumbing & Mechanical Inspectors Association; Tom Fauber, VA ABPA; Joey Hiner, VA SERCAP; Shane Wyatt, DCLS; Chris Pomeroy, Virginia Municipal Drinking Water Association; Michelle Caruthers, VWEA; Mark Estes, VRWA; Ignatius Mutoti, VSPE; Geneva Hudgins, VA AWWA; Anthony Morris, DEQ; Jesse Royall, Sydnor Hydro

**Members Who Did Not Participate But Listened Remotely:** Caleb Taylor, Virginia Municipal League

**Members Absent:** Andrea Wortzel, Troutman Pepper; Kathleen Banfield, Virginia Health Catalyst; Russ Navratil, VA AWWA; Whitney Katchmark, Principal Water Resources Engineer

**Office of Drinking Water (ODW) Staff:** Bailey Davis, Grant Kronenberg, Jane Nunn, Jessica Coughlin, Robert Edelman, Barry Matthews, Rebecca Bliley, Anthony Hess, Daniel Horne, Jack Hinshelwood, James Reynolds, Jeremy Hull, Ray Weiland, Steve Kvech, Fiora DeBorous

#### **Meeting Overview**

The Waterworks Advisory Committee (WAC) met in person at the Glen Allen Public Library on Wednesday, September 18, 2024. The meeting was also attended by electronic communication means via WebEx.

There were enough WAC members present to establish quorum.

The meeting was called to order at 10:36 a.m.

Chair, David Van Gelder introduced himself and followed by brief introductions of those in attendance to introduce themselves.

Mr. Van Gelder passed the floor to Grant Kronenberg.

#### **Review and Adopt Minutes of Meeting**

The WAC unanimously approved the June meeting minutes via a voice vote.

#### **ODW Funding Discussion**

Mr. Kronenberg stated that the next agenda item, discussion of the ODW budget and funding, was requested by the WAC at its June meeting. Mr. Kronenberg passed the floor to Rebecca Bliley, ODW Business Manager, to review the budget.

Ms. Bliley reviewed the projected 2025 Fiscal Year (FY), Office of Drinking Water (ODW) budget. Ms. Bliley advised the projected budget is based on FY24 expenditures as the FY25 budget is not yet approved. In review of budget items, Ms. Bliley advised the projected budget includes a 3% salary increase for ODW employees.

Ms. Bliley stated that the budget considers the following items: incoming EPA funding, the continued decrease in funding moving into 2027, and the newly added Business Unit and a need to increase staffing by an additional 55 employees. The increase in staffing was a determined necessity based on an EPA review of the office.

Ms. Bliley advised that ODW receives funding from a variety of sources including federal grants, state general funds and operating fees. Ms. Bliley reviewed the projected funding to be received by ODW from the Drinking Water State Revolving Fund (DWSRF)/BIL in the amount of \$17.9 - \$18.12 million, \$2.0 - \$2.3 million from the Public Water System Supervision (PWSS) grant, \$10.1 million state matching funds for DWSRF/BIL grant funding, \$0.82 million for state matching for PWSS grant funding, \$4.86 million in state general funds, and \$1.5 million for sampling verification.

Anthony Hess reviewed the Drinking Water State Revolving Fund (DWSRF) and the Bipartisan Infrastructure Law (BIL) program. Mr. Hess discussed how the redirect of funding on a federal level has decreased the amount of DWSRF funding.

Mr. Royall questioned if the funding changes in 2021 and 2022 were due to an increase in funding or increase in personnel. Mr. Hess advised that change was due to changes in the way funds were appropriated. He also advised that set-asides were not taken, and those funds were reinvested into construction funding.

Mr. Van Gelder questioned if ODW has maximized at the 31% of allowable set-asides.

Barry Mathews advised the Committee that the funds allocated for 10% staff support and 15% for Capacity Development set-asides have been expended. He stated ODW has chosen to use supplemental set-aside funding to build up staff and program needs in addition to PWSS funds. Mr. Matthews stated that funding is currently sufficient to manage the program through 2026, and the BIL funding ending in 2027 and will cause a significant impact on the program. Mr. Matthews advised that the emergent contaminants set-asides have not been used. Mr. Matthews stated that due to the complexity of the budget it would be beneficial to discuss the topic in greater detail on another forum.

Mr. Van Gelder states this is excellent information to have. He stated this appears to be a \$4.3 million fix and considerations should be made to address the issue in the next state budget cycles.

Mr. Royall motioned the WAC for the creation of subcommittee to discuss the budget and financial needs.

Mr. Kronenberg placed the vote on the floor on the creation of the subcommittee. The WAC members in attendance unanimously voted to approve the creation of the subcommittee. Mr. Kronenberg will submit a formal request to WAC members to seek participation on the subcommittee. Mr. Kronenberg advised the WAC that subcommittee meetings will follow the meeting guidelines currently established for WAC meetings.

Mr. Matthews discussed the \$100 million American Rescue Plan Act (ARPA) funding allocated to ODW by the General Assembly. Mr. Matthews advised the Committee that 43 projects were funded and \$40 million in funding across all projects have been disbursed. Twenty-two projects remain in the design phase, two of which have not presented any funding requests. Forty percent of construction funds have been exhausted. He advised that ARPA currently has two contract employees, one engineering firm, and five planning district commissions.

Ms. Caruthers questioned anticipated risks associated with ARPA funds. Mr. Matthews advised that the funding must be 100% allocated before September 30, 2024. Mr. Matthews advised in order to meet this requirement funds must be pre-obligated.

### **Revised Remote Participation Policy**

Mr. Kronenberg presented for the WAC's consideration a proposed amended electronic meeting policy for fully electronic meetings, and a proposed amended electronic meeting policy to allow individual members to join in-person meetings through electronic means. Mr. Kronenberg stated that the need for adoption of new electronic meeting policies is the result of the General Assembly amending the Virginia Freedom of Information Act.

Mr. Kronenberg reviewed the amendments to *VA Code 2.2-3708.3, Meetings held through electronic communication means; situations other than declared states of emergency*. Mr. Kronenberg stated that these changes to the Virginia Freedom of Information Act's electronic meeting provisions require the WAC to adopt amended policies if it wishes to allow fully electronic meetings and for individual members to join in-person meetings electronically. Mr. Kronenberg briefly reviewed some of the changes in the new law. Mr. Kronenberg stated that he has drafted proposed amended policies that reflect the changes in the law. Mr. Kronenberg confirmed, upon being asked a question by Mr. Pomeroy, that the proposed electronic meeting policies met the requirements of the law.

The WAC voted to unanimously approve the two electronic meeting policies as presented by Mr. Kronenberg. Mr. Kronenberg advised the Committee that the electronic meeting policies will be reviewed annually going forward.

### **Development of Amendments to the Waterworks Regulations**

Jane Nunn discussed draft proposed amendments to the Waterworks Regulations.

Ms. Nunn discussed well abandonment and the Waterworks Business Operation Plan (WBOP). Mr. Royall provided details on national studies regarding the usage of clay slurry, advising most

states do not allow clay slurry usage. He advised the use of bentonite slurry with at least 20% solids for well abandonments may be the best solution. Mr. Royall will forward research and information to Ms. Nunn on founded research for review and future discussion. Ms. Nunn will use the information for final draft for review and approval during the December WAC meeting.

Ms. Nunn reviewed the temporary waiver of the operator requirement under the new statute. Ms. Nunn advised that Mr. Pomeroy and Mr. Kronenberg worked together on clarifying the language for temporary waiver. Ms. Nunn advised no regulatory changes were made or necessary at this time, because the statute does not give ODW discretion in granting a temporary operator waiver. Ms. Nunn advised that regulations should not be promulgated if they will only repeat the statutory language.

Ms. Nunn reviewed the new language in the statute regarding remote monitoring. She advised that the proposed language in the regulation is precise enough to allow for changes and fluctuations in technology and allows for future growth. Ms. Nunn advised the addition of 12VAC5-590.F(d) allows for fluidity in rules as needed without an immediate need to re-address the statute.

Ms. Caruthers advised subsection d of the regulation needs specifics with the verbiage and the item should only address the requirements. Mr. Pomeroy agreed and advised the WAC of the need to differentiate between the type and reason for remote monitoring. Ms. Nunn advised these measures are to make sure monitoring occurs and is maintained over a secure connection as stations increase the use of various types of technology.

Mr. Van Gelder advised that the language in subsection d needs to be softened to prevent overload as the tasks are currently being performed and the topic should refer to the currently implemented rules. Mr. Kronenberg advised that ODW's plan is to generalize the rules and qualifications as there are various types of required monitoring.

Ms. Nunn advised the Committee that cybersecurity plans are currently required by the AWIA to be reviewed every five years, however, due to rapid technology changes, the annual reviews in subsection d would be more appropriate. Mr. Pomeroy advised that plans need to be submitted and assessments need to be done in accordance with the policy. Several WAC members suggested that the term, "reassessment" be used for the annual assessment following the initial assessment to alleviate any confusion on how extensive the annual assessment needed to be.

Ms. Nunn addressed the issue of multiple waterworks being monitored by the same operator. Ms. Nunn advised that for consistency a waterworks owner can submit one plan for multiple waterworks monitored by the same operator. If the submitted plan for any one system is not acceptable, however, ODW will reject entire the plan, and resubmissions will need to be done for each system. Ms. Nunn discussed the need to address any items that could lead to conflicts of interest. Mr. Van Gelder suggested the usage of a fundamental checklist using EPA rules.

Ms. Nunn requested feedback on timeframe requirements to implement changes when cybersecurity assessments have findings that need to be addressed. Mr. Royall advised due to costs,

manpower and additional overhead, corrections and adjustments will vary. Mr. Pomeroy mentioned the requirement of a risk mitigation plan. Ms. Nunn advised that this topic will be further discussed in the next quarterly meeting.

Ms. Nunn reviewed the newly added variance clause in the statute and advised that it was only necessary to modify the existing clause in the regulation so that it reflects the requirement in the statute. The WAC agreed to the change.

### **Licensed Operator Waiver and Remote Monitoring Policies**

Mr. Kronenberg thanked the WAC members for having provided feedback on the draft licensed operator waiver and remote monitoring policies since the last WAC meeting. Mr. Kronenberg mentioned changes that have been made to the draft policies since receiving that feedback. Mr. Kronenberg stated that he and Ms. Nunn spoke with Mr. Pomeroy recently and will be looking at further revisions to the draft policies.

Mr. Kronenberg reviewed the Remote Monitoring Policy in brief and advised meeting participants that changes were made to Section III, to reflect consistency with current regulations and to address cybersecurity concerns.

Mr. Kronenberg discussed needed changes to Section IV, B regarding regulatory and cybersecurity assessments and that it needs further review and will be discussed in the December quarterly meeting. He will distribute a red-line copy of the draft document to WAC members for review prior to the next quarterly meeting.

Mr. Pomeroy questioned what the essential elements are to receive operator credits. Mr. Kronenberg advised that additional information and conversation will be addressed relating to operator credits and will be discussed during the December WAC meeting.

### **Drinking Water Program Discussion**

Robert Edelman reviewed the ODW Lead and Copper Rule Revisions (LCRR) and Lead and Copper Rule Improvements (LCRI) updates. Mr. Edelman advised that the LCRR Service Line Inventory compliance date is October 16, 2024, and the inventory information needs to be made available to the public on this date. Mr. Edelman advised that notices need to go out to customers for community systems with lead, galvanized requiring replacement and unknown materials service lines within 30 days of completing the inventory but no later than November 15, 2024. Templates are available on the ODW website for use. Mr. Edelman advised that localities with water systems that have no lead or galvanized services lines are allowed to submit a written statement in lieu of providing the inventory.

Mr. Edelman pointed out that the EPA's LCRI rule has delayed or pushed back some of the requirements in the LCRR. He advised that water systems do not need to submit a list of schools and childcare facilities by the October 16, 2024, deadline. See his slides for more details.

Mr. Edelman discussed ODW's Harmful Algal Bloom (HAB) policy. VDH issued a HAB policy in November 2019 as a part of the Source Water Manual. In 2021, as a result of a HAB event on the North Fork Shenandoah River, VDH toxicology staff provided health advisory levels for two additional cyanotoxins: Anatoxin-a and Saxitoxin. As a result of lessons learned, ODW's Emergency Services Coordinator advanced a draft of the HAB policy in 2022. This year, a potential HAB event on the North Fork Shenandoah River highlighted that the HAB policy is a draft. ODW intends to update and finalize this policy and requests input from the WAC, possibly by convening a subgroup of stakeholders to review the policy in detail. Mr. Pomeroy requested information on how the advisory level present in the draft policy was determined and asked that more information on the determination be provided to the group.

Bailey Davis advised that HAB is not a part of ODW regulations, however, rising levels can cause the Commissioner of Health to act on the issue when required, noting EPA is advising states with information in the event actions need to be taken. Mr. Davis advised as an emerging contaminant, ODW would like to get ahead of any potential issues.

Mr. Kronenberg advised that this item will move forward to the December agenda. Mr. Kronenberg offered to include the state toxicologist in the meeting to discuss how the advisory level determination was made.

### **Public Comment Period**

Mr. Van Gelder invited members of the public and participants who are not on the advisory committee to comment. No public comments were made.

### **Conclusion**

The final WAC meeting of calendar year 2024 is scheduled for December 11, 2024 (virtual via WebEx).

The meeting adjourned at 1:04 p.m.