

REGULATORY ADVISORY PANEL (RAP): HB542

December 6, 2021

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

MEETING SUMMARY

Meeting Attendees

HB542 RAP MEMBERS & ALTERNATES	
Pam Baughman, VA Rural Water Association, Louisa County Water Authority	Scott Morris, Virginia Municipal Drinking Water Association, Chesterfield County Department of Utilities
Jon Brindle, Stafford County	Chad Neese, Southside PDC
Kelly Evko (Alternate), RiverLink	Ross Phillips, City of Richmond
Amy Martin, Virginia Department of Wildlife Resources	Greg Prelewicz, Fairfax Water
Eldon James, Virginia Chapter American Planning Association, Rappahannock River Basin Commission	Erin Reilly, James River Association
Pam Kenel, Loudoun Water	Ben Rowe (Alternate) VA Farm Bureau
Eric Lawrence, Frederick Water	Kyle Shreve, VA Agribusiness Council

NOTE: RAP Members NOT in Attendance: Kevin Byrd, New River Valley Regional Commission; Robert Cornett, Washington County Service Authority; Anne Doyle, A-NPDC; Jay Ford, Chesapeake Bay Foundation; Whitney Katchmark, Hampton Roads Planning District Commission (HRPDC); James Maupin, Virginia Water Well Association (Maupin Drilling); Randy Owen, Virginia Marine Resources Commission; Jessica Phillips, Virginia Regional Tribal Operations Committee/Chickahominy Indians – Eastern Division; Dwayne Roadcap, Virginia Department of Health Office of Drinking Water; Brett Vassey, Virginia Manufacturers Association; Michael Ward, Henry County; Jay Ford, Chesapeake Bay Foundation

PUBLIC/INTERESTED PARTIES	
Normand Goulet	George Hayes

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

Proceedings

1) Welcome

- a) The meeting began at 10:05am and was called to order by Scott Kudlas. A quorum was present.

2) Goals

- a) Meet the regulatory deadline for the RAP process.
- b) Discuss the Strawman document for proposed amendments to the Local and Regional Water Supply Planning Regulation.

3) Review and Approve Meeting Summary from RAP Meeting #2

- a) The panel advised that the word “to” is missing from 4e in the second to last sentence.
- b) DEQ noted a revised and final copy of the Meeting #2 summary would be sent out as soon as possible and posted on Virginia Town Hall and on the [HB542 Website](#).

4) Review of Strawman for Proposed Amendments to Local and Regional Water Supply Planning Regulation

- a) Ryan Green began the discussion of the Strawman document and noted that main changes are those that are necessary to meet the changes to the statute from HB542 and all other changes are “copy edits”.
- b) The title of the regulation is “Local and Regional Water Supply Planning” will be revised to remove the words “Local and”.
- c) **9VAC25-780-10. Application:** Changes are shown on Lines 8-12 of the Strawman document:

Proposed Amendments: “A. All counties, cities and towns (hereinafter “local governments”) in the Commonwealth of Virginia shall submit a local water supply plan or shall participate in a regional planning unit in the submittal of a regional water supply plan to the board in accordance with this chapter participate in cross-jurisdictional, coordinated water resource planning, and shall develop and submit, with the other local governments within a regional planning area, a single jointly produced regional water plan to the department.”

- i) The use of “water supply plan” vs. “water plan” was discussed. There was a general consensus amongst RAP members that the term “water supply plan” was the preferred term. Staff will review the Strawman document and revise to use the term “water supply plan”.
 - ii) RAP members asked about the schedule for completion of work. Staff noted the technical deadline of 180 days from the end of the NOIRA Public Comment Period, but DEQ referenced an internal deadline of mid-January.
 - iii) A question was raised about the date of January 1, 2003 found in Section B and whether there had been any consideration to change or remove that date. Staff noted that typically this language is not changed, and Brandon Bull, DEQ Water Policy Manager, confirmed.
- d) Preamble**
- i) The panel asked about addition of a Preamble. DEQ responded that this is not typical, and the Registrar’s Office discourages inclusion in a regulation.
- e) 9VAC25-780-20. Purpose of Chapter**
- i) The panel pointed out that local governments are ultimately responsible for the development of the water supply plans and bear the majority of the burden for coordination and implementation.
 - ii) The panel questioned the inclusion of the phrase “and other stakeholders” in lines 31-32. DEQ noted that there is language included elsewhere in the regulation that looks at the participation of other stakeholders in the process. The panel suggested adding clarifying language such as “local governments with the participation of stakeholders”. A member of the panel volunteered to review and submit a proposed revision to DEQ.
- f) 9VAC25-780-30. Definitions:** The Definitions section was skipped at the recommendation of staff as reviewing definitions will be more productive with the context of the other sections. Definitions will be reviewed after reviewing other sections

g) 9VAC25-780-40. Program development

- i) The panel discussed local government coordination to develop regional water plans; including general approach, staffing and resource limitations, and stakeholder participation. DEQ noted approach would differ by region.
- ii) DEQ noted that the original language required that local governments shall consult and coordinate with all community water systems. Language includes a requirement that local governments must consult and coordinate with other self-supplied users that utilize more than 300,000 gallons in any month.
- iii) The panel raised concerns over lack of control of participation efforts of partnering local governments. DEQ referenced compliance checklists that can be used to address activities at the local level for localities that are included in the “regional” plan/program. DEQ also noted that the “consult and coordinate” language was existing language in the regulation.
- iv) DEQ emphasized that there is currently no opt out mechanism for local governments wishing to plan locally instead of regionally.
- v) The panel raised concerns that coordination and cooperation of a regional program might be burdensome to localities. DEQ responded that the direction that DEQ has been given was that the “regional plans” that were done in the first two iterations were not “regional”; and the goal of the statute is to create truly “regional plans”.
- vi) The panel asked whether DEQ has reached out to all regional stakeholders for input. DEQ responded that is it the responsibility of panel members to reflect the positions of their regions, and that there will be several public comment periods to elicit stakeholder input.
- vii) The panel asked what specific language of House Bill 542 was being addressed by addition of requirements in 9VAC25-780-40. DEQ noted requirements in Section 62.1-44.38:1 B.
- viii) The panel noted that the language below needed to be either mandatory or suggested. There was general consensus to remove the phrase “but not limited to”.

...Other stakeholders; including but not limited to developers, economic development organizations and agricultural, industrial, conservation, and environmental organizations, shall be invited and encouraged to participate in the preparation of a regional program. Other stakeholders may participate at the discretion of the regional planning unit.

- ix) The panel discussed what would constitute “sufficient outreach”. There was a general consensus to edit the text based on panel discussions, proposed as follows:

...Other Local governments shall make a good faith effort to invite and encourage participation in the preparation of a regional program by other stakeholders including but not limited to developers, economic development organizations and agricultural, industrial, conservation, and environmental organizations shall be invited and encouraged to participate in the preparation of a regional program. Other stakeholders may participate at the discretion of the regional planning unit.

h) 9VAC25-780-45 Designation of Regional Planning Areas

- i) The panel noted that term “Independent” should be “Incorporated” in Section A. DEQ to revise as needed.
- ii) DEQ noted the proposed language in 9VAC25-780-45 B identifies a series of regional planning areas based exactly on the Drought Regions, with the only changes being to the names of the regions.

- iii) Panel members were asked to review the regional planning areas and suggest edits. DEQ was asked if there was a maximum number of planning regions. DEQ noted that the primary basis is planning based on river basin but it is preferred there be no more than 20 or 25 planning areas for practicality given the available staff and resources for reviewing plans. Planning areas boundaries would need to adhere to statutory requirements regardless of total number.
- iv) The panel asked if localities would be able to ‘apply’ to be a part of a different planning area after regional planning areas have been finalized. DEQ noted that they were unsure whether language allowing for that can be included at this time and requested additional input and suggestions for wording for this section from the panel.
- v) The panel raised a number of potential issues associated with specific localities and the use of drought regions as planning districts. DEQ asked that the panel put their concerns and suggestions in writing.

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

- i) DEQ noted that in the first sentence of this section that there is a substitution to replace the term “local” with the term “regional” as it relates to program as defined in the section. The reference to the local public hearing requirement found in Section 15.2-1427 of the Code of Virginia was discussed. A suggestion was made to revise the current language as follows:

A. Local governments must adopt a ~~local~~ regional program as defined in this section, including any revisions to comprehensive plans, water supply plans, water and sewer plans, and other local authorities necessary to implement this chapter. A ~~local public hearing consistent with § 15.2-1427 of the Code of Virginia is required during the development of the local program.~~ Local governments must publish notice and conduct a public hearing consistent with a local government’s requirements to adopt an ordinance. The public hearing may be combined with other public hearings that may be required.

- ii) It was noted that 9VAC25-780-50 C 11 requires that a resolution be submitted. The panel voiced confusion since it appears that a local government would approve the resolution and then during the development of the program the local government would then approve the program, which would include the resolution they had previously adopted. The panel was asked to provide suggested language to address the concerns.
- iii) DEQ noted that a single submission date of December 31, 2025 has been inserted in Section B. Some panel members noted that five years from date of adoptions does seem reasonable, but others noted concerns. DEQ clarified that the Registrar would revise the date accordingly to provide for that five-year interval, based on the final date of adoption.
- iv) The availability of funding was discussed. DEQ noted there are currently no grant funds available for this program.
- v) DEQ confirmed that Towns would also be required to pass resolutions.
- vi) The panel suggested “adopt” should replace the term “submit” in Section B. DEQ noted that Section B discusses “submitting” which identifies what you have to submit to DEQ in order to be deemed to be compliant with the regulation requirements.
- vii) DEQ noted a new requirement (C 13) that addresses the cross-jurisdictional components of the plan as well as the stakeholder involvement and consultation component. The panel made several suggestions including: allowing for a certification statement that local

governments have done what was required and that the documentation would be provided to DEQ upon request, or revise the language to give DEQ the ability to request more documentation if needed but not require it to be submitted.

- viii) The panel requested clarification on what would satisfy the requirement for documentation, and suggested that the addition of the terms “representative” or “relevant”. DEQ noted that there are current requirements to list those involved in outreach activities and the important piece is to make sure that each locality does the “due-diligence” necessary to implement the regional program.
 - ix) The panel suggested the use of “shall be included” instead of “should be provided upon request”, citing concerns about whom would have access to the included information. DEQ noted identification of the involved stakeholders is already in the list of required information. Historically these details have been included in guidance.
 - x) The panel noted concerns about language in Section D, specifically “substantial change” and the submittal of a “revised plan”. DEQ noted submission of a “new plan” is not required, but a “revised plan” is required. The panel will provide proposed language.
 - xi) The panel requested an outline of regional program development, update, and adoption.
- j) 9VAC25-780-60. State role in program preparation**
- i) The panel expressed concern about a situation where localities within a regional planning area do not participate in the planning process. The panel stated that localities have no mechanisms to force compliance. DEQ noted that in the case where all localities in a region are not participating, the regional plan may not comply with the statute.
- k) 9VAC25-780-70. Existing water source information**
- i) The panel raised security concerns about required spatial data being public information. DEQ noted that spatial information was added to improve evaluations of potential impacts, and therefore estimates of shortfalls or deficits as required by HB542.
 - ii) DEQ noted that Section 9VAC25-780-70 C should acknowledge any intake or intakes within the reservoir as well as any outside of the reservoir and staff will make the necessary changes.
 - iii) A panel member asked whether DEQ currently regulates the release from water supply facilities/structures downstream, or if this is handled locally. DEQ responded that it depends on the amount of water released.
 - iv) The panel noted concerns that plan requirements may be wandering into areas that are not within locality authority. DEQ noted that the locality would be simply providing the information to DEQ in order to evaluate impact, and that in the past facilities have responded to information in water supply plans by stating it does not accurately reflect their operation when needed.
 - v) A panel member asked if “reservoir” relates only to water supply reservoirs. DEQ responded that it includes all reservoirs.

- vi) The panel asked for the statutory reference for the estimated risk requirement. DEQ referenced the following statutory language:

B. 1. In preparing river basin plan and program reports enumerated in subsection A of this section, the Board shall... (vi) identify water management problems and alternative water management plans to address such problems estimate, using a data-driven method that includes multiple reasonable assumptions about supply and demand over varying time frames, the risk that each locality and region will experience water supply shortfalls; and (vii) evaluate hydrologic, environmental, economic, social, legal, jurisdictional, and other aspects of each alternative management strategy identified.

DEQ also noted that 9VAC25-780-50 contains language which states that “This information may be derived from existing, readily available information and additional detailed studies shall not be required.” The panel expressed preference for maintaining the qualification related to deriving information from readily available information.

- vii) The panel suggested that the addition of the language in 9VAC25-780-50 D & E should read: *“the location in latitude and longitude of the **intake or intakes** in a coordinate system specified by the board,”*.
- viii) A member of the panel proposed that information related to “surface water withdrawals exempt from VWP permit requirements (grandfathered) should be reported in either this section or in the next section (Section 80). Another member of the panel seconded this proposal. DEQ noted that there may be disagreements about what that number (grandfathered amount) might be and would need to be estimated by region and estimates provided in the plan. DEQ acknowledged that requiring grandfathered amounts would essentially be a reporting requirement and not any sort of claim or adjudication.

L. 9VAC25-780-80. Existing water use information:

- i) DEQ referenced the changes in 9VAC25-780-80 B 9 (below) and noted specifically that the categories included are important for planning at both the local and regional scale. The proposed language below changes “may” to “shall”, which staff noted would ensure more meaningful data reporting. Panel support was noted for the change because the regulation does say “shall include an estimate...” and a community water system is in the best position to provide that kind of estimate.

9. For each community water system included in the water plan, the plan shall include an estimate of the disaggregated amounts of water used in categories of use appropriate for the system. ~~Typical categories may~~ Categories shall include but are not limited to:

- a. Residential use;
- b. Commercial institutional and light industrial (CIL) use;
- c. Heavy industrial use;
- d. Military water use;
- e. Water used in water production processes;
- f. Unaccounted for losses;
- g. Sales to other community water systems and the names of such systems; or
- h. Subtotals of the above categories for all community water systems.

- ii) DEQ noted a change that had been made throughout the regulation and this section related to water use per month (300,000 gallons per month) which is to change “per month” to “in any month”. DEQ noted that this is to be consistent with the interpretation in the

current plan submissions and the application in other programs and will be making this change consistent throughout the regulation.

- m. **9VAC25-780-90. Existing resource information:** DEQ noted that there are no recommended changes to the current language in this section.
- n. **9VAC25-780-100. Projected water demand information:** DEQ noted the proposed change in D4 which mirrors the change proposed in Section 80 B9. These two sections will be looked at and any recommended changes will be reflected in both sections based on the comments made by the panel.
 - i. A panel member asked if there is a need for an additional category “i.” for “Other Significant Use or Uses”? DEQ noted that this might be covered in the “but not limited to” language, but would consider the additional category.
- o. **9VAC25-780-110. Water demand management information:** DEQ noted that the only changes in this section were the addition of the term “regional” to designate the planning area in A1; A2 and A3.
 - i. The panel mentioned concern that localities all have quite different water use efficiency practices and conservation measures that may vary quite dramatically. DEQ responded that if individual locality measures vary, this should be detailed in the regional program plan.
- p. **9VAC25-780-120. Drought response and contingency plans:** DEQ reviewed the changes to Section 120. The major addition to this section is the following:

4. Regional planning units are encouraged to develop a regional drought response and contingency plan that applies to one or more local governments within the regional planning area. Such drought response and contingency plan shall include consistent drought stages and responses in accordance with 9VAC25-780-120 where possible within the region. Regional programs that do not contain consistent drought responses and stages within the regional planning area shall identify any risks associated with inconsistencies in drought response and contingency plans within the region as part of the identification of water supply risks required by 9VAC25-780-125.

 - i. A panel member raised concern over the meaning of the term “consistent”, particularly as is used in the phrase “consistent drought stage”. DEQ responded that the State Drought Assessment and Response Plan lays out the categories of use that ought to be restricted during different levels of drought and this should be the benchmark for consistency.
 - ii. The panel requested clarification on the process for “responses”. DEQ noted that in previous regional plans, localities utilized a regional matrix of all facilities to determine specific stages based on unique facility elements. Staff also noted that the ability to do either local or regional drought response plans should be retained.
 - iii. The panel asked whether a locality would be able to implement a drought contingency plan without involving the region. DEQ responded yes.
- q. **9VAC25-780-125. Identification of water supply risks and proposed regional strategies:** DEQ led the panel through a high-level review of this section, with plans to discuss further during RAP Meeting #4, planned for January 6th, 2021.

- i. The panel noted concerns that several risks would require remedies outside of locality authority. DEQ noted that the statute requires identifying risks and mitigation strategies and that general discussion of these risks is integral to long-term regional planning.
- ii. The definition of “water supply risk” was discussed. It was suggested that this definition of “risks” should be included in this section for clarity. The panel expressed concerns that the current language does not provide flexibility related to identification of risks and that requirements of this section overlap responsibilities of DEQ. DEQ acknowledged this concern but noted disagreement that there would be a significant burden of analysis given the flexibility to include risks on the basis on whether they are applicable to the area or not.
- iii. The panel suggested that a risk category for “contamination concerns” should be added.
- iv. A panel member suggested that some risk categories are not appropriate given the definition of risk. For example, “aquatic habitat” may be better suited for in other sections of the regulation. Another panel member stated aquatic habitat should be equated to the same level as other non-drinking water uses. DEQ discussed where consideration of aquatic habitat does meet the relevant definition of water supply risk, giving an example from the Shenandoah where Small Mouth Bass fisheries brought significant money to the local economy, and prioritizing flows necessary to promote the fishery was part of the water supply planning consideration for that region. DEQ also discussed how water supply project permit processes can be affected as a result of potential impacts to threatened and endangered species within the project area, and that part of the intent of the original process was to have localities consider that risk during their planning so they may be better prepared when they start a permit process.
- v. The panel noted concern over, “For each water supply risk identified, the probability and magnitude of the impact on water supply or other beneficial uses shall be estimated.” The question was asked how important is it to DEQ that impact be measured numerically, and if a ‘high’, ‘medium’, ‘low’ qualification system could be used. Staff noted that suggestion for review. Staff also noted that Section 140 G says that the evaluation of impacts that DEQ does for the state plan is intended to be given back to the localities or the Region for incorporation into their subsequent planning efforts. These risks provide a framework for incorporating that work in a more quantitative way.
- vi. The panel noted that there are three categories of risks that are listed that are more closely tied to where DEQ has expertise while other groups (localities) may not. They include: reduction in waste assimilation capacity; reduction in aquatic habitat; and reduction in the availability of groundwater. DEQ acknowledged the comment. The specifics on how these new requirements are addressed can be covered in guidance but there would be flexibility.

5) Public Comment

- a) Normand Goulet from Northern Virginia Regional Commission provided the following comments:

- Commenter expressed agreement with many comments that have been made during the course of the meeting.
- Throughout the document the phrases and words, “water plan”; “water supply plan”; “water resource plan”; “regional program”; “regional plan” are used interchangeably. That causes confusion.
- Some information requests or evaluations being asked of the locality are beyond the scope of what a locality can request for someone to implement or even potentially influence. Some are solely within DEQ’s purview, not a locality.
- In terms of the regulatory planning areas, language to provide and option for a locality to be able to petition DEQ to decide on a case-by-case basis to move from one region to another should be added.
- Plan submission date should use language like “five years from the effective date of the adoption of the regulations” rather than a specific year.
- Concerns with requiring latitude and longitude information and security for the drinking water sector. Critical infrastructure information in Northern Virginia becomes a National Security Concern.
- Would DEQ commit to producing a guidance document for this regulation?

Staff responded to the question raised in the final comment. A guidance document would be produced.

6) Wrap-Up & Next Steps

- a) Panel members to provide comments, feedback and language suggestions to DEQ staff by the Close-of-Business on December the 16th, 2021.
- b) RAP Meeting #4 will be on January 6th, 2021 and the revised draft will be sent out for review by the group as early as possible.

The meeting adjourned at 3:34 PM.