

**INFORMAL WORKGROUP TO DISCUSS THE VIRGINIA WATER
PROTECTION PERMIT PROGRAM REGULATION EXCLUSION
UNDER 9VAC25-210-310(A1)**

**DEQ Piedmont Regional Office – Training Room
4949-A Cox Road, Glen Allen, VA 23060**

**October 24, 2024
10:00 AM**

MEETING MINUTES

Committee Members Present	
Jennifer Rogers - Dominion Energy	Pam Baughman – Board member, VRWA
Michael Kearns – Sussex Service Authority	Matt Longshore – Director, Hanover County Public Utilities
Ron Harris-Newport News Waterworks	Philip E. Gimple-Superintendent of Water Treatment, Strasburg, VA
Dave Hundelt – Greene County Water and Sewer Department	Andrea Wortzel - (Mission H20/VMA) Troutman Pepper
Bill Mawyer -Rivanna Water and Sewer	

Committee Members’ Alternates Present	
Gregory J. Prelewicz, P.E., ENV SP (alternate for Jamie Bain Hedges, P.E.)	Fairfax Water

The following committee members were absent from the meeting; Chris Pomeroy – AquaLaw/VMDWA; Alan Johnson – City of Danville Water and Wastewater Treatment; Dr. Julie Shortridge – Department of Biological Systems Engineering; David Jurgens, P.E. – Director City of Chesapeake Public Works; Donald L. Bowman, P.E. President and CEO, BVU Authority; Erica Whitehurst – Deputy Director Department, Senior City of Richmond

Technical Support Staff Present	
Liz McKercher - DEQ	Scott Morris - DEQ
Weedon Cloe - DEQ	Jonathan Rak - DEQ
Morgan Emanuel - DEQ	Eric Seavey - DEQ
Meghan Mayfield - DEQ	Trevor Lawson - DEQ

Interested Parties	
Paul Nyffeler - Hunton Andrews Kurth	Andrew Parker - AdvanSix
Shana Moore - AdvanSix	Mike Collins - Harrisonburg Public Utilities
Tom Dunlap – James River Association	

Meeting Notes

Welcome and Introductions:

Mr. Jonathan Rak, DEQ’ Chief Policy Advisor, welcomed members to the third Informal Workgroup to Discuss the Virginia Water Protection Permit Program Regulation Exclusion Under 9VAC25-210310A1. He then identified the available handouts for today’s meeting.

Handouts:

- Review and Approval of Agenda,
- Presentation - Eric Seavey, DEQ Office of Water Withdrawal Permitting Manager – *“Surface Water Management Area Regulation Overview”*

He went over some housekeeping items, including location of facilities and emergency evacuation procedures.

Meeting Agenda:

Mr. Rak went over the planned meeting agenda outline.

1. Welcome and Introductions
2. Review and Approval of 10/24/2024 Agenda.
3. Update of intake/pump capacity and transmission line data collection effort
4. Presentation: Eric Seavey, Office of Water Withdrawal Permitting Manager - *“Surface Water management Area Regulation Overview”*
5. Questions
6. New Business – Discussion from Workgroup members
7. Public Comment Forum
8. Next Meeting
9. Wrap Up

Approvals:

- **Agenda:** The committee approved the tentative agenda as presented.

Discussion: Staff began by discussing adding a provision to DEQ's data request letter that will be sent to all of the grandfathered withdrawal users. DEQ staff will be adding a paragraph to the letter that requires users to acknowledge receipt of the letter and to inform DEQ staff if there are any reasons why they cannot provide the requested information within 90 days. The workgroup did not oppose the addition, and the group consensus was that two weeks was a reasonable period of time to allow for a response.

Presentation: *Surface Water Management Area Regulation*

Discussions: Mr. Eric Seavey gave a presentation to the workgroup on surface water management areas. The presentation covered; the legal definition of what a Surface Water Management Area (SWMA) is, the definition of beneficial use for both instream & off stream uses, the designation of a SWMA, the use of surface water within SWMA's, exclusions and exemptions to the use of surface water within SWMA's, how voluntary agreements operate and influence the use of surface water within SWMA, an explanation of how certificates & permits operate under a SWMA, water conservation management plans, previous SWMA petitions, changes experiences since the 1990s, and the challenges of a SWMA.

Questions: Mr. Seavey then opened the floor for questions from members of the workgroup. Questions included;

- A clarification that there are currently no designated SWMA's;
- Clarification that exemptions to the SWMA include grandfathered users who are below the max daily withdrawal prior to July 1, 1989 and have not received a § 401 certification;
- How the pre 1989 daily withdrawal is calculated;
 - It would go back to how the data was collected. It was reported on a monthly basis, unless otherwise reported as a daily value, so we would have to look at it on a monthly basis;
- Whether the max daily was the actual withdrawal or the design capacity;
 - The actual volume;
- Clarification that voluntary agreements act in lieu of a permit;
- Clarification on how release requirements function under a SWMA;
- Whether the agreement between the agreement that ended a prior SMWA was a formal agreement under the structure of the SWMA or an informal agreement between Henrico County and the city of Richmond;
 - It was not under the structure of the SWMA.
- Who the lack of consensus was between that ended an SMWA in the Shenandoah River Basin;
 - There was a Technical Advisory Committee formed.
- what modeling shortcomings exist under an SWMA;
 - SWMA are a drought response action, as opposed to VWP permits do not exist under drought conditions. Permits are looking at water supply from a prospective point of view. When DEQ receives a VWP application, do they factor in grandfathered withdraw, or look exclusively at the recent history of uses.

ACTION ITEM: The department will post the Presentation on the DEQ Website.

Discussion: Mr. Rak opened the floor for comments and discussion from members of the workgroup. Topics of discussion included:

- How to view a SWMA in the broader context of how we approach water supply management. There is currently the permitting program, planning requirements, and DEQ's monitoring plan, which all influence the state water resource plan. The regulatory language does not specifically require a drought plan, but instead cites conditions where a low flow condition *could* occur. Looking at it from a groundwater context, permits were issued for a maximum withdrawal amount that was not the actual withdrawal, and the modeling showed that if the maximum amount was withdrawn, it would cause issues with the water supply. A groundwater management area was formed to discuss the issue. We have the same sort of tool here, and it is more of a policy question of how the data is used.
 - Under that rationale you would look at all the grandfathered intake capacities, and once DEQ has identified the withdrawals have a significant impact, a SWMA would be established for that watershed. That would lead to the process of issuing 10-year permits, or voluntary agreements. That could potentially impact different user disproportionately.
- Focusing DEQ activity and Commonwealth activity to the areas that have been identified through planning and modeling as being the highest priority. When DEQ receives a request for a substantial increase from either an existing or new user, how does the data collected help DEQ make decisions when accounting for grandfathered withdrawal rights.
 - When DEQ receives a request for a substantial increase, either from an existing user or a new user, and DEQ needs to make a decision how does the SWMA help DEQ make decisions when accounting for grandfathered rights.
- When DEQ is making a permitting decision, they have made a policy decision to look at a five-year window for grandfathered withdrawals and use that for their model, and DEQ also has information about how the projected withdrawals over the next 30-50 years. It is a policy question of how to use that data. One option is to model at the grandfathered amount based on the information DEQ receives, and we will find that there are areas of the state where we are over allocated. This would trigger the SWMA, and it becomes a more managed water body. Under the current legal construct, you can't change the grandfathered rights without an SWMA.
- An expectation is set that problem areas have already been identified. Areas where issuing permits is going to be challenging. The expectation going in without a declaration of a SWMA might get to the same decision. But while you have a SWMA declaration, everybody understands that there will have to be more challenges.
- It is also the vehicle for implementing decisions about prioritization. This is what the General Assembly intended to be used for that purpose. If you are facing a shortage in an area of the Commonwealth, the language of the SWMA sets that prioritization.
 - Using it as a proactive measure as opposed to a reactive measure. And if we do that it would limit all the intake capacities. It could lead to significant cuts to withdrawals.
- In a groundwater area the way those cuts were done was to say, this is the amount you are authorized to withdraw but you have never withdrawn over this amount, that is the new amount. There isn't a legal ability to reduce those outside of that context.

- The language of the SWMA limits users to their actual pre-1989 withdraw. You can't exceed that amount, that is the point of the SWMA regulation having that distinction.
 - Looking at matters from a proactive approach as opposed to a reactive approach. Once conditions stabilize you would just not maintain a SWMA. The permit itself does not go into effect until the low-flow condition. Taking it as a proactive measure means looking at it and saying if everyone is taking their maximum intake capacity it would create a low-flow condition and to prevent that from happening were going to establish a SWMA and that will trigger permits.
- The solution needs to be designed to match the problem The entire state was in a low flow condition during the last drought in 2002. Is that where we are heading, where the entire state is going to be in a SWMA for the purposes of controlling the grandfathered withdraws?
 - I think you would look back at average flows and stream flows that would predicate review. I don't know if that would be the historical 2002 values. There is methodology that would have to be developed if we are taking a proactive approach to these areas. I don't know if we would go to 2002 for extreme flow conditions and push the whole state to a SWMA. I don't believe that would be the intent. The intent would be to look at the conditions on an average basis and like at high probability that a condition would occur if you were to hit those intake volumes and then predicate that off of the decision to petition the board.
- You have to look at the whole body of water resources management laws together. When you look at that full body it does suggest that a SWMA is intended to be a management tool.
- All of the permits already have water conservation measure requirements in them.
- There is a state water supply drought plan that has been codified and put in place for each region. There were model runs that were done for regions using grandfathered data along with actual withdraw data, that should give us an idea of where the sensitivity is.
 - That data is still a work in progress. Once that data has been compiled DEQ can present on the areas of concern.
- Looking back at the cuts in 2014-2016, there was a massive pushback from all of the permittees. DEQ presented information showing that it was based on a technical decision, not a policy decision. The tenor of the conversation changed when the data backed up the regulatory proposal. I think a technical focused approach, as opposed to a statewide policy, would lead to less pushback.
 - Going back to procedural questions relating to new or expanded withdraws under VWP permits. When DEQ does the analysis under the construct that has been discussed, if the answer is that there are not enough resources, does mean the petitioner has the right to invoke a SWMA?
- The Board can designate an SWMA, or a local government can petition for an SWMA, I don't think an industrial user can petition for one.
 - To clarify, an industrial user could petition the board, it would just require the board to make an evaluation and decide. That would be at the Board's discretion to authorize that.
 - For better or worse one of the differences in approach is that this would become a State Water Control Board admin process proceeding as opposed to a permit review process. That significantly increase the time of the process.

- Having a SWMA in those areas where you know challenges exist guides the economic development away from the areas where there are known problems. That is exactly what happened with the groundwater management plan. It frees up water for other uses and leads to creative solutions.
- Looking at the body of all the tools available, what is DEQ's role, what is the regional role in promoting new supply development. Supply and development needs to be apart of this too. Regional solutions should be the focus.

Public Comment: Public comments were received from three individuals;

- Paul Nyffeler of Hunton Andrews Kurth asked two questions. His first question was to request clarification on agriculture exemptions SWMAs. His second question was on how the prioritization of different instream and off stream uses works.
 - In VWP permitting there are separate limits to necessitate a permit for other users, but there is no separation for agriculture in an SWMA. For Prioritization, Class I are public water supplies, those would take precedence. Class 2 are new users and agricultural or industrial users. And Class 3 are any other new users. These are classification based on issuance not importance per se.
- Andrew Parker of AdvanSix made a statement regarding the economic impact to commercial and industrial users when a portion of a river is put in a SWMA
- Mike Collins of the Harrisonburg Public Utilities made a statement to give historical context to the SWMA in the Shenandoah River Basin

Discussion: Mr. Rak then proposed that the workgroup do a desktop planning exercise at the next meeting. He suggested that at the next meeting they have a hypothetical SWMA and put in various industrial, municipal and agricultural users, and see if we go through the procedures of the SWMA how that would come out for the different types of users. It was proposed that members of the industrial and agriculture sector be invited to participate. The committee members discussed the pros and cons of using real data in the ensure the most accurate and helpful decision-making. DEQ staff will evaluate different approaches to determine what will function best.

Discussion: Mr. Rak then opened the floor for a group discussion. Topics included:

- Financing the construction of new dams and reservoirs
- In the Eastern Virginia Groundwater context there have been a lot of private/public partnerships that have helped to fund programs, as well as a discussion on groundwater trading. Creative solutions occur when you get everybody in a room facing a reality.
- The amendment to the local water supply planning requirement. The same data that is being collected is needed by the localities in the planning unit.
 - The planning units are all known entities and known demands that can be projected out. During the development of a SWMA the caveat of any user over 300,000 gallons a month opens up to users that we do not have a lot of data. There is a volume of water being withdrawn that we don't have in place of the modeling that could influence permits, certificates, and low flow conditions. Identifying these users and incorporating that data would require a lot of leg work.
- If the regulators don't know how much water is being withdrawn, how can they expect the local government to know? The regulators are best placed to get that information.

- We have assumptions on those uses that we use as surrogates, the actual numbers we don't have. When we go through and establish the SWMA the actual numbers could be vastly different. Those are assumptions that must be vetted in that process. You don't know you are going to find until you come to the table and getting the actual numbers from users that we don't have regulatory authority to permit.

New Business –Topics of Interest from Committee Members: Mr. Rak then opened the floor for the workgroup to engage in a general discussion. Topics of discussion included:

- Next steps for the committee
- Request for members to come up with proposals for discussion
- A request for an update presentation from the first meeting to show updated results
- Clarification that when looking at different scenarios and problems, the next step is evaluating what legal authorities in each scenario are. One of the issues is going through the VWP program adds a lot of restrictions.
- Before the advisory exercise is concluded, we should get to the point where we are looking at 2 possible solutions; one is to convert grandfathered users to permits. But that does come with legal challenges. And then the SWMA approach, with pros and cons to users in the Commonwealth.
- The majority of the workgroup members are municipal, and it would be helpful to hear from agricultural and industrial users to get a well-rounded view.

Public Comment: No comments were provided.

Action Items:

- DEQ will prepare three different hypothetical scenarios for a desktop exercise for the workgroup.
- DEQ will circulate the minutes from the previous meeting for members review and approval.

Next Committee Meeting: Johnathan Rak then turned to scheduling and planning the next meeting, as well as covering FOIA conditions. The workgroup consensus was that the next meeting should not be held until after users had been able to provide the requested information.

Adjournment: Jonathan Rak thanked all of the members of the committee, the interested public, Mr. Seavey for their presentations and closed the meeting. The meeting was adjourned at approximately 11:46 a.m.